



Department of Homeland Security Office of Inspector General

Recommendations to Improve the Coast Guard's System for Adjudicating Suspension and Revocation Matters





Homeland Security

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Preface

The Department of Homeland Security (DHS) Office of Inspector General (OIG) was established by the *Homeland Security Act of 2002* (Public Law 107-296) by amendment to the *Inspector General Act of 1978*. This is one of a series of audit, inspection, and special reports prepared as part of our oversight responsibilities to promote economy, efficiency, and effectiveness within the department.

This report addresses certain issues related to the Coast Guard's system for adjudicating suspension and revocation matters. It is based on interviews with current and former Coast Guard employees and officials, interviews with representatives of the mariner community, direct observations, and a review of applicable documents.

The recommendations herein have been developed to the best knowledge available to our office, and have been discussed in draft with those responsible for implementation. We trust this report will result in more effective, efficient, and economical operations. We express our appreciation to all of those who contributed to the preparation of this report.

A handwritten signature in cursive script that reads "Richard L. Skinner".

Richard L. Skinner
Inspector General

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Abbreviations

ALJ	Administrative Law Judge
ALJIPP	Administrative Law Judge Internal Procedures and Practices
APA	<i>Administrative Procedure Act</i>
CDOA(s)	Commandant Decision(s) on Appeal
DHS	Department of Homeland Security
MSPB	Merit Systems Protection Board
OIG	Office of Inspector General
S&R	Suspension and Revocation

OIG

*Department of Homeland Security
Office of Inspector General*

Executive Summary

In October 2008, the United States Coast Guard requested that we assess the validity of a former Administrative Law Judge's allegations of bias and misconduct in the Coast Guard's Administrative Law Judge program, particularly in connection with the adjudication of cases involving the suspension and revocation of merchant mariner credentials. In January 2009, we initiated a review to determine whether the Chief Administrative Law Judge directed subordinate Administrative Law Judges to rule in favor of the Coast Guard and whether the Chief Administrative Law Judge's senior staff engaged in an improper, *ex parte* meeting with Coast Guard attorneys and investigating officers. Our report, *Allegations of Misconduct within the Coast Guard's Administrative Law Judge Program* (OIG-10-108), addressed the merits of the allegations. It did not contain any recommendations.

While assessing the allegations, we reviewed the Administrative Law Judge program and the Coast Guard's suspension and revocation administrative proceedings, and noted programmatic issues not directly related to the allegations that warranted management's attention. The Administrative Law Judge program needs to review and update certain policies and procedures regarding the training, investigation, and discipline of Administrative Law Judges. The Coast Guard should also train and provide adequate legal support to its investigating officers. Commandant Decisions on Appeal need to be issued more timely and be more accessible to the public. Finally, the Coast Guard should establish guidelines governing interaction between staff handling prosecutorial and adjudicative functions. We are making 11 recommendations to address these issues and to improve the effectiveness, integrity, and efficiency of both the ALJ program and suspension and revocation administrative proceedings. In its response to our draft report, the Coast Guard concurred with each recommendation.

Background

The Coast Guard's Administrative Law Judge (ALJ) program is governed by the *Administrative Procedure Act* (APA) (5 U.S.C. § 551 et seq.) and Coast Guard regulations. Typically, Coast Guard administrative proceedings focus on suspension and revocation (S&R) of merchant mariner credentials (46 U.S.C. Chapter 77); and assessment of class II civil penalties in accordance with provisions of the *Federal Water Pollution Control Act* (33 U.S.C. § 1321(b)(6)) and the *Comprehensive Environmental Response, Compensation and Liability Act* (42 U.S.C. § 9609(b)).¹ The purpose of the program is to provide a low-cost and timely method of helping to maintain safety in maritime operations. In general, the Coast Guard's administrative proceedings are intended to be more informal, less expensive, and faster than regular court proceedings, while still providing fundamental due process to respondents. Accordingly, S&R proceedings are designed so that neither the Coast Guard nor the respondent needs legal representation to resolve the matters in dispute. Historically, S&R and class II civil penalty hearings represent only a very small portion of the Coast Guard's mission-related activities.

Pursuant to the APA and Coast Guard regulations, the Chief ALJ assigns other ALJs to preside over administrative proceedings.² An ALJ must be an impartial finder of fact, free from the influence of the Coast Guard or any other person when hearing and deciding Coast Guard cases.³ Further, the respondent must be given notice of the charges against him or her and the opportunity to rebut those charges in a hearing before an impartial ALJ. When the administrative proceeding is concluded and the ALJ renders a decision, that decision becomes the decision of the agency unless the decision is appealed.⁴ Either the respondent or Coast Guard investigating officers may appeal the ALJ's decision by filing a notice of appeal with the ALJ program's docketing center within 30 days of the issuance of the decision, and subsequently filing an appellate brief with the Coast Guard's Commandant within 60 days of the issuance of the decision.⁵

The Coast Guard's Office of Maritime and International Law handles the appeal of an ALJ's initial decision to the Commandant.

¹ 33 C.F.R. Part 20.

² 33 C.F.R. § 20.201. *See also* 5 U.S.C. § 3105.

³ 33 C.F.R. § 20.206.

⁴ 5 U.S.C. § 557(b).

⁵ 33 C.F.R. §§ 20.1001 and 20.1003.

It reviews the record of the proceedings along with the appellate briefs and drafts the Commandant's Decision on Appeal (CDOA) for review and signature by the Vice Commandant, who issues the decisions on the Commandant's behalf. If an ALJ's decision has not been appealed, the Commandant may still review it on his own initiative if there is a finding that the charge was proved.⁶ A respondent who disagrees with the Commandant's decision may appeal the decision to the National Transportation Safety Board (NTSB).⁷ An appeal from the NTSB can be made to an appropriate federal court of appeal.⁸

The ALJ program, which is funded by but operates independently of the Coast Guard, has had three Chief ALJs since its inception in 1948. The Chief ALJ has offices at Coast Guard headquarters in Washington, DC, and at the program's docketing center in Baltimore, MD. The program operates field offices in Alameda, CA; Houston, TX; New Orleans, LA; New York, NY; Houston, TX; and Seattle, WA. One ALJ is assigned to Baltimore. The Director of Judicial Administration, also staffed at Coast Guard headquarters, serves as attorney advisor to the Chief ALJ and has broad management responsibility for the ALJ program.

Day-to-day management of the ALJ program occurs at the docketing center. The docketing center, created in 1997, is staffed by a senior attorney, attorney advisors, paralegal specialists, and administrative assistants. Paralegal specialists manage the case docket and all filings associated with Coast Guard administrative proceedings. In addition, the staff helps parties file documents, maintains a system for tracking and monitoring the status of outgoing and archived files, issues ALJ assignments and notices on behalf of the Chief ALJ, and answers inquiries from parties and the public. The attorney advisors provide legal support and advice to ALJs upon request that have questions about rules, regulations, legal, and policy issues. The docketing center provides an initial orientation for ALJs; it does not provide any formal training for new ALJs. The docketing center assists the Chief ALJ and Director of Judicial Administration in carrying out periodic ALJ conferences that may include legal and procedural updates. Since 1999, the docketing center has assigned uncontested cases to ALJs on a rotational basis. Contested cases are generally assigned based on the location where the Coast Guard filed the complaint, i.e., whether a case is filed within an ALJ's area of geographic

⁶ 46 C.F.R. § 5.801.

