

Article 139 and the PCA

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GOALS of the Training

1. Understand Article 139
2. Learn how to assist our victims and witnesses in making an Art 139 complaint
3. Understand the Personnel Claims Act (PCA)
4. Learn how to assist our victims and witnesses in making PCA claims

Article 139, UCMJ

Article 139

- 10 U.S.C. § 939 = Art 139
- JAGMAN Chapter IV
- Redress of injuries to property
- Commanders have the authority to deduct money from one military member's pay and give it to another member or civilian.

Article 139

- Start with an example:
- LCpl Accused gets into a fight with his girlfriend. He launches her iPhone 6 across the room like he's trying out for Angry Birds. She comes to you with her shattered phone. You help her make an Art 139 complaint to LCpl Accused's commander. The commander can direct that the cost of the damage be deducted from LCpl Accused's pay and given to his girlfriend.
- Plus side: maybe you'll get invited to the wedding after salvaging the relationship.

Article 139

- Whenever (a) **complaint** is made **to any commanding officer** that **willful damage** has been done **to the property** of any person **or** that his property has been **wrongfully taken by members of the armed forces**, he may, under such regulations as the Secretary concerned may prescribe, **convene a board** to investigate the complaint. The board shall consist of from **one to three commissioned officers** and, for the purpose of investigation, it has the power to **summon witnesses** and examine them upon oath, to **receive depositions** or other **documentary evidence**, and to **assess the damages** sustained against the responsible parties. The assessment of damages made by the board is **subject to the approval of the commanding officer**, and in the amount approved by him shall be charged against the pay of the offenders. The order of the commanding officer directing charges herein authorized is **conclusive on any disbursing officer** for the payment by him to the injured parties of the damages as assessed and approved."

Article 139

- What kind of damage?
 - Private property damage, destruction, or loss
- What kind of conduct causes the damage or loss?
 - Willfully damaged
 - Reckless, riotous, or disorderly conduct
 - Not involving simple negligence or inadvertent
 - Intentionally, knowingly, and purposefully without justifiable excuse
 - Wrongfully taken
 - Unauthorized taking or withholding of property
 - Done with intent to temporarily OR permanently deprive the owner
- Who can make a claim?
 - Any individual, either civilian or military, business, charity, or a state or local government that lawfully own or possesses property.

Article 139

- What is it not?
 - No claims resulting from simple negligence.
 - No third party subrogees.
 - You can't make a 139 claim for breach of contract.
 - Bad check? No 139 claim.
 - LCpl 85% APR defaults on payments? Civilian business can't get at it via Art 139.

Article 139 – Submitting a Claim

- To the commanding officer within 90 days of the incident
 - CO can extend time period for good cause
 - Good cause? Never knew Art 139 existed (does anyone?), had no idea who caused the damage until recently
- Which CO?
 - Ideally, you want to submit the claim to the CO of the unit that the damager-Marine is assigned to.
 - If that's not practical, may go to commander of the nearest military installation (tap into Lance Commander underground)
 - The claim is then routed to the CO that has SPCMA over damager
 - This is the CO that that appoints a board

Article 139 – Submitting a Claim

- Where's my form?
 - Making the claim orally gets the process started, BUT
 - An official Art 139 complaint must be drafted AND include the sum asked for in compensation before final action can be taken.
- What needs to be included:
 - Amount of the claim,
 - Facts and circumstances surrounding the claims,
 - Any other relevant information
- Each claimant must file separately
- Must be personally signed by claimant or authorized representative

Article 139 – The Investigation

- Who is it? The CO convenes an investigation under JAGMAN Chapter 2.
- Review all available witnesses and evidence
- Three principal functions:
 - Determine if this is really an Art 139 claim;
 - Identify the party responsible for the damage; and
 - Determine the liability for damages.
 - “Preponderance of the evidence” standard

Article 139 – The Investigation

- IO Recommendation
 - Assess the damages against the identified service member or members
 - Deduct from the assessment any voluntary or partial payments already made
 - Proximate cause? Comparative Responsibility?
 - Assess damages against member that were present during the incident, if authorities can't individually identify the offender
 - Disapprove the claim

Article 139 – JA Review

- Investigating Officer forwards to SJA
 - Limited review
 - Does the evidence support the findings?
 - Are the recommendations consistent with the findings?
 - SJA may kick-back to IO for further investigation
- SJA then forwards investigation and review to CO
 - No idea what format or substance the SJA comments/review take

Article 139 – Commander's Action

- The Commander evaluates the board's recommendations
 - Is this really an Art 139 claim?
 - Change amount appropriated to each offender (board sets ceiling)
- Amount charged in any single month cannot exceed one-half of basic pay
- Notifies the offender and claimant of action

Article 139 – Commander's Action

- If the CO is not a GCMCA...
 - The written claim,
 - The IO report,
 - The offender's statement, and
 - The SPCMCA recommendation...
- Are all forwarded to the GCMCA for review and action
- Directs DFAS to withhold the specified amount from each paycheck to the claimant
 - Special review if greater than \$5,000
- Notifies the offender and claimant of action

Article 139 – Appeal

- Claimant or offender may request reconsideration within 5 working days of GCMCA decision, goes to OJAG
- No action can be taken until after opportunity for reconsideration and final action is complete
- A successor commander may change or cancel the assessed compensation based only on newly discovered evidence, fraud, or obvious error of law or fact.

