

**BY ORDER OF THE  
SECRETARY OF THE AIR FORCE**

**AIR FORCE INSTRUCTION 51-904**

**28 JULY 2015**



**Law**

**COMPLAINTS OF WRONGS UNDER  
ARTICLE 138, UNIFORM CODE OF  
MILITARY JUSTICE**

**COMPLIANCE WITH THIS PUBLICATION IS MANDATORY**

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This instruction implements Air Force Policy Directive (AFPD) 51-9, *Civil Law for Individuals*. It explains how to prepare, submit, and review both the initial application for redress under Article 138, Uniform Code of Military Justice (UCMJ), and the subsequent formal complaint under Article 138, UCMJ. This AFI applies to all Regular Air Force (RegAF) military personnel, members of the United States Air Force Reserve (USAFR) while in federal service on active duty and in federal service on inactive-duty training, and members of the Air National Guard (ANG) when activated under Title 10 active duty in the Air National Guard of the United States (ANGUS) status. This AFI may be supplemented at any level, but all supplements that directly implement this instruction must be routed to AF/JAA for coordination prior to certification and approval. Refer recommended changes and questions about this publication to the Office of Primary Responsibility (OPR) using AF Form 847, *Recommendation for Change of Publication*; route AF Form 847s from the field through major command (MAJCOM) publications/forms managers. The authorities to waive wing/unit level requirements in this publication are identified with a Tier ("T-0, T-1, T-2, T-3") number following the compliance statement. See AFI 33-360, *Publications and Forms Management*, Table 1.1 for a description of the authorities associated with the Tier numbers. Submit requests for waivers through the chain of command to the appropriate Tier waiver approval authority, or alternatively, to the Publication OPR for non-tiered compliance items. This instruction requires the collection and maintenance of information protected by the Privacy Act of 1974. The authority to collect and maintain this information is set forth in the applicable Privacy Act system notice, F051 AF JA I, *Military Justice and Magistrate Court Records*. Ensure that all records created as a result of processes prescribed in this publication are maintained IAW Air Force Manual (AFMAN) 33-363, *Management of Records*, and disposed of IAW Air Force Records Information Management System (AFRIMS) Records Disposition Schedule (RDS).

**SUMMARY OF CHANGES**

This document has been substantially revised and must be completely reviewed. Major changes were made to clarify procedures for processing initial applications for redress under Article 138, UCMJ, and subsequent formal complaints under Article 138, UCMJ. The time for submitting the initial application for redress has been reduced from 180 days after discovery of an alleged wrong to 90 days. The immediate commander’s time for responding to the member’s initial application for redress has been reduced from 60 days to 30 days. The revised instruction clarifies the scope of Article 138, UCMJ, providing clear criteria for determining how to process the initial application for redress and any subsequent formal complaint under Article 138, UCMJ. It explains that general court-martial convening authorities (GCMCAs) may rely on their staff for assistance; however, GCMCAs may not delegate their responsibility to act on formal complaints filed pursuant to Article 138, UCMJ, or to respond to complainants. Attachment 1 provides references, acronyms, and terms. Attachments 2 and 3 provide sample formats for preparing the initial application for redress under Article 138, UCMJ, and the subsequent formal complaint under Article 138, UCMJ. The revision clarifies that e-mail submissions will be accepted; however, hard-copy submissions are preferred.

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**1. Purpose.** This instruction implements Article 138, UCMJ, which states: “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.”

## 2. Policy.

2.1. A member of the armed forces (see Attachment 1) has a statutory right to submit a formal complaint under Article 138, UCMJ, to the appropriate GCMCA after:

2.1.1. The member has first submitted an initial application for redress under Article 138, UCMJ, requesting relief from the commander who has allegedly committed the wrong against the member; and

2.1.2. The commander has wholly or partially denied the member’s initial application for redress under Article 138, UCMJ, or has failed to respond in the required timeframe.

2.2. Commanders must act on initial applications for redress under Article 138, UCMJ, and GCMCAs must act on any subsequent formal complaints under Article 138, UCMJ.

2.3. Commanders will not restrict the submission of initial applications for redress under Article 138, UCMJ, or subsequent formal complaints under Article 138, UCMJ. Commanders will not take action in retaliation or reprisal against members for submitting initial applications for redress or any subsequent formal complaints.

2.4. The member may voluntarily withdraw his or her submission under Article 138, UCMJ, at any time before either the commander complained against takes final action or the GCMCA takes final action, by making a written request to the officer in possession of the submission.

