

U.S. Department of
Homeland Security

United States
Coast Guard



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ALJIPP 5830.1
6 MAR 2012

ADMINISTRATIVE LAW JUDGE INTERNAL PRACTICES AND PROCEDURES 5830.1

Subj: INVESTIGATIONS AND COMPLAINTS AGAINST ADMINISTRATIVE LAW JUDGES

Ref: (a) Administrative Investigations Manual, COMDTINST M5830.1A
(b) Coast Guard Regulations, COMDTINST M5000.3B
(c) Standards of Conduct for Administrative Law Judges and Program Employees, ALJIPP 5800.1

1. PURPOSE. In accordance with 46 C.F.R. § 1.01-25(d), this directive provides policy concerning the general administration and management of the Coast Guard Administrative Law Judge Program (ALJ). This *Administrative Law Judges' Internal Practices and Procedures* (ALJIPP) establishes procedures for receiving, processing and investigating complaints alleging misconduct, impairment by drugs or alcohol or a mental, emotional or physical condition, or the competence or diligence of a Coast Guard ALJ.

2. ACTION. Upon receiving a complaint concerning an Administrative Law Judge, the Chief Administrative Law Judge (CALJ) must direct a preliminary inquiry to determine whether the complaint has merit and whether further investigation is warranted. If a preliminary investigation indicates further investigation is warranted, the CALJ must convene an investigation in accordance with reference (a). In such cases, the CALJ shall serve as the Final Action Authority. The Final Action Authority is the most appropriate official in the chain of command ultimately responsible for ensuring that the Investigative Report is correct, and for implementing the administrative, policy, or other corrective action indicated by the facts and circumstances documented in the investigation report.

For complaints concerning the CALJ, the Vice Commandant must direct a preliminary inquiry to determine if the complaint has merit and whether further investigation is warranted. If a preliminary investigation indicates further investigation is warranted, the Vice Commandant must convene an investigation in accordance with reference (a). In such cases, the Vice Commandant is Final Action Authority.

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NON-STANDARD DISTRIBUTION:

No legal counsel representing or advising the Coast Guard in Suspension and Revocation Proceedings before a Coast Guard Administrative law Judge may advise or participate in this investigation.

3. DIRECTIVES AFFECTED. This directive supplements reference (a).

4. AUTHORITY. Under 5 C.F.R. § 930.211, “[a]n agency may remove, suspend, reduce in level, reduce in pay, or furlough for 30 days or less an administrative law judge only for good cause established and determined by the Merit Systems Protection Board on the record and after opportunity for a hearing before the Board as prescribed in 5 U.S.C. 7521 and 5 CFR part 1201.” Reference (b) at Chapter 4-1-8 provides, “. . . incidents involving Coast Guard personnel, and other unusual incidents or circumstances requiring a determination of facts (except Marine Safety incidents covered by 46 C.F.R. Part 4) shall be the subject of an inquiry or investigation in accordance with the provisions of the Administrative Investigations Manual”

The Administrative Investigations Manual (AIM), reference (a), is the primary guide for investigations under this ALJIP. Chapter 2.E.1 of reference (a) provides “[a]ny incidents involving unusually high levels of public, media or governmental interest in, or criticism of, the Coast Guard’s actions, should be appropriately investigated.” Under Chapter 3.A.3.c of reference (a), the CALJ and the Vice Commandant, are authorized to appoint Investigating Officers to Investigations.¹

5. APPLICABILITY. This ALJIP applies to all investigations of complaints of misconduct, impairment by drugs or alcohol or a mental, emotional or physical condition, or the competence or diligence of a Coast Guard ALJ, including Senior ALJs on temporary contract or ALJs on loan from other agencies. This Instruction does not apply to motions to disqualify an ALJ based on “personal bias or other valid cause” during suspension and revocation proceedings in accordance with 33 C.F.R. Part 20.

6. REQUIRED ELEMENTS OF A COMPLAINT. Guidance to the public on how to file a complaint and the information that must be included in a complaint is also listed at the Coast Guard ALJ website <http://www.uscg.mil/alj/>. The complaint must be written and must include the following information.

- a. Concise Statement of Facts. A complaint must contain a concise statement that details the specific facts on which the claim of misconduct, impairment, incompetence, or lack of diligence is based. The statement of facts should include a description of:
 1. what happened;
 2. when and where the relevant events happened; and
 3. any additional information or other valid causes that form the basis of the allegation and assist an investigator with determining the facts.

- b. Complainant’s Address and Signature. The complainant must provide a contact address and sign the complaint. The truth of the statements made in the complaint must be verified in writing and the signature constitutes certification by signer that he or she read the document; to the best of his or her knowledge, information and belief, formed after a reasonable inquiry under the

¹ Generally, a Standard Investigation will be convened. A Standard Investigation is convened to investigate major and minor incidents through informal evidence gathering procedures (*i.e.* no party designations and no subpoenas for interviewing witnesses). Normally a single individual (referred to as investigating officer) conducts a Standard Investigation.

circumstances, that the statements made in the complaint are true. *See* 33 C.F.R. 20.303(c). *See also* FED. R. CIV. P. 11 (b); and ABA MODEL CODE OF PROFESSIONAL CONDUCT RULE 3.1 and 8.2 (a) (2011) for attorneys. If any of these requirements are not met, the complaint will not be accepted for filing.