⁷ 46 C.F.R. § 5.713; 49 C.F.R. Part 825; 49 U.S.C. § 1133(3).

⁸ 49 U.S.C. § 1153

responsibility. The docketing center also considers other factors in the case assignment process, such as whether the ALJ who would normally be assigned the matter has a particularly heavy workload or is scheduled for leave.

The Coast Guard's Office of Investigations and Analysis is charged with, among other things, policing the Nation's waterways and helping to ensure safety at sea. Local investigating officers, who are generally not attorneys, represent the Coast Guard in S&R proceedings. Investigating officers are often responsible for investigating the charges against a mariner, drafting and filing the resulting complaint, and then prosecuting the matter before the assigned ALJ.⁹ Typically, investigating officers have no prior legal background and serve for only a few years before being rotated into a new position. Investigating officers have access to regional Coast Guard attorneys to assist them in the S&R proceedings when necessary, but as a practical matter, investigating officers rarely interact with the Coast Guard's attorneys. Thus, the Coast Guard often is not represented by attorneys in contested administrative hearings.

Results of Review

Our report, *Allegations of Misconduct Within the Coast Guard's Administrative Law Judge Program* (OIG-10-108), addressed the merits of several allegations by a former Coast Guard ALJ. While conducting our review, we identified certain actions the Coast Guard can take to improve the efficiency and effectiveness of its S&R proceedings, both at the initial hearing level and when on appeal. Specifically, both the ALJ program and the Office of Maritime and International Law, which handles appeals to the Commandant, need to update and formalize procedures and policies to increase transparency and to avoid the appearance of impropriety. In addition, the Coast Guard should improve its training of its investigating officers. Finally, the Coast Guard must take steps to isolate staff handling prosecutorial functions from staff handling adjudicative functions for administrative proceedings. We are making 11 recommendations to improve the efficiency and effectiveness of the Coast Guard's administrative proceedings.

⁹ "Prosecuting" an S&R proceeding is an administrative process, not a criminal process.

The ALJ Program Needs to Review and Update Certain Policies and Procedures

In the past few decades, the Coast Guard's ALJ program has grown from a very small network of ALJs and support staff to a larger program that hears cases with an increasing level of complexity on behalf of multiple agencies. The program has also experienced turnover owing to the retirement of many more experienced ALJs. As a result, the Coast Guard should re-evaluate how it administers the program. Specifically, the program needs to review, update, and, if necessary, formalize its current policies and procedures, including but not limited to (1) developing a formal training program for ALJs; (2) developing formal procedures for investigating allegations of misconduct against an ALJ; (3) developing written guidance for the Chief ALJ to use when disciplining an ALJ; and (4) clarifying the extent of the Chief ALJ's authority to issue policy guidance to subordinate ALJs and the means by which the Chief ALJ may do so.

Training Program for Administrative Law Judges

ALJ program officials maintain that because the Coast Guard hires only experienced ALJs, there is no need to conduct formal training for ALJs new to its S&R system. The officials believe that the laws and regulations governing S&R procedures are straightforward and easy to understand, and an experienced ALJ should already possess the skills to interpret the laws and to preside over an S&R hearing. Consequently, the ALJ program does not have a formal training program. It provides training in an ad hoc, informal manner upon request.

However, S&R hearings are usually adversarial and neither party is usually represented by counsel. Over the past few years, the Coast Guard has employed some ALJs who had no prior maritime law experience or who were not familiar with the format of S&R hearings. Most Coast Guard ALJs were hired from the Social Security Administration's ALJ program, where the proceedings are rarely adversarial.

Most of the ALJs believe that formal training is not necessary. In addition, many experienced Coast Guard ALJs assert that because both the Coast Guard and the respondent often proceed without legal representation, the ALJ program expects that a Coast Guard ALJ has a heightened responsibility to develop the record and help the parties to the proceeding understand the law. This expectation according to the ABA Model Code of Judicial Conduct

(Model Code) which the ALJ program requires its ALJs to follow. The Model Code allows judges to make “reasonable accommodations” to ensure that unrepresented litigants are fairly heard.¹⁰ During the informal orientation of new Coast Guard ALJs, the Chief ALJ’s senior staff explains that an ALJ must compensate for the fact that the parties in an S&R proceeding are not required to have legal representation and, therefore, might not be able to present their case effectively. Coast Guard ALJs explained that they ask the parties questions to help develop the record, but they must not become an advocate for either party. However, the ALJ program does not provide the ALJs with any guidance regarding the extent to which they are expected to assist the parties in establishing facts on the record or in identifying the relevant law.

The ALJ program would benefit from a formal training curriculum that provides instruction for new Coast Guard ALJs on the basics of maritime law, the purpose and format of S&R hearings, and the context of the hearings within the overall operation of the agency. In addition, to the extent that Coast Guard ALJs are expected to assist unrepresented parties, they should receive written guidance on the best way to provide this assistance in an unbiased and impartial manner.

Investigating Allegations of Misconduct

The Chief ALJ is tasked with investigating allegations of misconduct levied against ALJs and, although they are rare, the ALJ program does not have guidance to assist the Chief ALJ in performing an investigation. As a result, the Chief ALJ has conducted investigations of ALJs in an informal, ad hoc manner. In one investigation of an ALJ, the Chief ALJ delegated responsibility for assessing the initial complaints against the ALJ to senior staff. After an initial meeting to discuss the complaints, the Chief ALJ sent members of his senior staff to meet with the complainants, gather information about the complaints, and report their findings back to him. Subsequently, and without informing the Chief ALJ, a senior staff member who attended this meeting informally discussed the contents of the meeting with the ALJ under investigation. This could have jeopardized the investigation. Furthermore, the absence of formal guidance with respect to the investigation could have caused the ALJ program staff to dismiss the complaints against this ALJ without ascertaining their validity. The creation of formal guidelines or an investigating framework

¹⁰ Rule 2.2, Comment 4, American Bar Association Model Code of Judicial Conduct (2007).

would enable the Chief ALJ to: (1) provide the ALJs under investigation with an opportunity to address the allegations lodged against them where appropriate; (2) maintain an accurate record of the fact-finding and decision-making for potential use in a disciplinary action; or (3) ensure that any and all allegations of misconduct are handled consistently and in accordance with an accepted set of guidelines. Moreover, formal guidance can provide advance notice to personnel about the Chief ALJ's authority to investigate allegations against an ALJ and discipline the ALJ accordingly.

