

**JUDICIAL PROCEEDINGS PANEL
REQUEST FOR INFORMATION SET # 3**

79. Who informs the Service member of their options to challenge the investigation findings? To whom can a Service member make a complaint about the handling of their case or appeal the findings of the:

USA	The individual responsible for informing a Service member of the options to challenge an investigation finding depends on the regulations governing the agency that conducted the investigation. In all cases, if there is any adverse action as a consequence of the investigation, the Service member will be advised of all due process protections under the provisions of law, DoD, or Army policy governing the particular adverse information (for example, AR 600-37 with respect to official reprimands). Service members will also be advised of their right to criminal defense advice and representation from U.S. Army Trial Defense Service members and/or the local Legal Assistance Office.
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a. Command investigation?

USA	Command investigations require an independent legal review when complete to identify any errors in the process or conclusions. This legal review ensures thorough and independent investigations and conclusions supported by the evidence. The Service member can challenge the investigation and its findings to the Commander that appointed the investigation, the Inspector General's Office or they may avail themselves of the Art. 138, UCMJ, complaint process.
USAF	<p>The Commander-Directed Investigation (CDI) Guide, para. 7.3, provides that there is no formal appeal process. If the victim wishes to appeal the result of the CDI, the victim should provide additional information to justify further review and any “appeal” is within the discretion of the initiating commander and superior commanders. In practice victims have demonstrated their awareness of their right to request further review. Victims may also appeal any adverse administrative action or non-judicial punishment to the Air Force Board for Correction of Military Records (AFBCMR) for substantive relief. Active duty members may also file an Article 138 complaint to request redress.</p> <p><u>References:</u></p> <ul style="list-style-type: none"> - <i>Commander-Directed Investigation (CDI) Guide</i>, 26 April 2010, http://www.af.mil/Portals/1/documents/ig/cdi-guide.pdf
USN	<p>Service members with a complaint about the handling of their case may contact supervisory personnel at the local NCIS office, or alternatively, their command, VA, VLC, higher NCIS headquarters, the offices of the DON and DoD Inspector General, or members of Congress.</p> <p>When a victim has engaged a VLC, the VLC will inform a victim of their option to challenge the investigation findings. SARCs and VAs may also provide this information, and refer victims to the VLC (or legal assistance attorney for non-sexual assault victim questions) for any legal questions. Further, all of the above offices may inform the service member of their options to challenge the investigation findings.</p>
USMC	VLC are equipped to advise clients about the handling of their case, including any

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	appeal processes. Article 138 provides recourse for victims to seek redress for improper actions by their commanders.
USCG	A Service member can request a command investigation be reviewed higher up the chain of command or can request that CGIS look into the matter.

b. MCIO investigation?

USA	A service member may consult with a legal assistance attorney or a civilian attorney at their own expense. Department of Defense Instruction 5505.07, (Titling and Indexing Subjects of Criminal Investigations in the Department of Defense), provides that an individual or entity is listed as the subject of a criminal investigation in the Defense Central Index of Investigations (DCII) to ensure that this information may be retrieved for law enforcement or security purposes in the future. Reports of a criminal investigation are titled to identify the subject for the accuracy and efficiency of the investigative effort. An individual (or representative of a business entity) who believes he or she (or the business entity represented) was titled or indexed incorrectly may appeal to the head of the investigation organization to obtain a review of the decision. When reviewing the appropriateness of a titling and indexing decision, the reviewing official shall consider the investigative information available at the time the initial titling and indexing decision was made to determine whether credible information exists that the subject committed a criminal offense.
USAF	AFI 71-101, <i>Criminal Investigations Program</i> , does not establish any direct formal procedures for challenging investigative findings. Victims may file a complaint regarding an Air Force Office of Special Investigations (AFOSI) investigation through the AF Inspector General (AF IG) or directly with the Headquarters AFOSI/Inspector General. <u>References:</u> AFI 71-101, <i>Criminal Investigations</i> , 4 February 2015, http://static.e-publishing.af.mil/production/1/saf_ig/publication/afi71-101v1/afi71-101v1.pdf
USN	Service members with a complaint about the handling of their case may contact supervisory personnel at the local NCIS office, or alternatively, their command, VA, VLC, higher NCIS headquarters, the offices of the DON and DoD Inspector General, or members of Congress. When a victim has engaged a VLC, the VLC will inform a victim of their option to challenge the investigation findings. SARCs and VAs may also provide this information, and refer victims to the VLC (or legal assistance attorney for non-sexual assault victim questions) for any legal questions. Further, all of the above offices may inform the service member of their options to challenge the investigation findings.
USMC	N/A. NCIS is a DON agency; NCIS procedures will be addressed in the USN response.
USCG	CGIS does not make specific findings in their reports. They report only information collected. CGIS does not “substantiate” a report. A service member, either directly or through the SVC, can bring additional information or leads to the attention of CGIS and can approach a convening authority or legal office with concerns that a CGIS investigation does not adequately cover the claim the member brought forward.

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c. Service IG investigation?

