



TORII LEGAL ASSISTANCE

OFFICE OF THE STAFF JUDGE ADVOCATE



Article 138 Complaints

Adapted from a Fort Sill, Oklahoma Handout

Any member of the Army who believes himself wronged by his 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).ⁱ

Generally, a commander's actions are presumed proper. However, Article 138 of the Uniform Code of Military Justice (UCMJ) 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. Paragraph 19-5b of Army Regulation 27-10 gives examples when an Article 138 Complaint is not appropriate.

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 Trial Defense Service. In all other cases, contact the Legal Assistance Office.

ⁱ Article 138, Uniform Code of Military Justice