

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

**DEPARTMENT OF THE AIR FORCE
INSTRUCTION 51-505**



28 AUGUST 2024

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 51-5, *Administrative Law, Gifts, and Command Relationships*. It explains how to prepare, submit, and review both informal and subsequent formal complaints under Article 138, Uniform Code of Military Justice (UCMJ). This Department of the Air Force Instruction applies to all Regular Air Force (RegAF) military personnel, United States Space Force (USSF) military personnel, members of the Air Force Reserve while in federal service on active duty and in federal service on inactive-duty training, and members of the Air National Guard when activated under Title 10, United States Code (U.S.C.), *Armed Forces*. The authorities to waive wing/delta/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 Department of the Air Force Manual (DAFMAN) 90-161, *Publishing Processes and Procedures*, for a description of the authorities associated with the tier numbers. For tiered items, submit requests for waivers through the chain of command to the appropriate tier waiver approval authority. All waivers of non-tiered compliance statements must be submitted to Air Force Military Justice Law and Policy (AF/JAJM), the publication Office of Primary Responsibility (OPR). This instruction requires the collection and or maintenance of information protected by the Title 10, U.S.C. Section 552a (Privacy Act of 1974) authorized by Title 10, U.S.C. Section 1169, *Regular enlisted members: Limitations on Discharge*; and Executive Order 9397, *Numbering System for Federal Accounts Relating to Individual Persons*; and Executive Order 13478, *Amendments to Executive Order 9397 Relating to Federal Agency Use of Social Security Numbers*. The applicable System of Record Notices (SORN) F036 AFPC P, Separation Case Files, (Officer and Airman), F033 ARPC B, Locator or Personnel Data, and F036 AFPC C,

Military Personnel Records System is available at: <https://dpcl.d.defense.gov/Privacy/SORNs.aspx>. Ensure all records generated as a result of processes prescribed in this publication adhere to Air Force Instruction (AFI) 33-322, *Records Management and Information Governance Program*, and are disposed in accordance with the Air Force Records Disposition Schedule, which is located in the Air Force Records Information Management System. Refer recommended changes and questions about this publication to the OPR using the DAF Form 847, *Recommendation for Change of Publication*; route DAF Forms 847 from the field through the appropriate functional chain of command. This instruction may be supplemented at the wing/delta level, but all supplements must be coordinated and approved by The Office of the Judge Advocate General (AF/JA) prior to implementation.

SUMMARY OF CHANGES

This document has been substantially revised and needs to be completely reviewed. Major changes include amending common terms for inclusivity of United States Space Force members, updates to relevant citations and office symbols, changing various tiered waiver authorities where applicable, and other minor administrative changes.

Chapter 1

OVERVIEW

1.1. Purpose. This Instruction provides an outline of the process used when pursuing a complaint under Title 10, United States Code, Section 938, Article 138, UCMJ (hereinafter, “Article 138 complaint”). Article 138 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 will 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 will examine into the complaint and take proper measures for redressing the wrong complained of; and will, as soon as possible, send to the Secretary concerned a true statement of that complaint, with the proceedings had thereon.”

1.2. Applicability.

1.2.1. All RegAF and USSF members, members of the Air Force Reserve on active duty and in inactive-duty training status, and members of the Air National Guard activated under Title 10, United States Code, are eligible to seek relief under Article 138. Members of the Air National Guard not currently activated under Title 10, United States Code, are only eligible to seek relief under Article 138 for matters concerning prior Federal service, while activated under Title 10, United States Code. A member seeking Article 138 relief is referred to as the “petitioner” in this Instruction.

1.2.2. Article 138 allegations are submitted against a member’s commander. In this Instruction, the person alleged to have committed the wrong is referred to as the “respondent commander.”

1.2.3. Except as provided below concerning members of the Air National Guard not currently activated under Title 10, United States Code, neither the respondent commander nor the general court-martial convening authority are able to provide relief for individuals who are no longer in active status. **(T-0)** If an individual files an Article 138 complaint after separating or retiring, the commander will refer the individual to the Air Force Board for the Correction of Military Records or to other appropriate avenues of relief, such as the Discharge Review Board and Evaluation Reports Appeals Board. **(T-1)** A respondent commander and the general court-martial convening authority are able to provide relief for members of the Air National Guard not currently activated under Title 10, United States Code, provided it is for matters concerning prior Federal service when the petitioner was activated under Title 10 and the petitioner has neither separated nor retired. **(T-1)**