USA	<p>Upon DoD approval of DAIG findings, DAIG notifies service members who submitted allegations of retaliation under 10 U.S.C 1034 of their option to challenge the investigation finding as it pertains to an error or injustice they believe exists in their records. DAIG notifies Service members they can appeal the finding to the Army Board for Correction of Military Records. The Secretary of the Army is directed by DoDD 7050.06, "Military Whistleblower Protection," dated April 17, 2015 to notify a Service member that he or she may request review of the matter by the USD(P&R) on behalf of the Secretary of Defense. 10 USC 1034(h) establishes a right to appeal findings to the Secretary of Defense upon completion of all administrative review.</p> <p>A Service member can make a complaint about the handling of their case to the next higher IG office, DAIG, or DoD IG.</p>
USAF	<p>AFI 90-301, para. 2.4, grants complainants the right to request the next higher-level IG review their complaint within 90 days of receiving the IG response. The closure letter that complaints receive includes a statement that the complainant can request the next higher level IG review the investigation if they have additional information to justify the review. The letter also provides their option to address the issues with the Air Force Ombudsman and/or the AFBCMR. In the case of reprisal, a redacted copy of the Report of Investigation is included with the closure letter.</p> <p><u>References:</u></p> <ul style="list-style-type: none"> - AFI 90-301, <i>Inspector General Complaints Resolution</i>, 6 June 2012, http://static.e-publishing.af.mil/production/1/saf_ig/publication/afi90-301/afi90-301.pdf
USN	<p>Service members with a complaint about the handling of their case may contact supervisory personnel at the local NCIS office, or alternatively, their command, VA, VLC, higher NCIS headquarters, the offices of the DON and DoD Inspector General, or members of Congress.</p> <p>When a victim has engaged a VLC, the VLC will inform a victim of their option to challenge the investigation findings. SARCs and VAs may also provide this information, and refer victims to the VLC (or legal assistance attorney for non-sexual assault victim questions) for any legal questions. Further, all of the above offices may inform the service member of their options to challenge the investigation findings.</p>
USMC	<p>Since professional retaliation (reprisal) investigations are conducted by IGMC and over-sighted by DoD IG, challenge or appeal would quickly be exhausted within DoD. The only appeal a service member can make is to the Secretary of Defense, after he/she receives notification of the ASN (M&RA) determination. If the complainant has new or additional information that was not considered by the IGMC, or has a complaint of investigatory misconduct, a new IGMC/DoD IG complaint can be filed.</p>
USCG	<p>As noted previously, generally CGIS handles IG complaints that involve the Coast Guard. The Coast Guard does not have a Service IG.</p>

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d. DOD investigation?

USA	DOD IG will provide this response separately.
USAF	Defer to DoD Inspector General.
USN	<p>Service members with a complaint about the handling of their case may contact supervisory personnel at the local NCIS office, or alternatively, their command, VA, VLC, higher NCIS headquarters, the offices of the DON and DoD Inspector General, or members of Congress.</p> <p>When a victim has engaged a VLC, the VLC will inform a victim of their option to challenge the investigation findings. SARCs and VAs may also provide this information, and refer victims to the VLC (or legal assistance attorney for non-sexual assault victim questions) for any legal questions. Further, all of the above offices may inform the service member of their options to challenge the investigation findings.</p>
USMC	N/A.
USCG	The Coast Guard is not a part of the Department of Defense.

e. Art. 138 investigation?

USA	<p>Art. 138, UCMJ, allows a Service member to lodge a complaint against his/her commander if said Service member believes he/she has been wronged. The UCMJ and AR 27-10 establish a complaint, not investigation, system wherein a Service member's allegations against his/her commander may be adjudicated. After the Service member informs the allegedly offending commander of the grievance, if said commander does not rectify the situation to the Service member's satisfaction (or the matter is not appropriate for resolution IAW Art. 138), the Service member may "appeal" to the GCMCA for adjudication. Subsequent to GCMCA adjudication, as a matter of due course, all such Art. 138 complaints are forwarded to the Army Judge Advocate General (acting on behalf of the Secretary of the Army) for review of the GCMCA's action; or in other words, an "automatic appeal."</p>
USAF	<p>If the superior commander receiving the Article 138 complaint deems it necessary, the commander may order a CDI into matters raised in the complaint. In that case, the challenge mechanisms within the CDI process would be available as described above.</p> <p>Inherent in the Article 138 process is the service member's right to have his/her complaint reviewed by a superior commander if the member's immediate commander does not grant the redress petitioned for. Under paragraph 4.2, the immediate commander must promptly notify the member in writing as to the redress granted, or in the case of denial of the petitioned redress, must specify the reasons for such denial. AFI 51-904, para. 4.2.</p> <p>Further, in the event that the complainant believes the initial redress is unsatisfactory, para. 4.5 requires that the officer exercising General Court-Martial Convening Authority (GCMCA) over the member's immediate commander, conduct or direct further investigation into the complaint and then "inform the member in writing of</p>

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	<p>both the action taken on the complaint and the reasons for that action.” Finally, the GCMCA must forward the file to the Air Staff for review and disposition.</p> <p><u>References:</u></p> <ul style="list-style-type: none"> - AFI 51-904, <i>Complaints of Wrongs under Article 138, Uniform Code of Military Justice</i>, 30 June 1994, http://static.e-publishing.af.mil/production/1/af_a3_5/publication/afi51-904/afi51-904.pdf
USN	<p>Service members with a complaint about the handling of their case may contact supervisory personnel at the local NCIS office, or alternatively, their command, VA, VLC, higher NCIS headquarters, the offices of the DON and DoD Inspector General, or members of Congress.</p> <p>When a victim has engaged a VLC, the VLC will inform a victim of their option to challenge the investigation findings. SARCs and VAs may also provide this information, and refer victims to the VLC (or legal assistance attorney for non-sexual assault victim questions) for any legal questions. Further, all of the above offices may inform the service member of their options to challenge the investigation findings.</p>
USMC	<p>VLC are equipped to advise clients about Article 138 complaints, including the inherent appeals process. Article 138 includes review by a GCMCA, JAG, and the SecNav (delegable to the ASN) as part of the process, and the SECNAV provides the complainant with the final determination.</p>
USCG	<p>A General Court-Martial Convening Authority reviews, with advice of their SJA, all investigations into Article 138 complaints, and takes the final action with regard to them. That action is then reviewed in the Office of the Judge Advocate General.</p>