



**XVIII Airborne Corps and Fort Bragg
Office of the Staff Judge Advocate
Legal Assistance Office**



INFORMATION PAPER – ART 138 COMPLAINT

1. WHAT IS AN ARTICLE 138 COMPLAINT?

An Article 138 complaint is a process by which you can attempt to remedy a wrong committed against you by your commanding officer. A “wrong” may be an action the commander has taken (an act), or the failure of the commander to take an action that should have been taken (an omission). A “wrong” is something that affects you personally, and is either in violation of a law or regulation, beyond the legitimate authority of the commander, an arbitrary act or an abuse of the commander’s discretion, or materially unfair. The “wrong” may be a *deprivation, restriction, or limitation* of any *right, privilege, benefit, or entitlement*.

2. WHEN CAN I USE THE ARTICLE 138 COMPLAINT PROCESS?

Generally, an Article 138 complaint can be used any time you feel a commanding officer has committed a wrong against you. As discussed in paragraph 3 below, there are some exceptions. Common examples of perceived wrongs are when a commander unreasonably denies your request for leave or revokes promotion orders for unknown reasons.

3. WHEN CAN'T I USE THE ARTICLE 138 COMPLAINT PROCESS?

The Article 138 process is not appropriate when the Army has provided alternative channels for resolving the complaint. Examples include:

- a. Complaints relating to a court-martial or Article 15 proceeding.
- b. Complaints arising out of most board actions, such as officer or enlisted elimination boards, flight evaluation boards, reduction boards, or formal AR 15-6 investigations.
- c. Actions for which Army regulations specifically authorize an administrative appeal (for example, complaints relating to officer or NCO evaluation reports, findings of financial liability as the result of a report of survey, or filing of written reprimands or other adverse information in official personnel records).
- d. A commander’s recommendation or initiation of an action listed above. For example, if your commander recommends you receive a field grade Article 15 for missing a formation, you may not file an Article 138 complaint.

4. HOW DOES THE ARTICLE 138 PROCESS WORK?

STEP 1: If you feel you’ve been wronged and want that wrong “fixed,” you must first submit a **written request for redress** (fixing of the wrong) through your chain of command to the commander who has committed the wrong against you. A request for redress must contain the following information:

- (1) Name and unit of the commanding officer against whom you are making the request for redress;
- (2) An explanation of the nature of the alleged wrong committed against you;
- (3) The remedial action you desire.

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STEP 2: The commanding officer normally has 15 days from the date of receipt to respond to your request for redress. If more time is needed, the commander should provide you an interim response indicating the estimated date of the final response. In acting on your request, the commander may take remedial action or refuse your request. If no final response is received within 15 days through no fault of yours (and no interim response has been provided), you may assume your request for redress has been refused.

STEP 3: If the commander refuses your request for redress, the next step is to pursue the matter through a **formal Article 138 complaint**. An Article 138 complaint must be in writing, signed by you, and contain the following information:

- (1) Statement that you are a member of the Armed Forces on active duty (or a reservist on inactive duty for training and subject to the UCMJ),
- (2) Your current military organization and unit address,
- (3) Your military organization and unit address at the time the wrong was committed against you,
- (4) The name of the commanding officer who wronged you,
- (5) The date you submitted a request for redress to the commander and a statement that the commander either refused it outright or failed to provide a final response within 15 days,
- (6) A statement that your complaint is submitted under the provisions of Article 138, UCMJ, and Army Regulation 27-10,
- (7) A clear explanation of the complaint, including why you believe the commander's action or inaction is a wrong, and
- (8) A statement of the specific remedial action you seek and why you consider it appropriate.

STEP 4: You must attach to the Article 138 complaint your request for redress to the commanding officer and any supporting information, documents, or statements you want to have considered in support of your Article 138 complaint.

STEP 5: Deliver the Article 138 complaint and all supporting documents to your immediate superior commissioned officer.

5. HOW LONG DO I HAVE TO SUBMIT AN ARTICLE 138 COMPLAINT?

You must submit an Article 138 complaint to your immediate superior commissioned officer within 90 DAYS from the date you discovered the wrong. The 90-day limit excludes any period of time your request for redress was in the hands of the commanding officer against whom you submitted it.

The best advice would be to submit a request for redress to the commanding officer you claim has wronged you IMMEDIATELY after you discover the wrong committed against you. Be ready to submit an Article 138 complaint immediately to your chain of command, in case the request for redress is refused.