1.3. Scope of Commander Actions Eligible for Article 138 Review.

1.3.1. Although there may be instances in which a member believes their commander has wronged them, not all such instances are reviewable under Article 138. For many adverse actions, there exists a specific forum and procedure to ensure the member has an adequate opportunity to be heard and receive due process. Those specific procedures are generally more effective and efficient for resolving such matters. The procedures outlined in this Instruction cannot substitute for or duplicate them. **(T-1)**

1.3.2. A petitioner has a statutory right to submit a complaint under Article 138 when their commander is alleged to have acted or failed to act in a manner that is:

- 1.3.2.1. A violation of law or regulation;
 - 1.3.2.2. Beyond their legitimate authority;
 - 1.3.2.3. Arbitrary, capricious, or an abuse of authority; or
 - 1.3.2.4. Clearly unfair or unjust.
- 1.3.3. The following matters are expressly ineligible for Article 138 review:
- 1.3.3.1. Acts or omissions that were not initiated, carried out, or approved by the respondent commander.
 - 1.3.3.2. A request for reversal or modification of non-discretionary command actions. For example, mandatory adverse information filing in an Unfavorable Information File or in an Officer Selection Record.
 - 1.3.3.3. A challenge to a respondent commander's action on an Article 138 complaint. A submission alleging the respondent commander failed to act on or forward a formal complaint, however, will be considered a new informal Article 138 (see [paragraph 3.1](#)) complaint against that respondent commander. Denial of a formal complaint is not considered a "failure to act" by the respondent commander.
 - 1.3.3.4. A submission filed by one person on behalf of another. However, if the petitioner is represented by an attorney, the attorney may file on behalf of the petitioner.
 - 1.3.3.5. A submission requesting disciplinary action be taken against another person.
 - 1.3.3.6. A submission where the petitioner may seek redress through other forums that provide the petitioner notice, opportunity to be heard, and review by an appellate authority (or reviewing authority) superior to the commander taking action. Examples for these submissions include, but are not limited to, submissions:
 - 1.3.3.6.1. Relating to the denial, in whole or in part, of a request for religious accommodation.
 - 1.3.3.6.2. Relating to action under the UCMJ, including nonjudicial punishment, pretrial confinement, trials by courts-martial, and appeals of the same.
 - 1.3.3.6.3. Challenging an action taken by a board pursuant to authority from a Department of the Air Force Instruction (DAFI), such as an administrative discharge board or board of inquiry.
 - 1.3.3.6.4. Relating to an involuntary administrative separation.
 - 1.3.3.6.5. Challenging any evaluation report required by a DAFI (for example, Officer Performance Briefs, Enlisted Performance Briefs, Reenlistment Recommendation Forms, Promotion Recommendation Forms, etc.). Such submissions are addressed by the Evaluation Reports Appeals Board.
 - 1.3.3.6.6. 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). Refer to DAFI 36-2803, *Military Decorations and Awards Program*, for the appropriate authority to act on these complaints.

1.3.3.6.7. Requesting relief from an assessment for pecuniary liability by accountable officials. Such submissions are addressed by the Secretary of the Air Force Remissions Board.

1.3.3.6.8. Challenging a suspension or disqualification from flying status. Such submissions are addressed by a Flying Evaluation Board.

1.3.3.6.9. Challenging an action that is not yet final, such as a respondent commander's recommendation to a higher or other authority, or initiation of an adverse administrative action.

Chapter 2

ROLES AND RESPONSIBILITIES

2.1. Secretary of the Air Force. When warranted, acts on petitions when the preponderance of the evidence supports remedial action.

2.2. The Judge Advocate General of the Air Force. Is delegated the authority given to the Secretary of the Air Force concerning Article 138 complaints, except the authority to grant remedial action, in accordance with the 14 March 2019 Secretary of the Air Force delegation memo.

2.3. Director, Military Justice & Discipline (AF/JAJ). Is further delegated the authority given to the Secretary of the Air Force concerning Article 138 complaints, except the authority to grant remedial action.

2.4. General Court-Martial Convening Authority. Examines the complaint, investigates as necessary, and takes proper measures for redressing the wrong complained of.

2.5. Respondent Commander.

2.5.1. Examines the complaint, investigates as necessary, and takes proper measures for redressing the wrong complained of.

2.5.2. Informs the petitioner of their decision on the complaint.

2.6. Superior Commissioned Officer. Forwards Article 138 complaints to the officer exercising general court-martial convening authority over the respondent commander.

