

**Special Victims'
Counsel Handbook
Third Edition**

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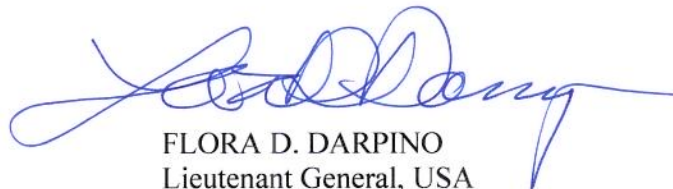
Welcome to your assignment as Special Victims' Counsel (SVC). I know you will find this role to be both challenging and professionally rewarding. Special Victims' Counsel provide legal representation to qualifying victims of sexual assault. It is your primary duty to zealously represent the best interests of your client, even if these interests do not align with the interests of the government.

As an SVC, you must ensure that your clients know that, regardless of the outcome of the judicial or administrative process, the military justice and administrative system supports them and gives them the opportunity to be heard. It is vital that the military justice process proceed in a fair and just manner, protecting both the rights of the victim and the Constitutional rights of the accused.

The SVC Program is an invaluable part of the military justice system. The driving force behind the Program's success is the SVC's ability to work as part of an interdisciplinary team of caring professionals to meet the client's needs. Every effort should be made to establish and maintain an effective, complementary and professional working relationship with stakeholders. Special Victims' Counsel should use these relationships to swiftly address allegations of retaliation against your client, whether professional or social.

You have been hand-picked to serve in this vital role. This Handbook, and the specialized training you have received, will guide you in your daily practice. I am confident that you will empower your clients and I applaud you for all your efforts.

Army Strong!



FLORA D. DARPINO
Lieutenant General, USA
The Judge Advocate General

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THE ARMY SPECIAL VICTIMS' COUNSEL PROGRAM

On 14 August 2013, the Secretary of Defense directed the Services to establish special victim advocacy programs tailored to the needs of sexual assault victims. Subsequently, on 15 October 2013, The Judge Advocate General (TJAG), announced the creation of the Army Special Victims' Counsel (SVC) Program¹, (TJAG Sends, 15 October 2013; see also, TJAG Policy Memorandum 14-01, dated 1 November 2013). The purpose of the SVC Program is to provide zealous advocacy for the victims of sexual assault throughout the military justice and administrative process.² Congress subsequently implemented the SVC Program in the National Defense Authorization Act (NDAA) for Fiscal Year 2014 (FY 14), codified as 10 U.S.C. §1044e. Amendments were made to the act in both FY15 and FY16.

Army SVC³ are legal assistance attorneys who receive specialized training and are certified by TJAG. They provide zealous representation to their clients throughout the full spectrum of the military justice process, from initial investigation to convening authority action. They represent the best interests of their clients, even when the clients' interests do not align with Government. An SVC's primary duty is to his/her client and no other person, organization, or entity. Special Victims' Counsel empower victims by fostering the victims' understanding of the military justice and administrative processes. As legal assistance attorneys, SVC are able to provide victims with a full range of services to address their legal needs.

¹ Initially, the SVC Program was known as the Special Victim Advocacy Program (SVAP), but the name was subsequently changed to the SVC Program.

² The term military justice process is herein interpreted broadly to include all criminal and administrative actions resulting from a report of an incident of sexual assault.

³ This Handbook applies to Active Army and U.S. Army Reserve (USAR) and Army National Guard SVC.

Chapter 1 Victim Eligibility

Any individual eligible for military legal assistance under 10 U.S.C. Section 1044 or AR 27-3 who alleges sexual assault is eligible for SVC representation subject to the limitations below⁴. Victims are entitled to SVC services regardless of whether the report of the offense is restricted or unrestricted. Questions concerning victim eligibility should be directed to the SVC Program Office.

1-1. Eligibility for Army Members

a. All Army Active Duty Soldiers, to include those in entry level status, who report they are a victim of sexual assault are eligible for SVC representation. Soldiers who report that they are a victim of sexual assault under state and federal laws are also eligible for limited SVC assistance (See Chapter 7).⁵

b. Regardless of duty status, Reserve Component⁶ (RC) Soldiers are eligible for SVC representation, if the circumstances of the alleged sex-related offense have a nexus to the military service of the victim.

c. Soldiers who are on active duty, but were victims of sexual assault prior to enlistment or commissioning are generally not eligible for SVC representation, but may be eligible for legal assistance in accordance with AR 27-3.

1-2. Eligibility for Dependents of Servicemembers

a. Dependents of Servicemembers who report that they are a victim of sexual assault by a Servicemember are eligible for SVC representation. Former dependents will be eligible if they were entitled to legal assistance at the time of the offense.

b. For purposes of this rule, dependents are defined in 10 U.S.C. Section 1072.

1-3. Eligibility for Members of Other Services

a. By agreement of the Service SVC Program Managers, the service of the victim dictates the service of the SVC. Accordingly, Army SVC may represent Army Servicemembers regardless of the service of the accused.

b. An Army SVC is not authorized to represent victims from other Services, unless the other Service declines representation and agrees that representation by an Army SVC is more appropriate

⁴ Sexual assault is defined to include any sex-related offense under Articles 120, 120a, 120b, 120c, 125c of the UCMJ, or an attempt under Article 80, UCMJ to commit one of the enumerated offenses.

⁵ Victims assaulted by foreign military members may be entitled to appointment of a local counsel from the host country to represent their interests. The victim's unit will fund the cost of the civilian attorney.

⁶ As defined in 10 U.S.C § 144e(g).

c. Army SVC may request an SVC/ VLC⁷ from the Accused's Service be designated as a liaison to assist the SVC with obtaining information from the Sister Service OSJA and Command, and to assist with Service specific issues.

d. Army SVC should not form an attorney client relationship with other Service victims without prior consent of the other Service SVC/VLC Program Manager. However, if this occurs, the client has the following options:

1. The client may retain the Army SVC and decline representation by the other Service's SVC/VLC.

2. The client may choose to be represented by the other Service's SVC/VLC and terminate Army SVC representation.

1-4. Eligibility for Other Categories of Victims

a. All remaining categories of individuals eligible for legal assistance under AR 27-3 or 10 U.S.C. 1044 are eligible for SVC assistance when an unrestricted or restricted report of sexual assault is filed and a Commander may exercise UCMJ jurisdiction over the alleged offender.

b. If a civilian perpetrator is accompanying the armed forces during overseas military operations,⁸ the Department of Justice (DOJ) must be consulted to determine whether it will exercise jurisdiction over the civilian. An SVC may provide legal assistance services to the victim, but may not represent the victim as an SVC in civilian court (See Chapter 7).

c. Reserve Officer Training Corps (ROTC) Cadets are eligible for SVC representation similar to Army Reserve Soldiers. However, due to unique considerations related to a Cadet's duty status, questions regarding ROTC Cadet eligibility should be directed to the SVC Program Office.

1-5. Determination for Eligibility

The SVC Program was created and resourced to provide victims of sexual assault legal assistance and representation during the military justice and administrative processes. If there is any question of victim eligibility, SVC should consult with their Chief of Legal Assistance (CLA) and the SVC Program Office. It may not be appropriate for SVC to represent Servicemembers in matters where that Servicemember is currently represented by defense counsel for sexual assault allegations. Decisions on whether representation is appropriate should be made in conjunction with the SVC Program Office on a case by case basis.

⁷ The Navy and Marine Corps refer to an SVC as a Victim Legal Counsel (VLC).

⁸ See DoD Instruction 5525.11 para. 1-3 "Criminal Jurisdiction Over Civilians Employed By or Accompanying the Armed Forces Outside the United States, Certain Service Members, and Former Service Members," March 3, 2005, and Secretary of Defense Memorandum Regarding UCMJ Jurisdiction Over DoD Civilian Employees, DoD Contractor Personnel, and Other Persons Serving With or Accompanying the Armed Forces During Declared War and in Contingency Operations, Dated 10 MAR 08, Incorporating Change 1 September 2010.

Chapter 2

Special Victims' Counsel Representation Process (Adult Victims)

2-1. Victim Notification of Right to an SVC

- a. The Victim Advocate (VA) (or first responsible party to make contact with a victim, e.g., SARC, SAPR, FAP, military criminal investigator, VWL, or TC) IAW 10 U.S.C. § 1565b, will inform eligible victims of their right to SVC representation utilizing DD Form 2701 (Initial Information for Victims and Witnesses of Crime). Victims will be informed that an SVC is available and may be requested at any time throughout the duration of the military justice process.
- b. An initial declination of SVC services does not permanently waive the right to an SVC.
- c. If charges are preferred as a result of the sexual assault, the TC will notify victims eligible for legal assistance of the right to be represented by an SVC.

2-2. Victim Exercises Right to SVC

If the victim chooses to exercise the right to consult with an SVC, the following process will be followed:

- a. The SVC will ensure that a conflict check is performed IAW AR 27-3 para. 4-9.
- b. If the CLA determines that the SVC office is unable to represent the victim due to a conflict of interest or other prohibiting factor, the CLA will coordinate with a part-time SVC serving outside the legal assistance office, if available, or with the CLA from an installation in the geographic region to ensure that the victim receives representation.
- c. Whenever possible this first meeting with the victim should be in person.
- d. SVC will utilize the scope of representation form (Appendix A), or declination of representation form (Appendix B), during the initial consultation.
- e. Once the attorney-client relationship has been established, the client's information shall be entered into CIS.
- f. Generally, an SVC will be assigned at the trial location to facilitate interaction with the trial and defense counsel, investigative agencies, and the court. However a victim who is not located at the trial location may elect to have an SVC near their location, to facilitate face to face consultation with the SVC, and to provide support with any legal assistance matters. If the victim chooses to have an SVC at their location, it may be appropriate to have an SVC at the location of the courts-martial serve as a liaison with the OSJA. Dual representation is discouraged, and must be approved by the SVC Program Office.

2-3. USAR and National Guard SVC

a. Representation of victims by Reserve Component (RC) SVC will be guided by the principles and procedures of this handbook.

b. If the victim is a RC member or dependent, and chooses to consult with an SVC, the following process will be followed:

1. In accordance with paragraph 2-1, the first responsible party to make contact with the victim will notify the designated POC for the geographical area that received the complaint.

2. The SVC POC will notify the appropriate SVC in the region which will exercise jurisdiction over the incident.

3. If the victim is not located at the trial location and elects to have an SVC at or near their location, the SVC POC will notify the appropriate SVC in the geographical area closest to the victim. This will facilitate face to face consultation with the SVC, and allow the SVC to provide support with any legal assistance matters. An Active Component (AC) SVC may be assigned as a liaison to provide advice on military justice matters and facilitate communication with the OSJA responsible for the courts-martial.

4. Assignment of an SVC should occur within 24 hours of the victim's request/election of right to an SVC. The SVC notified will perform a conflict check IAW AR 27-3, para. 4-9 and attempt to consult with the victim within 24 hours of notification.

5. If the SVC determines that his or her office is unable to represent the victim due to a conflict of interest, the SVC will coordinate with the RC SVC Program Manager to ensure the victim receives representation.

c. Army RC SVC, who also advise commanders, must ensure that their representation does not create an actual or perceived conflict of interest. It is recommended that SVC not represent victims within their Command.

d. Army RC Soldiers may be entitled to benefits or services of a different nature than those of AC Soldiers. Active Component SVC representing RC Soldiers should consult with RC SVC, as appropriate, to ensure victims understand the availability of services, and the proper stakeholders to contact in order to obtain those benefits or services.

e. When an RC victim is participating in matters related to the military justice process arising out of a sexual assault, such as a military law enforcement interview, TC/DC interview, court-martial, etc., they must be placed in a Title 10 status, rather than Invitational Travel Orders.