2.5. The Article 138, UCMJ, complaint resolution process is administrative in nature. The standard of proof that applies is proof by a preponderance of the evidence.

## 3. Subject Matter.

3.1. **Submissions within the Scope of Article 138, UCMJ.** Matters reviewed under Article 138, UCMJ, include discretionary acts or omissions by a commander that adversely affect the member personally and allegedly are:

3.1.1. A violation of law or regulation;

3.1.2. Beyond the legitimate authority of that commander;

3.1.3. Arbitrary, capricious, or an abuse of discretion; or

3.1.4. Clearly unfair or unjust.

3.2. **Submissions outside the Scope of Article 138, UCMJ.** Matters that are not reviewed under Article 138, UCMJ, include, but are not limited to:

3.2.1. Submissions related to acts or omissions that were not initiated, carried out, or approved by the member’s commander;

3.2.2. Submissions seeking reversal or modification of non-discretionary command actions. For example, mandatory filings of adverse information in an unfavorable information file (UIF) are not reviewed under Article 138, UCMJ;

3.2.3. Submissions challenging the actions of the commander complained against which addressed an Article 138 application for redress, or actions by the GCMCA on an Article 138 complaint;

3.2.3.1. However, a submission alleging that the commander or GCMCA failed to act on or forward a formal complaint, will be considered under Article 138, UCMJ, as a new application for redress against the commander or GCMCA, as appropriate.

3.2.4. Submissions filed on behalf of another person; and

3.2.5. Submissions requesting disciplinary action against another person.

**3.3. Submissions within the Scope of Article 138, UCMJ, but more appropriately addressed by alternative review processes which have the authority necessary to grant or recommend to proper authorities, the requested relief.**

3.3.1. Submissions requesting relief which the commander and the GCMCA lack authority to grant. For example, actions initiated against the member when the governing directive requires final action by the Secretary of the Air Force.

3.3.2. Submissions related to disciplinary action under the UCMJ, including nonjudicial punishment under Article 15, UCMJ. However, unlawful pre-trial confinement, deferral of post-trial confinement, and administrative actions taken in lieu of court-martial or nonjudicial punishment under the UCMJ are reviewed under Article 138, UCMJ.

**3.4. Submissions More Appropriately Referred to Alternate Channels.** In many matters complained of, there already exist by law or regulation, specific alternative established channels to accomplish the objective of the complainant. These include, for example, the Board for Correction of Military Records, the Air Force Discharge Review Board, the Evaluation Reports and Appeals Board. The commander or GCMCA may resolve the complaint by notifying the member of the alternate channel.

3.4.1. Complaints that may be resolved by alternate channels include, but are not limited to, complaints concerning:

3.4.1.1. Challenges to any evaluation report required by AFI, which affects a member's military career (e.g., OPRs, EPRs, RRFs, PRFs, etc.) addressed by the Evaluation Reports and Appeals Board (ERAB);

3.4.1.2. Relief from an assessment for pecuniary liability (Secretary of the Air Force Remissions Board (SAFRB));

3.4.1.3. A suspension from flying status (Flying Evaluation Board (FEB)); and

3.4.1.4. Set aside of Non-Judicial Punishment actions (Art 15, UCMJ)

3.4.2. Upon receipt of a complaint for which more specific channels and procedures are available, the commander or GCMCA may act on it as prescribed in paragraphs 5.4.4 and 8.6.4.

**4. Member's Submission of the Initial Application for Redress under Article 138, UCMJ.**

4.1. To begin the Article 138, UCMJ, process, an Air Force member **must submit his or her initial application for redress to the commander who allegedly wronged the member.**

4.1.1. If the commander who allegedly wronged the member is no longer in command of the member, the member must still submit the initial application for redress to the commander who allegedly wronged the member, regardless of that commander's current position or duty location, or the member's current position or duty location.

4.1.2. If the commander who allegedly wronged the member is no longer in the service, e.g., separated or retired, then the member must submit the initial application for redress to the successor commander occupying the complained of command billet at the time the initial application for redress is submitted.

4.2. When submitting the initial application for redress, the member must state the application for redress is being submitted pursuant to Article 138, UCMJ. For guidance, Attachment 2 contains a sample format for the initial application for redress. The initial application for redress must be submitted in writing. Hard-copy submissions are preferred, however e-mail submissions will also be accepted. Submissions must contain the following information:

4.2.1. The member's current military unit and the member's military unit at the time of the alleged wrong, if different;

4.2.1.1. If the application for redress is from a member of the Air National Guard or Air Force Reserve, include information to establish the alleged wrong was done in connection with a period of the member's federal service on active duty or federal service on inactive-duty training.