Disciplining an Administrative Law Judge

When the Chief ALJ determines that an ALJ has engaged in misconduct, the Chief ALJ has considerable discretion. He may choose to file a complaint against an ALJ before the Merit Systems Protection Board (MSPB) or he may choose not to initiate a formal disciplinary action against the ALJ and handle the matter informally. However, the ALJ program does not have any formal guidance applicable to this decision making process. A formal policy should address the rights and responsibilities of the Chief ALJ in this context and the options available to him.

For example, one former Coast Guard ALJ had significant performance and misconduct-related issues during that ALJ's tenure. However, this ALJ was only reprimanded informally. The Chief ALJ could have filed a complaint against the ALJ to the MSPB or formally documented some of the allegations of misconduct against this ALJ. Guidelines would have helped the Chief ALJ in the exercise of his discretion in this manner. The ALJ program should develop guidelines for how one files a complaint against an ALJ, and for what purposes, and for the Chief ALJ to follow when deciding whether and how to investigate complaints against an ALJ or take formal disciplinary action against an ALJ. These guidelines should enable the Chief ALJ to determine the propriety of an MSPB or other personnel-related disciplinary action. Such policies and procedures can make the factors that the Chief ALJ considers in his decision-making process more transparent.

Authority of the Chief ALJ in Issuing Policy Guidance to the ALJs

Pursuant to Coast Guard regulations and the Chief ALJ's job description, the Chief ALJ has the authority to issue policy guidance to the other Coast Guard ALJs. Specifically, the Chief

ALJ has the authority to ensure “general compliance of subordinate ALJs’ decisions with agency rules and procedures,” to ensure that the penalties that ALJs impose are generally consistent and to develop and implement “policies and other guidance which has usage throughout the agency-wide ALJ program.”¹¹ In addition, the Chief ALJ is tasked with training new and incumbent ALJs,¹² reviewing the ALJs’ decisions to ensure that they comply with applicable law, and generally ensuring that the ALJs are performing their duties competently.¹³

A former ALJ expressed concerns about how the Chief ALJ can and should implement guidance and to what extent Coast Guard ALJs are bound to follow such guidance. In the past, Chief ALJs issued guidance through ALJ Internal Procedures and Practices (ALJIPP). Judges were, and still are, required to follow all guidance issued in an ALJIPP. However, the ALJ program has not updated ALJIPPs on a regular basis, as the ALJIPPs have not been revised for years. Today, ALJ program personnel and several ALJs consider many ALJIPPs to be either obsolete or irrelevant. The current Chief ALJ distributes policy guidance primarily through policy memorandums rather than through ALJIPPs. He also sends other guidance to the ALJs in the form of memoranda that are not binding, such as legal updates and other information useful to ALJs. As a result, personnel must distinguish whether memorandums are either directive or instructive in nature. Failure to make the correct distinctions may result in an ALJ confusing non-binding guidance with binding policy.

The ALJ program should create a single source of definitive policy guidance by reviewing its ALJIPPs and policy memorandums and consolidating all that are still relevant and current into a manual for ALJs. The ALJ program should clarify which ALJIPPs and policy memoranda are out of date and should no longer be used. The ALJ program should also state to what extent ALJs are required to follow each ALJIPP or policy memorandum. Additionally, to the extent practicable, the ALJ program should publish its policies on its website to make the S&R process more transparent to the public. Going forward, the ALJ program should develop a process for distributing future policy guidance to ALJs that includes a designated format for the guidance and a clear explanation of whether and to what extent it binds the ALJs.

¹¹ Chief ALJ Job Description.

¹² 46 C.F.R. § 1.01-20(c)(3).

¹³ See 46 C.F.R. § 1.01-20(c)(4).

Recommendations

We recommend that the Chief Administrative Law Judge:

Recommendation 1: Evaluate current procedures for training ALJs and create a formal training program.

Recommendation 2: Develop formal written procedures for investigating allegations of misconduct against an ALJ.

Recommendation 3: Create formal guidelines for the Chief ALJ to follow when deciding how or whether to discipline an ALJ.

Recommendation 4: Revoke any obsolete policy guidance and consolidate current policy guidance into a manual.

Recommendation 5: Develop a standard format for the issuance of policy guidance that establishes to what extent an ALJ is required to follow the guidance.

Management Comments and OIG Analysis

USCG's Comments to Recommendation 1:

The Coast Guard concurred with the recommendation. The Coast Guard acknowledged that many of these areas of law are complex and very specialized and many attorneys, even maritime attorneys, may not have had much exposure to the intricacies of the law and regulations. Currently, a copy of the ALJ Process Guide is provided to all ALJs and is posted on the website, Homeport.uscg.mil. The ALJ Program will create training aids and checklists that are consistent with Coast Guard statutes, regulations, Commandant Decisions on Appeal, and the Administrative Procedures Act, all of which will supplement the existing ALJ Process Guide.

The curriculum will include general legal issues arising in administrative law practice and maritime law as enforced by the Coast Guard. Specifically, this includes vessel manning requirements, issuance of merchant mariner credentials, vessel operating requirements, drug and alcohol testing and fundamental navigation rules. The Coast Guard estimates completing new training aids and checklists by the end of 2010.

OIG Analysis:

We concur with Coast Guard's response. Although our recommendation is fairly broad, our results of review included two paragraphs dealing with unrepresented parties. While the Coast Guard addressed the matter of an ALJ's maritime law experience, it did not address expectations of an ALJ with respect to unrepresented parties. The curriculum should include these matters.

This recommendation is Resolved – Open.

USCG's Comments to Recommendation 2:

The Coast Guard concurred with the recommendation. The ALJ program will create formal written guidance for the Chief ALJ to follow when investigating an ALJ. The ALJ Program published procedures for filing a complaint against an ALJ on Homeport (homeport.uscg.mil) and follows the Coast Guard's Administrative Investigations Manual. The Coast Guard will consider both when implementing this recommendation. The Coast Guard estimates completing new written procedures by Spring 2011.

OIG Analysis:

We concur with the Coast Guard's response. Currently, the homeport website includes a mailing address for complaints, but does not explain the procedures the Coast Guard uses to investigate those complaints. The Coast Guard responded that it will consider its service-wide investigations manual as it creates formal written guidance to address this recommendation. The investigation manual is a comprehensive guide for administrative and formal investigations that should provide a suitable foundation for ALJ-specific procedures.

This recommendation is Resolved – Open.

USCG's Comments to Recommendation 3:

The Coast Guard concurred with the recommendation. It pointed out that other than a minor reprimand or minimal suspension, the Chief ALJ does not directly discipline an ALJ, but can only

recommend a sanction to the MSPB. The degree of discipline (suspension or termination) is a matter for MSPB to decide. The Coast Guard's formal guidelines will address "whether" an ALJ should be disciplined. The Coast Guard estimates completing the guidelines by Spring 2011.