2-4. Solicitation of Victims Prohibited

Special Victims' Counsel will not solicit clients, but should publicize the availability of SVC

services to the command in order to increase awareness of the program (Consistent with Army Rules of Professional Conduct for Lawyers, Rules 7.1, 7.2, and 7.3). This may include notification through SHARP managers or representatives, Family Advocacy Program (FAP) personnel, Commanders, First Sergeants, Chaplains and others. Any radio or television appearances, and media articles should be approved by the SVC Program Office.

Chapter 3

Legal Assistance

a. An SVC may provide the following services (See 10 U.S.C. §1044e):

1. Legal consultation regarding potential criminal liability of the victim stemming from or in relation to the circumstances surrounding the alleged sex-assault offense and the victim's right to seek military defense services.

2. Legal consultation regarding the Victim Witness Assistance Program (VWAP), including:

a) The rights and benefits afforded to the victim;

b) The role of the VWAP liaison and what privileges do or do not exist between the victim and the liaison; and

c) The nature of communication made to the liaison in comparison to communication made to an SVC or a legal assistance attorney.

3. Legal consultation regarding the responsibilities and support provided to the victim by the Sexual Assault Response Coordinator, a unit or installation VA, or domestic abuse advocate, to include any privileges that may exist regarding communications between those persons and the victim.

4. Legal consultation regarding the potential for civil litigation against other parties (other than the United States).

5. Legal consultation regarding the military justice system, including (but not limited to):

a) The roles and responsibilities of the trial counsel, the defense counsel, and investigators;

b) Any proceedings of the military justice process in which the victim may observe;

c) The Government's authority to compel cooperation and testimony; and

d) The victim's responsibility to testify, and other duties to the court.

6. Representing the victim at any proceeding in connection with the reporting,

military investigation, and military prosecution of the alleged sex-related offense.

7. Legal consultation regarding eligibility and requirements for services available from appropriate agencies or offices for emotional and mental health counseling and other medical services.

8. Legal consultation and assistance:

a) In personal civil legal matters (Note that an SVC shall not represent a victim in any civilian proceeding but may provide assistance in accordance with AR 27-3);

b) In any proceedings of the military justice and administrative process in which a victim can participate as a witness or other party;

c) In understanding the availability of, and obtaining any protections offered by, civilian and military protection or restraining orders; and

d) In understanding the eligibility and requirements for, and obtaining, any available military and veteran benefits, such as transitional compensation benefits and other State and Federal victims' compensation programs.

e) In all cases in which the victim reports allegations of professional or social retaliation, the SVC will work with local stakeholders to address the retaliation. The SVC will also record the allegations in CIS in a narrative format detailing the nature of the allegation and the disposition or resolution.

9. Legal consultation and assistance in connection with:

a) Any complaint against the government including any allegation under review by the Inspector General and a complaint regarding equal employment opportunities.

b) Any request to the government for information, including a request under 5 U.S.C. § 552a, Freedom of Information Act (FOIA) request.

c) Any correspondence and other communications with Congress.

d) Such other legal assistance as the Secretary of Defense may authorize in regulations proscribed.

b. In those instances where the victim has a Medical Evaluation Board (MEB) or Physical Disability Evaluation Board (PEB) pending, the Soldiers' MEB or PEB counsel or other appropriate representative is primarily responsible for advising and representing the victim on these matters.

c. Special Victims' Counsel should maximize the opportunity for face-to-face communication between counsel and client. If face-to-face is not feasible, counsel must

ensure that effective means of communication are available (VTC/Skype/Video Chat).⁹ Appropriate steps must be taken to ensure confidentiality.

Chapter 4

Military Justice

4-1. Notice of Representation

a. If the client has filed an unrestricted report and an attorney-client relationship is formed, the SVC will serve the SJA, Chief of Military Justice, Senior Defense Counsel (SDC), CID, the VWL, and the SARC/VA/FAP with a notice of representation (Appendix C). An SVC will ensure that all parties and non-parties to a proceeding are notified, as appropriate, that the victim is their client, and not the Army.

b. Thereafter, pursuant to AR 27-26, Army Rules of Professional Conduct for Lawyers, Rule 4.2, trial counsel and the accused's defense counsel may NOT communicate about the case with the represented victim without the consent of the SVC.

c. After the preferral of charges, the TC will ensure the SVCs' information is included on the Electronic Docket Request (Rule 1 and Appendix A of the Rules of Practice before Army Courts-Martial).

d. In the event that administrative proceedings (such as reduction or elimination proceedings) are initiated against the alleged offender, the SVC will ensure that the Recorder is informed of the SVC's schedule in order to insure that any proceedings are scheduled when both the victim and SVC are available to attend.

4-2. Attendance at Interviews by SVC

a. An SVC should attend interviews of the victim by investigators, TC and DC. It is in the victims' interest to build a rapport with the TC/SVP, so the SVC may allow direct access to the victim for routine notifications.

b. Requests by Defense Counsel to interview the victim must be made through the SVC.

c. In all interviews of the victim by a third party, SVC should ensure that a paralegal or other individual is present for interviews to prevent the SVC from becoming called as an impeachment witness.

4-3. Rules of Practice

a. Special Victims' Counsel have limited standing to represent victims before Army courts.

⁹ So long as those means of communication employ reasonable precautions to prevent confidential and privileged information relating to representation of the client from coming into the possession of unintended recipients. See Army Rule 1.6 (Confidentiality of Information).

b. Special Victims' Counsel shall follow all Rules of Court to the same extent as counsel for the parties, including but not limited to the rules on motions (Rule 2.3.1 of the Rules of Practice before Army Courts-Martial).

c. To safeguard the rights of crime victims and provide notice as required by Article 6b(2), UCMJ, the prosecution will provide the victim, Special Victims' Counsel, and legal guardian of a victim who is a minor, incompetent, incapacitated or deceased, if applicable, with the information listed below without request by the victim.

1. Upon preferral of charges:

a) A copy of all statements and documentary evidence produced or provided by the victim;

b) An excerpt of the charge sheet setting forth the preferred specifications pertaining to that victim; and

c) The date, time, and location of any pretrial confinement review pursuant to Rule for Courts-Martial 305, and the preliminary hearing pursuant to Article 32, UCMJ.

2. Upon receipt or filing by the government:

a) A summarized transcript of the victim's testimony at the preliminary hearing;

b) An excerpt of the charge sheet setting forth the referred specifications pertaining to that victim;

c) Any docket requests, as well as any docketing or scheduling orders, including deadlines for filing motions and the date, time, and location for any session of trial;

d) A copy of any motion or responsive pleadings that may limit a victim's ability to participate in the court-martial, affect the victim's possessory rights in any property, or concern the victim's privileged communications or private medical information, or involve the victims' right to be heard;

e) Any request to interview the victim received from defense counsel.¹⁰

3. The SVC will make regular contact with counsel for the parties to ensure that this requirement is timely completed and not overlooked.

4. Upon being authorized by the military judge to speak in open court for the first time in a case, an SVC will announce the SVC's legal qualifications, as follows:

"I am qualified and certified under Article 27(b) and sworn under Article 42(a) Uniform Code of Military Justice. I have not acted in any manner that might tend to disqualify me

¹⁰ Article 46(b), UCMJ

in this court-martial.”

5. If the SVC is filing a motion on behalf of a minor client, the SVC shall identify the client by initials in any pleadings with the court.

4-4. Victims’ Rights

a. The government will consult with the SVC and victim to obtain the victim’s views concerning:

1. A decision not to prefer charges;
2. Dismissal of charges;
3. Decisions concerning pretrial restraint of the alleged offender or his or her release;
4. Negotiation of pretrial agreements and their potential terms.

b. The Government will ensure timely and accurate notice to victims concerning significant proceedings and events in the military justice process, to include¹¹:

1. The status of the investigation;
2. The apprehension of the suspected offender;
3. The decision on whether to prefer (or file in a civilian court) or dismiss the charges against a suspected offender;
4. The initial appearance of the suspected offender before a judicial officer at a pretrial confinement hearing or preliminary hearing under UCMJ, Art. 32;
5. The scheduling (date, time, and place) of each proceeding and any scheduling changes;
6. The detention or release from detention of an offender or suspected offender;
7. The acceptance of a plea of guilty or the rendering of a verdict after trial;
8. The opportunity to consult with TC about providing evidence in aggravation concerning financial, social, psychological, and physical harm done to, or loss suffered by, the victim;
9. The result of trial or other disposition;

¹¹ An SVC should be familiar with AR 600-20 para. 8-5(o)(30) to ensure that the client is receiving thorough and timely feedback on case status from the client’s battalion commander.

10. If the sentence includes confinement, the date on which the offender will be eligible for parole;

11. General information regarding the corrections process, including information about work release, furlough, probation, and other forms of release from custody, and the offender's eligibility for each;

12. The right to request, through the VWL, TC, or designee of the commander of the corrections facility to which the offender is assigned, notice of the matters in 4-5 below where the sentence includes confinement; and

13. How to submit a victim impact statement to the Army Clemency and Parole Board for inclusion in parole and clemency considerations (under AR 15-130).

c. A victim of sexual assault has a right to be heard through counsel on issues implicating MRE 412 (rape shield), MRE 513 (psychiatrist-patient privilege), MRE 514 (victim advocate-victim privilege), MRE 615 (exclusion of the victim from trial), and any other matter where the client interest or rights are at stake.

d. If an SVC attends court proceedings from which the victim is excluded under MRE 615 as a witness, the SVC will not inform the client about the testimony of any witness testifying at such proceeding. The SVC will discuss this restriction with the client prior to the court proceeding.

4-5. Post Trial

In accordance with AR 27-10, para. 17-14, upon a sentence to confinement, the TC or a representative from the Government will:

a. Inform the victim, or when applicable, the victim's SVC, regarding post-trial procedures, to include the victim's eligibility to submit matters for consideration by the convening authority during the clemency phase of the court-martial process under the provisions of RCM 1105A, the right to be notified if the offender's confinement or parole status changes, and when the offender will be considered for parole or clemency by providing the victim with DD Form 2703 (Post-Trial Information for Victims and Witnesses of Crime); and Ensure the victim's election regarding notification is recorded on DD Form 2704. If the victim elects to submit matters for consideration, SVC should ensure that post-trial matters are submitted in a timely manner.

b. Ensure the victim's election regarding notification is recorded on DD Form 2704 (Victim/Witness Certification and Election Concerning Inmate Status), in every case, regardless of election.

c. Special Victims' Counsel will ensure victims understand the appellate process and what future notifications from the appellate court mean (Appendix D).

4-6. Other Duties

a. Special Victims' Counsel, in their legal assistance capacity, shall not represent Servicemembers on any matter when the Servicemember has been accused of sexual assault. The SVC Program Office may grant exceptions.

b. Special Victims' Counsel should not be utilized as Preliminary Hearing Officers (PHOs) for sexual assault cases, domestic violence cases or other matters where an actual or perceived conflict of interest could arise.

c. Special Victims' Counsel should avoid serving as designees for minor or incapacitated victims (see para 5-4d below).

Chapter 5 Representing Child and Incapacitated Victims

This Chapter discusses procedures to follow when representing victims who are children or incapacitated adults. The words "child" and "minor" will be used interchangeably throughout to refer to victims of sexual assault under the age of 18. Child victims of sexual assault are entitled to the same services as adult victims. The method of delivering these services may be modified as discussed below.