4.2.2. The member's current mailing address. The member shall notify the commander or GCMCA, as appropriate, of any changes in his unit of assignment or home mailing address while the application or complaint are pending;

4.2.3. The name of the commander against whom the complaint is made;

4.2.4. A description of the facts and circumstances of the alleged wrong;

4.2.5. A statement of the relief sought; and

4.2.6. All supporting evidence available to the member.

4.3. The member must submit the initial application for redress to the commander within **90 days** of the member's discovery of the alleged wrong. Untimely applications for redress will be denied without a determination on the merits of the submission and will be returned to the member in accordance with paragraph 5.4.3.3, unless the commander waives the time requirements for good cause.

4.4. At the outset, the burden of persuasion is on the member. If evidence provided by the member does not establish a valid basis for a complaint, the commander against whom the complaint was made is presumed to have acted properly, and the application for redress or complaint may be denied.

4.5. The member may consult a military defense counsel for advice and assistance in drafting submissions under Article 138, UCMJ. The member may also consult civilian legal counsel at no expense to the Government.

## **5. Commander's Review of an Initial Application for Redress under Article 138, UCMJ.**

5.1. The commander must consult with the servicing SJA before taking action on the member's initial application for redress. However, a formal legal review of an initial application for redress is not required. **(T-1)**.

5.2. The commander may initiate any proceedings or inquiries that he or she considers necessary to respond to an initial application for redress. The member may be asked to provide a statement, furnish additional information, or otherwise assist in resolving the matter. Neither the member nor his or her counsel has a right to participate in proceedings or inquiries convened to resolve the complaint. However, the member and counsel may attend proceedings or inquiries that are also open to the public.

5.3. The commander may consider evidence in addition to matters attached to the initial application for redress before responding to the member. If the commander considers additional evidence, it will be attached to the file so the GCMCA and the member can review all of the evidence.

5.4. Not later than **30 days** after receipt of the initial application for redress, the commander must notify the member in writing that **(T-1)**:

5.4.1. A decision regarding the requested relief has been deferred to allow for the completion of further fact gathering. Such notice of a deferral shall be sent every **30 days** until such fact gathering proceeding is completed. Such notice prohibits the member from requesting GCMCA review, as provided in paragraph 6.3, until **90 days** have elapsed from the initial application for redress; or

5.4.2. The requested relief is granted; or

5.4.3. The requested relief is wholly or partially denied because:

5.4.3.1. The requested relief is not warranted;

5.4.3.2. The submission is outside the scope of Article 138, UCMJ (see paragraph 3.2);

5.4.3.3. The submission is untimely (see paragraph 4.3); or

5.4.3.4. There is a more appropriate channel for reviewing the complaint (see paragraph 3.4).

5.4.4. If the commander denies the requested relief because there is a more appropriate channel for reviewing the complaint or the commander lacks authority to grant the requested relief, the commander must **(T-1)**:

5.4.4.1. Forward the submission (including any supporting evidence) to the appropriate processing office or officer, if any, with authority to grant the requested relief; or

5.4.4.2. Return the submission (including any supporting evidence) to the member and direct the member to the appropriate office or officer, if any, with authority to grant the requested relief; and

5.4.4.3. If appropriate, inform the member of his or her right to file an application with the Air Force Board for Correction of Military Records, in accordance with Air Force Instruction (AFI) 36-2603, *Air Force Board for Correction of Military*

*Records, and Air Force Pamphlet (AFPAM) 36-2607, Applicants' Guide to the Air Force Board for Correction of Military Records (AFBCMR).*

5.5. If the commander to whom the initial application for redress was submitted is a MAJCOM, DRU, or FOA commander, that commander's response to the member's initial application for redress shall identify for the member the appropriate GCMCA over the commander. **(T-1)**.

5.6. The commander must ensure that any information released outside of official channels complies with the provisions of AFI 33-332, *The Air Force Privacy and Civil Liberties Program*. **(T-0)**.

5.7. In all cases, the commander shall retain a copy of the initial application for redress, the supporting evidence, and the commander's response to the member for two years. **(T-1)**.

