

“(2) When federal law, state law, Department of Defense regulation, or service regulation imposes a duty to report information contained in a communication;

(3) When a victim advocate or Department of Defense Safe Helpline staff 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 or Department of Defense Safe Helpline staff 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;”

(o) Mil. R. Evid. 514(e)(2) is amended to read as follows:

“(2) Before ordering the production or admission of evidence of a victim’s records or communication, the military judge must conduct a hearing, which shall be 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. However, the hearing may not be unduly delayed for this purpose. The right to be heard under this rule includes the right to be heard through counsel, including Special Victims’ Counsel under section 1044e of title 10, United States Code. 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.”

(p) Mil. R. Evid. 514(e)(3) is amended to read as follows:

“(3) The military judge may examine the evidence, or a proffer thereof, in camera if such examination is necessary to rule on the production or admissibility of protected records or

communications. Prior to conducting an in camera review, the military judge must find by a preponderance of the evidence that the moving party showed:

(A) a specific factual basis demonstrating a reasonable likelihood that the records or communications would yield evidence admissible under an exception to the privilege;

(B) that the requested information meets one of the enumerated exceptions under subsection (d) of this rule;

(C) that the information sought is not merely cumulative of other information available; and

(D) that the party made reasonable efforts to obtain the same or substantially similar information through non-privileged sources.”

(q) A new Mil. R. Evid. 514(e)(4) is inserted immediately after Mil. R. Evid. 514(e)(3) and reads as follows:

“(4) Any production or disclosure permitted by the military judge under this rule must be narrowly tailored to only the specific records or communications, or portions of such records or communications, that meet the requirements for one of the enumerated exceptions to the privilege under subsection (d) above and are included in the stated purpose for which the records or communications are sought under subsection (e)(1)(A) above.”

(r) Mil. R. Evid. 514(e)(4) is renumbered as Mil. R. Evid. 514(e)(5).

(s) Mil. R. Evid. 514(e)(5) is renumbered as Mil. R. Evid. 514(e)(6).

(t) Mil. R. Evid. 615(e) is amended to read as follows:

“(e) A victim of an offense from the trial of an accused for that offense, unless the military judge, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that hearing or proceeding.”