5-1. Unique Considerations when Representing Children and Incapacitated Victims

a. The representation of a child raises complex professional responsibility issues. An SVC must be familiar with AR 27-26, Army Rules of Professional Conduct for Lawyers, especially Rule 1.14 (Client under a Disability) and the SVC's state licensing rules. Prior to undertaking representation of a child victim of sexual assault, an SVC shall request permission from the SVC Program Office (Appendix E). Any changes in the client's status will be reported to the SVC Program Office throughout the SVC's representation of the child.

b. When an SVC represents a child victim of sexual assault, the child is the client, not the parent or guardian. In providing representation, an SVC must assess the child's ability to make a considered decision in his or her case by weighing the child's level of development and maturity, as well as the child's ability to communicate. These factors will determine whether the child is able to enter into an attorney-client relationship and gauge the child's ability to define the representation.

c. In order to determine whether a child has the requisite development and maturity to make a considered decision in his or her case, the SVC must interview the child in an age appropriate manner. The SVC has a continuing duty to evaluate the decision making capacity of his or her client, so that representation may be adjusted accordingly. A child may not have the capacity to make considered decisions in the beginning of a case, but later may demonstrate the capacity to make considered decisions. Also, sometimes the decision making capacity of a child may diminish during the representation, due to a variety of factors, such as medical issues.

5-2. Representation of Child Victims When Child Has Considered Judgment

a. If the SVC believes the child possesses the ability to make considered decisions in his or her case, the representation proceeds very much like representation with an adult victim, except the SVC must use the appropriate Scope of Representation Letter for Representing Child Victims (Scope Letter). The SVC must discuss the Scope Letter with the child victim in an age appropriate manner, and ensure that the child understands the scope of the attorney-client relationship.

1. If the child is young and with limited communication ability, but is determined by the SVC to have the requisite level of development and maturity to make considered decisions and enter into an attorney-client relationship, the SVC will use the Scope of Representation Letter for Young Children (Appendix F). This Scope Letter is designed for children with limited communication skills and is intended to help facilitate a discussion regarding the terms and conditions of the representation. Following the instructions on the worksheet, the SVC must discuss the Scope Letter in an age appropriate manner. If after the discussion, the SVC believes that the child understands the terms and conditions of representation, the SVC will have the child sign the Scope Letter, and the SVC will then certify the worksheet and save the signed Scope Letter and certified worksheet in the client file.

2. If the child is older, and the SVC determines the child possesses the requisite level of development and maturity to make considered decisions and enter into an attorney-client relationship, the SVC will use the Scope Letter for Older Children (Appendix G). The SVC will explain and discuss the Scope Letter with the child in an age appropriate manner. The SVC will pay particular attention to the parts of the letter dealing with confidentiality and consulting parents/guardians and others. Once the SVC and the child are confident that the child understands it, the child will sign the Scope Letter.

b. However if the SVC determines the child does not possess the ability to make a considered decision in his or her case, then the representation is conducted in accordance with para. 5-3 below. In this scenario, the SVC will use the Parent/Guardian Scope Letter (Appendix H).

c. In all cases, the SVC is to ensure that the child understands the scope of representation, including:

1. That the SVC's loyalty is to the child, and to no one else, and that the SVC is there to advocate the child victim's legal interests.

2. That anything the child says to the SVC is confidential, and the SVC normally cannot disclose this information without the child's consent. Also the SVC must ensure that the child understands that others (including the child's parents/guardians), cannot compel the child to disclose confidential information the child does not wish to share, and that the child should immediately tell the SVC when someone attempts to coerce the child into disclosing confidential information.

3. That the child understands the limited exceptions of confidentiality and that the SVC

may be compelled in some circumstances to disclose confidential information.

4. That the child understands the circumstances when the SVC will consult with other individuals during the military justice and administrative process as appropriate, such as the TC, DC, military judge, parents/guardians, medical and mental health professionals, school counselors, etc.

d. It may be necessary for the SVC to consult with the child's parents/guardians and/or other family members, as well as professionals with experience dealing with child victims of sexual assault and children in general. Other resources the SVC should consult when appropriate are medical and mental health professionals, school counselors, teachers, therapists, psychologists and personnel from state child protection agencies. When consulting others, however, the SVC shall:

1. First consult with the client about the need to consult others, and what, if any, confidential information will need to be disclosed.

2. After consultation, obtain the client's consent to consult with others.

3. When consulting with others after gaining consent, limit the disclosure of confidential information to what is absolutely necessary.

e. The SVC must remember to adjust the approach to representation based on the level of development and maturity of the individual child client. Even if the client has capacity to make considered decisions, the capacity to make such decisions may vary from issue to issue, and the capacity of a client may change during the course of the representation. In addition, the language skills of clients vary. Younger children with the capacity to make considered decisions, nevertheless, may have more limited language skills.

f. It must also be remembered that the child who possesses the capability to make considered decisions has the right to make his or her own decisions about the case, just like any adult client. As long as the client's decisions or actions are not illegal, unethical, or influenced by third parties, the client's decisions should be respected, even if the SVC disagrees with them. The SVC should work with the child victim so that the child's decision is consistent with the child's best interest.

5-3. Representation of Child Victims When the Child Does Not Have Considered Judgment

If the SVC determines that the child does not have the requisite development and maturity to make a considered decision, the SVC will use the Scope of Representation Letter for Parent/Guardian (Appendix H). During the SVC's initial meeting/consultation with a minor victim's parents/guardians, the SVC will review the letter with one or both of the non-offending parents/guardians. If only one non-offending parent/guardian is available, the SVC shall consult with the available parent/guardian. The SVC will emphasize that he or she is getting their consent to enter into an attorney-client relationship with their child, that SVC representation is for their child, and that the SVC will represent their child to the best of his or her ability. The

parent/guardian will then be asked to sign the letter, acknowledging the scope of the attorney-client relationship with their child. The SVC will specifically explain that:

- a. The client is the child, not the parent/guardian; that the SVC's duty of loyalty and confidentiality belongs to the child, not them; and that the SVC will do what is in the child's legal interests.
- b. That the SVC ordinarily may not discuss confidential information obtained from the child, with the parent/guardian unless the child consents to disclosure.
- c. That the SVC will consult with them throughout the representation where the SVC deems appropriate, and in the legal interests of the client, including sharing otherwise confidential information when necessary.
- d. The parent/guardian may have to meet with the SVC from time to time to have releases and other documents related to the child's case executed.

5-4. When Parents/Guardians Are Not Acting In Child's Best Interest

- a. There may be instances where the parent/guardian is uncooperative or hostile to representation by an SVC, or otherwise acting against the best interests of the child. A parent/guardian is not necessarily acting against the child victim's best interest merely because they disagree with the SVC's advice or decisions. But if the SVC concludes that the parent/guardian's actions or decisions are objectively unreasonable and harmful to the child, the SVC shall immediately notify the Chief of Legal Assistance and the SVC Program Office.
- b. Circumstances when you should notify the SVC Program Office:
 1. A parent/guardian is the offending party.
 2. The parent/guardian is hostile to the investigation, a proceeding, or the SVC.
 3. The parent/guardian does not believe the child, and is actively impeding the investigation, or otherwise acting against the best interests of the child victim.
 4. Any other circumstance where there is reason to question whether the parent/guardian is acting in the child's best interest.
- c. Prior to referral, if the SVC Program Office determines that a Guardian Ad Litem (GAL) is needed in the case, the command FAP office or other installation agency responsible for child cases will be contacted to facilitate the appointment of such an individual. A GAL is a person who is appointed by a State civil or criminal court to represent the best interests of a minor or incapacitated victim. The GAL's scope of representation can be found within the parameters of the court's order. The SVC has a separate responsibility to represent the client's interests, even if they differ from the GAL's interests. If a GAL is necessary, an SVC cannot petition a state court for the appointment of a Guardian Ad Litem (GAL), but must work through local legal

processes, using the services of a properly licensed attorney. The CLA and SVC Program Office will assist in this process (See also Chapter 7-1 of this Handbook).

d. R.C.M. 801 requires a military judge to appoint a representative to assume a child victim's rights under Art. 6b. This individual is not a GAL. When the Judge determines that a designee must be appointed, the SVC should work with FAP or other installation agency responsible for child cases to determine who should serve in this role. SVC should avoid serving as the designee due to the potential conflict of interest when serving as the child's advocate and also looking out for their best interest.

Chapter 6

Collateral Misconduct

An investigation into the facts and circumstances surrounding a sexual assault may produce evidence that the victim engaged in misconduct. Collateral misconduct is misconduct that is committed by a victim of sexual assault that has a direct nexus to the sexual assault. Typical examples of collateral misconduct include underage drinking, adultery, fraternization, and violations of regulations or orders, such as General Order 1 or curfews. Collateral misconduct will not preclude SVC representation.

6-1. Referral of Victim to USATDS

a. It is Army policy that USATDS will provide counsel for collateral misconduct. When the SVC becomes aware that the victim has allegedly committed collateral misconduct, the SVC will notify the victim that a TDS Counsel may be requested to represent the victim in the event that non-punitive measures, administrative action, non-judicial punishment, administrative discharge, or the court-martial process is initiated.

b. Victim Notification. The SVC will inform the victim of the availability of TDS Counsel. The SVC will inform the victim that the SVC will not serve as the victim's counsel for purposes of collateral misconduct.

c. Victim Referral. In the event that qualifying action is initiated or the victim indicates a desire to meet with TDS Counsel, the SVC will not contact TDS at the installation where the accused is located, but will follow the instructions in the 1 April 2014 TDS Policy Memorandum, to identify an appropriate TDS resource (See Appendix I). The SVC will ensure an effective hand-off with assigned TDS counsel.

Chapter 7

SVC Interaction with Third Parties

7-1. Special Victims' Counsel Association with SARC and FAP

a. The SARC serves as the installation's single point of contact for integrating and coordinating sexual assault victim care services. The FAP fulfills this role for sexual assault victims who are in a domestic, intimate partner relationship with the accused, and all cases

involving child abuse. The SARC or FAP must notify the victim of their right to an SVC utilizing DD Form 2701 (Initial Information for Victims and Witnesses of Crime).¹²

b. Once an attorney-client relationship is formed, SVC will inform the SARC/FAP of this representation. This notice is intended to make SARC and FAP aware that the victim is represented by legal counsel to facilitate effective multi-disciplinary support for the victim.

c. To ensure effective utilization of available SARC/FAP resources, SVC should advise victims of the services available through these agencies. The SVC should work in conjunction with SARC/FAP to coordinate delivery of services and avoid duplication of services. The SVC should advocate to the responsible agencies when appropriate services are either not being provided, or are not being provided in the manner intended. The SVC should not provide client services that can be more efficiently provided by others.

d. The SVC will not act as a legal advisor for the SARC/FAP or commanders, but shall have access to the SARC/FAP and commanders to represent the needs and interests of the victim/client as necessary.

7-2. Special Victims' Counsel Association with the Victim Witness Assistance Program

a. The Victim Witness Assistance Program (AR 27-10, Chapter 17-6), through the SJA, VWAP Coordinator, and victim liaison, shall ensure that victims are afforded certain enumerated rights, such as consultation with TC and notification of all court-martial proceedings. Once an attorney-client relationship has been formed in the case of an unrestricted report, SVC will inform the VWL of the representation.

b. Under VWAP, a SVWL/VWL may be assigned to each victim. The SVWL/VWL works for the SJA as a part of the military justice office and as such, any communication by the victim or the SVC with the SVWL/VWL will not have protection of confidentiality.

c. The SVC should work cooperatively with the assigned VWAP to coordinate delivery of services to the victim and avoid duplication of services.

