

U.S. Department of  
Homeland Security

United States  
Coast Guard



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United States Coast Guard

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5800  
22 Dec 2015

## MEMORANDUM

From:   
S.D. Poulin, RADM  
Judge Advocate General

Reply to  
Attn of: Ms. Cothrel  
5-6916

To: CG- LMA

Subj: SPECIAL VICTIMS' COUNSEL SERVICES FOR PERSONS INELIGIBLE FOR  
LEGAL ASSISTANCE

Ref: (a) National Defense Authorization Act FY2016, Section 532  
(b) 10 U.S.C. §§ 1044, 1044e, and 1565b  
(c) Memorandum from DoD OGC for Director, Headquarters U.S. Air Force  
Administrative Law Directorate, 15 Sept 14  
(d) Delegation to the Commandant of the U.S. Coast Guard, Department of Homeland  
Security Delegation Number: 0170.1(Jun. 20, 2003)  
(e) Delegation of Authority, HQINST M5402.3D

1. Purpose. Ensure consistency of position with the Department of Defense (DoD), parity of access for Department of Homeland Security (DHS) and Coast Guard civilian employees to Special Victims' Counsel (SVC) services consistent with the provisions of the FY2016 National Defense Authorization Act (NDAA), and provision of services that will enhance Sexual Assault Prevention and Response (SAPR) efforts.

2. Background.

a. Section 1044e, Title 10, U.S. Code (reference (b)) ties eligibility for SVC services to eligibility for legal assistance services. This results in the apparent inability to extend SVC services to victims who are not eligible for legal assistance services. Mr. Paul Koffsky, Deputy General Counsel for Personnel and Health Policy addressed this lacuna by an opinion in 2014 (reference (c)). Writing to the Air Force's Director of Administrative Law, Mr. Koffsky stated, "I conclude that neither 10 U.S.C. § 1044e nor 10 U.S.C. § 1044 precludes the Secretary of a Military Department from authorizing SVCs to provide services that exceed the scope of those statutes."

b. FY 2016 NDAA, section 532 (reference (a)) provided statutory sanction for DoD civilian employees who, despite ineligibility for military legal assistance may be offered SVC services when approved by the "Secretary of Defense or the Secretary of the military department concerned." This NDAA section does not apply to the Coast Guard by its terms. The authority to define the parameters of legal assistance has been delegated from the Secretary of the

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Department of Homeland Security to the Commandant (reference (d)) and then further delegated to me (reference (e)). *See also*, Commandant Instruction 5801.4e.

3. Discussion.

a. In support of his analysis, Mr. Koffsky cited to: (1) the broad authority afforded the Secretary of the Air Force to administer the Air Force; (2) a 2012 memorandum authored by the DoD General Counsel that concluded "10 U.S.C. § 1044 was 'not intended to constrain the military departments' pre-existing inherent authority'"; (3) 10 U.S.C. § 1044e's legislative history that failed to reflect an "intent to limit the scope of the Military Department's SVC programs; and (4) the Army and Marine Corps conclusions that "10 U.S.C. § 1044e does not define the limits of permissible SVC services."

b. I adopt Mr. Koffsky's analysis. I similarly conclude that based on Service impact and parity, SVC services can also be extended to any individual who is otherwise ineligible to receive legal assistance pursuant to 10 U.S.C. § 1044 or SVC services per 10 U.S.C. § 1044e. Because a sexual assault involving an employee has strong potential to adversely affect the federal service, I conclude that SVC services should and will be offered to any Coast Guard employee who alleges he or she is the victim of sexual assault. Experience has demonstrated that other persons otherwise ineligible for SVC services would benefit from the extension of this program and providing an SVC to those persons would enhance the SAPR program and prosecutions. Accordingly, I conclude that consideration should be given to extending SVC representation in other cases when circumstances warrant.

4. Action. Accordingly, in order to ensure that DHS/Coast Guard civilian employees are provided the opportunity to obtain SVC services consistent with their DoD counterparts and in line with previous legal interpretations by DoD OGC, I conclude that DHS/Coast Guard civilian employees are eligible for SVC services. DHS/Coast Guard civilian employees may utilize SVC services through requests to CG-LMA. I further direct that any individual who would otherwise be ineligible to receive legal assistance pursuant to 10 U.S.C. § 1044 or SVC services per 10 U.S.C. § 1044e be afforded the opportunity to apply for SVC services through CG-LMA. These requests will be evaluated on a case-by-case basis by CG-LMA. This eligibility is effective immediately and will be detailed in the forthcoming SVC Commandant Instruction.

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