OIG Analysis:

We concur with the Coast Guard's response. In its response, the Coast Guard explained how the Chief ALJ has limited authority to discipline and how he can only recommend a sanction to the MSPB. Nevertheless, the Coast Guard also explained how it can issue a minor reprimand or minimal suspension. We do not assert that the Chief ALJ or Coast Guard can take action that is within the authority of the MSPB. Instead, the Coast Guard should describe the process and options available to the Chief ALJ when a series of facts may lead to action against an ALJ. A minor reprimand or suspension do not require MSPB action, but are still forms of discipline and should be included in the guidelines. The process could identify certain benchmarks or decision points during or at the conclusion of an investigation. Those decisions could include a minor reprimand, referral to the MSPB, or closure of the investigation in appropriate circumstances.

This recommendation is Resolved – Open.

USCG's Comments to Recommendation 4:

The Coast Guard concurred with the recommendation. The Coast Guard commented that the ALJ program initiated this task in 2008 and it is partially complete. It cancelled the majority of obsolete policy documents and guidelines in 2009. It will update, consolidate, cancel, revoke or replace remaining policy documents using the new method proposed for issuing new policy guidance. The Coast Guard estimates completing this task by the end of 2010.

OIG Analysis:

We concur with the Coast Guard's response. In its action plan, the Coast Guard should update the OIG on its progress in updating policies.

This recommendation is Resolved – Open.

USCG's Comments to Recommendation 5:

The Coast Guard concurred with the recommendation. It commented that the ALJ program is already in the process of developing a standard format for issuing of policy guidance to the ALJ s and staff that is consistent with OMB Guidance Policy. The Coast Guard estimates it will implement this recommendation by the end of 2010.

OIG Analysis:

We concur with the Coast Guard’s response. In its response, the Coast Guard did not distinguish between mandatory policy and “guidance” but should make this distinction. For example, the ALJ Program could define mandatory guidance/policy as matters involving judicial administration, management, personal conduct, and ethics. Each of these subjects may be within the Chief ALJ’s discretion. It could distinguish such mandatory guidance or policy from memoranda that provide legal updates and developments or procedural guides which summarize the law. Most important: when guidance from the Chief ALJ is never truly binding, and only guidance by the Commandant is, then the Coast Guard should make that fact clear.

This recommendation is Resolved – Open.

The S&R Program Needs to Improve Training and Provide Consistent and Effective Legal Support to Investigating Officers

In addition to executing the Coast Guard’s mission of policing the Nation’s waterways, some Coast Guard officers perform the temporary duty of investigating officers. Investigating officers draft and file complaints against mariners and represent the Coast Guard in S&R proceedings. Most investigating officers are not attorneys and may not receive sufficient formal training to navigate more complex regulations and proceedings adequately. Further, the investigating officers may not have sufficient legal support in situations where it would be useful or necessary, such as in complex cases or in cases wherein the respondent is represented by counsel. Moreover, because the investigating officers are rotated out of their positions after only a few years, very few have either the opportunity or the incentive to gain a high level of expertise in prosecuting S&R cases.

In 2008, the Coast Guard established the Suspension and Revocation National Center of Expertise to alleviate some of these problems by,

among other methods, providing investigating officers with training and legal support. Given the scope of our review, we did not examine whether the Center has sufficient resources to meet the investigating officers' needs. Moreover, several investigating officers told us that they were unaware of the resources available to them from the Center.

Investigating Officers Need More Training in Their Prosecutorial Role

The initial orientation and formal training for investigating officers consists of an approximately 3-week course that not all investigating officers complete before they begin representing the Coast Guard in S&R proceedings. An investigating officer told us that it was common for new investigating officers to begin handling S&R matters before they attended the formal orientation and training program. As a result, the Coast Guard relies on on-the-job training to prepare some investigating officers. The content and quality of this training varies from district to district, which could cause the Coast Guard's S&R program to be enforced inconsistently. In addition, there are few advanced training courses in S&R litigation skills for senior or more experienced investigating officers seeking to refine or refresh their skills.

Investigating Officers Should Have Access to Additional Legal Support

Most investigating officers are not licensed attorneys and thus cannot be expected to handle all legal issues that arise. Even with sufficient training in S&R proceedings, investigating officers may not be able to represent the Coast Guard at S&R hearings effectively, enter evidence into the record competently, and argue points of law correctly or persuasively in every case. For the purposes of its marine safety operations, the Coast Guard divides the country into nine geographic districts. These districts are further divided into sectors, which are further divided into smaller geographic areas under the jurisdiction of marine safety units. S&R matters are prosecuted by the investigating officers at the marine safety units. However, legal support for these matters is only available at the district level. While investigating officers have access to the Coast Guard's attorneys, these attorneys are often too far removed from the investigating officers, both geographically and in the Coast Guard hierarchy. Thus, the investigating officers may not always seek attorney assistance, either because they are not aware of when to ask for legal support or because they do not feel comfortable seeking assistance outside of their chain of command. In addition, S&R proceedings

represent a small percentage of the Coast Guard attorneys' responsibilities, both on the district level and in headquarters. Therefore, attorneys may not always be able to give investigating officers the assistance they need, particularly in cases involving complex factual or legal issues or in which the mariner is represented by counsel.

Although the Center is designed, in part, to provide additional legal support to the investigating officers, the officers told us they were not aware of the resources available to them through the Center. The Coast Guard should make better use of the Center to provide investigating officers additional legal support. With sufficient available staff, the Center could help ensure that investigating officers interpret Coast Guard law and policy and implement the S&R program consistently throughout the Nation. It could also help meet some of the investigating officers' training needs. The Center could generate training materials, such as manuals and courses, to ensure that investigating officers nationwide have access to uniform and consistent guidance and legal advice.

The Coast Guard's sectors and marine safety units should encourage investigating officers to interact with the Center as needed, and the Center should initiate communication with the senior investigating officers in each district to assess the legal needs of the investigating officers. It should work to meet those needs and increase its staff as necessary to provide effective support.

The Coast Guard rotates investigating officers out of the S&R program every few years, just as they are gaining the expertise to represent the Coast Guard effectively at S&R hearings. Although we have not fully studied the effect of the loss of qualified investigating officers on S&R proceedings, this issue warrants attention.

Recommendations

We recommend that the Commandant instruct the Office of Investigations and Analysis to:

Recommendation 6: Administer a formal orientation and training course that investigating officers complete before handling S&R cases.

Recommendation 7: Make available or require, if necessary, ongoing or advanced skills training for investigating officers who seek or need to improve their prosecutorial skills.

Recommendation 8: Promote the use of the Center of Expertise to ensure that investigating officers have access to training and legal support.

Management Comments and OIG Analysis

USCG's Comments to Recommendation 6:

The Coast Guard concurred with the recommendation. It plans to modify its policy to ensure investigating officers that present cases before an ALJ have completed the S&R Hearing Personnel Qualification Standard (which requires attendance of the existing S&R course), or are directly assisted by an investigating officer with such qualification who is sitting second chair at the S&R hearing.

OIG Analysis:

We concur with the Coast Guard's response. In its action plan, the Coast Guard should update the OIG on the implementation of this policy.

This recommendation is Resolved – Open.