7-3. Contact with Civilian Prosecutors and Agencies

If a state decides to prosecute the victim's case, an SVC may provide information upon request to the civilian prosecutor and appropriate agencies, such as state or federal victim compensation and restitution programs, consistent with governing Rules of Professional Responsibility and as authorized by the client. In the capacity of a legal assistance officer, SVC may advise and assist eligible victims to access off-post services, e.g., shelters for abused women or children, post rape crisis centers, etc. SVC should keep in mind that on-post resources, such as FAP and SHARP often have established relationships with their counterpart civilian agencies in the community, and should coordinate efforts to ensure quick access to specific services and benefits.

¹² In accordance with 10 U.S.C. § 1565b.

7-4. Off-Installation Advocacy by SVC Generally Prohibited

- a. An SVC is precluded from representing victims in civilian criminal courts. The SVC will explain to their clients this limitation in their scope of representation.
- b. An SVC may not represent clients before off-post civilian or local agencies even if the SVC is authorized to practice in the local jurisdiction. The SVC may contact local civilian authorities to obtain information related to the availability of local support services when there are judicial matters being handled by civilian authorities. The SVC may assist the victim in obtaining, through the appropriate agencies, a civilian restraining order against the perpetrator, or in the capacity of a legal assistance attorney.
- c. Reserve Component SVC must also ensure that there is no conflict of interest between the representation of a victim and the SVC's civilian employment.

7-5. Notification to Third Parties by SVC

- a. Special Victims' Counsel will ensure that third parties understand the SVCs role and that the victim is the SVC's client.
- b. In any off-installation setting, the SVC must avoid creating the impression that the SVC represents the Army's official position or interests in any matter.

7-6. Interaction with Media

- a. Special Victims' Counsel will interact with the media strictly in accordance with Rule 3.6 of AR 27-26, Army Rules of Professional Conduct for Lawyers, and TJAG Policy Memorandum 14-03 (Communication with the Media).
- b. Special Victims' Counsel must remain independent zealous advocates. Whenever possible, SVC will coordinate media communications with their SJA in accordance with paragraph 1 and 2 of TJAG Policy Memorandum 14-03 (Communication with the Media). However, in cases where the victim requests that the SVC communicate with the media and the victim does not consent to the SVC informing the OSJA, or the SVC is of the opinion that the SVC cannot adequately represent the interests of the client by discussing the media engagement with the SJA, SVC are required to coordinate such media communications with the SVC Program Manager.

Chapter 8 Interlocutory Appeals

8-1. Procedures to Follow Prior to Filing

- a. If the SVC concludes that the victim's rights are being violated, the SVC may petition the Army Court of Criminal Appeals (ACCA) for an interlocutory appeal (writ).

b. Prior to filing any writ, the SVC shall:

1. Consult with the client as to whether or not the client desires and authorizes the SVC to take the issue to the appellate court to include the potential delay in the court-martial;

2. The SVC and the CLA must consult the SVC Program Office to determine whether an interlocutory appeal would be appropriate. The SVC and CLA are encouraged to discuss potential writs early with the SVC Program Office.

3. Special Victims' Counsel must perfect the Record of Trial by requesting a Motion for Reconsideration and written ruling from the Judge prior to filing a writ.

Chapter 9

Duration of SVC Client Relationship

a. Ensuring continuous coverage for clients when SVC are re-assigned to new duties within the SJA office, are transferred to a new duty installation, or leave active duty is imperative.¹³ Due to the unique role of SVC in the representation of clients in military justice and administrative proceedings, there is a need for accountability, assignment planning, and coordination with gaining supervisors when SVC intend to continue representation of certain victims. In order to guarantee uninterrupted representation to victims of sexual assault by SVC, the following protocols should be followed:

1. No later than sixty (60) days prior to anticipated change of duty status SVC will notify all existing clients of the impending change in status.

2. Special Victims' Counsel will work with their CLA and SJA to ensure the victim is assigned a new SVC at the same installation, or if no SVC are available, at a geographically similar installation.¹⁴

3. Clients will be provided the contact information for a new SVC in writing whenever practical, and an in person transfer will take place with the client, and both the old and new SVC. In cases in which one of the SVC cannot be present, use of VTC should be considered.

4. SVC will have their client sign a termination of representation from their clients and will forward it to the CLA (Appendix J).

b. In special circumstances, the client may request that the SVC continue to represent them after the SVC's reassignment (i.e. there is a trial date pending).

¹³ Reserve Component SVC will consult with their respective Program Manager to ensure proper procedures are followed.

¹⁴ The SVC has the duty to inform other local stakeholders of the transfer if a new SVC is assigned. Local stakeholders include TC, DC, SARC, and FAP (where applicable).

1. If the SVC is being reassigned within the same OSJA, the SVC must provide the CLA and SJA with notice of the number of victims and locations of the victims that the SVC intends to continue to represent.

2. If the SVC is being reassigned outside of the OSJA, the SVC shall provide the CLA and losing SJA with written notice of the number of victims and locations of the victims that the SVC plans to continue to represent. The losing SJA should coordinate with PPTO, the SVC Program Office and the gaining SJA to ensure all parties have visibility over the SVC's remaining workload.

a) In cases where the SVC has filed a Notice of Appearance, the SVC shall identify the name of the case and trial date on the Notice of Continued Representation Memo.

b) In the case where the client wishes to remain confidential (restricted reports), the SVC should identify only the number of victims and their general locations (CONUS or OCONUS). This information is provided to ensure the gaining SJA understands the potential travel obligations of the SVC. SVC shall ensure no confidential or identifying information is disclosed without the victim's consent.

3. The SVC, in conjunction with the gaining SJA, should ensure the new first line supervisor is aware of the incoming SVC's workload.

4. Special Victims' Counsel should be aware that certain assignments are not conducive to continued representation. Examples of assignments which may preclude representation are the following:

a) Military Schools;

b) Military Justice Positions in the same GCMCA;

c) Military Judge;

d) SJA/DJSA.

c. Special Victims' Counsel being reassigned are strongly encouraged to ensure a smooth transition of their clients to properly safeguard the rights of victims of sexual assault. Staff Judge Advocates will continue to ensure victims of sexual assault are provided with continuous representation throughout all stages of the military justice and administrative proceedings, while promoting and enhancing the professional qualifications of Judge Advocates selected to serve in the SVC role.

d. In general, termination of the SVC-client relationship should be conducted in a face-to-face meeting, and confirmed in writing (Appendix J).

1. For Courts-Martial, SVC typically conclude representation upon initial action by the convening authority or earlier termination of charges.

2. For non-judicial punishment under Article 15, UCMJ, case disposition is upon the completion of any imposed punishments.

3. For administrative actions, case disposition differs depending on the type of action.

a) In cases of separation actions, disposition is when the separation authority takes final action.

b) For memoranda of reprimand, disposition is when the filing determination is made.

c) For other administrative actions, disposition is the approval authority's final action.

4. If a decision is made to take no action on the case, the SVC shall ensure that the victim understands their right to consult with TC.

5. Termination of representation does not preclude the SVC from providing the client with legal assistance services IAW AR 27-3.

e. Absent the client's consent, an SVC may terminate representation only in accordance with Army Rules of Professional Conduct for Lawyers, Rule 1.16. Special Victims' Counsel should consult with their CLA and SVC Program Office.¹⁵

f. A client may terminate the relationship at any time. However, the CLA where the court-martial is to take place retains the authority to determine whether a new SVC should be appointed.

g. TJAG Certification of an officer identified to serve as an SVC continues, even after the JA leaves the SVC position. However, the SVC shall re-certify to the new SJA that they have not been the subject of any disqualifying event (Appendix K). If a USAR SVC is re-assigned to another command or different SJA office, the SJA for the new command must re-appoint the SVC.

h. Upon completion of a Court-Martial or administrative disposition, or any representation presenting significant or novel issues the SVC will submit an Memorandum for Record (MFR) to the SVC Program Office.

¹⁵ If the situation arises where an attorney client relationship is formed between with the SVC and victim, and the victim subsequently retains a civilian SVC counterpart, the SVC is authorized to maintain or terminate the attorney-client relationship after consulting with the CLA and the Program Manager.

Chapter 10

Training and Certification Requirements

a. In accordance with TJAG Policy Memorandum 14-01, Special Victims' Counsel, dated 1 November 2013, SJAs will nominate Judge Advocates to serve as SVC (Appendix L).¹⁶

b. Nominees must have the maturity and good judgment to serve in this important role.

c. The SVC should possess prior military justice experience.

d. The SJA nomination memorandum should include the following:

1. The nominee's military justice experience;

2. If no military justice experience, the nominee's civilian criminal law or civil litigation experience;

3. If the nominee does not have any military justice or civilian criminal law experience, the SJA must explain why this person is best qualified to serve.

4. That the SJA attests to the maturity and good judgment; and

5. An attached self-certification memorandum from the nominee of the following:

"I do not have any substantiated criminal or civil actions pending or resolved against me of any kind to include sexual assault, sexual battery, sexual harassment or any other such sexual or domestic violence related charge(s) or offenses.

Additionally, I do not have any derogatory information in my Military Personnel Record which would prevent me from serving honorably as a Special Victims' Counsel. Specifically, I do not have any substantiated pending or resolved administrative actions against me of any kind to include sexual assault, sexual battery, sexual harassment or any other such sexual or domestic violence related charge(s) or offenses."

e. Nominees will undergo a professional responsibility review.

f. Judge Advocates who are selected to serve as SVC must successfully complete an approved Special Victims' Counsel Certification course before assuming the duty.

g. An SVC must successfully complete a certified Child Course prior to undertaking the representation of a child victim.

h. Judge Advocates are not authorized to represent victims of sexual assault prior to TJAG certification.

¹⁶ Judge Advocates who are serving in TDS may be nominated by their RDC to serve in the SVC role.

Chapter 11 Oversight and Reporting Structure

11-1. Professional Oversight of SVC by CLA

a. Special Victims' Counsel are Legal Assistance Attorneys in the Office of the Staff Judge Advocate. As such the Staff Judge Advocate, through the Chief of Legal Assistance, provides oversight of SVC. As the SVC's direct supervisor, the CLA is responsible for training and continuing education for SVC at the installation level.

b. In situations where the interests of the victim do not align with the government, the CLA and the SVC Program Office will provide technical advice and professional responsibility supervision IAW AR 27-26.

c. Any issue involving retaliation or intimidation of an SVC should be reported to the SVC Program Office immediately.

d. Upon receipt of credible information that raises a substantial question as to an SVC's honesty, trustworthiness, or fitness as a lawyer in other respects, the SJA should immediately contact the SVC PM and suspend the SVC from seeing clients or taking on any new ones. The SJA must also inform the Professional Responsibility Branch at OTJAG IAW TJAG Policy Memorandum 14-02 (Professional Responsibility). Upon completion of the investigation, the SJA will either reinstate the SVC or notify the Program Office of their recommendation to revoke the SVC's certification. The SJA and CLA must ensure that all clients are reassigned to a new SVC.

11-2. Functional and Policy Oversight of SVC Program

a. Functional and policy oversight of the SVC Program will be provided by the SVC Program Manager.

b. Special Victims' Counsel will provide monthly reports to the SVC Program Office.

11-3. Functional and Policy Oversight of the USAR SVC Program

a. TJAG is the appointment authority for the RC SVC PM. Functional and policy oversight of the USAR SVC Program will be provided by the RC SVC Program Manager. However, the SVC PM is ultimately responsible for the overall function, oversight and implementation of the USAR SVC Program in the U.S. Army.

b. The RC SVC PM provides day-to-day supervision of SVC and is the intermediary between the SVC assigned to their geographical region and the SVC PM.

c. A tracking system will be used to track SVC and their workload. The metrics obtained utilizing this tracking system will be reported on a monthly basis NLT 1700 EST on the 1st duty day of each month to the USAR SVC Program Office, which will in turn report the

metrics to the SVC Program Office.

d. Nothing should be construed as interfering with any USAR SVC's direct access to the SVC Program Manager on any issue. Any issue that may generate media interest should immediately be communicated to the SVC Program Office.

e. Commanders of Legal Operation Detachments and United States Army Reserve General Officer Commands SJAs will nominate individuals to serve as SVC (Appendix S).

