

(2) Before ordering the production or admission of evidence of a patient's records or communication, the military judge must conduct a hearing. Upon the motion of counsel for either party and upon good cause shown, the military judge may order the hearing closed. At the hearing, the parties may call witnesses, including the patient, and offer other relevant evidence. The patient must be afforded a reasonable opportunity to attend the hearing and be heard at the patient's own expense unless the patient has been otherwise subpoenaed or ordered to appear at the hearing. However, the proceedings may not be unduly delayed for this purpose. In a case before a court-martial composed of a military judge and members, the military judge must conduct the hearing outside the presence of the members.

(3) The military judge may examine the evidence or a proffer thereof in camera, if such examination is necessary to rule on the motion.

(4) To prevent unnecessary disclosure of evidence of a patient's records or communications, the military judge may issue protective orders or may admit only portions of the evidence.

(5) The motion, related papers, and the record of the hearing must be sealed in accordance with R.C.M. 1103A and must remain under seal unless the military judge or an appellate court orders otherwise.

Rule 514. Victim Advocate—Victim Privilege

(a) *General Rule.* A victim has a privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication made between the alleged victim and a victim advocate, in a case arising under the Uniform Code of Military Justice, if such communication was made for the purpose of facilitating advice or supportive assistance to the alleged victim.

(b) *Definitions.* As used in this rule:

(1) "Victim" means any person who is alleged to have suffered direct physical or emotional harm as the result of a sexual or violent offense.

(2) "Victim advocate" means a person who:

(A) is designated in writing as a victim advocate in accordance with service regulation;

(B) is authorized to perform victim advocate duties in accordance with service regulation and is acting in the performance of those duties; or

(C) is certified as a victim advocate pursuant to federal or state requirements.

(3) A communication is "confidential" if made in the course of the victim advocate - victim relationship and not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of advice or assistance to the alleged victim or those reasonably necessary for such transmission of the communication.

(4) "Evidence of a victim's records or communications" means testimony of a victim advocate, or records that pertain to communications by a victim to a victim advocate, for the purposes of advising or providing supportive assistance to the victim.

(c) *Who May Claim the Privilege.* The privilege may be claimed by the victim or the guardian or conservator of the victim. A person who may claim the privilege may authorize trial counsel or a defense counsel representing the victim to claim the privilege on his or her behalf. The victim advocate who received the communication may claim the privilege on behalf of the victim. The authority of such a victim advocate, guardian, conservator, or a defense counsel representing the victim to so assert the privilege is presumed in the absence of evidence to the contrary.

(d) *Exceptions.* There is no privilege under this rule:

(1) when the victim is dead;

(2) when federal law, state law, or service regulation imposes a duty to report information contained in a communication;

(3) when a victim advocate believes that a victim's mental or emotional condition makes the victim a danger to any person, including the victim;

(4) if the communication clearly contemplated the future commission of a fraud or crime, or if the services of the victim advocate are sought or obtained to enable or aid anyone to commit or plan to commit what the victim knew or reasonably should have known to be a crime or fraud;

(5) when necessary to ensure the safety and security of military personnel, military dependents, military property, classified information, or the accomplishment of a military mission; or

(6) when admission or disclosure of a communication is constitutionally required.

(e) *Procedure to Determine Admissibility of Victim Records or Communications.*

(1) In any case in which the production or admission of records or communications of a victim is a matter in dispute, a party may seek an interlocutory ruling by the military judge. In order to obtain such a ruling, the party must:

(A) file a written motion at least 5 days prior to entry of pleas specifically describing the evidence and stating the purpose for which it is sought or offered, or objected to, unless the military judge, for good cause shown, requires a different time for filing or permits filing during trial; and

(B) serve the motion on the opposing party, the military judge and, if practicable, notify the victim or the victim's guardian, conservator, or representative that the motion has been filed and that the victim has an opportunity to be heard as set forth in subdivision (e)(2).

(2) Before ordering the production or admission of evidence of a victim's records or communication, the military judge must conduct a hearing. Upon the motion of counsel for either party and upon good cause shown, the military judge may order the hearing closed. At the hearing, the parties may call witnesses, including the victim, and offer other relevant evidence. The victim must be afforded a reasonable opportunity to attend the hearing and be heard at the victim's own expense unless the victim has been otherwise subpoenaed or ordered to appear at the hearing. However, the proceedings may not be unduly delayed for this purpose. In a case before a court-martial composed of a military judge and members, the military judge must conduct the hearing outside the presence of the members.

(3) The military judge may examine the evidence or a proffer thereof in camera, if such examination is necessary to rule on the motion.

(4) To prevent unnecessary disclosure of evidence of a victim's records or communications, the military judge may issue protective orders or may admit only portions of the evidence.

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Rule 601. Competency to Testify in General

Every person is competent to be a witness unless these rules provide otherwise.

Rule 602. Need for Personal Knowledge

A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness's own testimony. This rule does not apply to a witness's expert testimony under Mil. R. Evid. 703.

Rule 603. Oath or Affirmation to Testify Truthfully

Before testifying, a witness must give an oath or affirmation to testify truthfully. It must be in a form designed to impress that duty on the witness's conscience.

Rule 604. Interpreter

An interpreter must be qualified and must give an oath or affirmation to make a true translation.

Rule 605. Military Judge's Competency as a Witness

(a) The presiding military judge may not testify as a witness at any proceeding of that court-martial. A party need not object to preserve the issue.

(b) This rule does not preclude the military judge from placing on the record matters concerning docketing of the case.

Rule 606. Member's Competency as a Witness

(a) *At the Trial by Court-Martial.* A member of a court-martial may not testify as a witness before the other members at any proceeding of that court-martial. If a member is called to testify, the military judge must – except in a special court-martial without a military judge – give the opposing party an opportunity to object outside the presence of the members.

(b) *During an Inquiry into the Validity of a Finding or Sentence.*

(1) *Prohibited Testimony or Other Evidence.* During an inquiry into the validity of a finding or sentence, a member of a court-martial may not testify about any statement made or incident that occurred during the