USCG's Comments to Recommendation 7:

The Coast Guard concurred with the recommendation. The Office of Investigations & Casualty Analysis will work with the S&R National Center of Excellence to assess needs of the program. The Coast Guard expects to complete this assessment in 24 months. The Marine Investigations program is in the last year of a multi-year effort to add civilian and military billets to ensure that there are enough investigating officers in the field to handle the workload. Until this is complete, the Coast Guard is focusing on providing basic training to the officers. The S&R National Center of Excellence is almost fully operational and will provide the specialized expertise for complex cases.

OIG Analysis:

We concur with the Coast Guard's response. In its action plan and subsequent updates, the Coast Guard should keep the OIG apprised of the status of its assessment of the Marine Investigations program.

This recommendation is Resolved – Open.

USCG's Comments to Recommendation 8:

The Coast Guard concurred with the recommendation. It noted that the Center is now fully functioning and assisting investigating officers with S&R proceedings. The staff is well-versed in the laws, regulations and Coast Guard policy which govern the S&R process and administrative hearing proceedings. More importantly, they are a dedicated resource to assist Investigating Officers with the S&R process and administrative hearing procedures. There are currently four members on staff at the Center, including one attorney and they are in the process of bringing on three additional staff (to include an additional attorney). To ensure investigating officers are aware of this resource, the Office of Investigations & Analysis has published multiple announcements regarding the availability and functions of the Center. Center staff present briefings at all investigating officer, S&R and Sector Department Head courses located at the Coast Guard Training Center Yorktown, VA. The staff also provides instruction to investigating officers on the S&R process and hearing procedures during all S&R courses.

OIG Analysis:

We concur with the Coast Guard's response.

This recommendation is Resolved – Closed.

The Coast Guard Needs to Issue Commandant Decisions on Appeal in a Timely Manner and Make the Decisions More Accessible to the Public

Through CDOAs, the Commandant exercises adjudicative and policy-making authority and creates binding precedent for ALJs to follow when deciding S&R cases. Because of the important role that CDOAs play in S&R proceedings, the Coast Guard needs to issue the decisions in a timely

and accessible manner, such that parties who are not represented by counsel can locate Coast Guard case law easily.

The Coast Guard Needs to Issue Commandant Decisions on Appeal in a Timely Manner

The Commandant exercises considerable adjudicative and policy-making authority with respect to S&R proceedings through CDOAs. Therefore, it is imperative that the Commandant issue these decisions in a timely manner. The timely issuance of CDOAs may prevent an ALJ from repeatedly issuing erroneous decisions based on a single misunderstanding of Coast Guard law and regulations. Timely issuance of CDOAs could ensure that mariners receive consistent interpretations of maritime regulations across all Coast Guard districts, the judicious resolution of disputes affecting their livelihood, and due process under the law.

The Commandant has taken up to three years to issue appeals decisions, a fact that could have led to at least one ALJ making the same errors of law repeatedly. Coast Guard officials cited several reasons for the delays, including increased demands on the Coast Guard since September 11, 2001, recent lawsuits affecting the ALJ program and the Office of Maritime and International Law, and other, more pressing matters that often consume the time of the attorneys who handle Coast Guard appeals. The S&R program represents only a small percentage of the Coast Guard's mission-related activities and, accordingly, only a small part of the duties of the attorneys in the Office of Maritime and International Law and the Office of the Judge Advocate General.

The timeliness of the S&R appeals process and CDOAs will not improve without either making them a higher priority or dedicating additional resources to prevent recurring backlogs.

Commandant Decisions on Appeal Should Be Readily Accessible to the Public

Although the Coast Guard's S&R proceedings are designed such that the parties do not need the assistance of counsel, as a practical matter, unrepresented mariners cannot easily access CDOAs, which are binding Coast Guard case law. Given the increasing complexity of S&R proceedings and the fact that mariner's livelihoods are at stake, CDOAs should be readily accessible to the public.

The CDOAs are accessible through Westlaw, an online legal research service used primarily by attorneys and legal practitioners, and through the Coast Guard's website, "Homeport."¹⁴ The Coast Guard publishes both ALJ decisions and CDOAs on its website. However, the decisions are organized only by the year of issuance and identified by the respondent's last name or an assigned number. As a result, to find relevant legal precedent, a respondent must already know the date the decision was issued, its case name, and—because it is not provided on the Coast Guard's website—the subject matter of the opinion. The Coast Guard's website does not allow users to search all decisions by topic, keyword, or phrase. The website is ineffectual as a means for providing access to Coast Guard decisions to unrepresented mariners. The Coast Guard should create a publicly available database of ALJ decisions and CDOAs that is organized or searchable by topic or keywords.

Recommendations

We recommend that the Commandant:

Recommendation 9: Take steps to decrease the length of time required to issue CDOAs.

Recommendation 10: Create a database of CDOAs and ALJ decisions in which the public can use a topic or key word to locate relevant Coast Guard precedent.

Management Comments and OIG Analysis

USCG's Comments to Recommendation 9:

The Coast Guard concurred with the recommendation. The Coast Guard noted that in 2007 it had a backlog of 20 cases which took an average of 28 months to resolve. Presently, the Coast Guard has 9 cases, with an average resolution of 16 months. The Coast Guard is working to reduce its inventory and the time required to resolve cases. With the exception of extremely complex and unusual cases, its goal is to process every appeal in 6 months or less.

OIG Analysis:

¹⁴ <http://homeport.uscg.mil/>.

We acknowledge the Coast Guard's progress in reducing the backlog of cases and the time to resolve them. The Coast Guard endeavors to process cases in 6 months—a reasonable goal—but it did not describe in its response what specific steps it has taken or plans to take to decrease the length of time required to issue CDOAs. In its action plan, the Coast Guard should describe how it is working to improve the processing of CDOAs.

This recommendation is Resolved – Open.

USCG's Comments to Recommendation 10:

The Coast Guard concurred with the recommendation. The Coast Guard continues to explore additional methods to provide the public more meaningful access to CDOA and ALJ decisions, subject to the availability of resources. Currently, the Coast Guard is actively exploring resources and computer technology that is available or required to implement the functionality of key word or topic search of CDOAs and ALJ decisions. Given the multi-faceted legal review process coupled with the complexity of computer technology options available, the Coast Guard expects to implement this recommendation in 24 months (June 2012).

OIG Analysis:

We concur with the Coast Guard's response. In its action plan and subsequent updates, the Coast Guard should keep the OIG apprised of its progress in developing the database with this search capability.

This recommendation is Resolved – Open.