2.7. General Court-Martial Convening Authority Office of the Staff Judge Advocate.

2.7.1. Advises the general court-martial convening authority.

2.7.2. Within seven calendar days of the general court-martial convening authority's action, forwards the complaint to Air Force Investigations, Inquiries, and Relief Division (AF/JAJI).

2.8. Installation-Level Office of the Staff Judge Advocate. Advises respondent commanders on how to respond to informal and formal Article 138 complaints.

2.9. Installation-Level Office of the Inspector General. In appropriate cases, receives reports of informal and formal complaints against a respondent commander made pursuant to Article 138. Refer to DAFI 90-301, *Inspector General Complaints Resolution*, for specific reporting requirements.

Chapter 3

PETITIONER RESPONSIBILITIES IN INITIATING THE ARTICLE 138 PROCESS

3.1. Informal complaint. To begin the Article 138 process, the petitioner must submit an informal complaint to the respondent commander.

3.1.1. If the respondent commander is no longer in command of the petitioner, the petitioner must still submit the informal complaint to the respondent commander, regardless of the respondent commander's or the petitioner's current duty position or location.

3.1.2. If the respondent commander is no longer in the service (for example, has separated or retired), or if the respondent commander is no longer activated under Title 10, United States Code, the petitioner must submit the informal complaint to the successor commander occupying the original commander's billet at the time the informal complaint is submitted.

3.2. Timeliness of the Informal Complaint. The deadline for the petitioner to submit the informal complaint to the respondent commander is 90 calendar days from the petitioner's discovery of the first wrong alleged, unless the respondent commander determines there is good cause shown for the untimely submission. It is the petitioner's responsibility to establish good cause for untimely submissions. Informal complaints found to be untimely and without good cause will be dismissed without a decision on the merits and returned to the petitioner in accordance with [paragraph 4.2.2](#).

3.3. Form of the Informal Complaint. The informal complaint must be submitted in writing. **(T-1)** See [Attachment 1](#) for a template for informal complaints. When submitting the informal complaint, the petitioner must state the informal complaint is being submitted pursuant to Article 138. **(T-2)** Informational complaints must contain the following:

3.3.1. The petitioner's current unit and unit at the time of the alleged wrong. If the informal 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 service under Title 10, United States Code. **(T-1)**

3.3.2. The petitioner's current personal mailing address. The petitioner should notify the respondent commander of any changes in their unit of assignment or personal mailing address while the informal complaint is pending. **(T-1)**

3.3.3. The name and grade of the respondent commander. **(T-1)**

3.3.4. The name and contact information for any counsel representing the petitioner. **(T-1)**

3.3.5. A description of the facts and circumstances of the alleged wrong. **(T-1)**

3.3.6. A statement of the relief sought to correct the alleged wrong. **(T-1)**

3.3.7. All supporting evidence. **(T-1)**

3.3.8. A statement or citation of the specific law or regulation the respondent commander is alleged to have violated, if applicable. **(T-1)**

3.4. Proof Requirements. It is the petitioner's responsibility to establish a valid basis for the complaint. A valid basis for a complaint is one which alleges facts that, if true, would constitute

a wrong within the scope of Article 138, and which provides sufficient evidence to permit a review of the petitioner's allegation.

3.4.1. The petitioner should include all relevant facts and supporting evidence reasonably available within the submission. For example, a petitioner alleging a respondent commander violated a law should state which law they believe was violated, the actions the respondent commander took which allegedly constitute the violation, and provide any evidence available that substantiates the alleged wrong committed, such as relevant documents and the names of individual witnesses with knowledge of the alleged wrong.

3.4.2. The petitioner must include any relevant documentation previously provided to petitioner reflecting action taken against them by the respondent commander if that action is the subject of the complaint. For instance, if the petitioner's complaint involves their receipt of a Letter of Reprimand (LOR), a copy of the completed LOR must be provided by petitioner with their complaint.

3.4.3. The responsibility to establish a valid basis for a complaint should not be considered a burden to prove that relief is warranted. While the petitioner must provide enough information to review the complaint, it is the respondent commander's duty to resolve whether relief is warranted under Article 138.

3.5. Legal Representation. The petitioner may consult military defense counsel or victims' counsel (if member qualifies for, and is appointed, counsel for this purpose) for advice and assistance in drafting submissions under Article 138. The petitioner may consult civilian legal counsel at no expense to the Government. If the petitioner is represented by counsel and has provided written notice, all notices provided to the petitioner will also be served on petitioner's counsel. **(T-1)**

Chapter 4

PROCESSING THE INFORMAL COMPLAINT UNDER ARTICLE 138

4.1. Consultation Required. The respondent commander must consult with their current servicing staff judge advocate before acting on any informal complaint. (T-1) A written legal review of an informal complaint is not required.

