

(A) *Capital cases.* In capital cases, for purposes of this rule, the “right to be reasonably heard” means the right to make a sworn statement.

(B) *Non-capital cases.* In non-capital cases, for purposes of this rule, the “right to be reasonably heard” means the right to make a sworn or unsworn statement.

(c) *Content of statement.* The content of statements made under subsections (d) and (e) of this rule may include victim impact or matters in mitigation.

(d) *Sworn statement.* The victim may give a sworn statement under this rule and shall be subject to cross-examination concerning the statement by the trial counsel or defense counsel or examination on the statement by the court-martial, or all or any of the three. When a victim is under 18 years of age, incompetent, incapacitated, or deceased, the sworn statement may be made by the victim’s designee appointed under R.C.M. 801(a)(6). Additionally, a victim under 18 years of age may elect to make a sworn statement.

(e) *Unsworn statement.* The victim may make an unsworn statement and may not be cross-examined by the trial counsel or defense counsel upon it or examined upon it by the court-martial. The prosecution or defense may, however, rebut any statements of facts therein. The unsworn statement may be oral, written, or both. When a victim is under 18 years of age, incompetent, incapacitated, or deceased, the unsworn statement may be made by the victim’s designee appointed under R.C.M. 801(a)(6). Additionally, a victim under 18 years of age may elect to make an unsworn statement.

(1) *Procedure for presenting unsworn statement.* After the announcement of findings, a victim who would like to present an unsworn statement shall provide a copy to the trial counsel, defense counsel, and military judge. The military judge may waive this requirement for good cause shown.

(2) Upon good cause shown, the military judge may permit the victim's counsel to deliver all or part of the victim's unsworn statement.

(cc) R.C.M. 1103A(a) is amended to read as follows:

“(a) *In general.* If the report of preliminary hearing or record of trial contains exhibits, proceedings, or other matter ordered sealed by the preliminary hearing officer or military judge, counsel for the government or trial counsel shall cause such materials to be sealed so as to prevent unauthorized viewing or disclosure. Counsel for the government or trial counsel shall ensure that such materials are properly marked, including an annotation that the material was sealed by order of the preliminary hearing officer or military judge, and inserted at the appropriate place in the original record of trial. Copies of the report of preliminary hearing or record of trial shall contain appropriate annotations that matters were sealed by order of the preliminary hearing officer or military judge and have been inserted in the report of preliminary hearing or original record of trial. This Rule shall be implemented in a manner consistent with Executive Order 13526, concerning classified national security information.”

(dd) R.C.M. 1103A(b)(1) is amended to read as follows:

“(1) *Prior to referral.* The following individuals may examine sealed materials only if necessary for proper fulfillment of their responsibilities under the UCMJ, the MCM, governing directives, instructions, regulations, applicable rules for practice and procedure, or rules of professional responsibility: the judge advocate advising the convening authority who directed the Article 32 preliminary hearing; the convening authority who directed the Article 32 preliminary hearing; the staff judge advocate to the general court-martial convening authority; and the general court-martial convening authority.”