



FORT SAM HOUSTON LEGAL ASSISTANCE OFFICE

ARTICLE 138

"Any member of the armed forces who believes himself wronged by his commanding officer, and who, upon due application to that commanding officer, is refused redress, may complain to any superior commissioned officer, who shall forward the complaint to the officer exercising general court-martial jurisdiction over the officer against whom it is made. The officer exercising general court-martial jurisdiction shall examine into the complaint and take proper measures for redressing the wrong complained of; and he shall, as soon as possible, send to the Secretary concerned a true statement of that complaint, with the proceedings had thereon."

--Article 138, UCMJ (10 USC 938)

What is Article 138, Uniform Code of Military Justice?

Article 138, UCMJ, (10 USC 938) is a statutory grievance procedure for members of the armed forces who believe themselves wronged by their commanding officer. It is of ancient origin, with some of its provisions traceable to the military code promulgated in 1688 by King James II of England.

How is it implemented in the Army?

Army Regulation 27-10, *Military Justice*, chapter 20, implements Article 138 in the Army. The regulation details procedures for filing and processing Article 138 complaints and provides definitions of key terms. For example:

- a. A "member of the armed forces" means a member of the Army, Air Force, Navy, Marine Corps or Coast Guard on active duty or inactive duty training and subject to the UCMJ.
- b. A "commanding officer" is an officer in the complainant's chain of command, up to and including the first officer exercising general court-martial (GCM) jurisdiction over the complainant, who is authorized to impose nonjudicial punishment on the complainant.
- c. A "wrong" is a commanding officer's discretionary act or omission under color of Federal military authority that adversely affects the complainant personally and is: (1) in violation of law or regulation; (2) beyond the officer's legitimate authority; (3) arbitrary, capricious or an abuse of discretion; or (4) materially unfair.
- d. "Redress" is action by any commander that revokes the act complained of or otherwise restores the complainant's rights, privileges, status or property lost as a result of the wrong.

What types of complaints are not appropriate for Article 138 procedures?

The procedures in AR 27-10, chapter 20, are intended to ensure that soldiers have an adequate official channel for requesting redress from commanding officers. For many adverse actions, however, there are more specific procedures to ensure that soldiers have an adequate opportunity to be heard. Article 138 procedures are not intended to duplicate or supplant those specific procedures. A complaint is generally not appropriate for review if other procedures provide notice, a right to a rebuttal or hearing, and review by a superior authority. For example, complaints related to courts-martial, nonjudicial punishment, confinement, separation actions, evaluation report appeals, withdrawal of flying status, appeals from findings of pecuniary liability and similar actions are not appropriate subject matter for Article 138 complaints.

How does the complaint process work?

Prior to making a complaint, a soldier must make a written request for redress to the commanding officer concerned. The commanding officer generally has fifteen days from receipt to respond in writing. If the commanding officer denies redress, the soldier, now called the complainant, must deliver a written complaint to the complainant's immediate superior commissioned officer within ninety days of discovering the wrong. The time the request for redress was in the hands of the commanding officer concerned, now called the respondent, is excluded from this ninety-day period. (See AR 27-10, paragraph 20-7, for a detailed description of the information that must be included in the formal complaint. A soldier who desires to submit a complaint may consult a military lawyer for advice and assistance in drafting the complaint. That advice will include whether an Article 138 complaint is authorized and appropriate, under the circumstances.)

The formal complaint is processed through the chain of command to the officer exercising GCM jurisdiction over the respondent. Complaints that do not substantially meet the requirements of Article 138, as implemented by AR 27-10, chapter 20, are deficient and are generally returned to the complainant without action. The complainant may also decide to withdraw the complaint, for example, because an officer in the chain of command grants redress, at any time before final action is taken at HQDA. If the complaint is neither withdrawn nor deficient, the officer exercising GCM jurisdiction will examine into the complaint and act personally on it. If that officer finds the complaint is appropriate for review using Article 138 procedures, such officer will determine the merits of the complaint and the redress requested. The officer exercising GCM jurisdiction may deny redress, grant appropriate redress, or recommend that an officer or agency with the necessary authority grant appropriate redress.

What happens to the complaint after the officer exercising GCM jurisdiction takes action?

Even if redress is granted or the complaint is inappropriate for Article 138 procedures, the officer exercising GCM jurisdiction must forward the complaint and all allied papers, including any investigations conducted, to HQDA for review and final action. The Secretary of the Army has designated The Judge Advocate General of the Army to act on Article 138 complaints. The Judge Advocate General has designated The Assistant Judge Advocate General for Military Law and Operations to take final action. After that officer reviews the proceedings on the complaint and takes final action, the complainant, the respondent, and the officer exercising GCM jurisdiction will be informed of the final disposition of the complaint.