

**MILITARY DEPARTMENT
STATE OF OREGON
1776 Militia Way
Salem, Oregon 97309-5047**

**OREGON ARMY NATIONAL GUARD REGULATION
NUMBER 22-14
OREGON AIR NATIONAL GUARD REGULATION
NUMBER 119-10**

1 March 1990

**Military Justice
GENERAL**

Chapter 1. COMPLAINT OF WRONG

Summary. This regulation applies to any member of the organized militia wronged by his/her commanding officer. It provides guidance to members relating to the processing and administering of any complaint of wrong. The regulation establishes procedures for the preparation, submission, and disposition of complaints made pursuant to ORS 399.205 by a member of the organized militia against a commanding officer.

Suggested improvements. The proponent of this regulation is the State Judge Advocate. Users are invited to send comments to the Military Department, State of Oregon, ATTN: SJA, P.O. Box 14350, Salem, OR 97309-5047.

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This regulation supersedes ORARNGR 22-14; ORANGR 119-10, dated 15 March 1989.

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1-1. Purpose. This regulation establishes procedures for the preparation, submission, and disposition of complaints made pursuant to ORS 399.205 by a member of the organized militia against a commanding officer.

1-2. Applicability. This regulation applies to any member of the organized militia wronged by his/her commanding officer, provided that the wrong occurs while the member is in a duty status, or during a period of time that the member was under lawful orders to be in a duty status, or is otherwise incident to or connected to such duty in the organized militia.

1-3. Policy.

a. Resolution of complaints. The policy of the organized militia is to resolve complaints at the lowest level of command and to provide adequate administrative procedures for such resolution. ORS 399.205 is one of several methods available. It provides for consideration at three successive levels.

(1) The first attempt to resolve a perceived wrong must be between the member and the commanding officer he believes has wronged him. If conventional measures are unsuccessful, the member may submit a request for redress under ORS 399.205. Every reasonable measure should be taken to resolve complaints at this level.

(2) The principal responsibility for acting on ORS 399.205 complaints lies with the officer exercising special court-martial jurisdiction. Ordinarily, this is the commanding officer of a brigade, regiment, wing or group.

(3) The action of the officer exercising special court-martial jurisdiction is reviewed by The Adjutant General.

b. Right to complain. A member of the organized militia has a statutory right to submit an ORS 399.205 complaint. Commanders will not restrict the submission of such complaints or retaliate against a member for submitting a complaint.

c. Complaint to be forwarded. Every ORS 399.205 complaint will be forwarded to the officer exercising special court-martial jurisdiction unless voluntarily withdrawn by the complainant.

d. Complainant not a participant. A member who submits a ORS 399.205 complaint does not have a right to participate in any ensuing procedures under this regulation. However, he may be asked to testify, provide additional information, or otherwise assist in resolving the complaint.

e. Presumption of regularity. If the available evidence does not establish the validity of a complaint, despite vigorous good faith efforts to do so, a commanding officer is presumed to have acted properly.

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f. Departure from command channels. Commanders are authorized to deviate from strict adherence to command channels when that will facilitate action under this regulation. However, no commander who has a direct interest in the subject matter will be by-passed. Generally, command channels should be followed to the first commander with special court-martial jurisdiction. Commanders with special court-martial jurisdiction should communicate directly with The Adjutant General.

1-4. Explanation of terms. For purposes of this regulation, these terms used in ORS 399.205 are defined as follows:

a. Member of the organized militia. A person who is a member of the organized militia and subject to the Oregon Code of Military Justice. A member of the organized militia who has submitted an ORS 399.205 complaint is referred to in this regulation as the complainant.

b. Commanding officer. An officer in the complainant's chain of command, up to and including the first officer exercising special court-martial jurisdiction over the complainant, authorized to impose nonjudicial punishment on the complainant (whether or not the authority to impose nonjudicial punishment or to exercise special court-martial jurisdiction has been limited or withheld by a superior commander). A commanding officer against whom an ORS 399.205 complaint has been made is referred to in this regulation as the respondent.

c. Superior commissioned officer. A commissioned officer in the complainant's current chain of command who is senior to the complainant in grade, rank, or position.

d. Officer exercising special court-martial jurisdiction. The first officer (or his successor) in the respondent's chain of command with special court-martial jurisdiction over the respondent at the time of the alleged wrong (whether or not the exercise of such jurisdiction was restricted or withheld by a superior commander.) If there is no such officer below The Adjutant General, this term refers to the officer (or his successor) who actually exercised special court-martial jurisdiction over the respondent at the time of the alleged wrong.

e. Wrong. A discretionary act or omission by a commanding officer, under color of state military authority, which adversely affects the complainant personally and which is--

- (1) In violation of law or regulation;
- (2) Beyond the legitimate authority of that commanding officer;
- (3) Arbitrary, capricious, or an abuse of discretion; or
- (4) Materially unfair.