11-4. Office Space and Other Support

a. An SVC is responsible for providing the SVC Program Office with advanced notice of travel and initiating the authorization in the Defense Travel System (DTS). While the SVC Program funds travel, local OSJA staff should assist the SVC with administrative issues. Travel for Victim Legal Counsel from the USN and USMC is funded by the convening authority, not the Army SVC Program.

b. Special Victims' Counsel are encouraged to coordinate administrative needs at installations being visited prior to departure. Courtesy call to the leadership of the OSJA being visited is recommended.

c. The OSJA at the GOCOM may also be involved with coordinating support for a traveling Reserve SVC and/or the victim(s) when either the SVC or the victim's physical presence is required for any military justice or adverse administrative action. Reserve Component and National Guard Soldiers should be placed in a Title 10 status in accordance with Chapter 2-3.

d. Paralegals are called upon to provide a variety of support for the SVC. Paralegal support to the SVC is provided by the Legal Assistance office.

e. The senior paralegal NCO for the SVC Program is responsible for coordinating training for paralegals providing SVC support. In addition, the senior paralegal, serves as reach back capability for paralegals in the field.



DEPARTMENT OF THE ARMY
ORGANIZATION
STREET
ADDRESS CITY
STATE ZIP

OFFICE SYMBOL

DATE

[Name of Client]
[Client Address]

Re: Special Victims' Counsel Scope of Representation

Dear Client,

I am an attorney licensed to practice law and serve as a Legal Assistance Attorney with the United States Army. In that capacity, I will serve as your Special Victims' Counsel. My duties as your Special Victims' Counsel are to provide you with effective and timely advice, be available to assist you throughout the full spectrum of the military justice practice from initial investigation to convening authority action, and provide you with appropriate advocacy to assure that your rights are fully protected. This letter will provide you with the scope of legal assistance that I can provide you as well as the limits on my representation of you through this program.

Scope of Legal Assistance Provided:

1. Personal Civil Legal Affairs – I can answer your questions related to the Victim Witness Assistance Program; the role of Victim Advocates and Victim Liaisons and the nature of your conversations with these persons; what medical and mental health services are available; the availability of protective orders from military or civilian authorities; and information concerning the difference between restricted and unrestricted reporting. I can also assist you with a host of other civil legal issues, including family law, landlord-tenant and consumer laws that are related to your case.

2. Representation Throughout the Military Justice Process – I can advocate your interests to any actor in the military justice and administrative process resulting from the sexual assault, including commanders, convening authorities, Staff Judge Advocates, the accused's defense counsel, and the military judge.

a) I can attend your interviews with investigators, trial counsel, and defense counsel. If I am unable to attend in person, I can attend such interviews via VTC or telephonically.

b) I can assist you in obtaining information relevant to the sexual assault case that you have a right to, such as the status of the investigation and the status of the accused.

c) You have a right to consult with the government regarding certain decisions, such as whether or not charges will be preferred and plea negotiations. I can represent you during this process.

d) I can represent you in UCMJ and administrative proceedings, such as courts-martial, where you are afforded an opportunity to attend and be heard by the court.

3. Advocacy to Civilian Prosecutors and Agencies – In general, my representation of you will be more limited off base than for military justice matters on base. I will inform you if there is a matter where I cannot represent you, and you may obtain civilian counsel, at no expense to the government, for these purposes, while still retaining me to represent you in other matters, if you so choose.

a) I can advocate your interests to civilian prosecutors, law enforcement agencies, and other civilian and government agencies.

b) I cannot represent you in civilian court.

4. Collateral Misconduct – Covered collateral misconduct is misconduct that may have been committed by you that has a direct nexus to the sexual assault, such as underage drinking, adultery, fraternization, and violations of certain regulations or orders. If through our conversations, either you or I believe you may have committed misconduct, I will advise you of your options regarding representation.

a) I will provide you with the name and contact information for a Trial Defense Service attorney, other than the attorney representing the accused, who can represent you.

b) For misconduct that you may have committed that is not related to the sexual assault, you are eligible for representation through the Trial Defense Service program. I cannot represent you for such matters.

Confidentiality:

Since I am your lawyer, information related to this representation, including everything you tell me, is confidential. This means I have a general obligation not to disclose such information to others. I may need to discuss confidential information with others, such as your commander, the Legal Office, or investigators, in order to represent your interests. However, I will discuss such matters with you first and obtain your consent. There are some limited exceptions to this general rule of confidentiality:

1. I am required by professional ethics rules to disclose information in order to prevent you from committing a criminal act that I believe is likely to result in imminent death or substantial bodily harm or significant impairment of national security or the readiness or capability of a military unit.

2. Additionally, I may disclose such information if necessary to defend myself in the event that you assert a claim against me or I need to defend myself in other proceedings related to this representation.

3. Finally, I may be required by law or a court order to disclose what you and I discussed.

Duration of Representation:

1. In general, I will be your attorney for all matters related to the sexual assault, unless and until you release me.

2. If I am required to withdraw from representing you or ETS, I will take steps to protect your interests, such as giving you reasonable notice, arranging for you to obtain other counsel, and surrender papers and property to which you are entitled.

3. If I am reassigned to other duties in my current or future assignment, I will discuss with you the options of continuing this representation or seeking assignment of a new SVC.

4. I will represent you until case disposition is complete. For example, in a court-martial, case disposition is considered complete following the convening authority's initial action or earlier termination of charges.

5. You may terminate this representation at any time that you desire.

Please feel free to contact as indicated below.

CPT John P. Smith (123)
456-7899
john.p.smith.mil@mail.mil

JOHN P. SMITH CPT, JA
Special Victims' Counsel

I have read and understand the above letter describing the scope of representation. I agree to these terms of representation.

[Name of Client]

[Date]



DEPARTMENT OF THE ARMY
ORGANIZATION
STREET
ADDRESS CITY
STATE ZIP

OFFICE SYMBOL

DATE

MEMORANDUM FOR Chief, Legal Assistance, Fort XXXXXX

SUBJECT: Declination of Special Victims' Counsel (SVC) Representation

1. My initial consultation with [SVC Name], Special Victims' Counsel, occurred on [date].
2. I understand that I may elect to have an SVC represent me in matters relating to my status as a sexual assault victim. If I decline representation at this time, I may elect representation at anytime in the future.
3. At this time I decline representation. Should I desire representation at a later time, I may request a Special Victims' Counsel by contacting the Sexual Assault Response Coordinator (SARC), Victim Advocate (VA), or by calling the SVC at (XXX) XXX-XXXX
4. I have been provided a copy of this memorandum for my records.

Date

Client Signature

Client Name Printed



DEPARTMENT OF THE ARMY
ORGANIZATION
STREET
ADDRESS CITY
STATE ZIP

OFFICE SYMBOL

DATE

SUBJECT: Notification of Representation of [Client's Name]

1. I am the Special Victims' Counsel for [client's name]. As you know, my client has specific rights during any investigation and subsequent court-martial. My goal is to represent [client's name] interests throughout the investigative and judicial processes and ensure that her rights are protected.
2. I will be present with [client's name] when my client meets with trial counsel, defense counsel, and investigators. I plan to appear for my client and with my client at all hearings or court-martial proceedings.
3. Please do not contact my client directly. As [client's name]'s legal representative, I request that you coordinate all contact and communication regarding my client through me. Should you need to set up a meeting or interview, I will facilitate my client's participation should the client so desire.
4. Should you have any questions or concerns, please feel free to contact me via phone at (123) 456-7899 or via email at jane.p.smith.mil@mail.mil.

JANE P. SMITH
CPT, JA
Special Victims' Counsel

April 4, 2016

Ms. Jane Doe
123 Main Street
Fort Campbell, KY 42223

Re: United States v. Specialist John Doe (ARMY 20151234)

Dear Ms. Doe,

The above-referenced case has been submitted to the U.S. Army Court of Criminal Appeals, (ACCA), for review. This review is an automatic process under Article 66 of the Uniform Code of Military Justice for each of the Armed Forces. It is not indicative of a problem with the original trial or sentence and was not initiated by the convicted soldier.

A panel of three military judges will review the record of trial, including all testimony and exhibits, as well as briefs written by the Army's Government and Defense Appellate Divisions. The panel does not address not guilty charges or ones that were dismissed. Although rare, the panel may schedule a hearing if it finds that the briefs have raised sufficient issues to necessitate it.

If the findings and sentence were correct in law and fact, the panel will affirm (approve) the findings and sentence. If the panel finds an error AND they believe that the error changed the outcome, they can make changes including correction of a clerical error or calculation, dismissal of a charge(s) and requiring a re-hearing or re-sentencing. The panel may grant the convicted soldier some relief (for example, a reduction of sentence), based on the finding of error or may determine that the sentence was appropriate despite the error. Each case is different and this happens only in a small percentage of cases.

The appellate process may take some time before a final decision is reached. The Clerk of Court is unable to estimate when the review will be completed or what the outcome will be. I will monitor the case carefully and will inform you if a hearing is scheduled or a decision is made.

If you wish to continue to receive notification regarding this case, please inform me of any changes to your current address. If you wish to, you may provide an e-mail address or telephone number as well. This information will be kept confidential. **If your address has changed since the court-martial and the convicted soldier is incarcerated, please be reminded that you must contact the correctional facility to update your contact information if you want to be notified upon his/her release.** Changing your address in my system does not equate to notification of the correctional facility.

I will be your point of contact for all appellate matters. Please contact me at (703)693-1328, or via e-mail at shelley.d.goodwin-mathers.civ@mail.mil if you have any questions.

Sincerely,

Shelley Goodwin-Mathers

Shelley D. Goodwin-Mathers
Appellate Victim Liaison

SVC Child Victim Representation



BACKGROUND

- **Date SVC Requested:** XX October 2014
- **Who:** Biological dependent mother is requesting SVC representation for her 3 year old child victim. Accused is biological father (active duty Soldier, E-5, located at Fort Irwin).
- **Where:** Alleged assault took place at Fort Atterbury, CA, but mother and child are leaving the state this week
- **What:** Child's mother has requested SVC representation for child to protect child throughout investigative and court-martial process
- **Guardian Contact Information:**
 - **Name:**
 - **Phone:**
 - **Email:**
- **Additional Facts:**
 - List any special circumstances
 - Any additional SVC or Victim Advocates involved with the case

CONCERNS

- Child is very young (3 years old) and reportedly exhibits autistic behavior.
- Not sure who should serve as guardian/direct SVC representation

RECOMMENDATION(S)

- **Approve representation.**

Date Submitted	26 August 2014
Servicing SVC	CPT Snuffy, Joe
Phone	123-123-1234
Attended SVC Child Victim Course	Yes/No
# Months of Military Justice Experience (TC or DC)	



DEPARTMENT OF THE ARMY
ORGANIZATION
STREET ADDRESS
CITY STATE ZIP

OFFICE SYMBOL

DATE

[Name of Client]
[Client Address]

Re: Special Victims' Counsel Scope of Representation of [Client
Victim] Dear [**Child Victim**],

1. I am your Lawyer. My job is to help you with this case. I work for you.
2. I am not allowed to share anything you tell me with anyone. I cannot tell anybody anything you tell me unless you say it is okay, or in an emergency to help you, or if a judge tells me to.
3. I can help you with personal matters, like finding a doctor or counselor.
4. In a military court I can talk for you. I can also talk to the judge and other lawyers for you.
5. I cannot help you in civilian court, but I can help you find a civilian attorney to help you in civilian court.
6. I will be your lawyer until the case is done.
7. Signing this letter means you want me to be your lawyer, and that you understand what I told you.

