

CLE: Emerging Ethical Issues for Special Victims' Counsel

Class length: 60 minutes

Instructor: Prof. Martin Mitchell

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The Department of Defense, working with the Services, has created a legal support function for victims of sexual assault that provides legal advice and guidance, and maintains a victim's confidentiality. The Army, Air Force, National Guard, and Coast Guard refer to these professionals as Special Victims' Counsel (SVC), while the Navy and Marine Corps have labeled them Victims' Legal Counsel (VLC). Whether an SVC or VLC, these lawyers have experience trying cases in both military and civilian trials. They understand the legal process and are able to guide victims as a perpetrator is brought to trial.

The SVC have a unique role in the military justice system. They are not the prosecution or the defense. However in representing the victim of the offense, they have a role in the administration of justice. There are certain times in the process when they have an explicit role. MRE 412 governs the relevancy and admissibility of the victim's sexual behavior and predisposition in courts-martial for sexual offenses. MRE 513 governs the psychotherapist-patient privilege. Under both MRE, the President has expressly stated that the victim has a reasonable right to be attend and be heard at evidentiary hearings. This right includes the right to be heard through counsel. See, *LRM v. Kastenberg*, 72 MJ 364 (CAAF 2013).

How do the Rules of Ethics apply to SVC throughout the proceedings and their representation of their clients? SVCs are attorneys, possessing the same attorney-client privilege as in other similar and well-known attorney-client relationships. SVCs operate under the same professional and privilege rules as other attorneys

This lecture looks at the application of Rules 1.1 (Competence), Rule 1.4 (Communication); Rule 1.6 (Confidentiality of Information), Rule 3.3 (Candor to the Tribunal); Rule 4.1 (Truthfulness in Statements to Others) and Rule 8.4 (Misconduct). It also includes a discussion of the 2007 ABA Standards of Practice for Lawyers Representing Victims of Domestic Violence, Sexual Assault and Stalking in Civil Protection Order Cases. The class engages in an in-depth discussion of a reported cases of ethical questions about an SVC's conduct in [United States v. Battles, No. ARMY 20140399, 2017 CCA LEXIS 380, at \\*21 \(A. Ct. Crim. App. May 31, 2017\)](#).

Based on the case discussion, the case delves into the ethical issues faced by prosecutors, defense counsel and now SVCs – what to do if they believe their client is not truthful? Are SVCs different than defense counsel and prosecutors? What is the level of proof necessary? Does the timing matter? What steps must an attorney take and when? When is withdraw of representation required? Do state bar rules differ?

And ends with a discussion of how the ethics rules guide an SVC's advice to clients about social media.