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f. Redress. Authorized action by any officer in the complainant's chain of command to effect the revocation of a previous official action or otherwise to restore to the complainant any rights, privileges, property, or status lost as a result of a wrong.

1-5. Inappropriate subject matter for ORS 399.205 complaints.

a. General. The procedures prescribed in this regulation are intended to ensure that an adequate official channel for redress is available to every member of the organized militia who believes himself wronged by his commanding officer. For many adverse actions, however, there are other, more specific, channels and procedures to ensure the member has an adequate opportunity to be heard. Those specific procedures usually are more effective and efficient for resolving such matters, and ORS 399.205 procedures should neither substitute for nor duplicate them. Generally, an action is an inappropriate subject for resolution under ORS 399.205 procedures when:

(1) Review is specifically provided by the OCMJ or the action is otherwise reviewable by a court authorized by the OCMJ or by a military judge.

(2) It is taken pursuant to the recommendation of a board authorized by Army, Air Force, National Guard Bureau, or Oregon Military Department regulation at which the complainant was substantially afforded the rights of a respondent.

(3) Army, Air Force, National Guard Bureau, or Oregon Military Department regulation specifically authorizes an administrative appeal.

(4) It is a commander's recommendation or initiation of an action included in (1), (2), or (3) above.

The fact that the wrong complained of could be redressed by the Army or Air Force Board for the Correction of Military Records (AR 15-185) does not make ORS 399.205 complaints inappropriate.

b. Referral to alternate channels. When the officer exercising special court-martial jurisdiction receives an ORS 399.205 complaint apparently involving an adverse action for which more specific channels and procedures are available, he will act on it as prescribed in paragraph 3-3. A decision to leave the matter to be processed in those alternate channels and to so advise the complainant [para 3-3b(1)] constitutes proper measures for redressing the wrong complained of within the meaning of ORS 399.205.

Chapter 2. MAKING A COMPLAINT

2-1. Request for redress.

a. Request by the member. Before submitting a complaint under ORS 399.205, a member of the organized militia must make a written request for

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redress of the wrong to the commanding officer he believes wronged him while the member was in a duty status. The request for redress:

(1) Must clearly identify the commanding officer against whom it is made, the date and nature of the alleged wrong, the duty status of the member at the time of the wrong and, if possible, the specific redress desired; and

(2) Will be submitted through command channels to the commanding officer who is alleged to have committed the wrong. (For exception to this procedure, see paragraph 1-3f).

b. Response by the commanding officer. A commanding officer receiving a request for redress submitted under this regulation will respond, in writing, within 20 days of receipt. (Paragraphs 3-2a and 3-3b may be used as a guide in determining action on the request.) If a final response within 20 days is not possible, an interim response will be provided which indicates the estimated date of a final response.

2-2. Complaint. A member of the organized militia may submit an ORS 399.205 complaint for any act or omission by his commanding officer which he believes to be a wrong (para 1-4e) and for which he has requested redress and has been refused. A member who, through no fault of his own, has not received a final response within 20 days may elect to treat that as a refusal of redress.

a. Form. The complaint should:

(1) Be in writing and signed by the complainant;

(2) Identify the complainant as a member of the organized militia and subject to the OCMJ;

(3) Identify the complainant's current military organization and address;

(4) Identify the complainant's military organization at the time of the wrong;

(5) Identify the commanding officer whose act or omission is complained of;

(6) Identify the member's duty status at the time of the wrong or describe how the wrong complained of is connected to duty in the organized militia.

(7) Indicate the date a written request for redress was submitted to that commanding officer and either that:

(a) The request was refused, in whole or in part, and the date thereof; or

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(b) A final response was not received within 20 days.

(8) Include a statement that it is a complaint submitted under the provisions of ORS 399.205 and this regulation;

(9) Clearly and concisely describe the specific wrong complained of. When not readily apparent, state the reason the complainant considers it a wrong;

(10) State the specific redress the complainant seeks. Unless it is readily apparent, state the reason the complainant considers that redress appropriate;

(11) Have attached to it:

(a) The complainant's request to his commanding officer for redress and the commanding officer's response, if any.

(b) Any supporting information or documents the complainant desires to be considered.

b. Submitting the complaint.

(1) The complainant will deliver the complaint to his immediate superior commissioned officer within 90 days of the date of complainant's discovery of the wrong, excluding any period during which the request for redress was in the hands of the respondent.

