

ARTICLE 138, UCMJ, COMPLAINT

Applicability of Article 138

We have reviewed the attached case file and conclude that, barring a prior response to an Article 138 complaint on the same subject, Col Echo is responsible for providing an initial response to Captain John A. Alpha under AFI 51-904, *Complaints of Wrongs Under Article 138, Uniform Code of Military Justice*, 28 Jul 15.

Background

On 16 Sep 16, Capt Alpha submitted an application for redress to Col Bravo, (then) Director of an Air Force Direct Reporting Unit Directorate (AFDRU/DIR). Col Bravo considered the complaint substantively and denied redress on 30 Sep 16, to which Capt Alpha responded by forwarding an application for redress to Maj Gen Delta, AFDRU/CC. On 3 Nov 16, AFDRU/CC responded to Capt Alpha denying redress without substantive consideration because the AFDRU/DIR, was not a commanding officer under AFI 51-904, paragraph 1 (see AFI 51-904, Attachment 1, *Terms*).

Discussion

There are a number of allegations in Capt Alpha's complaint directed variously at Col Bravo, Col Charlie (MSG/CC), and Col Echo (then) ABW/CC. For the purposes of the allegations in Capt Alpha's complaint directed at Col Bravo, we concur with AFDRU/CC that the AFDRU/DIR, while exercising some of the prerogatives that were formerly within the exclusive scope of command, does not meet the definition of commander in AFI 51-904, nor is that definition unjustified by the statutory language of 10 U.S.C. § 938 (Article 138). Although the complaint of wrongs was ostensibly directed to Col Bravo, the substance of two of the allegations are directed to Col Echo in his role as the wing commander.

While Col Echo is not Capt Alpha's immediate commander, or in his supervisory chain of command, neither of these are required for submission under AFI 51-904 or Article 138. These sources *do* require that he is "his" (Capt Alpha's) commander, but in Col Echo's role as installation commander he possess jurisdiction over all individuals on his installation. Because of this jurisdiction, insofar as Capt Alpha's allegations concern actions taken in Col Echo's role of installation commander, he is susceptible to Article 138.

AFI 51-904, paragraphs 5.8 and 7.2, directs commanders or superior officers who receive either the initial or formal application for redress to forward that application to the appropriate commander complained against if it has been misdirected. We therefore believe the complaint properly should have been split upon receipt, with a response provided on behalf of Col Bravo and a second version forwarded to Col Echo for response. Although he is no longer serving as the ABW/CC, under AFI 51-904, paragraph 4.1.1, the complaint is routed to Col Echo rather than his successor in command.

As regards Capt Alpha's complaints against Col Charlie, they are excluded from this discussion for two reasons. First, as the MSG/CC, Col Charlie was *a* commander, but was not *Capt Alpha's* commander, and thus is not subject to Article 138 complaint under AFI 51-904, paragraph 1, and 10 USC § 938. Second, while we note that an MSG commander may bear some delegated authority of a wing commander and/or exercise jurisdiction over an individual on an installation in some instances, in this case the allegations against Col Charlie do not involve actions carried out under delegated or installation-level authority.

Although there are a number of vague allegations in Capt Alpha's application for redress against Col Echo, for the purposes of his response we assess the relevant complaints as first, general "intimidation and discrimination" and second, improperly instructing AFDRU/DIR to issue an order prohibiting Capt Alpha from setting up an additional booth or other display at the diversity council. We express here no preconception of the proper disposition of these complaints. They may be suitable for dismissal without reaching the substance on other grounds.

Summary

Col Echo should provide Capt Alpha with an initial response in regards to his complaint under AFI 51-904. Col Echo's response should instruct the member that formal complaint as to Col Echo's portion of the Article 138 will be conducted by the first GCMCA in his chain of command, in accordance with AFI 51-904, paragraph 6.4 and 7.1.