The Coast Guard Needs to Develop Formal Protocols to Prevent Improper Contacts Among Personnel in the ALJ Program, the Office of Maritime and International Law, and the Office of Investigations and Analysis

The APA prohibits certain contacts between agency employees who perform adjudicative functions, such as ALJs, and those who perform either investigating or prosecutorial functions, such as investigating officers. Specifically, “an employee or agent engaged in the performance of investigative or prosecuting functions for an agency in a case may not, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review, except as witness or counsel in public proceedings.”¹⁵

With regard to its S&R proceedings, the Coast Guard has no formal rules or procedures governing interaction between staff responsible for adjudicative functions i.e., the ALJ program and the appellate staff in the Coast Guard’s Office of Maritime and International Law i.e., and staff responsible for investigating and prosecutorial functions (the Office of Investigations and Analysis). Nor does the Coast Guard have any formal rules concerning contact between the ALJ program and the appellate staff at the Office of Maritime and International Law. As a result, the Coast Guard has no policies to ensure that no improper contacts, i.e., contacts that either violate the APA or create an appearance of impropriety within its S&R adjudication process, take place among personnel in the ALJ program, the Office of Maritime and International Law, and the Office of Investigations and Analysis. Although we are unaware of any intentional improper contact between members of these offices, the absence of formal rules might lead to unintentional improper contacts and allow appearances of impropriety even where none exists.

For example, on February 24, 2005, a meeting was held in New Orleans to hear allegations by local investigating officers that an ALJ was engaging in judicial misconduct. In attendance were members of the Chief ALJ’s senior staff, who were charged with investigating the allegations; members of the Office of Investigations and Analysis, including local Coast Guard attorneys and investigating officers, who had cases pending before the ALJ; and an appellate attorney from the Office of Maritime and International Law, who was there, among other reasons, to act as a subject matter expert on S&R rules and procedures. Although the participants agreed not to talk about pending cases by name and to focus merely on the issues, as a practical matter, they knew that they were talking about a particular ALJ and a limited number of cases. The appellate attorney

¹⁵ 5 U.S.C. § 554(d).

might have been able to identify a particular case in the future, had it reached the Office of Maritime and International Law on appeal.

In addition, one of the members of the Chief ALJ's senior staff reported to the ALJ who was the subject of the misconduct allegations about the matters discussed at the meeting. This conversation between the senior staff member and the ALJ caused the ALJ to believe that the investigating officers (1) discussed issues in the ALJ's pending cases and (2) were seeking to have the ALJ disciplined because of her rulings in those cases. Formal procedures governing interaction between the Chief ALJ, the Office of Investigations and Analysis, and the Office of Maritime and International Law likely would have prevented this inadvertent improper contact and would have given the ALJ guidance to assess the propriety of any such contact.

In addition, the Office of Maritime and International Law did not have any formal procedures or rules that would have prevented the appellate attorney from attending the meeting—at which the Office of Investigations and Analysis complained about the ALJ's rulings and conduct, but not the merits or names of cases—and from further participating in the appeals of the ALJ's decisions. The attorney's further participation in this ALJ's decisions on appeal was problematic. The Coast Guard asserts that because each CDOA underwent multiple levels of review after the attorney's initial involvement in drafting the decisions, her attendance at the meeting had no effect on the outcome of the CDOAs. The attorney stated that she did not recognize the matters discussed when they appeared before her on appeal, because only general issues were discussed at the meeting and no specific cases were identified. Although there was no evidence that the appellate attorney's attendance at the meeting changed the outcome of the CDOAs with respect to any respondent, the attorney's participation in drafting the CDOAs, at a minimum, created an appearance of impropriety.

Although not improper, Office of Maritime and International Law also has provided training to the Office of Investigations and Analysis. Specifically, the appellate attorney who attended the February 24, 2005 meeting also provided training on S&R procedures to the investigating officers as part of a class taught at the Coast Guard Training Center in Yorktown, VA. The Coast Guard has since stopped the practice of allowing Office of Maritime and International Law attorneys who work on CDOAs to train investigating officers at Yorktown.

However, the Office of Maritime and International Law staff's dual role as experts who provide legal advice to various Coast Guard components and appellate attorneys who draft opinions for the Commandant is such that an improper contact could occur. For example, without clear guidance to the

contrary, an employee who serves in an investigating or prosecutorial function could solicit advice from an Office of Maritime and International Law attorney who might eventually be involved on the same matter in an adjudicative function. Although CDOAs are a means for the Commandant to issue policy and, as such, the Coast Guard may need to involve its policy experts in drafting CDOAs, formal rules are needed to prevent Office of Maritime and International Law attorneys who serve in this dual function from engaging in improper contacts with the Coast Guard's investigating and prosecutorial staff.

The ALJ program, the Office of Maritime and International Law, and the Office of Investigations and Analysis should create formal procedures that govern their staff's interaction with each other with regard to pending matters or matters that are likely to be appealed. The procedures should address (1) the permissibility of a member of one office providing training to another office and (2) the ability of staff in the Office of Investigations and Analysis to have contact with either the ALJ program or the appellate attorneys at the Office of Maritime and International Law relating to matters pending or likely to be pending before either an ALJ or the Commandant, respectively.

In May 2008, in response to a lawsuit in federal district court alleging that *ex parte* contacts took place in conjunction with the February 24, 2005, meeting, the Office of Maritime and International Law created and implemented "Business Rules for Coast Guard Suspension and Revocation and Civil Penalty Appeal Programs." The goal of the rules is "to maximize the ability of appeal opinion drafters and decision makers to remain as impartial as possible while ensuring Coast Guard program offices are able to seek and receive timely, comprehensive and pertinent legal advice."

We concur with both the intent and content of the rules. Had they been in existence earlier, many of the allegations of the former ALJ would have been mitigated. These or related rules should be implemented through established Coast Guard procedures to cover all offices involved in the adjudication and prosecution of S&R matters and distributed to all relevant staff, including but not limited to employees in the Judge Advocate General's Office, the Office of Maritime and International Law, the ALJ program, and the Office of Investigation and Analysis. The establishment, expansion, and dissemination of the rules would facilitate better understanding among the various components of the S&R program and provide clear guidance on permitted contacts and interactions.

Recommendations

We recommend that the Commandant:

Recommendation 11: Develop formal procedures governing interaction between personnel in the ALJ program, the Judge Advocate General's Office, and the Office of Investigations and Analysis. The procedures should address (1) training provided by one office to another office; (2) the ability of investigators, attorneys, and staff involved in the investigation and prosecution of S&R matters to contact the ALJ program and the Office of Maritime and International Law; and (3) the ability of the ALJ Program and the Judge Advocate General's Office to communicate about appropriate issues of concern to each office.

Management Comments and OIG Analysis

USCG's Comments to Recommendation 11:

The Coast Guard concurred with the recommendation. In its response, the Coast Guard stated it believes that the Office of Maritime and International Law's business rules put in place in May 2008 address much of this concern and will prevent situations that would create any appearance of impropriety. However, the Coast Guard intends to pursue transferring the function of drafting CDOAs from the Office of Maritime and International Law to another, neutral office with little or no responsibilities in advising the S & R program. We expect this transfer of responsibility to occur within 12 months.

OIG Analysis:

We support the Coast Guard's plans to transfer the responsibility of drafting CDOAs from the Office of Maritime and International Law. However, we do not concur that the Business Rules, as constituted, sufficiently address our recommendation. Our recommendation seeks more formal, binding guidelines that affect the Office of Maritime and International Law, the S&R program, and the ALJ program and specifically prescribe their respective roles and their ability to share information.

