

**COMMANDER, DESTROYER SQUADRON FOURTEEN
ARTICLE 32, UCMJ INVESTIGATION**

UNITED STATES

v.

BM2 JUAN J. FELIX, U.S. NAVY

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**PROTECTIVE ORDER
LIMITING ACCESS TO, AND
DISTRIBUTION OF, REPORT
OF INVESTIGATION AND
RECORDING**

8 May 2014

1. This protective order shall take effect if, as part of the subject Article 32, UCMJ investigation, evidence falling under Military Rule of Evidence (M.R.E.) 412, is offered at a preliminary hearing under M.R.E. 412(c).
2. This order shall apply to the Investigating Officer, Accused, Defense Counsel and Support Staff, and Government Counsel and Support Staff.
3. Given the private and potentially degrading nature of evidence of an alleged victim's sexual predisposition or prior sexual behavior, I hereby order that all evidence, recordings, and other documents related to the Article 32 preliminary hearing under M.R.E. 412(c) must be sealed and will remain sealed unless and until the Convening Authority or a Military Judge orders otherwise. Neither the testimony taken during such a closed hearing, nor the sealed contents, should be included in the Article 32 report of investigation. Instead, the Trial Counsel should maintain the sealed documents and recordings for safeguarding unless and until the Convening Authority or Military Judge orders otherwise
4. This protective order shall remain in effect until withdrawn by me or a military judge.

R. C. TILLOTSON

24 Jul 14

From: Victims' Legal Counsel, NS Mayport, FL
To: Commander, Destroyer Squadron FOURTEEN
Via: Staff Judge Advocate, Destroyer Squadron FOURTEEN

Subj: REQUEST TO AMEND APPOINTING ORDER FOR ARTICLE 32, UCMJ
INVESTIGATION ICO BM2 JUAN J. FELIX, USN

Ref: (a) VLC detail ltr 5800 Ser 14/037 dtd 3 Jun 14
(b) Your ltr 5800 Ser N00/189 dtd 14 Jul 14

Encl: (1) Sample protective order

1. Per reference (a), I have been detailed as Victims' Legal Counsel (VLC) for ITSN D.H., USN, in connection with an unrestricted report of sexual assault. The alleged offender is BM2 Juan J. Felix, USN. ITSN D.H. is a named victim in the charges preferred against BM2 Felix, which are pending an investigation pursuant to Article 32, UCMJ. Reference (b) appointed an investigating officer and directed the investigation pursuant to Article 32, UCMJ.

2. Military Rule of Evidence (M.R.E.) 412 and Rule for Courts-Martial (R.C.M.) 405 generally prohibit the admission of an alleged victim's other sexual behavior or sexual predisposition evidence during military justice proceedings, including Article 32 investigations. However, M.R.E. 412(b) describes limited exceptions to the blanket exclusion of such evidence. M.R.E. 412(c) sets out procedures to determine the possible admission of such evidence and includes requirements for reasonable notice to all parties, the closing of the courtroom to the public for sensitive sessions, and the sealing of documents and evidence related to the proceeding when this evidence is sought or discussed. On June 13, 2014, the President amended R.C.M. 405(i) to apply all of M.R.E. 412 to Article 32 investigations.

3. The Article 32 Investigation may include discussion of highly personal information regarding the past sexual history or sexual predisposition of ITSN D.H. In order to protect the lawful privacy interests of ITSN D.H., I respectfully request

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that you amend reference (b) to include the following language
in the Article 32 Convening Order:

"In conducting your investigation, you will comply with the requirements and protections of M.R.E. 412, including the procedure to determine admissibility of such evidence mandated under M.R.E. 412(c). I am explicitly directing you that: a) absent good cause, any party intending to introduce such evidence must file a written notice at least five (5) days prior to the Article 32 investigation describing the evidence and purpose for which it will be offered, b) any such motion shall be served on the opposing party and VLC, c) any preliminary hearing to determine the admissibility of such evidence shall be closed, and d) all evidence, recordings, and other documents related to such a hearing must be sealed and will remain sealed unless and until the Convening Authority or a Military Judge orders otherwise. Neither the testimony taken during such a closed hearing, nor the sealed contents, should be included in your report of investigation. Instead, the Trial Counsel should maintain the sealed documents and recordings for safeguarding unless and until the Convening Authority or Military Judge orders otherwise. Further, all evidence, recordings, and other documents related to an M.R.E. 412(c) preliminary hearing are subject to the enclosed protective order."

4. R.C.M. 405(c) provides that the commander convening the Article 32 investigation may give procedural instructions consistent with lawful rules and regulations. This request is for a procedural instruction consistent with the Rules for Courts-Martial, Military Rules of Evidence, and the intent of the President when he amended R.C.M. 405. It further serves to clarify the Investigating Officer's duties under M.R.E. 412.

5. This request does not deny the defense the opportunity to present evidence under one of the limited exceptions in

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M.R.E. 412 for consideration in reaching your disposition decision. It merely ensures that, should the Investigating Officer need to address such sensitive topics, ITSN D.H.'s privacy interests are safeguarded according to the procedures required by the rule.

6. If you have any questions, please contact me at: [REDACTED]
[REDACTED] or by email at [REDACTED].

Very Respectfully,



P. K. KORODY

Copy to:

DC

TC

IO