5.8 If a commander who receives an initial application for redress is not the commander who allegedly wronged the member, the commander in receipt of the initial application for redress will forward the member's matters to the commander complained against; and the member will be notified in writing that the initial application for redress has been forwarded to the commander who allegedly wronged the member. The member may be asked to furnish additional information to assist in identifying the commander who allegedly wronged the member.

## **6. Member's Submission of the Formal Complaint under Article 138, UCMJ.**

6.1. If the member's commander wholly or partially denies an initial application for redress under Article 138, UCMJ, the member must request GCMCA review within **30 days** after receiving the commander's written response denying, in whole or in part, the initial application for redress.

6.2. If after **30 days** from the submission of the initial application for redress, the member has received no response from the commander who allegedly wronged the member, the member must request GCMCA review within **60 days** from the date the initial application for redress was submitted.

6.3. If the member's commander has notified the member that a decision regarding the requested relief has been deferred (in accordance with paragraph 5.4.1), the member may only request GCMCA review after **90 days** from the initial application for redress.

6.4. The member may submit the formal Article 138 complaint directly to the GCMCA exercising jurisdiction over the commander against whom the initial application for redress was made, or through any superior commissioned officer.

6.5. Untimely formal complaints under Article 138, UCMJ, will be denied without a determination on the merits of the submission and returned to the member in accordance with paragraph 8.6.3.3, unless the GCMCA waives the time requirement for good cause.

6.6. NOTE: The member's submission constitutes the filing of a formal complaint under Article 138, UCMJ, even if the format and content have not changed from the initial application for redress under Article 138, UCMJ.

6.7. When submitting a formal complaint, the member must state that the formal complaint is being submitted pursuant to Article 138, UCMJ. For guidance, Attachment 3 contains a

sample format for a formal complaint under Article 138, UCMJ. The formal complaint must be submitted in writing. Hard-copy submissions are preferred, however e-mail submissions will also be accepted. Submissions must contain the following information:

6.7.1. The member's current military unit and the member's military unit at the time of the alleged wrong, if different;

6.7.1.1. If the complaint is from a member of the Air National Guard or Air Force Reserve, include information to establish the alleged wrong was done in connection with a period of the member's federal service on active duty or federal service on inactive-duty training.

6.7.2. The member's current home mailing address;

6.7.3. The name of the commander who committed the alleged wrong;

6.7.4. A description of the facts and circumstances of the alleged wrong;

6.7.5. A statement of the relief sought;

6.7.6. The date on which the initial application for redress under Article 138, UCMJ, was submitted to the member's commander;

6.7.7. The date on which the requested relief was denied, in whole or part, or a statement that the commander failed to respond within the required timeframe; and

6.7.8. All supporting evidence available to the member, to include a copy of the initial application for redress, with its attachments, and the commander's written response.

6.7.9. NOTE: The member may not add new allegations of wrongdoing or submit additional evidence without first submitting the allegation(s) or evidence to the commander who allegedly wronged the member.

6.8. If the immediate commander to whom the initial application was submitted is a GCMCA, the member must submit the subsequent formal complaint to the GCMCA exercising jurisdiction over the GCMCA commander.

## **7. Forwarding the Member's Formal Complaint under Article 138, UCMJ.**

7.1. If an intermediate commander or superior commissioned officer receives a formal complaint, where the requested relief has been denied in whole or in part, he or she must forward the submission to the GCMCA who **currently** exercises GCMCA jurisdiction over the commander against whom the initial application for redress was made. **(T-1)**.

7.2. If an intermediate commander or superior commissioned officer receives a formal complaint, but determines the member has not submitted an initial application for redress to the commander who allegedly wronged the member, the intermediate commander or superior commissioned officer will forward the member's matters to the commander complained against; and the member will be notified in writing that his or her complaint under Article 138, UCMJ, has been forwarded to the commander who allegedly wronged the member. The member may be asked to furnish additional information to assist in identifying the commander who allegedly wronged the member.

7.3. The appropriate GCMCA may be determined by consulting the servicing Air Force legal office, or referring to AFI 51-201, *Administration of Military Justice*, Section 2A. If



the commander who allegedly wronged the member is assigned to a unit commanded by an officer senior in grade to the GCMCA for the installation, then the complaint should be forwarded to the next senior GCMCA in the chain of command.