6. ONCE I SUBMIT AN ARTICLE 138 COMPLAINT, WHAT HAPPENS TO IT?

The officer to whom you submitted the Article 138 complaint must promptly forward it to the officer exercising general court-martial jurisdiction, who is usually your commanding general (from here on, we'll assume this person is your commanding general for simplicity). Any commander through whom the complaint is forwarded may grant any

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redress within that particular commander's authority or may add pertinent material to the file and forward it to higher commanders.

Upon receipt, the commanding general or a designated subordinate will examine your complaint. If the commanding general delegates the examination of the complaint to a subordinate, the subordinate must conduct an AR 15-6 investigation into the complaint, make a specific recommendation as to the appropriateness of the redress you have requested, and identify any other necessary corrective action.

After the investigation, the commanding general must personally act on your complaint. He determines the merits of your complaint and grants or denies the redress you requested. If the commanding general believes redress is appropriate, but it is beyond his authority, he will forward your complaint to the agency or commander who has the authority to grant the redress. You will be notified in writing of the commanding general's action on your complaint.

Your complaint and all supporting materials are then forwarded to Headquarters, Department of the Army (HQDA), along with the results of the commanding general's examination into your complaint and the action taken. At HQDA, the entire file is reviewed by The Judge Advocate General (or his designated representative) on behalf of the Secretary of the Army. The Judge Advocate General may return your file for additional information or further investigation. He may also recommend that the Secretary of the Army grant the redress you requested. You will be informed about the final disposition of your complaint by HQDA.

7. WHAT HAPPENS IF MY ARTICLE 138 COMPLAINT DOES NOT CONTAIN ALL THE NECESSARY INFORMATION OR MEET THE REQUIREMENTS OF ARTICLE 138?

Your complaint is considered defective if:

(1) Your complaint deals with subject areas that are inappropriate for resolution under Article 138 (see paragraph 3 above). The commanding general may look into your complaint to see if other channels are available for resolving the alleged wrong, but he will not make a decision or take action on the complaint.

(2) You fail to include all the information laid out in paragraph 4, Step 3 above.

(3) You fail to submit a request for redress before submitting a formal Article 138 complaint.

The commanding general may grant a waiver of deficiency under any of these circumstances in the interests of fairness and review the complaint as if it were properly prepared.

8. WHAT IF I CHANGE MY MIND ABOUT MY ARTICLE 138 COMPLAINT?

You may withdraw your Article 138 complaint at any time before final action is taken by HQDA. Your withdrawal of your complaint, however, must be completely voluntary. No person may order, direct, or demand that you withdraw your complaint, regardless of that person's rank, position, or authority. If this occurs, immediately consult with an attorney or the Inspector General's (IG) office. Your withdrawal may be accomplished by an oral request if you do it early enough, otherwise it must be in writing. The best way to withdraw your Article 138 complaint is to do it in writing, citing your complaint, the date you submitted it to your superior commissioned officer, and your desire to withdraw your complaint voluntarily and freely.

9. WILL MY COMMAND RETALIATE AGAINST ME FOR AN ARTICLE 138 COMPLAINT?

You have a right secured by The Uniform Code of Military Justice to submit an Article 138 complaint. Your chain of command may not take any retaliatory action against you. If you believe your chain of command is taking retaliatory

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action, see your attorney or consult with the IG's office. Do not take matters into your own hands -- let someone know about it and find out what you can do.

10. WHO CAN HELP ME WITH THE ARTICLE 138 COMPLAINT PROCESS?

You have the right to consult with a legal assistance attorney for advice and assistance in drafting a request for redress and formal Article 138 complaint. You may also hire or consult with a civilian attorney at your own expense (no expense to the Government). A military attorney cannot represent you before any proceedings conducted under the provisions of AR 27-10 or Article 138, but a civilian attorney may do so.

11. SOME LAST WORDS ON THE ARTICLE 138 COMPLAINT PROCESS...

An Article 138 complaint is a drastic action. It may consume a great deal of your time and energy, as well as that of your command. If at all possible, do your best to try to resolve the problem without going to the extent of submitting an Article 138 complaint. Don't be afraid to talk with your commander, first sergeant, or command sergeant major about the problem and how to resolve it. You may be pleasantly surprised at the results. However, if you have made reasonable and good faith efforts to resolve the problem and it has not worked, then look to the Article 138 complaint as a solution.

12. REFERENCES:

UCMJ, Article 138; AR 27-10, Chapter 20 (20 Sep 99)