Article 139

- This is a real thing. Promise.
- Like all things people in the military have never heard of, be prepared for push-back and confusing looks. It's in the JAGMAN.
- These are not SJA decisions. These are commander decisions.
- Article 138 complaint?

Article 139 – Realistic Scenario

- Domestic violence incident.
- Charges are pending for assault, and let's say some kind of unlawful detention (went around breaking all communications devices.)
- Victim wants compensation because the accused busted her phone and computer.
- Accused is pleading not guilty to charges that are directly related to these allegations.
- Go ahead, it's administrative? What evidence is coming in? 31(b)? Punt it? Wait until trial is over?

Article 139 – Realistic Answer

- I dunno, maybe?
- JAGMAN 0409 says to fire away.
- Acquittal or conviction is “not determinative” on the issue of responsibility for damages

Personnel Claims Act

- Military Personnel and Civilian Employees' Claims Act (PCA), 31 U.S.C. § 3721 – Gratuitous act to compensate Navy and Marine Corps military and civilians for loss, damage or destruction of personal property "incident to service."
- If there is one thing you learn from this entire section of the presentation, learn Code 15.

Personnel Claims Act



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Claims & Tort Litigation (Code 15)

MISSION

The Claims and Tort Litigation Division (Code 15) has worldwide responsibility for processing different types of claims under various statutes and regulations. Code 15 processes approximately 45,000 claims with claims paid and recovered totaling \$60-\$70 million.

Code 15 is comprised of a headquarters unit at the Washington Navy Yard, D.C.; a Tort Claims Unit (TCU) in Norfolk, VA; a Personnel Claims Unit (PCU) in Norfolk, VA; and three Medical Care Recovery Units (MCRU), one each in Norfolk, VA, Pensacola, FL, and San Diego, CA.

Code 15 is also the custodian and designated release authority for all command investigations convened pursuant to Chapter II of the Manual of the Judge Advocate General conducted prior to December 1995, and all litigation report investigations. Code 15 is not the custodian or release authority for command investigations convened after December 1995 nor investigations involving breaches of classified information or information security regulations maintained by the Chief of Naval Operations (N09N).

FUNCTION

As the manager of the Navy Claims System, Code 15 develops and implements claims policy for the Judge Advocate General (JAG) and the Secretary of the Navy (SECNAV), and processes all claims brought for or against the Navy under the following statutes:

- Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 1346(b), 2671-2680 – Limited waiver of U.S. sovereign immunity for damages for personal injury, death or property damage caused by negligence of Federal employees acting within the scope of their official duties.

DO YOU WANT TO FILE A CLAIM?

These links have all the information and documents you will need:

[Camp Lejeune Claims](#)

[Packets & Forms](#)

[Claims POCs/Addresses](#)



Personnel Claims Act

- Scenario:

Victim reports a sexual assault. NCIS politely requests to take the phone. Litigation goes on for 6-8 months...maybe years? Victim would like to have a phone during this time. Victim purchases new phone. Is more than a little upset with just about everyone involved.

- This is exactly what the PCA is for!

Personnel Claims Act

- Maybe you've heard of the Military Claims Act (MCA)?
- Maybe you think that sounds like a reasonable way to get reimbursement for your phone?
- You're wrong! How dare you!
- The Army and the Air Force have been using the MCA in these situations. Code 15 found out about it. They were not amused.

Personnel Claims Act

- Things worth remembering, Part 2
 - Payment is permitted for the damage or loss of use of the property if held for 60 days or more, and
 - Upon a showing by the claimant that the loss of the property is causing a “grave hardship” to them.
- Payments to civilian victims would not be authorized under the PCA.
- You only get depreciated value, no-boondoggling.

Personnel Claims Act

0802 RESPONSIBILITIES

JAGMAN

a. The Judge Advocate General (JAG) is responsible for the resolution of claims arising under the Federal Tort Claims Act (FTCA), Military Claims Act (MCA), Nonscope Claims Act, Military Personnel and Civilian Employees' Claims Act (PCA), Foreign Claims Act (FCA), International Agreements Claims Act (IACA), Medical Care Recovery Act (MCRA), the Third Party Payers Act, and the Federal Claims Collection Act (FCCA) (affirmative claims). The Office of the Judge Advocate General (OJAG), Claims and Tort Litigation Division (Code 15) executes this responsibility on behalf of the JAG.

b. The Division Director, Claims and Tort Litigation (OJAG Code 15) is the manager of the Department of the Navy (DON) claims system that evaluates, adjudicates, and provides litigation support for claims arising under the acts listed above. The claims system consists of attorneys and support personnel assigned to OJAG (Code 15). Code 15 personnel responsible for processing tort

SUMMARY

- You are now the smartest person in the room.
- Article 139 – compensation for personal property damage by service member
- PCA – NCIS takes a victim's phone for greater than 60 days