I want [NAME OF SVC] to be my lawyer and help me.

[Name of Child Client] [Date]

[Name of Client]
[Client Address]

Re: Worksheet for Special Victims Counsel Scope of Representation of [Client Victim]

1. These instructions are to be used each time you enter directly into an attorney-client relationship with a child victim. This Scope of Representation Letter is only to be used after it has been determined that the child victim possesses the level of development and maturity to make considered decisions in his or her case, and that the child is capable of entering into an attorney-client relationship. If the child victim is an older teen, you may be able to use the Scope of Representation Letter for older children, or the one for adult victims. Otherwise, use this bullet point format.
2. Below are the same bullet points that are on the child victim's Scope of Representation Letter. First, review the Scope of Representation Letter for older children to ensure that you are prepared to properly discuss the terms and conditions of representation. Then, follow the instructions below, and in an *age appropriate manner*, you will read and discuss with the child victim each of these bullet points. When discussing the Scope of Representation try not to use Military Justice Terminology, and use the terms more common in civilian courts. Most children will have had exposure to the terminology in civilian criminal courts through crime dramas on television, and through other mass media, so use "prosecutor" instead of "Trial Counsel," or "defense lawyer" instead of "Trial Defense Counsel."
3. After you are satisfied that the child victim understands the bullet point in question, initial the bullet point on this worksheet, and continue to the next bullet point. When you are satisfied the child victim understands each and every bullet point, have the child victim sign the Scope of Representation Letter.
4. After the child victim signs the Scope of Representation Letter, sign these Instructions certifying that you discussed the Scope of Representation Letter with the child victim, and that you believe the child victim understands the conditions of the attorney-client relationship, and agrees to them. Staple these instructions to the Scope of Representation Letter the child signed, and keep in the client's file.

SCOPE OF REPRESENTATION WORKSHEET

1. I am your Lawyer. My job is to help you with this case. I work for you. ____

INSTRUCTIONS: Make sure the child victim understands that you are their lawyer and that your loyalty is to them. Make sure the child understands that it is your job to protect the child's interests, as well as discuss the options with the child victim. Also, make it clear that you are the child's lawyer, and will advise him or her on decisions, but the child will be the one making the decisions on matters where they have been deemed competent to decide that issue, even if you do not agree with them.

2. I am not allowed to share anything you tell me with anyone. I cannot tell anybody anything you tell me unless you say it is okay, or in an emergency to help you, or if a judge tells me to. ____

INSTRUCTIONS: Make sure you spend sufficient time to emphasize this point, because confidentiality could be a difficult concept for younger children. When discussing confidentiality with the child try to stay away from legal terms like "confidentiality" and "privilege," and instead explain to the child you are not allowed to share anything the child tells you. Avoid using words like "secret" which the accused may have used in discussing their relationship. Some of the older teens will understand "confidentiality," but most child victims will not. Also, ensure the child victim understands that he or she does not need to reveal any confidential information to anyone else, including the child's parents or guardians, and that the child must immediately tell you if anyone tries to make him or her disclose confidential information.

3. I can help you with personal matters, like finding a doctor or counselor. ____

INSTRUCTIONS: Make sure the child victim knows that your job is to help the child get the support he or she needs, whether medical, psychiatric, counseling, etc. Emphasize to the child victim that if he or she ever needs anything the child should not hesitate to ask you, and if you cannot do something yourself, you will do your best to find out who can help the child victim.

4. In a military court I can talk for you. I can also talk to the judge and other lawyers for you. ____

INSTRUCTIONS: This can be tricky to explain to some of the younger children, but make sure they understand that after they make a decision, that you will advocate for that result to the best of your ability. Also, make sure they understand that you will be with them through all phases of the Military Justice Process, including the initial investigation and trial preparation. Furthermore, ensure that they understand that they

may have to speak in court and be questioned by others, but that you will be there with them.

5. I cannot help you in civilian court, but I can help you find a civilian attorney to help you in civilian court. ____

INSTRUCTIONS: Make sure the child victim understands that you cannot go into a civilian court, and advocate for the child. You can also tell the child that he or she may be able to get a civilian lawyer to help the child victim in civilian court.

6. I will be your lawyer until the case is done. ____

INSTRUCTIONS: Explain to the child in an age appropriate manner, which usually means telling the child victim that you are the child's lawyer until the trial is over.

7. Signing this letter means you want me to be your lawyer, and that you understand what I told you. ____

INSTRUCTIONS: Ask the child victim if they have any questions on anything. Question the child again if you think necessary. Then ask the child if he or she understands that when the child signs or prints his or her name on the letter, that he or she wants you to be the child's lawyer, and understands the Scope of Representation.

CERTIFICATION

I certify that I read and discussed the Scope of Representation Letter with [Child Victim Name], that the child understands and has agreed to the terms and conditions of representation.

[Name of SVC][Date]



DEPARTMENT OF THE ARMY
ORGANIZATION
STREET ADDRESS
CITY STATE ZIP

OFFICE SYMBOL

DATE

Name of Client]
[Client Address]

Re: Special Victims Counsel Scope of Representation of [Client Victim]

Dear [**Child Victim**],

1. I am a lawyer for the United States Army. I will serve as your Special Victims Counsel (SVC). The purpose of this representation is to help protect your rights as a victim.

2. As your lawyer, my loyalty belongs to you. I am responsible for representing and guiding you throughout the entire legal process. My guidance includes advice and, when needed, I will speak for you to ensure your interests are heard. Furthermore, anything that you and I discuss or talk about in private will remain private between you and me. I promise not to talk to anyone about your case without your permission. This letter describes what I can and cannot do for you as your Special Victims Counsel.

Scope of Legal Assistance and Representation I Can Provide:

1. Personal Matters – If you choose, I can help guide you to available medical, mental health, and counseling resources.
2. Military Justice Process – I can speak on your behalf to anyone in the military justice process to include commanders, investigators, lawyers, and the military judge.
 - a) I can attend interviews with the investigators, prosecutors, and defense counsel. If I am unable to attend in person, I can attend these interviews via telephone or video teleconference.
 - b) I can help gather information about the status of your case throughout the entire legal process.
 - c) You have a right to consult with the prosecutor regarding important decisions regarding your case.
 - d) I can also represent you in any military court proceeding where you are afforded an opportunity to attend and be heard.

3. Off-Post Criminal and Civil Matters – In general, my ability to represent you in non-military legal matters is limited. You may obtain another lawyer to represent you for these proceedings at your own expense. If you decide to obtain another lawyer, I will continue to represent you and your interests with any related military legal matters.

a) I cannot represent you in a non-military based court proceeding; however, I can help describe these proceedings to you.

b) I can help provide legal options to protect you and your property.

Confidentiality:

1. Disclosure – As your lawyer, any information we talk about is private.

a) I will not discuss our conversations to anyone without your approval. This includes talking about your case to your parents, guardian, school counselor, therapist, doctor, investigator, and anyone else.

b) You do not have to share what we discuss with anyone. You must tell me immediately if anyone tries to make you talk about our private conversations against your will. I will take the necessary steps to protect your right to speak with me confidentially as well as your right to privacy.

2. Exceptions – There are limited exceptions regarding your right to speak with me confidentially and your right to privacy. I will need to talk to another person about our private discussions if one of these exceptions occurs:

a) To prevent you from committing a crime or an act that I believe is likely to result in a person's death or serious bodily harm,

b) To protect national security or the readiness or capability of a military unit,

c) To defend myself regarding any legal proceedings related to my representation of you, and

d) When the law requires or a court orders me to disclose what you and I talked about.

Duration of Representation:

I will be your lawyer until the completion of all matters related to this case, or until you, or another authority, releases me. Completion or termination includes:

a) When the Convening Authority takes action;

b) You may terminate my representation of you at any time;

c) When my representation of you would result in violation of the Rules of Professional Conduct or other law;

If I am withdrawn from your case, or if I leave the U.S. Army, I will take steps to protect your rights by giving you reasonable notice to arrange for you to obtain another Special Victims' Counsel, and I will surrender papers and/or property to which you are entitled.

Contact Information:

Please feel free to contact me as indicated below.

CPT Jane Doe
Special Victims Counsel, OSJA
Fort Sam Houston
2271 Reynolds Road
Fort Sam Houston, Texas 78234-7800
(123) 456-7899
jane.doe.mil@mail.mil

Jane Doe Captain,
U.S. Army
Special Victims Counsel

I have read and understand the above letter describing the scope of representation. I agree to these terms of representation.

Name

Date



DEPARTMENT OF THE ARMY
ORGANIZATION
STREET ADDRESS
CITY STATE ZIP

OFFICE SYMBOL

DATE

[Name of Parent/Guardian]
[Name of Client]
[Client Address]

Re: Special Victims' Counsel Scope of Representation of [Client Victim]
[Parents/Guardians]

Dear **Parent/Guardian**,

1. I am a lawyer licensed to practice law and serve as a Legal Assistance Attorney with the United States Army. Your minor child [Name], as a victim of sexual assault, is eligible for Special Victims' Counsel services. I will serve as [Child's] Special Victims' Counsel (SVC) to assist [him/her] in exercising [his/her] rights. Please understand that I am not your lawyer, I am [Child's] lawyer, and [he/she] is my client. My responsibility and loyalty is to [Child] and in representing [his/her] best interests. Although [Child] is a minor, to the extent that I believe [he/she] has the maturity and judgment to make a considered decision about a representational matter, I am bound to follow [his/her] direction in that matter. My role as [Child's] lawyer also means that, generally, any conversations that [Child] and I have will be confidential between me and [him/her]. However, I will share with you relevant information about your child's case, provided it does not violate my duty of confidentiality and is in [Child's] best interest.

2. My duties as your child's SVC fall generally into two areas—the first is to provide advice and assistance in civil legal matters; the second is to provide advice, assistance and appropriate representation during the course of the military justice process, from investigation to completion of the case. These duties are described in more detail below.

A. Scope of Legal Assistance Provided:

1. Personal Civil Legal Affairs – I can help [Child] and you access various services, such as medical, counseling and legal assistance and other benefits to which you may be entitled, and can advise and assist with a range of civil legal issues, including the availability of protective orders from military or civilian authorities. I can also provide advice and assistance throughout the course of the administrative processing of [Child's] case, including explaining the role of victim advocates, victim witness and victim liaisons and the nature of conversations with these persons.

2. Representation Throughout the Military Justice Process – I can coordinate with commanders, convening authorities, Staff Judge Advocates, trial counsel (prosecutors), the accused's defense counsel, and the military judge in order to convey your child's interests to any actor in the military justice process

a) I can attend your child's interviews with investigators, trial counsel, and defense counsel. If I am unable to attend in person, I can attend such interviews via video teleconference or telephonically.

b) I can obtain and provide information relevant to the sexual assault case that [Child] has a right to receive, such as the status of the investigation and the status of the accused.

c) You and [Child] have a right to consult with the government regarding certain decisions, such as whether or not charges will be preferred against an accused and plea negotiations. I can represent [Child] during this process.

d) I can represent [Child] in proceedings under the Uniform Code of Military Justice (UCMJ), such as Courts-Martial, where your child is afforded an opportunity to attend and be heard by the court.