4.2. Determining Whether Dismissal or Transfer is Appropriate.

4.2.1. If an informal complaint raises a matter outside the scope of Article 138 as outlined in [paragraph 1.3.3](#), it will be returned to the petitioner without a decision on the merits, but with a notice as to the specific reason the informal complaint fails to meet the scope of Article 138. (T-1) If the informal complaint is found to be outside the scope of Article 138 because there is an alternate forum to address the alleged wrong, it will be returned to the petitioner with direction as to the appropriate alternate forum. For example, if the requested redress can only be resolved through the Air Force Board for the Correction of Military Records, the respondent commander should inform the petitioner of their right to file an application with the Board, in accordance with DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*.

4.2.2. If an informal complaint fails to meet the time requirements, it will be dismissed without a decision on the merits, unless the respondent commander affirmatively, and in writing, waives the timeliness requirement for good cause shown. It is the petitioner's responsibility to establish good cause for any untimely submission. The petitioner must be notified that the petition was dismissed because it was untimely and, if appropriate, whether a requested waiver of the time requirement for good cause was considered. (T-1)

4.2.3. The respondent commander will not consider complaints which are deficient in meeting the requirements for an informal complaint outlined in paragraphs [3.3](#) and [3.4](#). Deficient complaints must be returned to the petitioner. The petitioner must be notified of the specific reasons the materials were returned and what steps, if any, may be taken to correct the deficiencies. (T-1) The petitioner will be granted 10 calendar days from the date of receipt to correct the noted deficiencies. Extension requests must be submitted prior to the expiration of the 10 calendar days and will be granted for good cause shown.

4.2.4. If a commander who receives an informal complaint is not the respondent commander, the commander in receipt of the informal complaint forwards the petitioner's matters to the respondent commander and notifies the petitioner in writing that the informal complaint was forwarded to the respondent commander. If the respondent commander to whom the informal complaint was submitted is a major command, field command, direct reporting unit, or field operating agency commander, that commander's notice to the petitioner will identify for the petitioner the appropriate general court-martial convening authority over the commander. (T-1)

4.3. Further Inquiry or Investigation.

4.3.1. The respondent commander may conduct, direct, or request an inquiry or investigation necessary to evaluate an informal complaint. The respondent commander may, if necessary and appropriate, refer the matter to an appropriate law enforcement agency to investigate an

informal complaint. The petitioner may be asked to provide a statement, furnish additional information, or otherwise assist in resolving the matter.

4.3.2. The respondent commander may consider evidence in addition to matters attached to the informal complaint before responding to the petitioner. If the respondent commander considers additional evidence, it will be attached to the file and provided to the petitioner or otherwise made available for review by petitioner or counsel, upon resolution of the informal complaint.

4.4. Respondent Commander's Notice to the Petitioner. Within 30 calendar days after receipt of the informal complaint, the respondent commander must provide written notice to the petitioner or petitioner's counsel, if any, that, as applicable (**T-1**):

4.4.1. A decision regarding the requested relief has been deferred to allow for the completion of further fact gathering. Notice of deferral must be sent every 30 calendar days until such fact gathering is completed. This notice prohibits the petitioner from requesting general court-martial convening authority review until 90 calendar days have elapsed from the date petitioner submitted the informal complaint;

4.4.2. The informal complaint is dismissed without consideration on the merits because:

4.4.2.1. The submission is untimely;

4.4.2.2. The submission is procedurally deficient;

4.4.2.3. The submission fails to establish a valid basis for a complaint;

4.4.2.4. The submission is outside the scope of Article 138;

4.4.3. The requested relief is denied, in whole or in part, because the requested relief is not warranted on the merits;

4.4.4. The requested relief is denied, in whole or in part, because the requested relief is outside the scope of the commander's authority or for some other reason is not possible to grant (the respondent commander should consider forwarding to the general court-martial convening authority in accordance with [paragraph 4.5](#)); or

4.4.5. The requested relief is granted.

4.5. Forwarding. The respondent commander may, but is not required to, forward a copy of the Notice to the Petitioner, along with any evidence obtained during the respondent commander's review (or any subsequent investigation), to the respondent commander's general court-martial convening authority. Forwarding matters to the general court-martial convening authority does not constitute the filing of a formal Article 138 complaint.