(2) If the complainant corrects and resubmits the complaint after the officer exercising special court-martial jurisdiction has returned it as deficient (para 3-2a), the number of days the complaint was in military channels between submission by and return to the complainant will also be excluded in computing the 90-day period.

c. Withdrawal. The complainant may withdraw the complaint at any time before final action is taken by The Adjutant General. If a complaint is withdrawn, it must be a completely voluntary act on the part of the complainant.

(1) Prior to receipt by the officer exercising special court-martial jurisdiction, the complaint may be withdrawn by an oral request of the complainant.

(2) After receipt by the officer exercising special court-martial jurisdiction, the complainant must submit a written request to withdraw the complaint to the officer in possession of the complaint.

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2-3. Legal advice.

a. Complainant. A member who desires to submit an ORS 399.205 complaint may:

(1) Consult a judge advocate for advice and assistance in drafting the complaint. Such advice will include whether, under the circumstances, an ORS 399.205 complaint is authorized and appropriate. The member also should be advised of any other laws or regulations under which he may proceed to seek redress. In connection with ORS 399.205 complaints, a military lawyer will be provided only for such consultation and advice, but not to represent the member in any ensuing ORS 399.205 proceedings.

(2) Consult or retain other legal counsel at no expense to the State. Such counsel may attend any proceedings under this regulation which are open to other member of the public, but may not participate in them.

b. Respondent. A commanding officer who receives a request for redress or against whom an ORS 399.205 complaint is submitted may obtain necessary legal advice from his servicing judge advocate.

Chapter 3. ACTION ON THE COMPLAINT

3-1. Action by the person receiving the complaint.

a. Forwarding. A superior commissioned officer who receives an ORS 399.205 complaint will promptly forward it to the officer exercising special court-martial jurisdiction. Any other person receiving a complaint (except the officer exercising special court-martial jurisdiction) will forward it to the complainant's immediate superior commissioned officer or to the officer exercising special court-martial jurisdiction.

b. Other action. The person receiving the complaint, or through whom it is forwarded, may add pertinent material to the file or grant any redress within his authority. If either action is taken it will be noted in the transmittal.

3-2. Determination not required by officer exercising special court-martial jurisdiction.

a. Deficient complaint.

(1) If a complaint does not substantially meet the requirements of ORS 399.205, as implemented by this regulation, no determination as to the merits of the complaint is required. Unless the deficiency is waived (see b. below), such a complaint will be returned to the complainant with a written explanation of the deficiency and, if correctable, how it may be corrected.

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(2) If the deficiency is not corrected or waived, the complaint will not be processed as an ORS 399.205 complaint. However, any other appropriate action to resolve matters raised by the complaint should be taken.

b. Waivers.

(1) Except as provided in (2) and (3) below, the officer exercising special court-martial jurisdiction may waive deficiencies when he considers it necessary in the interest of fairness.

(2) The following deficiencies should be waived only for good cause. The reason waiver is considered appropriate will be explained in the correspondence forwarding the complaint [para 3-3d or 3-3b(2)(c)].

(a) The complaint was not delivered to complainant's superior commissioned officer within 90 days of the date of discovery of the wrong.

(b) Redress has not been requested and refused.

(c) The complaint is repetitive in that it is substantially the same as a previous complaint by the same complainant on which official action has already been taken.

(3) The following deficiencies may not be waived:

(a) The complainant was not a member of the organized militia and subject to the OCMJ when the complaint was delivered to his superior commissioned officer.

(b) The wrong complained of did not occur incident to or in connection with the member's duty in the organized militia.

(c) The wrong complained of was not a discretionary act or omission, or it was not by the complainant's commanding officer, or it was not under color of state military authority, or it did not adversely affect the complainant personally (para 1-4e).

(d) The complaint does not adequately identify a respondent or the wrong complained of.

c. Transfer of complaint. Jurisdiction to act on an ORS 399.205 complaint lies with the officer exercising special court-martial jurisdiction described in paragraph 1-4d. If the respondent has been transferred after the alleged wrong, the officer exercising special court-martial jurisdiction may transfer action on the ORS 399.205 complaint to the first special court-martial convening authority in the respondent's current chain of command. However, the action may be transferred only if that convening authority consents and if the transfer will facilitate compliance with this regulation. Thereafter, the officer to whom the complaint was transferred is responsible

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for all actions prescribed by this regulation for the officer exercising special court-martial jurisdiction.

d. Withdrawal of the complaint. Once a voluntary request for withdrawal has been received, no further action will be taken under this regulation. This does not preclude other appropriate action to resolve any matters raised by the complaint.