3. Relationship with Civilian Prosecutors and Agencies – In general, my representation of [Child] will be more limited in civilian proceedings than in military justice proceedings or other matters on post. For example, while I may be authorized to share information with State prosecutors or agencies, I cannot represent your child in a civilian court. I will inform you and [Child] if a circumstance arises in which I cannot represent [him/her]. If that occurs, you may opt to obtain civilian counsel at your own expense to handle the civilian court matter. I will continue to advise and represent your child in all other matters.

B. Consultation Regarding Representation With Parent/Guardians and Others:

Your child is a minor, so the law recognizes that [he/she] is not qualified to make certain legal decisions on [his/her] own, for example, entering into contracts. With respect to representing [his/her] interests in court proceedings, a minor may or may not be qualified to make informed decisions. To the extent that I determine that [Child] has the requisite level of development and maturity to understand the circumstances of [his/her] case and to make a considered decision, I will carry out [Child's] directives to the best of my ability. However, if I determine that your child lacks the requisite development and maturity to understand and make a considered decision in [his/her] case, I will consult with you and others, as necessary, to determine what is in [Child's] best interest. Other individuals I may consult include medical professionals, counselors, victim's advocates, and officials from relevant government agencies.

C. Confidentiality:

Since I am [Child's] lawyer, information related to this representation, including everything [Child] tells me, is generally confidential between me and [Child]. This means I have a general obligation not to disclose such information to others, including you. However, there may be times when I believe it is necessary, in order to represent your child's interests, to discuss confidential information with you or others, such as members of the Staff Judge Advocate's Office, the appropriate commanding officer, investigators and medical personnel. Normally, when representing an adult, the rules of confidentiality require me to gain my client's consent before disclosing confidential information. When a client is a minor, however, this rule of confidentiality is modified. If, in my judgment, [Child] lacks the ability to make a considered decision on an issue, I will at my discretion, consult with you and any other professionals I deem necessary. I will still only disclose such information to the extent necessary to make a decision in [Child's] case on the specific issue in question. There are some limited exceptions to this general rule of confidentiality:

1. I am required by professional ethics rules to disclose information in order to prevent you or your child from committing a criminal act that I believe is likely to result in imminent death or substantial bodily harm, or significant impairment of national security or the readiness or capability of a military unit.
2. I may disclose otherwise confidential information if necessary to defend myself in the event that you or your child asserts a claim against me or I need to defend myself in other proceedings related to this representation.
3. Finally, I could be required by law or court order to disclose information.

D. Child Reaches Age of Majority During Pendency of Case:

If during the pendency of your child's sexual assault case [he/she] reaches age 18, I will no longer consult with you regarding any matter for which I am representing your child.

E. Duration of Representation:

In general, I will be your child's lawyer for all matters related to the sexual assault, unless and until your child or other competent authority releases me.

1. I will be [Child's] lawyer for all matters related to the sexual assault until the case disposition is complete. In a Court-Martial this means the Convening Authority takes action on the case or upon termination of charges.
2. My representation also could end if [Child] terminates it, which [he/she] may do at any time, or if another competent authority releases me from representing [Child], for example, if I leave the U.S. Army, or am required to withdraw for reasons of law or professional responsibility. If that should occur, I will take steps to protect [Child's] interests, including giving reasonable notice to you and [Child]. Another SVC will be

assigned to represent [Child], and I will surrender all papers and property to which [Child] is entitled to my successor SVC.

If you have any questions you may contact me at the address and number below.

CPT John P. Smith
(123) 456-7899
john.p.smith.mil@mail.mil

JOHN P. SMITH
Captain, U.S. Army
Special Victims' Counsel

I/we have read and understand the above letter describing the scope of representation.
I/we agree to these terms of representation.

[Name of Parent/Guardian] [Relation to Child][Date]

[Name of Parent/Guardian] [Relation to Child][Date]



DEPARTMENT OF THE ARMY
UNITED STATES ARMY TRIAL DEFENSE SERVICE
9275 GUNSTON ROAD
FORT BELVOIR, VA 22060

REPLY TO
ATTENTION OF:

JALS-TD

1 April 2014

MEMORANDUM FOR All Trial Defense Counsel

SUBJECT: TDS Policy Memorandum 2014-01: Detailing of Defense Counsel and Formation of Attorney-Client Relationships With Alleged Victims of Sexual Offenses

1. Purpose. This memorandum establishes policies and procedures for members of the Trial Defense Service (TDS) to follow when an alleged victim of a sex offense or his or her Special Victims' Counsel (SVC) on his or her behalf requests trial defense representation. This memorandum will be coordinated with interested personnel outside of the TDS to promote understanding of, and compliance with, TDS policies and procedures.
2. Alleged Victim's Entitlement to TDS Representation. In many sexual assault cases, the alleged victim has criminal exposure for collateral misconduct of a relatively minor nature, like underage drinking, adultery, or violation of a barracks policy. The alleged victim is entitled to a SVC, however, the SVC will not provide advice to the alleged victim on potential criminal liability. The SVC or the alleged victim may contact the local TDS field office seeking TDS representation. Having attorneys in the same field office represent both the alleged victim and the accused in the same sex offense case raises several concerns.
3. Avoidance of Conflicts of Interest and Inadvertent Disclosures of Client Confidences.
 - a. All supervisory attorneys in the TDS have a duty to create conditions for the ethical practice of law. Having TDS attorneys from the same field office represent both the accused and the alleged victim in the same case raises a possibility of inadvertent disclosure of confidential information and conflicts-of-interest. To avoid these ethical problems, it is the policy of the TDS that the alleged victim and the accused in the same sex offense case will not be represented by attorneys assigned to the same TDS field or branch office.
 - b. TDS attorneys frequently consult one another when preparing for trial. These discussions between peers are an invaluable strength of the TDS and is a primary way more experienced counsel give advice to less experienced counsel. In addition, TDS counsel consult members of the TDS technical chain and the Defense Counsel Assistance Program (DCAP) for advice. All of these discussions are protected by Rule 1.6 as client confidences. Often, these conversations are informal and take place in hallways or in offices with doors open. With the exception of cases where there are multiple defendants, these informal conversations are permissible and everyone in the field office can participate. The avoidance of inadvertent disclosures in multiple accused situations is manageable because, normally, each defense counsel is aware of who represents the co-accuseds. However, we cannot take for granted that the alleged victim in an active sex offense case will want the fact that she is represented by a TDS counsel generally

JALS-TD

SUBJECT: TDS Policy Memorandum 2014-01: Detailing of Defense Counsel and Formation of Attorney-Client Relationships With Alleged Victims of Sexual Offenses

known. The fact that Attorney A represents Client B is a piece of information related to the representation of B and is protected under Rule 1.6. This fact cannot be disclosed without B's consent or one of the other exceptions to the confidentiality requirement listed in Rule 1.6 apply. This puts the counsel detailed to represent the accused, the counsel detailed to represent the alleged victim, and the detailing authority in a difficult position.

c. Not only is the fact that Attorney A represents Client B a client confidence that must be protected by A, it is a confidential fact that must be protected by the detailing authority. The Scope of the ABA Model Rules makes clear that most of the duties flowing from the attorney-client relationship attach only after the client has requested the lawyer to render legal services and the attorney has agreed to do so. However, some duties, including confidentiality, attach when the lawyer agrees *to consider* whether an attorney-client relationship will be established. In the unique circumstances of the TDS field office, the consideration of whether an attorney-client relationship will be established begins with the detailing authority receiving a request to detail a defense counsel to represent the client. As a matter of TDS policy, detailing authorities will keep confidential the fact that Client B has requested representation and that the detailing authority has detailed Attorney A to represent Client B where B is an alleged victim of a sexual assault.

d. The requirement that detailing authorities keep confidential the fact that an alleged victim requested or has TDS representation may potentially lead to a conflict-of-interest. If this fact must be kept confidential based on the attorney-client relationship between the alleged victim and her detailed defense counsel, the detailing authority's duties to other clients may conflict. For example, if the detailing authority personally represents the accused, it would be impossible to maintain the duty to the alleged victim and use the information to represent zealously the person she has accused. Even if the detailing authority is acting as mentor and coach of the counsel who represents the accused (which creates duties with respect to the accused), he can still be put in a position where he cannot both keep the alleged victim's confidence and give unqualified advice to the attorney representing the accused. To avoid this potential conflict, no detailing authority in TDS will detail counsel to represent a Soldier accused of a sex offense and the alleged victim in the same case.

4. Mechanics of Detailing Counsel to Represent Alleged Victim.

a. TDS policy is that the detailing authority located at the installation where the accused is assigned will detail a defense counsel to represent the accused. TDS policy is that a different detailing authority at a different installation will detail a defense counsel from a different installation to represent the alleged victim. Enclosure 1 lists all Army installations that have TDS counsel. Enclosure 1 pairs each installation with another installation. Each SDC will

JALS-TD

SUBJECT: TDS Policy Memorandum 2014-01: Detailing of Defense Counsel and Formation of Attorney-Client Relationships With Alleged Victims of Sexual Offenses

proactively coordinate with the SVC(s) on the installation and ensure the SVC(s) understand the policy and the requirement to seek TDS representation directly from the TDS field office at the installation that is matched to the installation where the accused is assigned. SDCs will develop a system for screening their calls so they avoid speaking directly with an alleged victim seeking TDS representation or an SVC. The intent is to ensure that SDCs are not conflicted from representing, or supervising counsel representing, a client accused of a crime.

b. These policies apply to all normal cases. A normal case is a case where neither the accused nor the alleged victim has been reassigned to another installation as a result of the allegation. A normal case is a case where the accused is facing a court-martial (a Priority I duty of TDS counsel) and the alleged victim's criminal liability is likely to result in no action or an action no more severe than nonjudicial punishment or administrative separation (Priority II duties of TDS counsel). A normal case is a case where the accused will be represented by a TDS counsel at the same installation to which the accused is assigned. If, for example, a Fort Hood Soldier accuses another Fort Hood Soldier of rape and the alleged victim is reassigned to Fort Sill, it would make more sense for the alleged victim to be represented by a TDS attorney at Fort Sill and not Fort Sam Houston (the installation paired with Fort Hood in Enclosure 1). Similarly, for example, if an accused from Fort Hood is represented by a defense counsel from Fort Sam Houston, it is possible that the alleged victim from Fort Hood could be represented by a conflict-free defense counsel at Fort Hood. These are only examples, and there may be other exceptional cases. All requests to deviate from this policy and the representational scheme in Enclosure 1 will be directed to the TDS Operations Officer. The important thing is that we prevent situations where client confidences can be inadvertently disclosed to adverse parties and conflicts-of-interests can arise.

5. TDS Supervisory Responsibilities. TDS must manage conflicts-of-interest all levels of the organization. The result of this policy is that a counsel detailed to represent a Soldier accused of a sex offense can go to his/her SDC for guidance and advice. Similarly, Regional Defense Counsel (RDC) will be kept conflict-free so he or she can provide guidance and advice to a subordinate representing a client accused of a sex offense. RDCs will not detail counsel to represent alleged victims seeking TDS representation. RDCs will not be contacted by anyone seeking representation for an alleged victim of a sex offense. Similarly, members of DCAP will be kept conflict-free so they can provide advice to defense counsel representing clients facing sex offense accusations in a court-martial. A defense counsel defending a court-martial client accused of a sex offense will have all of the usual resources available to defense counsel defending court-martial clients in other types of cases. A defense counsel representing an alleged victim of a sex offense will receive guidance and assistance from his or her SDC and the TDS Operations Officer.