Chapter 5

PROCEDURES FOR FILING A FORMAL COMPLAINT

5.1. Eligibility and Time Requirements for Filing a Formal Complaint.

5.1.1. If the 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 calendar days after receiving the respondent commander's written response dismissing or denying, in whole or in part, the informal complaint.

5.1.2. If the petitioner has received no response from the respondent commander 30 calendar days after the date of submission of the informal complaint, the deadline for petitioner to request general court-martial convening authority review is 90 calendar days from the date the petitioner submitted the original informal complaint.

5.1.3. If the respondent commander has notified the petitioner that a decision regarding the requested relief has been deferred to permit further fact gathering, the petitioner may only request the general court-martial convening authority review after 90 calendar days from respondent commander's receipt of the informal complaint have elapsed. If the respondent commander defers deciding but does not act on the submission within 90 calendar days of receiving the informal complaint, the petitioner must submit the formal complaint to the general court-martial convening authority within 30 calendar days (for example, no later than 120 calendar days from the respondent commander's receipt of the informal complaint). If the respondent commander acts on the informal complaint between calendar days 90 and 120, the petitioner will have 30 calendar days from that response to submit a formal complaint to the general court-martial convening authority.

5.2. Formal Complaint Requirements and Limitations.

5.2.1. The formal complaint must be submitted in writing. (T-1) See [Attachment 3](#) for a template for a formal complaint. When submitting a formal complaint, the petitioner must state that the formal complaint is being submitted pursuant to Article 138. (T-2) In addition to the information required for informal complaints; formal complaints must also contain the following:

5.2.1.1. The date on which the informal Article 138 complaint was submitted to the respondent commander. (T-1)

5.2.1.2. The date on which the requested relief was dismissed or denied, in whole or in part; a statement that the respondent commander failed to respond within the required timeframe; or a statement that the respondent commander deferred decision and more than 90 calendar days have passed since the respondent commander's receipt of the informal complaint. (T-1)

5.2.2. The petitioner may not add new allegations of wrongdoing or submit additional evidence without first submitting the new allegations or evidence to the respondent commander, in the form of a new informal complaint. (T-1)

5.3. Formal Complaint.

5.3.1. The petitioner may submit the formal Article 138 complaint directly to the general court-martial convening authority currently exercising jurisdiction over the respondent commander, or through any commissioned officer superior to the respondent commander.

5.3.2. If a formal complaint fails to meet the time requirements, it will be dismissed without a decision on the merits, unless the general court-martial convening authority affirmatively, and in writing, waives the time requirements for good cause shown. It is the petitioner's responsibility to establish good cause for any untimely submission.

5.3.3. If the respondent commander is a general court-martial convening authority, the petitioner should submit any formal complaint to the general court-martial convening authority exercising jurisdiction over the respondent commander.

Chapter 6

FORWARDING THE FORMAL COMPLAINT UNDER ARTICLE 138

6.1. Duty to Forward Complaint. If an intermediate commander or superior commissioned officer receives a formal complaint where the requested relief has been dismissed or denied, in whole or in part, he or she must forward the submission to the general court-martial convening authority who exercises jurisdiction over the respondent commander. **(T-0)** As long as the petitioner notifies the intermediate commander or superior commissioned officer that the filing is a formal complaint, the petitioner's submission to the intermediate commander or superior commissioned officer constitutes the filing of a formal Article 138 complaint, even if the format and content have not changed from the informal Article 138 complaint.

6.2. Determining the Appropriate Respondent Commander. If an intermediate commander or superior commissioned officer receives a formal complaint but determines the petitioner did not initially submit the informal complaint to the appropriate respondent commander, the intermediate commander or superior commissioned officer will forward the petitioner's matters to the appropriate respondent commander and notify the petitioner. **(T-1)** The petitioner may be asked to furnish additional information to assist in identifying the appropriate respondent commander.

6.3. Determining the Appropriate General Court-Martial Convening Authority. The principal responsibility for acting on a formal complaint lies with the officer exercising general court-martial jurisdiction over the respondent commander. Identifying the appropriate general court-martial convening authority aids in the exercise of oversight over subordinate commanders. If a different entity has the authority to grant the redress requested by a petitioner, the officer exercising general court-martial convening authority over the respondent commander should coordinate such relief with that authority. The appropriate general court-martial convening authority is generally determined in consultation with the relevant servicing legal office.

