



Disclosure of Information to Crime Victims

Background

Victims' rights have changed significantly within the past year including gaining the right to a Victims' Legal Counsel (VLC) for eligible victims, the enactment of Article 6b, UCMJ, and the implementation of Article 54(e) through Rules for Courts-Martial (RCM) 1103 and 1104. This practice advisory provides guidance on disclosure of information to victims of crimes as defined in Article 6b, UCMJ and for preparing the record of trial for victims of sexual assault pursuant to Article 54(e), UCMJ. Article 6b, enacted in the FY14 National Defense Authorizations Act, incorporates the Federal Crime Victims' Rights Act of 2004 into the UCMJ. These rights include: the right to be reasonably protected from the accused; the right to reasonable, accurate, and timely notice of certain hearings; the right not to be excluded from any public hearing or proceeding unless properly determined; the right to be reasonably heard at certain hearings; the reasonable right to confer with the counsel representing the Government; the right to receive restitution as provided in law; the right to proceedings free from unreasonable delay; and the right to be treated with fairness and with respect for the dignity and privacy of the victim. The Staff Judge Advocate to the Commandant of the Marine Corps has approved the below redaction and disclosure guidance to assist in the provision of these rights.

Disclosure of Information to Victims before the Trial

To safeguard the rights of crime victims and provide notice as required by Article 6b(2), UCMJ, the trial counsel will provide the Victims' Legal Counsel, the information listed below:

a. Upon notification of representation:

- (1) A copy of all statements and documentary evidence, in possession of the trial counsel, produced or provided by the victim.
- (2) The date, time, and location of any pretrial confinement review pursuant to R.C.M. 305.

b. Upon preferral of charges:

- (1) A copy of the charge sheet, redacted for PII, setting forth the preferred specifications pertaining to that victim.
- (2) The date, time, and location of any preliminary hearing pursuant to Article 32, UCMJ, and any request for continuance.

c. Upon receipt or filing by the government:

- (1) A transcript or summarized transcript of the victim's testimony at the preliminary hearing.
- (2) A copy of the charge sheet, redacted for PII, setting forth the referred specifications pertaining to that victim.
- (3) Any docket requests, as well as docketing or scheduling orders, including deadlines for filing motions and the date, time, and location for any session of trial.
- (4) A copy of any filing, including attachments, that may limit a victim's ability to participate in the court-martial, affect the victim's possessory rights in any property, concern the victim's privileged communications or private medical information, or involve the victim's right to be heard.

(5) Any request to interview the victim received from defense counsel.

(6) Notice of pretrial agreement negotiations and an opportunity to express the views of the victim regarding the proposed terms of the agreement.

(7) A copy of any approved pretrial agreement.

d. Nothing in this practice advisory prevents the trial counsel from disclosing additional documents if authorized under the Privacy Act and the Rules for Professional Responsibility. Further, nothing in this section prevents VLC from requesting disclosure of additional documents as necessary to safeguard victims' rights.

Preparing the Record of Trial for Eligible Victims

Article 54(e) requires the convening authority to provide a copy of the record of trial to testifying victims at a general or special court-martial involving an offense under Article 120, UCMJ. The recently implemented RCMs 1103 and 1104 expanded Article 54(e) in two key ways. First, the RCMs eliminated the requirement that a victim testify in order to receive a copy of the record of trial. Second, they expanded Article 54(e) beyond Article 120 offenses to cover victims of offenses under Articles 120, 120b, 120c, 125, and any attempt to commit such offense in violation of Article 80. Finally, the RCMs clarified that the convening authority shall not provide any material to the victim that would unlawfully violate the privacy interests of any party, to include those afforded by 5 U.S.C. § 552a, the Privacy Act of 1974. In preparing the record of trial for the victim, the following information must be redacted unless it relates to the victim receiving the record of trial:

- a. Social Security Numbers.
- b. Financial Account Numbers.
- c. Home Addresses.
- d. Birth Dates.
- e. Personal E-mail Addresses and Phone Numbers.
- f. The name of any victims or minors. In place of the name, initials should be provided for all victims or minors.
- g. Any unsealed medical records.

Submitting victim matters during the clemency phase of a court-martial

JAD recently updated the required form for victims to elect post-trial rights. It can be found at the following link:

[http://www.hqmc.marines.mil/Portals/135/Docs/TCAP/Victim's%20Election%20of%20Post-Trial%20Rights%20\(final%2015%20Oct%2014\).pdf](http://www.hqmc.marines.mil/Portals/135/Docs/TCAP/Victim's%20Election%20of%20Post-Trial%20Rights%20(final%2015%20Oct%2014).pdf)

Points of Contact

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