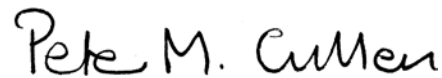
JALS-TD

SUBJECT: TDS Policy Memorandum 2014-01: Detailing of Defense Counsel and Formation of Attorney-Client Relationships With Alleged Victims of Sexual Offenses

6. Both the Soldiers accused of sexual offenses and the alleged victims of sexual offenses who seek TDS representation are clients of the TDS. All clients of TDS will receive zealous representation. Zealous representation of both the Soldier accused of a sex offense and the alleged victim of the sex offense will be accomplished while creating conditions that minimize the possibility of a violation of our Rules of Professional Responsibility.

7. Defense counsel will use DCAP Form 7h (Enclosure 2) to explain the scope of representation to alleged victims of sexual offenses. Defense counsel are authorized to form and maintain attorney-client relationships with alleged victims of sexual offenses consistent with DCAP Form 7h. The scope of representation is not limited to the scope of representation for Soldiers seen for a military justice consultation, even if the alleged victim of a sexual offense is not facing an adverse action at the time the relationship commences. DCAP Form 7h is comprehensive because often the defense counsel will not know what action, if any, the command will take. Defense counsel must be very careful to explain the scope of representation in a way that does not upset the client.

2 Ends:
as



PETER M. CULLEN
COL, JA
Chief, Trial Defense Service

Representational Scheme for Alleged Victims of Sexual Offenses Requesting TDS Representation

If the accused's TDS counsel
is assigned to:

Contact the Senior Defense Counsel at:

Alabama

Fort Rucker, AL

Fort Polk, LA (337.531.1448)

Alaska

JB Elmendorf-Richardson, AK

JB Lewis-McChord, WA (253.477.1851)

Fort Wainwright, AK

JB Lewis-McChord, WA (253.477.1851)

Arizona

Fort Huachuca, AZ

Fort Hood, TX (254.287.9843)

California

Fort Irwin, CA

JB Lewis-McChord, WA (253.477.1851)

Colorado

Fort Carson, CO

Fort Sill, OK (580.442.1494)

Georgia

Fort Stewart, GA

Fort Benning, GA (706.545.4299)

Fort Gordon, GA

Fort Stewart, GA (912.767.1127)

Fort Benning, GA

Fort Gordon, GA (706.791.5388)

Hawaii

Schofield Barracks, HI

Yongsan, ROK (DSN 315.738.4485/4446)

Kansas

Fort Leavenworth, KS

Fort Riley, KS (785.239.2456)

Fort Riley, KS

Fort Leavenworth, KS (913.684.1861)

Representational Scheme for Alleged Victims of Sexual Offenses Requesting TDS Representation

If the accused's TDS counsel
is assigned to:

Contact the Senior Defense Counsel at:

Kentucky

Fort Campbell, KY

Fort Knox, KY (502.624.1847)

Fort Knox, KY

Fort Campbell, KY (270.798.0750)

Louisiana

Fort Polk, LA

Fort Rucker, AL (334.255.2228)

Maryland

Fort Meade, MD

Fort Drum, NY (315.772.6631)

Missouri

Fort Leonard Wood, MO

Fort Riley, KS (785.239.2456)

New York

Fort Drum, NY

JB Myer-Henderson Hall (703.696.3038)

USMA, NY

JB Myer-Henderson Hall (703.696.3038)

New Jersey

Fort Dix, NJ

Fort Drum, NY (315.772.6631)

North Carolina

Fort Bragg, NC

Fort Jackson, SC (803.751.6813)

Oklahoma

Fort Sill, OK

Fort Carson, CO (719.526.0051)

Representational Scheme for Alleged Victims of Sexual Offenses Requesting TDS Representation

If the accused's TDS counsel
is assigned to:

Contact the Senior Defense Counsel at:

South Carolina

Fort Jackson, SC

Fort Bragg, NC (910.907.1949)

Texas

Fort Hood, TX

Fort Bliss, TX (915.568.1679)

Fort Sam Houston, TX

Fort Bliss, TX (915.568.1679)

Fort Bliss, TX

Fort Hood, TX (254.287.9843)

Virginia

Fort Belvoir, VA

Fort Lee, VA (804.765.2145)

JB Myer-Henderson Hall, VA

Fort Lee, VA (804.765.2145)

Fort Lee, VA

JB Myer-Henderson Hall (703.696.3038)

Fort Eustis, VA

JB Myer-Henderson Hall (703.696.3038)

Washington

JB Lewis-McChord, WA

JB Elmendorf-Richardson, AK (907.384.0396)

Germany

Kaiserslautern

Grafenwoehr (DSN 314.475.8494)

Baumholder

Grafenwoehr (DSN 314.475.8494)

Wiesbaden

Grafenwoehr (DSN 314.475.8494)

Grafenwoehr

Kaiserslautern (DSN 314.483.8075)

Bamberg

Kaiserslautern (DSN 314.483.8075)

Schweinfurt

Kaiserslautern (DSN 314.483.8075)

Representational Scheme for Alleged Victims of Sexual Offenses Requesting TDS Representation

If the accused's TDS counsel is assigned to:

Contact the Senior Defense Counsel at:

Katterbach/Ansbach

Kaiserslautern (DSN 314.483.8075)

Vilseck

Kaiserslautern (DSN 314.483.8075)

Italy

Vicenza

Grafenwoehr (DSN 314.475.8494)

Korea

Camp Casey

Schofield Barracks, Hawaii (808.655.1196)

Camp Humphreys

Schofield Barracks, Hawaii (808.655.1196)

Camp Henry

Schofield Barracks, Hawaii (808.655.1196)

Yongsan

Schofield Barracks, Hawaii (808.655.1196)

Japan

Okinawa

Schofield Barracks, Hawaii (808.655.1196)

Camp Zama

Schofield Barracks, Hawaii (808.655.1196)

CENTCOM

Bagram Airfield

Kaiserslautern (DSN 314.483.8075)

Kandahar Airfield

Kaiserslautern (DSN 314.483.8075)

Camp Arifjan

Kaiserslautern (DSN 314.483.8075)

All Other Cases

If you don't know where the accused's defense counsel is assigned, would like a defense counsel located geographically closer to the alleged victim, or have any special circumstances, call the TDS Operations Officer at 703.693.1019.



DEPARTMENT OF THE ARMY
ORGANIZATION
STREET ADDRESS
CITY STATE ZIP

Date

Special Victim Counsel Name

Client Name Address
City, State, Zip Code

Dear Client Name:

On [date], we discussed [the event triggering termination] and the end of my duties as your Special Victims' Counsel. On [date], I provided you notice of my [change of duty status due to re-assignment of new duties, transfer to a new duty installation, or release from active duty], along with the contact information for your new SVC. Additionally, we met face to face with CPT John Doe, your new SVC in order to establish your new attorney-client relationship. This letter serves as official notification of the termination of our attorney-client relationship.

As we discussed, you should direct all future communications to CPT John Doe, your new SVC. Information you disclosed to me in confidence during the course of representation remains confidential. However, you have authorized me to discuss your case with [CPT Doe] in order to ensure your effective continued representation.

Sincerely,

James P. Smith
Captain, U.S. Army
Special Victims' Counsel

I (client name) _____, acknowledge receipt of
this form on DD of MM, YYYY.



DEPARTMENT OF THE ARMY
ORGANIZATION
STREET ADDRESS
CITY STATE ZIP

Date

Special Victims' Counsel Name
Client Name Address
City, State, Zip Code

Dear Client Name:

On [date], [GCMCA name, rank] took initial action in the court-martial of Specialist Perpetrator [identify the event triggering termination]. On [date], we discussed [the event triggering termination] and the end of my duties as your Special Victims' Counsel. This letter serves as official notification of the termination of our attorney-client relationship.

As we discussed, this termination does not mean that you cannot contact me should any new issues arise related to the case, but it is important to keep in mind that anything you choose to disclose to me in the future may not be confidential. Information you disclosed to me in confidence during the course of my representation remains confidential.

[If you chose to be contacted in the event of Specialist Perpetrator's release from confinement or requested notification of his parole opportunities, you will be contacted by a Victim Witness Liaison from the correctional facility so that you may provide input for consideration.]

Should you have any questions about this notification, please do not hesitate to contact me.

Sincerely,

James P. Smith Captain, U.S.
Army Special Victims' Counsel

I (client name) _____, acknowledge receipt of
this form on DD of MM, YYYY.



DEPARTMENT OF THE ARMY
STAFF JUDGE ADVOCATE
GARRISON NAME
GARRISON LOCATION XXXXX-1000

OFFICE SYMBOL

XX Month YYYY

MEMORANDUM FOR RECORD

SUBJECT: Self Certification for **RANK NAME** as SVC in Support of **LOCATION**

1. I, (Nominee's Full Name) _____, would like to make the following statement under oath:

"I do not have any substantiated criminal or civil actions pending or resolved against me of any kind to include sexual assault, sexual battery, sexual harassment or any other such sexual or domestic violence related charge(s) or offenses.

Additionally, I do not have any derogatory information in my Military Personnel Record which would prevent me from serving honorably as a Special Victims' Counsel. Specifically, I do not have any substantiated pending or resolved administrative actions against me of any kind to include sexual assault, sexual battery, sexual harassment or any other such sexual or domestic violence related charge(s) or offenses."

2. I have completed (or will complete) the SVC Certification Course on **DATE** at **LOCATION**.

3. I fully understand the contents of this entire statement made by me; this statement is true and accurate. I have affixed my signature below to confirm that I have read the contents of this statement. I make these statements freely without threat of punishment, without coercion, unlawful influence, or unlawful inducement.

4. Should you require additional information, I can be reached at **(XXX) XXX-XXXX** or email at **(Nominee's Full Email)**.

SNUFFY SMITH
CPT, JA
SVC Nominee



DEPARTMENT OF THE ARMY
STAFF JUDGE ADVOCATE
GARRISON NAME
GARRISON LOCATION XXXXX-1000

OFFICE SYMBOL

XX Month YYYY

MEMORANDUM FOR Program Manager, Special Victims' Counsel (SVC) Program

SUBJECT: Request to Appoint **RANK NAME** as SVC in Support of **LOCATION**

1. I hereby nominate **RANK NAME** to serve as SVC under **NAME OF LAO CHIEF**, Chief of Legal Assistance at **LOCATION**. I have determined that **RANK NAME** possesses the requisite skills to serve as an SVC.

2. **(If Applicable)** **RANK NAME** has **XX** months of military justice experience having served as an Army trial counsel/defense counsel. In addition, **RANK NAME** has performed other roles as a Judge Advocate (JA) that makes him/her uniquely qualified to serve on the SVC Program.

2. **(If Applicable)** Although **RANK NAME** does not have previous military justice experience, she/he has served as a prosecutor/defender prior to his/her US Army JAGC service. In addition, **RANK NAME** has performed other roles as a Judge Advocate (JA) prior to his/her JAGC service that makes him/her uniquely qualified to serve on the SVC Program.

2. **(If Applicable)** Although **RANK NAME** does not have previous military justice experience, she/he has performed other roles as a Judge Advocate (JA) or prior to his/her JAGC service that makes him/her uniquely qualified to serve on the SVC Program.

3. In addition to the stated experience, I have determined that **RANK NAME** will be an excellent SVC because **BRIEF OVERVIEW OF SPECIFIC REASONS FOR SELECTION...**

4. **RANK NAME** possesses the maturity, judgment and intellect to be a highly successful SVC.

5. **RANK NAME** has self-certified that the candidate is not under investigation.

OFFICE SYMBOL

SUBJECT: Request to Appoint **RANK NAME** as Special Victims' Counsel (SVC) in Support of **LOCATION**

6. **RANK NAME** will attend the next SVC Certification Course from **DATES** and complete all other administrative requirements to be certified as an SVC.

7. POC for this request is the undersigned at snuffy.smith.mil@mail.mil.

SNUFFY SMITH
COL, JA
STAFF JUDGE ADVOCATE