6.3.1. If more than one general court-martial convening authority has jurisdiction over the respondent commander, the first general court-martial convening authority in the chain of command normally will act on the formal complaint. That general court-martial convening authority, however, may agree to defer to another general court-martial convening authority who has shared administrative command, or who exercises command authority over the respondent commander through another arrangement.

6.3.2. If the respondent commander is in a joint command and the general court-martial convening authority for the command is a general officer in the Department of the Air Force, that officer will be the primary general court-martial convening authority. If the general court-martial convening authority is not a general officer in the Department of the Air Force, and the respondent commander is a RegAF member, the Air Force District of Washington commander will be the primary general court-martial convening authority. If the general court-martial convening authority is not a general officer in the Department of the Air Force, and the respondent commander is a USSF member, the Space Operations Command commander will be the primary general court-martial convening authority.

6.3.3. If the primary general court-martial convening authority is not acting on the formal complaint, the general court court-martial convening authority acting on the formal complaint will coordinate with the primary prior to taking final action.

Chapter 7

PROCESSING THE FORMAL COMPLAINT UNDER ARTICLE 138

7.1. Personal Action Required. A general court-martial convening authority who receives a formal complaint may obtain assistance to investigate the matter further but must not delegate authority to act on formal complaints or respond to petitioners. **(T-0)**

7.2. Consultation Required. The general court-martial convening authority must obtain a written legal review from the servicing staff judge advocate before responding to any formal complaint. **(T-1)** The legal review will include a summary of the relevant facts, a determination of the legal sufficiency of the formal complaint, and a recommended action. The legal review is subject to the attorney-client privilege and attorney work product privilege and will not be released to the petitioner. The servicing staff judge advocate will ensure that all underlying evidence relevant to the complaint is attached to the file.

7.3. Determining Whether Dismissal or Transfer is Appropriate.

7.3.1. If a complaint raises a matter outside the scope of Article 138, the complaint will be dismissed without a decision on the merits. The petitioner must be notified of the specific reason the complaint fails to meet the scope of Article 138. **(T-1)** If the complaint is found to be outside the scope of Article 138 because there is a specific forum to address the matter complained of the general court-martial convening authority will dismiss the complaint and return the submission (including any supporting evidence) to the petitioner and petitioner's counsel, if any, and direct the petitioner to the appropriate forum to review the matter.

7.3.2. If a complaint is untimely, the complaint will be dismissed without a decision on the merits of the wrong alleged, unless a requested waiver of the time requirement is granted for good cause shown. The petitioner must be notified that the complaint was dismissed because it was untimely and, if appropriate, whether a requested waiver of the time requirement for good cause was considered and the result of such consideration. **(T-1)**

7.3.3. If the petitioner submits a formal Article 138 complaint to the general court-martial convening authority without first submitting an informal complaint to the respondent commander, the general court-martial convening authority will forward the submission to the respondent commander and notify the petitioner and petitioner's counsel, if any. The date the respondent commander receives the submission begins a new period to act on what is now an informal complaint.

7.3.4. If the petitioner submitted an informal complaint to the respondent commander, but adds new allegations of wrongdoing or new evidence to the subsequently submitted formal complaint, those new allegations or evidence will be forwarded to the respondent commander for review and appropriate action. **(T-0)** The general court-martial convening authority may defer final action on the formal complaint until all allegations have been addressed by the respondent commander. If the general court-martial convening authority defers final action on the complaint until the respondent commander addresses all allegations, he or she will inform the petitioner of the deferment. **(T-1)**

7.4. Further Inquiry or Investigation.

7.4.1. The general court-martial convening authority may conduct, direct, or request an inquiry or investigation, if necessary, to evaluate a formal complaint. The general court-martial convening authority may, if necessary and appropriate, refer the matter to the appropriate law enforcement agency for further investigation. The petitioner may be asked to provide a statement, furnish additional information, or otherwise assist in resolving the matter.

7.4.2. The general court-martial convening authority may consider evidence in addition to matters attached to the formal complaint before responding to the petitioner. If the general court-martial convening authority considers additional evidence, it will be attached to the file and provided to the petitioner or otherwise made available for review by petitioner or counsel, if applicable.

7.5. Consideration of Collateral Matters by Another Authority. If a matter collateral to the formal complaint has been reviewed or is pending review by another appropriate authority (for example, the Inspector General or Military Equal Opportunity programs), the general court-martial convening authority may consider that authority's findings and action in determining whether overlap exists with the formal Article 138 complaint, prior to taking action. If overlap exists, the general court-martial convening authority may defer action on the formal Article 138 complaint until the related collateral inquiry has been resolved to avoid duplicative processing. The general court-martial convening authority may consider such collateral inquiries and their results in evaluating, acting on, and responding to a formal complaint, unless otherwise prohibited by law or policy.

