



FORT SILL LEGAL ASSISTANCE



ARTICLE 138 COMPLAINTS

Article 138, Uniform Code of Military Justice, provides that any member of the armed forces who believes him or herself wronged by his or her commander, and refused redress, may make a complaint to **any** superior commissioned officer, who will forward the complaint up to the General Court Martial Convening Authority (GCMCA).

Generally, a commander's actions are presumed lawful and proper. However, Article 138 provides a means for an administrative review upon application of the Soldier. **This process should only be used as a last resort.** It is only available if there is no other statutory or regulatory avenue of appeal.

Complaints pursuant to Article 138 must be in writing and must allege that the complainant has been wronged. A "wrong" is a discretionary act or omission by a commanding officer, under color of Federal military authority, that adversely affects the complainant personally and that is:

- (1) In violation of law or regulation;
- (2) Beyond the legitimate authority of that commanding officer;
- (3) Arbitrary, capricious, or an abuse of discretion; or
- (4) Materially unfair.

PROCESS

An Article 138 complaint involves the following steps:

1. A Soldier files a written request for redress with the commander concerned. The commander has 15 days to reply. If it is not possible for the commander to reply within the 15 days, the commander must provide an interim response with estimated date for final response.
2. If the commander denies redress, the Soldier submits an Article 138 complaint, in writing, to the Soldier's immediate superior commissioned officer. The complaint must be submitted within 90 days of discovery of the alleged wrong. The time a request for redress with the commander is pending does not count towards the 90 day time period.
3. The complaint is processed through the chain of command to the GCMCA which had authority over the commander at the time of the alleged wrong. Anyone in the GCMCA chain of command may grant redress.
4. The GCMCA will examine the complaint. The type of examination conducted by the GCMCA is discretionary. The GCMCA may delegate the examination of the complaint, in which case there will be an investigation conducted in accordance with AR 15-6. The GCMCA will personally act on the complaint and notify the Soldier in writing. The GCMCA will forward the complaint to HQDA, regardless of the outcome of the complaint.

LEGAL ASSISTANCE

Soldiers may seek legal counsel when deciding whether to pursue an Article 138 complaint. If the matter involves a violation of the UCMJ, the Soldier may seek assistance from the Trial Defense Service. In all other cases, contact the Legal Assistance Office.

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This Information Paper provides only basic information and is not intended to serve as a substitute for personal consultation with a Legal Assistance Attorney. To schedule an appointment with a Legal Assistance Attorney, please contact the Legal Assistance Office at (580) 442-5058. The Fort Sill Legal Assistance Office is located on the 4th Floor of Building 4700 (Welcome Center) at 4700 Mow-Way Road, Fort Sill, Oklahoma 73503.