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ARTICLE 138 COMPLAINTS

Article 138 of the Uniform Code of Military Justice (UCMJ) gives every member of the Armed Forces the right to complain that he or she was “wronged” by his or her commanding officer. The right even extends to those subject to the UCMJ on inactive duty for training. The AFI for Article 138 complaints is 51-505 and addresses how to file an Article 138 complaint.

- **Matters appropriate to address under Article 138 include discretionary acts or omissions by a commander that adversely affects the member personally and are:**
 - In violation of law or regulation
 - Beyond the legitimate authority of that commander
 - Arbitrary, capricious, or an abuse of discretion; or
 - Clearly unfair (e.g., selective application of administrative standards/actions)
 - Unlawful pretrial confinement
 - Deferral of post-trial confinement; and
 - Administrative actions taken in lieu of court-martial or nonjudicial punishment under Article 15, Uniform Code of Military Justice.
- **Matters NOT appropriate for Article 138 action are:**
 - Acts or omissions that were not initiated, carried out, or approved by the petitioner’s commander
 - A request for reversal or modification of non-discretionary command actions. For example, mandatory adverse information filing in an Unfavorable Information File
 - A challenge to a respondent commander’s action on an Article 138 complaint
 - A submission related to an involuntary administrative separation

- Related to disciplinary action under the Uniform Code of Military Justice, including nonjudicial punishment, and set aside actions of nonjudicial punishment
- Challenging any evaluation report required by Air Force Instruction
- Challenging any decoration approving authority's decision not to award a military decoration (for example, decorations for acts of valor, exceptional service or achievement, and acts of heroism not involving actual combat).

– **INFORMAL COMPLAINT**

- The deadline for the petitioner to submit the informal complaint to the respondent commander is 90 days from the petitioner's discovery of the alleged wrong, unless the respondent commander waives the time requirement for good cause shown.
- Commander must provide notice to petitioner within 30 days after receipt of the informal complaint, the respondent commander must provide written notice to the petitioner or petitioner's counsel, if any
- Decisions regarding request including dismissal, request granted; or denied in whole or part

– **LEGAL REPRESENTATION**

The petitioner may consult a military defense counsel or special victims' counsel (if member qualifies for, and is appointed, a special victims' counsel) for advice and assistance in drafting submissions under Article 138. The petitioner may also consult civilian legal counsel at no expense to the Government.

– **FORMAL COMPLAINT**

- If respondent commander dismisses or denies (in whole or in part) an informal Article 138 complaint, the deadline for petitioner to request general court-martial convening authority review is 30 days after receiving the respondent commander's written response dismissing or denying, in whole or in part, the informal complaint
 - 60 days from the date of submission of informal to request GCMCA review if no response was received after 30 days from submission of informal complaint
 - Within 60 days of receipt the GCMCA must provide notice to the petitioner and petitioner's counsel regarding decision
- The GCMCA is prohibited from delegating his or her responsibilities to act on complaints submitted pursuant to Article 138