7.6. General Court-Martial Convening Authority's Notice to the Petitioner. Within 60 calendar days of receipt of a written formal complaint, the general court-martial convening authority must provide one of the following written notices to the petitioner and petitioner's counsel, if represented, that:

7.6.1. A decision regarding the requested relief has been deferred to allow for the completion of an inquiry, investigation, or completion of a review by another authority. Such notice should be sent every 30 calendar days until such inquiry, investigation, or review is completed. Once completed, the general court-martial convening authority must notify the petitioner of their decision within 60 calendar days;

7.6.2. The formal complaint is dismissed without consideration on the merits because:

7.6.2.1. The submission is untimely;

7.6.2.2. The submission is procedurally deficient;

7.6.2.3. The submission fails to establish a valid basis for a complaint; or

7.6.2.4. The submission is outside the scope of Article 138;

7.6.3. The requested relief is denied, in whole or in part, because the requested relief is not warranted on the merits;

7.6.4. The requested relief is granted; or

7.6.5. The requested relief is warranted, but authority to grant the relief requested resides with another general court-martial convening authority, major command, field command, or the Secretary of the Air Force. In such instances, the general court-martial convening authority must forward the complaint, along with a recommendation the requested relief be granted, to the appropriate authority. **(T-1)**

Chapter 8

FORWARDING THE FINAL ACTION FOR SECRETARY OF THE AIR FORCE REVIEW

8.1. Forwarding the Case File to AF/JAJI.

8.1.1. The general court-martial convening authority will send, through the general court-martial convening authority's servicing legal office, a complete file directly to AF/JAJI within seven calendar days of the general court-martial convening authority's action in all cases where the general court-martial convening authority has acted on a formal complaint in any way (to include dismissal) at AF.JAJIWorkflow@us.af.mil. (T-1)

8.1.2. When forwarding the file to AF/JAJI for review, the general court-martial convening authority should include the petitioner's last known personal mailing address.

8.2. Remedial Action. If AF/JAJI determines remedial action is appropriate, AF/JAJI will route the request to the Secretary of the Air Force for action.

8.3. Final Notice to the Petitioner. AF/JAJI will provide the petitioner and petitioner's counsel, if any, written notification of the completion of the review process, any further action taken on the formal complaint, and, if applicable, the reasons for that action. Absent extenuating circumstances, AF/JAJI should provide such notification within 90 calendar days of receipt of the case file. AF/JAJI sends a copy of the final action memorandum to the petitioner via their last known personal mailing address. AF/JAJI also sends a copy of the final action memorandum to the petitioner's counsel, if any, as well as to the general court-martial convening authority and the general court-martial convening authority's servicing legal office.

CHARLES L. PLUMMER
Lieutenant General, USAF
The Judge Advocate General

Attachment 1**GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION*****References***

5 U.S.C. § 552a, *Records maintained on individuals* (Privacy Act)
Title 10, United States Code, Section 938 (Complaints of wrongs)
10 U.S.C. § 1169, *Regular enlisted members: Limitations on Discharge*
AFPD 51-5, *Administrative Law, Gifts, and Command Relationships*, 31 August 2018
AFI 33-322, *Records Management and Information Governance Program*, 23 March 2020
DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, 4 October 2022
DAFI 36-2803, *Military Decorations and Awards Program*, 3 May 2022
DAFI 51-509, *Appointment to and Assumption of Command*, 28 December 2023
DAFMAN 90-161, *Publishing Processes and Procedures*, 15 April 2022
DAFI 90-301, *Inspector General Complaints Resolution*, 4 January 2024
EO 9397, *Numbering System for Federal Accounts Relating to Individual Persons*
EO 13478, *Amendments to Executive Order 9397 Relating to Federal Agency Use of Social Security Numbers*

Prescribed Forms

None

Adopted Forms

DAF Form 847, *Recommendation for Change of Publication*

Abbreviations and Acronyms

AF—Air Force
AFI—Air Force Instruction
DAFI—Department of the Air Force Instruction
DAFMAN—Department of the Air Force Manual
LOR—Letter of Reprimand
OPR—Office of Primary Responsibility
RegAF—Regular Air Force
SORN—System of Records Notice
UCMJ—Uniform Code of Military Justice
U.S.C.—United States Code
USSF—United States Space Force

Office Symbols

AF/JA—The Office of the Judge Advocate General

AF/JAJ—Air Force Military Justice & Discipline

AF/JAJI—Air Force Investigations, Inquiries, and Relief

AF/JAJM—Air Force Military Justice Law and Policy

Terms

Abuse of Authority—An arbitrary and capricious exercise of power by an employee or military member that adversely affects the rights of any person or that results in personal gain or advantage to himself or herself or to preferred other persons.