3-3. Determination required by officer exercising special court-martial jurisdiction. Except when his determination is not required on the ORS 399.205 complaint (para 302), the officer exercising special court-martial jurisdiction will take the following actions:

a. Examination into the complaint. The officer exercising special court-martial jurisdiction will examine into the complaint. This duty may be delegated, but not to a person subordinate to the respondent in the chain of command nor, except for good cause explained in the correspondence forwarding the complaint [d or b(2)(c) below], to a persons junior in rank to the respondent.

(1) Cases of the type described in paragraph 1-5. Unless the officer exercising special court-martial jurisdiction believes that established channels for redressing the alleged wrong would be inadequate in the particular case, the examination will be limited to determining whether the other channels are, in fact, available for resolving the alleged wrong.

(2) All other cases. An investigation under AR 15-6 or AFR 11-31 will be conducted to determine the circumstances giving rise to the complaint. Informal procedures normally will be used. Specific findings will be made as to whether the act or omission complained of was:

- (a) In violation of law or regulation;
- (b) Beyond the legitimate authority of the respondent;
- (c) Arbitrary, capricious, or an abuse of discretion; or

(d) Materially unfair; would be inadequate in the particular case, he will advise the complainant that:

A specific recommendation will be made regarding the appropriateness of the redress requested and of any other corrective action.

b. Action on the complaint. The officer exercising special court-martial jurisdiction must act personally on the ORS 399.205 complaint. This authority may not be delegated. After examination into the complaint is completed, he will take the first of the following actions which apply to the particular complaint:

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(1) If the alleged wrong is of the type described in paragraph 1-5, unless he believes that established channels for redressing the alleged wrong:

(a) The alleged wrong already is being considered in other official channels, if that is the case; or,

(b) A more appropriate official channel is available to redress the alleged wrong. The officer will specify that channel, any applicable regulation under which the complainant may proceed, and any military assistance available to the complainant in using that channel.

(2) He will determine the merits of the complaint and of the redress requested.

(a) If no redress is appropriate, he will deny the redress.

(b) He will grant whatever redress is appropriate and which is within his authority to provide.

(c) If he determines redress is appropriate which is beyond his authority to provide but which another commander could provide, he will forward the following to the commander with the necessary authority:

- 1 The documents described in d(1) through (3) below;
- 2 An explanation of why he considers redress appropriate;
- 3 His specific recommendations as to what redress should be granted; and,
- 4 A request that, upon completion of the action, the file be forwarded to Headquarters, Oregon National Guard in accordance with d. below.

c. Notice to the complainant. The officer exercising special court-martial jurisdiction will notify the complainant in writing of the action taken on the complaint.

d. Forwarding complaint to Headquarters, Oregon National Guard. Upon completion of action on the complaint, the officer exercising special court-martial jurisdiction [or the commander to whom the complaint was forwarded under b(2)(c) above] will forward the following to Headquarters, Oregon National Guard, ATTN: TAG.

(1) The complaint, the original request for redress, the refusal thereof, and any supporting materials submitted by the complainant;

(2) The results of the examination into the complaint, together with any supporting documentation (a. above);

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(3) A copy of the notice to the complainant (c. above);

(4) An endorsement or letter of transmittal:

(a) Indicating that the officer exercising special court-martial jurisdiction (or the commander to whom the complaint was forwarded) personally acted on the complaint.

(b) Describing his action (b. above) and the reasons therefore;
and,

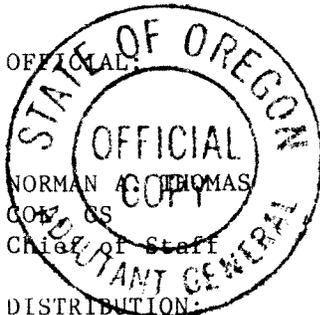
(c) When applicable, explaining any waiver of deficiencies in the complaint (para 3-2b) or inadequacy of established channels [b(1) above].

3-4. Action by Headquarters, Oregon National Guard.

a. Upon receipt at Headquarters, Oregon National Guard, each ORS 399.205 file will be reviewed by the State Judge Advocate (or his designee) on behalf of The Adjutant General. The State Judge Advocate may, in his discretion, return the file for additional information or investigation or for other action.

b. The complainant, the respondent, and the officer exercising special court-martial jurisdiction will be informed of the final disposition of the complaint.

BY ORDER OF THE GOVERNOR:



RAYMOND F. REES
Major General
The Adjutant General

DISTRIBUTION:
A (Army)
B (Air)



APPENDIX A

ORS 399.205

"Any member of the organized militia 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 Adjutant General."