The Business Rules provide a good foundation for the Office of the Judge Advocate General and, consistent with the law, they attempt

to prohibit discussions about active cases. For example, Rule 2 prohibits discussions about active cases and facts. Rule 3 prohibits covered attorneys from providing guidance to the Staff Judge Advocate, field level attorneys and program staff with regard to a specific case. Rule 5 attempts to limit contact with ALJs to avoid the appearance of impropriety.

However, the Business Rules do not apply to all offices involved in the adjudication and prosecution of S&R matters. The Business Rules state that they are “best practices” and are applicable solely to the Office of Maritime and International Law. They do not serve to address any of the three criteria we explicitly mentioned in the recommendation related to training, the ability to contact the ALJ program, and the ALJ program and the Judge Advocate General’s Office ability to communicate about appropriate issues of concern to each office.

Although everyone has an obligation to avoid impropriety and ex parte contacts, a more formal and carefully crafted policy could prevent larger problems.

This recommendation is Unresolved – Open.

Appendix A

Purpose, Scope, and Methodology

Our review of allegations by a former Coast Guard ALJ resulted in two reports. Our first report, *Allegations of Misconduct Within the Coast Guard Administrative Law Judge Program*, OIG-10-108, addressed the merits of the allegations and did not contain any recommendations. During the course of that review, we reviewed the ALJ program and the Coast Guard's S&R administrative proceedings, and noted issues not directly related to the allegations that warranted management's attention. This report makes recommendations to address those issues and improve the effectiveness, integrity, and efficiency of both the program and S&R administrative proceedings.

We evaluated the ALJ program's methods and procedures and certain aspects of how the Coast Guard prosecutes S&R matters and handles appeals to the Commandant. We reviewed many CDOAs, including all CDOAs on the former ALJ's cases. We also reviewed documents, case law, email messages, internal memoranda, and other documents. We interviewed current and former ALJs, ALJ program staff, and a number of Coast Guard personnel who were involved in the S&R administrative process. We also spoke with members of the mariner community and related legal practitioners. Those conversations and our review of documents enabled us to understand aspects of the Coast Guard's S&R administrative proceedings and supplied a context in which to make recommendations for its improvement. However, we did not conduct a full inspection of the S&R adjudication system or evaluate its overall performance.

We acknowledge that each sector is composed of unique demographics and mariner communities, and that some S&R programmatic policies and procedures affect sectors differently. Because this report grew out of our review of the former ALJ's allegations, our scope was limited. We focused much of our attention on evidence derived from Sector New Orleans and the Marine Safety Unit in Morgan City, Louisiana. Sector New Orleans processes more S&R matters than any other region. Our recommendations are intended to enhance the Coast Guard's system for adjudicating S&R matters regardless of location.

We conducted fieldwork from January 2009 to March 2010. We conducted our review under the authority of the *Inspector General Act of 1978*, as amended, and according to the *Quality Standards for Inspections* issued by the President's Council on Integrity and Efficiency.

Appendix A
Purpose, Scope, and Methodology

We appreciate the efforts by USCG management and staff who provide the information and access necessary to accomplish this review.

Appendix B
Management Comments to the Draft Report




Commandant
United States Coast Guard

2100 Second Street, S.W., Stop 7245
Washington, DC 20593-0001
Staff Symbol: CG-823
Phone: (202) 372-3533
Fax: (202) 372-2311

7501

MEMORANDUM

From: T. W. JONES, CAPT
COMDT (CG-82) 
To: Carlton I. Mann
Assistant Inspector General for Inspections

MAY 14 2010
Reply to: Audit Manager,
Attn of: Mark Kulwicki
(202) 372-3533

Subj: RESPONSE TO DHS OIG DRAFT REPORT: "RECOMMENDATIONS TO
IMPROVE THE COAST GUARD'S SYSTEM FOR ADJUDICATING SUSPENSION
AND REVOCATION MATTERS"
Ref: (a) Department of Homeland Security Inspector General (DHS OIG) Report of April 30,
2010

1. This letter transmits Coast Guard's response to the Department of Homeland Security Inspector General (DHS OIG) findings and recommendations in reference (a) and describes progress in implementing the recommendations.
2. The Coast Guard concurs with all the recommendations listed in the report.
3. If you have any questions, my point of contact is Mr. Mark Kulwicki at (202) 372-3533.

#

Enclosure: (1) USCG Comments

Appendix B Management Comments to the Draft Report

UNITED STATES COAST GUARD RESPONSE ON THE DEPARTMENT OF HOMELAND SECURITY INSPECTOR GENERAL DRAFT REPORT

TITLE: "Recommendations to Improve the Coast Guard's System for Adjudicating Suspension and Revocation Matters"

COAST GUARD'S GENERAL COMMENTS ON DHS OIG FINDINGS:

The Coast Guard concurs with all eleven recommendations to improve the effectiveness, integrity and efficiency of the Administrative Law Judge (ALJ) Program and the Suspension and Revocation (S&R) administrative proceedings. Implementation of the DHS OIG Recommendations will be a priority and we hope adoption of these recommendations further ensure public trust in the fairness of the Coast Guard S & R proceedings.

Some of the recommendations in the report were previously identified by an internal Working Group and are already in progress. Completed efforts demonstrating decisive action by the Working Group include: publishing all decision and orders issued by ALJs from 1999 to current on Homeport, publishing all ALJ guidance documents; establishing the S & R National Center of Expertise (S & R NCOE); securing alternative locations for hearings so Coast Guard facilities are not used and Federal courthouse usage is maximized, establishing a program to make available the use of pro bono and law school legal assistance programs for mariner representation and implementing electronic filing for mariners.

The Coast Guard concurs with the recommendations which are aimed at improving the competency of the Investigating Officers that are presenting S&R cases before ALJs. Over the past three years, the Coast Guard has implemented the Marine Safety Enhancement Plan, which contains elements to improve the competency of the Investigating Officers in the field. Specifically, the plan includes the following elements to improve the competency and professionalism of Investigating Officers appearing before ALJs by:

1. Establishing pre-requisite training requirements for officers that are assigned as an Investigating Officer. While these requirements do not entail legal training in S&R proceedings, they do ensure that Investigating Officers are well-seasoned Marine Safety professionals who are well-versed in the Marine Safety mission, as well as, the relevant laws, regulations and Coast Guard policy. By establishing this base of Marine Safety expertise, the Investigating Officers are better prepared to maintain maritime standards for competence, conduct and enhancement of safety at sea through the S&R process.
2. Establishing the S&R National Center of Expertise (S&R NCOE). As the DHS OIG report was being developed, the S&R NCOE was still being stood up. It is now fully functioning and assisting Investigating Officers with S&R proceedings. The staff at the NCOE is well-versed in the laws, regulations and Coast Guard policy which govern the

Appendix B Management Comments to the Draft Report

S&R process and administrative hearing proceedings. More importantly, they are a dedicated resource to assist Investigating Officers with the S&R process and administrative hearing procedures. There are currently four members on staff at the NCOE, including one attorney and they are in the process of bringing on three additional staff (to include an additional attorney). To ensure Investigating Officers are aware of this resource: the Office of Investigations & Analysis has published multiple announcements regarding the availability and functions of the NCOE; staff attends and presents a brief on NCOE functions at all investigating officer, S&R and Sector Department Head courses located at the Coast Guard Training Center Yorktown, VA; and staff provides instruction to investigating officers on the S&R process and hearing procedures during all S&R courses.