## 8. GCMCA's Review of a Formal Complaint under Article 138, UCMJ.

8.1. A GCMCA who receives a written application to correct an alleged wrong committed by a subordinate commander may rely on his or her staff for assistance to investigate and/or document findings, but shall not delegate authority to act on formal complaints filed pursuant to Article 138, UCMJ, or to respond to complainants.

8.2. If the member submits a formal complaint under Article 138, UCMJ, to the GCMCA without first submitting an initial application for redress to the commander who allegedly wronged the member, the GCMCA will forward the submission to the subordinate commander, and notify the member that the submission was forwarded to the commander who allegedly wronged the member. In addition, if the member submitted an initial application for redress to the commander complained against, but adds new allegations of wrongdoing or new evidence (which has not been submitted to the subordinate commander) in their formal complaint to the GCMCA, those new allegations or evidence will be returned to the commander complained against for initial review and appropriate action. The GCMCA may defer final action on the complaint until all allegations have been dealt with by the commander complained against.

8.3. The GCMCA may conduct or direct an investigation that he or she considers necessary to respond to the submission. The member may be asked to provide a statement, furnish additional information, or otherwise assist in resolving the matter. Neither the member nor his or her counsel have the right to participate in an investigation or proceedings convened to resolve the complaint. However, the member and counsel may attend proceedings or inquiries that are also open to the public.

8.4. The GCMCA must obtain a written legal review from the servicing SJA before responding to the member's formal complaint. **(T-1)**. The legal review will include a summary of the relevant facts, a determination of the legal sufficiency of the proceedings, and a recommended action. The servicing SJA will ensure that all underlying evidence relevant to the complaint is attached to the file. (Note: The SJA legal review is privileged attorney work product and is not releasable to the member or other individuals under the Freedom of Information Act.)

8.5. If a matter collateral to the formal complaint has been reviewed or is pending review by another authority (for example, Inspector General or Military Equal Opportunity programs), the GCMCA may consider that authority's findings and action to determine whether overlap exists with the Article 138, UCMJ, process before taking action. If overlap does exist, the GCMCA may defer action on the formal complaint under Article 138, UCMJ, until the related collateral inquiry has been resolved to avoid duplicative processing. The GCMCA may take into account such collateral inquiries in evaluating, acting on, and responding to a formal complaint, unless otherwise prohibited by law or policy.

8.6. Not later than **60 days** after receipt of the formal complaint, the GCMCA must notify the member that **(T-1)**:

8.6.1. A decision regarding the requested relief has been deferred to allow for the completion of a proceeding or inquiry (as provided in paragraph 8.3), or completion of a review by another authority (as provided in paragraph 8.5). Such notice shall be sent every **60 days** until such proceeding, inquiry, or review is completed. Once the proceeding, inquiry, or review is completed, the GCMCA must notify the member of his or her decision within **60 days**; or

8.6.2. The requested relief is granted; or

8.6.3. The requested relief is denied, in whole or in part, because:

8.6.3.1. The requested relief is not warranted;

8.6.3.2. The submission is outside the scope of Article 138, UCMJ (see paragraph 3.2);

8.6.3.3. The submission is untimely (see paragraph 6); or

8.6.3.4. There is a more appropriate channel for reviewing the complaint (see paragraph 3.4).

8.6.4. If the GCMCA denies the requested relief because there is a more appropriate channel for reviewing the grievance or the GCMCA lacks authority to grant the requested relief, the GCMCA will:

8.6.4.1. Forward the submission (including any supporting evidence) to the appropriate processing office or officer, if any, with authority to grant the requested relief; or

8.6.4.2. Return the submission (including any supporting evidence) to the member and direct the member to the appropriate office or officer, if any, with authority to grant the requested relief; and

8.6.4.3. If appropriate, inform the member of his or her right to file an application with the Air Force Board for Correction of Military Records, in accordance with AFI 36-2603 and AFPAM 36-2607.

8.6.4.4. If the GCMCA believes the requested relief should be granted and the authority to grant the relief requested resides with another GCMCA, MAJCOM, or the Secretary of the Air Force, the GCMCA should include the recommendation in the final action.

8.7. After taking final action and notifying the member, the GCMCA will send a complete copy of the file to AF/JAA. **(T-1)** The GCMCA will send a copy of the file to JAA in all cases where the GCMCA has acted on a formal complaint, including where the relief requested has been granted in full. Forward the file to the following address: AF/JAA, Administrative Law Directorate, Office of The Judge Advocate General, 1420 Air Force Pentagon, Room 5D116, Washington DC 20330-1420.

