

In the Matter of License No. 275959
Issued to: Dewey Soriano

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1441

Dewey Soriano

This appeal under Title 46 CFR 137.20-15(c) has been allowed from the denial, by the Chief Examiner, of defense counsel's motion to disqualify the Chief Examiner from conducting a hearing involving the grounding of the MV ISLAND MAIL on 29 May 1961.

The motion is based on the ground that, if the Chief Examiner conducts the hearing and there is an appeal from his decision, the right of the person charged to a fair and impartial appeal would be prejudiced by the Chief Examiner acting in a dual capacity since he would make recommendations as to the final action to be taken by the Commandant on appeal. 46 CFR 1.10(b)(1)(iv).

At the hearing, the Chief Examiner denied the motion stating that he does not participate in appeals from decisions which he has rendered. Nevertheless, counsel contends, past practice does not assure the person charged of due process in this case.

In such cases, the Commandant has not permitted the Chief Examiner to make recommendations or otherwise participate on appeal. Instead, there is a review of the case by some other member of the Commandant's staff or by another hearing examiner designated by the Commandant. Under this procedure, there can be

no prejudice to the right of a person charged to a fair and impartial appeal and, a fortiori, no denial of due process. The situation was entirely different in the cited *Dimitratos* case where the hearing examiner was not permitted to require the deposit of seamen's documents with him before he rendered an initial decision.

In connection with counsel's pending motion to dismiss, it is noted that there is no provision for an interlocutory appeal relative to any action taken on a motion to dismiss.

ORDER

The ruling, on 9 December 1963 at Seattle, Washington, denying the motion to disqualify the Chief Examiner, is AFFIRMED.

E. J. ROLAND
Admiral, United States Coast Guard
Commandant

Signed at Washington, D. C. this 15th day of January 1964.

***** END OF DECISION NO. 1441 *****

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