- c. Complaints should be typewritten if possible. If not typewritten, the complaint must be legible. An illegible complaint will be returned to the complainant with a request to resubmit it in legible form. If a resubmitted complaint is still illegible, it will not be accepted.
- d. Where to file complaint. Complaints concerning an ALJ must be filed with the Chief Administrative Law Judge at: Commandant (CG-00J), 2100 2nd Street SW, Stop 7000, Washington, DC, 20593-7000. Complaints concerning the Chief ALJ must be filed with the Vice Commandant (CG-09), 2100 2nd Street SW, Stop 7000, Washington, DC, 20593-7355.

7. PRELIMINARY INQUIRY. In some cases, there will be insufficient information to make an informed decision about whether to investigate, what type of investigation is necessary for a particular incident, or the specific matters that need to be investigated. A preliminary inquiry must be directed by the CALJ or Vice Commandant in such cases to answer these initial matters. A preliminary inquiry may result in no further action if the CALJ or Vice Commandant concludes further investigation would serve no useful purpose. A preliminary investigation that reveals only minor complaints about an ALJ or the CALJ, such as those involving judicial demeanor or temperament, may be informally resolved by the Final Action Authority. By informally resolving minor complaints, resources are preserved and allegations are promptly addressed. Possible corrective actions to minor complaints include requesting or directing an ALJ to review statutes, regulations, case law or agency policy or informally counseling the ALJ.

8. MISCONDUCT. Matters resulting in the suspension or removal of an ALJ by the Merit Systems Protection Board are considered Misconduct for purposes of this ALJIPP. The Board has held that ALJs are required to conduct themselves in a fitting manner, which, at a minimum, means they must not violate generally accepted rules of conduct. The Board has also applied the ABA Code of Judicial Conduct as a guide for further evaluating the conduct of ALJs. Additionally, reference (c) details the various codes of conduct to which ALJs are subject.

- a. Misconduct includes:
 - (1) failure to pay debts;
 - (2) poor performance;
 - (3) insubordination;
 - (4) verbal sexual harassment;
 - (5) lack of candor in an investigation;
 - (6) misuse of government equipment;

- (7) misuse of mail;
- (8) misuse of government employees;
- (9) physical abuse of a fellow employee; and/or, according to the ABA,
- (10) conduct occurring outside the performance of official duties which may undermine public confidence in the administrative adjudicatory process.

b. Misconduct does not include allegations directly related to the merits of a decision or procedural ruling, including questions concerning the correctness of a judge's ruling or a failure to recuse, as these issues are more appropriately addressed in the appellate process.

9. IMPAIRMENT, COMPETENCE, AND DILIGENCE. A judge must be able to perform his/her duties competently, as demonstrated by the ability to apply legal knowledge, skill and thoroughness as reasonably necessary and to seek the necessary resources, docket time and court staff to dispose of his/her administrative cases. The reasonable belief that an ALJ's performance is impaired by alcohol, drugs, mental, emotional or physical condition, will also constitute valid grounds upon which an individual may question a Coast Guard ALJ's competence and ability to discharge his/her duties.

10. ENVIRONMENTAL ASPECT AND IMPACT CONSIDERATIONS. The development of this directive and the general policies contained within it have been thoroughly reviewed by the originating office and are categorically excluded under current USCG categorical exclusion 33 from further environmental analysis, in accordance with Section 2.B.2 and Figure 2-1 of the National Environmental Policy Act Implementing Procedures and Policy for Considering Environmental Impacts, COMDTINST M16475.1.

This directive will not have any of the following: significant cumulative impacts on the human environment; substantial controversial or substantial change to existing environmental conditions; or inconsistencies with any Federal, State or local laws or administrative determinations relating to the environment. All future specific actions resulting from the general policies in this directive must be individually evaluated for compliance with the National Environmental Policy Act (NEPA), Council on Environmental Policy NEPA regulations at 40 CFR Parts 1500-1508, DHS and Coast Guard NEPA policy, and compliance with all other environmental mandates.

11. NO RIGHT OF ACTION. No violation of the Standards of Ethical Conduct, COMDTINST M5370.8B or the ABA Model Code of Judicial Conduct creates a private right of action or presumption of a legal duty.

12. RECORDS MANAGEMENT CONSIDERATIONS. CG-00J has evaluated this ALJIPP for potential records management impacts and has determined that it does not create any significant or substantial change to existing records management requirements.

13. FORMS/REPORTS. CG-00J maintains records of complaints or allegations of professional misconduct in accordance with current Coast Guard directives.

14. REQUESTS FOR CHANGES. Units and individuals may recommend changes by writing via the chain of command to Commandant (CG-00J), U. S. Coast Guard, 2100 2nd ST SW, Stop 7000, Washington, DC 20593-7000.

15. GUIDANCE DISCLAIMER. This ALJIPP is intended to provide operational requirements for Coast Guard personnel and is not intended to nor does it impose legally-binding requirements on any party outside the Coast Guard.



Hon. Parlen L. McKenna
Acting Chief Administrative Law Judge (CG-00J)
U.S. Coast Guard