8.8. When forwarding the file to AF/JAA for review, the GCMCA includes the member's personal mailing address. AF/JAA sends a copy of the final action memorandum to the member via his personal mailing address as well as to the GCMCA and the GCMCA's legal office.

8.9. In all cases, the GCMCA shall retain a copy of the formal complaint, the supporting evidence, and the GCMCA response to the member for two years (T-1).

**9. Secretary of the Air Force Review.**

9.1. AF/JAA is designated to exercise Secretarial authority for final review of formal complaints under Article 138, UCMJ.

9.2. AF/JAA will provide the member written notification of the following: the completion of the review process, any further action taken on the formal complaint, and, if applicable, the reasons for that action. AF/JAA will provide a copy of the final decision to the GCMCA and the GCMCA's SJA.

**10. Other Reporting Requirements.** When a submission pursuant to Article 138, UCMJ, involves allegations against general officers or colonels, follow the reporting requirements listed in AFI 90-301, *Inspector General Complaints Resolution*.

CHRISTOPHER F. BURNE  
Lieutenant General, USAF  
The Judge Advocate General

## Attachment 1

### GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION

#### *References*

Title 10, United States Code, Section 101

Title 10, United States Code, Section 938

Title 10, United States Code, Section 8062

AFPD 51-9, *Civil Law for Individuals*, 5 November 1993

AFI 33-332, *The Air Force Privacy and Civil Liberties Program*, 5 June 2013

AFI 36-2603, *Air Force Board for Correction of Military Records*, 5 March 2012

AFI 51-201, *Administration of Military Justice*, 6 June 2013

AFI 90-301, *Inspector General Complaints Resolution*, 23 August 2011

AFMAN 33-363, *Management of Records*, 1 March 2008

AFPAM 36-2607, *Applicants' Guide to the Air Force Board for Correction of Military Records*, 3 November 1994

#### *Prescribed Forms*

None

#### *Adopted Forms*

AF IMT 847, *Recommendation for Change of Publication*

#### *Abbreviations & Acronyms*

**AF**—Air Force

**AFBCMR**—Air Force Board for Correction of Military Records

**AF/JAA**—Air Force Administrative Law Directorate

**AFI**—Air Force Instruction

**AFMAN**—Air Force Manual

**AFPAM**—Air Force Pamphlet

**AFPD**—Air Force Policy Directive

**DRU**—Direct Reporting Unit

**EPR**—Enlisted Performance Report

**ERAB**—Evaluation Reports and Appeals Board

**FEB**—Flying Evaluation Board

**FOA**—Field Operating Agency

**GCMCA**—General Court-Martial Convening Authority

**HQ**—Headquarters

**MAJCOM**—Major Command

**OPR**—Office of Primary Responsibility; Officer Performance Report

**PRF**—Promotion Recommendation Form

**RRF**—Retention Recommendation Form

**SAFRB**—Secretary of the Air Force Remissions Board

**SJA**—Staff Judge Advocate

**UCMJ**—Uniform Code of Military Justice

**UIF**—Unfavorable Information File

### *Terms*

**Application for Redress under Article 138, UCMJ.**—A member’s written submission to the commander who allegedly wronged the member, requesting redress. An application for redress under Article 138, UCMJ, begins the Article 138, UCMJ, process. Before submitting a formal complaint under Article 138, UCMJ, the member must submit the initial application for redress to the commander who allegedly committed the wrong.

**Arbitrary and Capricious.**—The absence of a rational connection between the facts found and the decision made, constituting a clear error of judgment. The action does not appear to be based on consideration of relevant factors or is taken without observance of procedure required by regulation or law.

**Commander or Commanding Officer.** A commissioned officer occupying a command billet. Officers occupying “command—like” staff positions are not commanders. Civilian directors and leaders of Air Force organizations are not commanders.

**Formal Complaint under Article 138, UCMJ.**— A member’s written formal complaint under Article 138, UCMJ, which can be submitted to the GCMCA only after the commander wholly or partially denies the member’s initial application for redress under Article 138, UCMJ, or fails to respond within 30 days.

**General Court—Martial Convening Authority (GCMCA).** The officer currently exercising general court-martial convening authority over the commander against whom a formal complaint under Article 138, UCMJ, is made.