Arbitrary and Capricious—The absence of a rational connection between the facts found and the choice made, constituting a clear error of judgment. The action does not appear to be supported by fair, solid, and reasonable cause, or based upon relevant factors.

Commander or Commanding Officer—A commissioned officer on G-series orders, occupying a command billet and serving as a commander, as defined by DAFI 51-509, *Appointment to and Assumption of Command*. Officers occupying staff positions are not commanders. Civilian directors and leaders of Air Force organizations are not commanders.

Good Cause—A valid and substantiated reason for being unable to perform the required act. A finding of “good cause” is largely dependent on the facts of the particular case. As used in this Instruction, “good cause” is generally demonstrated when the reason for noncompliance was outside the petitioner’s control.

Preponderance of the Evidence—The standard of proof used in Article 138 complaints. The preponderance standard means: When it is more likely than not that events have occurred as alleged, there is a preponderance of the evidence.

Redress—A lawful action which restores to the petitioner any rights, privileges, property, or status to which they would have been entitled had the alleged wrong not occurred.

Respondent Commander—The commander who is alleged to have wronged the petitioner.

Attachment 2

SAMPLE INFORMAL COMPLAINT UNDER ARTICLE 138, UNIFORM CODE OF
MILITARY JUSTICE

Figure A2.1. Sample Informal Complaint Under Article 138, Uniform Code of Military Justice.

(Date)

MEMORANDUM FOR (Commander)

FROM: 1st Lt Jane Doe
(Current Personal Mailing Address)

SUBJECT: Informal Article 138, Uniform Code of Military Justice, Complaint

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

a. Describe the alleged wrong(s). Include:

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

(2) Any alleged violations of law or regulation;

(3) *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 petitioner's federal service on active duty or federal service on inactive-duty training.*

2. Describe why you believe the action or inaction was arbitrary and capricious, or an abuse of authority; beyond the legitimate authority of the commander; or clearly unfair.

3. Describe the adverse impact the action or inaction has had on you.

4. I request the following relief under Article 138, Uniform Code of Military Justice:

5. I have attached all the evidence available to me, which includes: *(memoranda for record, e-mails, list of witnesses, documentary materials relevant to the complaint).*

JANE E. DOE, 1st Lt, USAF

Attachment(s):
Supporting evidence

Attachment 3

SAMPLE FORMAL COMPLAINT UNDER ARTICLE 138, UNIFORM CODE OF MILITARY JUSTICE

Figure A3.1. Sample Formal Complaint Under Article 138, Uniform Code of Military Justice.

(Date)

MEMORANDUM FOR (General Court-Martial Convening Authority)

FROM: 1st Lt Jane Doe

(Current Personal Mailing Address)

SUBJECT: Formal Article 138, Uniform Code of Military Justice, Complaint

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

a. Describe the alleged wrong(s):

(1) The name and grade of the respondent commander.

(2) What the commander did or did not do that constitutes the alleged wrong.

(3) Any alleged violations of law or regulation.

(4) *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 petitioner's federal service on active duty or federal service on inactive-duty training.*

2. Describe why you believe the action or inaction was arbitrary and capricious, or an abuse of authority; beyond the legitimate authority of the commander; or clearly unfair.

3. Describe what the adverse impact was on you.

4. I submitted my informal complaint under Article 138, Uniform Code of Military Justice, on (date), but my commander did not grant the requested relief in that (specify why the respondent commander's response was unsatisfactory). *If the respondent commander has been reassigned, then insert: 123 ABW/CC is now a member of (insert unit) for which you are the general court-martial convening authority.*

5. I request the following relief under Article 138, Uniform Code of Military Justice:

6. I have attached all the evidence, available to me, which includes: *(memoranda for record, e-mails, list of witnesses, documentary materials relevant to the complaint).*

JOHN E. DOE, 1st Lt, USAF

Attachments:

1. *Informal Complaint under Article 138, Uniform Code of Military Justice (with all attachments)*
2. *Respondent Commander's Response to the Informal Complaint under Article 138, Uniform Code of Military Justice (with all attachments)*