RECOMMENDATIONS:

OIG Recommendation #1: Evaluate current procedures for training ALJs and create a formal training program.

USCG Response: Concur. Currently, a copy of the ALJ Process Guide is provided to all ALJs and is posted on the Homeport website (www.Homeport.uscg.mil) thereby increasing transparency to stakeholders (including the public). The ALJ Program will create training aids and checklists that are consistent with Coast Guard statutes, regulations, Commandant Decisions on Appeal (CDOA) and the Administrative Procedures Act (APA); all of which will supplement the existing ALJ Process Guide. Further, when drafting the training aids, the ALJ program will refer to the Office of Management and Budget Final Bulletin for Agency Good Guidance Practices which is intended to increase the quality and transparency of agency guidance and practices.

The curriculum will include general legal issues arising in administrative law practice and maritime law as enforced by the Coast Guard. Specifically, this includes vessel manning requirements, issuance of merchant mariner credentials, vessel operating requirements, drug and alcohol testing and fundamental navigation rules. We recognize that many of these areas of law are complex and very specialized and many attorneys (even maritime attorneys) may not have had much exposure to the intricacies of the law and regulations. Estimated completion date is end of CY 2010.

OIG Recommendation #2: Develop formal written procedures for investigating allegations of misconduct against an ALJ.

USCG Response: Concur. The ALJ Program will create formal written guidance for the Chief ALJ to follow when investigating an ALJ. The ALJ Program published procedures for filing a complaint against an ALJ on Homeport (www.Homeport.uscg.mil) and follows the Coast Guard's Administrative Investigations Manual; both will be considered when implementing this recommendation. Estimated completion date is spring 2011.

OIG Recommendation #3: Create formal guidelines for the Chief ALJ to follow when deciding how or whether to discipline an ALJ.

Appendix B Management Comments to the Draft Report

USCG Response: Concur. It should be noted that other than a minor reprimand or minimal suspension, the Chief ALJ does not directly discipline an ALJ rather can only recommend a sanction to the MSPB. The degree of discipline (suspension or termination) is a matter for MSPB to decide. Therefore, the recommendation of how to discipline will be decided by the MSPB and our formal guidelines will address “whether” an ALJ should be disciplined. Estimated completion date is spring 2011.

OIG Recommendation #4: Revoke any obsolete policy guidance and consolidate current policy guidance into a manual.

USCG Response: Concur. This is a partially completed task initiated by the ALJ Program in 2008. A majority of obsolete policy documents and guidelines were cancelled in 2009. These remaining policy documents will be updated, consolidated, cancelled, revoked or replaced using the new method recommended for issuance of policy guidance (see recommendation #5 below). Estimated completion date is end of CY 2010.

OIG Recommendation #5: Develop a standard format for the issuance of policy guidance that established to what extent an ALJ is required to follow the guidance.

USCG Response: Concur. The ALJ program is already in the process of developing a standard format for issuing of policy guidance to the ALJs and staff that is consistent with OMB Guidance Policy. Estimated completion date is end of CY 2010.

OIG Recommendation #6: Administer a formal orientation and training course that investigating officers complete before handling S&R cases.

USCG Response: Concur. Future Coast Guard policy will be changed to ensure Investigating Officers that present cases before an ALJ have completed the S&R Hearing Personnel Qualification Standard (which requires attendance of the existing S&R course), or are directly assisted by an Investigating Officer with such qualification who is sitting second chair at the S&R Hearing.

OIG Recommendation #7: Make available or require, if necessary, ongoing or advanced skills training for investigating officers who seek or need to improve their prosecutorial skills.

USCG Response: Concur. The Office of Investigations & Casualty Analysis will work with the S&R NCOE to assess needs of the program. Expect this assessment to be completed in twenty-four months, as the Marine Investigations program is currently in the last year (of a multi-year effort) of adding additional civilian and military billets to ensure there are enough investigating officers (IOs) in the field to handle the workload. Until this is complete, the current emphasis is on the basic training of IOs. In the mean time, the S&R NCOE is transitioning to full operating capacity and will be relied upon to provide the specialized expertise for complex cases.

Appendix B Management Comments to the Draft Report

OIG Recommendation #8: Promote the use of the Center of Expertise to ensure that investigating officers have access to training and legal support.

USCG Response: Concur. On September 30, 2008, the Coast Guard authorized the establishment of the S & R NCOE. Promoting and enhancing the use of the S & R NCOE is an ongoing endeavor.

OIG Recommendation #9: Take steps to decrease the length of time required to issue CDOAs.

USCG Response: Concur. In 2007 the Coast Guard had a backlog of 20 cases with an average length of time for resolution of 28 months. Today we have cut that in half, with only 9 cases on hand and with an average resolution of 16 months. While significant progress has been made, we are still working to improve; the ultimate goal being that, with the exception of extremely complex and unusual cases, no appeal should take more than 6 months to process.

OIG Recommendation #10: Create a database of CDOAs and ALJ decisions in which the public can use a topic or key word to locate relevant Coast Guard Precedent.

USCG Response: Concur. The Coast Guard continues to explore additional methods to provide the public more meaningful access to CDOA and ALJ decisions, subject to the availability of resources. Currently, the Coast Guard is actively exploring resources and computer technology that is available or required to implement the functionality of key word or topic search of CDOAs and ALJ decisions. Given the multifaceted legal review process coupled with the complexity of computer technology options available, the goal of completion is approximately twenty-four months.

OIG Recommendation #11: Develop formal procedures governing interaction between personnel in the ALJ Program, the Judge Advocate General's Office, and the Office of Investigation and Analysis. The procedures should address (1) training provided by one office to another office; (2) the ability of investigators, attorneys, and staff involved in the investigation and prosecution of S & R matters to contact the ALJ program and the Office of Maritime and International Law; and (3) the ability of the ALJ Program and the Judge Advocate General's Office to communicate about appropriate issues of concern to each office.

USCG Response: Concur. The Coast Guard believes that the Office of Maritime and International Law's business rules put in place in May 2008 address much of this concern and will prevent situations that would create any appearance of impropriety. However, the Coast Guard intends to pursue transferring the function of drafting CDOAs from the Office of Maritime International Law to another, neutral office with little or no responsibilities in advising the S & R program. We expect this transfer of responsibility to occur within 12 months.

Appendix C
Major Contributors to this Report

William J. McCarron, Chief Inspector
Kimberley Cox, Inspector
Christian Patton, Inspector

Richard N. Reback, Counsel to the Inspector General
René Rocque Lee, Assistant Counsel
Adam Berlin, Assistant Counsel

Appendix D
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