**Member of the Armed Forces.** A member of the United States Army, Navy, Air Force, Marine Corps, or Coast Guard, as defined in 10 U.S.C. § 101(a)(4). The Air Force is further defined in 10 U.S.C. § 8062 as members of the Regular Air Force, the Air National Guard of the United States, the Air National Guard while in service of the United States, and the Air Force Reserve. Complaints from members of the Air National Guard and Air Force Reserve are limited to allegations arising from a discretionary act or omission by a commander that was done in connection with a period of the member’s federal service on active duty as well as the period of federal service on inactive—duty training.

**Preponderance of the Evidence.**—The standard of proof used in Article 138, UCMJ, complaints.

A preponderance of evidence is that evidence which, when fairly considered, produces the stronger impression, has the greater weight, and is more convincing as to its truth when weighed against any evidence in opposition to it.

**Redress.** Any lawful action which restores to the member any rights, privileges, property, or status to which the member would have been entitled had the alleged wrong not occurred, unless the member requests less than full restoration.

**Superior Commissioned Officer.** Any commissioned officer who is senior, by grade or rank, to the commander who allegedly wronged the member. A superior commissioned officer does not have to be a commander, but he or she cannot be a civilian.

**Wrong.** A discretionary act or omission by a commander that adversely affects the member personally, and that, for example is: (1) in violation of law or regulation; (2) beyond the legitimate authority of that commander; (3) arbitrary, capricious, or an abuse of discretion; or (4) clearly unfair or unjust.

**Attachment 2****SAMPLE INITIAL APPLICATION FOR REDRESS UNDER ARTICLE 138, UCMJ**

(Date)

MEMORANDUM FOR 123 ABW/CC

FROM: 1st Lt John Doe  
(Current Mailing Address)

SUBJECT: Application for Redress under Article 138, UCMJ

1. I, (name), am currently assigned to (unit). On 1 Jan XX, while assigned to (unit), you committed the following wrong(s) against me:

a. Describe the alleged wrong. Include:

- (1) What the commander did or did not do that constitutes the alleged wrong;
- (2) Any alleged violations of law or regulation; or
- (3) Why you believe the action was arbitrary, capricious, or an abuse of discretion; beyond the legitimate authority of the commander; or clearly unfair; and
- (4) What the adverse impact was on you.

b. Continue if there is more than one alleged wrong.

c. Members of the Air National Guard or Air Force Reserve include information to establish the alleged wrong was done in connection with a period of the member's federal service on active duty or federal service on inactive-duty training.

2. I have attached all the evidence available to me. (For example, memoranda for record, e-mails, or any documentary materials relevant to the complaint.)

3. I request the following relief under Article 138, UCMJ:

a. Describe the relief requested.

b. Continue if more than one form of relief is requested.

JOHN E. DOE, 1st Lt, USAF

Attachment(s):  
Supporting evidence

**Attachment 3****SAMPLE FORMAL COMPLAINT UNDER ARTICLE 138, UCMJ**

(Date)

MEMORANDUM FOR 64 AF/CC (the GCMCA)

FROM: 1st Lt John Doe  
(Current Mailing Address)

SUBJECT: Formal Article 138, UCMJ, Complaint

1. I, (name), am currently assigned to (unit). On 1 Jan XX, 123 ABW/CC, committed the following wrong(s) against me:

a. Describe the alleged wrong. Include:

(1) What the commander did or did not do that constitutes the alleged wrong;

(2) Any alleged violations of law or regulation; or

(3) Why you believe the action was arbitrary, capricious, or an abuse of discretion; beyond the legitimate authority of the commander; or clearly unfair; and

(4) What the adverse impact was on you.

b. Continue if there is more than one alleged wrong.

c. Members of the Air National Guard or Air Force Reserve include information to establish the alleged wrong was done in connection with a period of the member's federal service on active duty or federal service on inactive-duty training.

d. If the commander has been reassigned, then insert: 123 ABW/CC is now a member of (insert unit) for which you are the GCMCA.

2. I submitted my initial application for redress under Article 138, UCMJ, on (date), but my commander did not grant the requested relief in that (specify why the commander's response was unsatisfactory).

3. I therefore respectfully request that you grant me the relief I requested, i.e., \_\_\_\_.



4. I have attached all the supporting evidence available to me. (For example, memoranda for record, e-mails, or any documentary materials relevant to the complaint.)

JOHN E. DOE, 1st Lt, USAF

Attachment(s):

Supporting Evidence

Initial Application for Redress under Article 138, UCMJ

Commander's Response to the Initial Application for Redress under Article 138, UCMJ