

## Some Questions and Answers About the Article 138 Process Under Title 10

**What is 10 U.S. Code § 938 - Art. 138. Complaints of Wrongs:** 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.

**What is the benefit – in addition to being on the offense – of filing an Article 138 complaint?**

- If a service member receives adverse paperwork and chooses to pursue a BCM/NR to correct their record, completing the Article 138 process strengthens their case, as BCM/NRs require exhaustion of all administrative remedies.

**What are the Service regulations that address the Article 138 complaints process?**

- Army: [Military Justice, AR 27-10](#), page 115.
- Navy / Marine Corps: [JAGINST 5800.7G CH-1](#), page 3-9.
- Air Force / Space Force: [Complaints of Wrongs under Article 138, DAFI51-505](#).
- Coast Guard: [Military Justice Manual, COMDTINST M5810.1H](#), page 25-1.

**Does the DoD and Coast Guard afford the SM an opportunity for legal advice by a military attorney in the Article 138 process?**

- Yes.

**What does this legal advice normally consist of (our experience)?**

- Document review / minor corrections – JAGs will not draft the complaint for the SM

**Are there limitations on what a SM can make a complaint about?**

- Yes. See Service regulations for specific guidance, but common ineligible topics include: ongoing NJP or court-martial proceedings, evaluation disputes (use the eval appeals board), discharge characterization (BCMR/DARB), and decisions by statutory boards (e.g., promotion or separation boards).

**What types of actions are generally considered reviewable under Article 138?**

- A wrong that the SM can argue was a violation of law or regulation, beyond the commander's authority, arbitrary, capricious, abusive, or clearly unfair/unjust.

## Can the SM make a complaint about the “Chain of Command”?

- No. The SM must make the complaint about a commander – a “respondent.”

## Can the SM’s complaint contain more than one “respondent”?

- No. Each complaint must identify only one respondent. If there are multiple respondents, the SM must submit separate complaints.

## Can a complaint involve more than one complainant?

- No. Service regulations do not allow “joinders.” Each complainant must file their own complaint.

## What is the timeline to submit a complaint after discovery of a the wrong?

- 90 days. Commanders can waive this “timeliness” requirement, but SMs should not rely on such grace from the same commander they are filing a complaint against.

## Who does the SM submit the complaint to?

- Army: Step One – First-line commander. Step Two – GCMCA.
- Navy / Marine Corps: Step One – First-line commander. Step Two – GCMCA.
- Air Force / Space Force: Step One – First-line commander. Step Two – GCMCA.
- Coast Guard: Step One – First-line commander. Step Two – OEGCMJ.

## Must the SM submit the complaint to their first-line commander even if that commander is the one abusing them?

- Yes. Required by Service regulations. A waiver may be possible if the commander is unavailable (e.g., deceased, incapacitated), or if the SM is no longer assigned to the command where the wrong occurred—in which case a successor or equivalent must receive the request.

## Why must the SM submit the complaint to the first-line commander?

- Service regulations require the commander be given the opportunity to correct their own misconduct.

## What is this complaint to the first-line commander called?

- Army: Initial Request for Redress.
- Navy / Marine Corps: Initial Request for Redress.
- Air Force / Space Force: Informal Complaint.
- Coast Guard: Letter Requesting Redress.

What are some of the risks to the SM and/or the success of the complaint due to the Service requirement to submit to the first-line commander?

- The SM warns the first-line commander of the Article 138 action, thereby risking additional abuse of authority, reprisal, etc.
- The GCMCA/OEGCMJ's lawyers have an opportunity to collaborate in advance with the first-line command's lawyers to build arguments to deny the SM's request.

Does the Service provide a format to submit the complaint?

- Army: No.
- Navy / Marine Corps: Yes – see page A-3-a.
- Air Force / Space Force: Yes – see page 19.
- Coast Guard: No.

What sort of evidence should the SM submit along with their complaint (both first and second step)?

- All evidence relevant to the complaint.

How long does the first-line commander have to respond to the complaint?

- Army: 15 days (exceptions apply – see paragraph 19-7).
- Navy / Marine Corps: 30 days.
- Air Force / Space Force: 30 days (exceptions – see paragraph 4.4).
- Coast Guard: “Timely manner, ordinarily within 30 days” (see page 25-3).

What happens if the first-line commander fails to respond in time?

- It is considered a denial. Proceed to the next step by submitting a formal Complaint of Wrongs under Article 138 to the GCMCA (Army, Navy/Marine Corps, Air Force/Space Force) or OEGCMJ (Coast Guard).

What is this complaint to the GCMCA / OEGCMJ called?

- Army: Complaints of Wrongs under Article 138 of the UCMJ.
- Navy / Marine Corps: Complaints of Wrongs under Article 138 of the UCMJ.
- Air Force / Space Force: Formal Complaint.
- Coast Guard: Complaints of Wrongs under Article 138 of the UCMJ.

How long does the GCMCA / OEGCMJ have to respond?

- Army: No timeline provided.
- Navy / Marine Corps: 90 days (exceptions – see page 3-16).
- Air Force / Space Force: 60 days (exceptions – see paragraph 7.6).
- Coast Guard: 90 days (exceptions – see page 25-5).

Can the GCMCA / OEGCMJ refuse to respond to the complaint?

- No.

If the GCMCA / OEGCMJ denies the request for redress, is there a next level of appeal before requesting action through a BCM/NR?

- Yes. The Service Secretaries (for DoD branches) or the Secretary of Homeland Security (for the Coast Guard).

Where should a service member go to initiate the BCM/NR process?

- Army: [Army Review Boards Agency](#)
- Navy / Marine Corps: [Board for Correction of Naval Records](#)
- Air Force / Space Force: [Air Force Review Boards Agency](#)
- Coast Guard: [Board of Corrections - Coast Guard](#)

What if the BCM/NR denies the SM's request and the issue involves a discharge or dismissal characterization?

- [DoD Discharge Appeal Review Board \(DARB\)](#)

Does the Article 138 process apply to a Reservist or National Guard member on Title 10 orders?

- Yes. The above generally applies, though timelines may vary. See Service regulations for details.

Does the Article 138 process apply to a National Guard member on Title 32 orders?

- No. Article 138 is a Title 10 process. National Guard members under Title 32 must follow their state's military justice procedures.

Can someone retired or separated from the military use the Article 138 complaints process?

- No.

Can a SM file an IG or congressional complaint while submitting an Article 138?

- Yes. They are separate processes. Filing a congressional or IG complaint does not pause or substitute the Article 138 process.

What are some common mistakes to avoid when filing an Article 138 complaint?

- Submitting without first-line redress, combining multiple respondents, submitting outside the timeline without justifying "good cause", failing to include evidence.