



*Walter J.  
Brudzinski*

*Chief Administrative  
Law Judge,*

**United States Coast Guard**

**W**alter J. Brudzinski is the Chief Administrative Law Judge for U.S. Coast Guard. He has been a Coast Guard Administrative Law Judge since 2003 and was appointed Chief Judge in 2013. He is a graduate of the University of Maryland and George Mason University School of Law and additionally holds a Master's and Ph.D. in Judicial Studies from the University of Nevada as well as Certificates in Judicial Development from the National Judicial College. Chief Judge Brudzinski has lectured extensively on Administrative Adjudication, including presentations before the ABA's Section on Administrative Law and Regulatory Practice, the Federal Bar Association, the Admiralty and Maritime Claims and Litigation Forum, and the University of Toulon, France.

He has also authored countless articles on suspension and revocation proceedings and other relevant topics in trade journals and other venues. Initially appointed Administrative Law Judge by the Social Security Administration in 1996, he was previously an Assistant and later a Deputy Commonwealth's Attorney in Virginia Beach. He served in the Coast Guard as a commissioned officer afloat and ashore and was a Special Assistant U.S. Attorney, Eastern District of Virginia. He was admitted to practice in Virginia, Maryland, and Pennsylvania; the U.S. District Court for the Eastern District of Virginia; the U.S. Court of Appeals



for the Fourth Circuit; the Court of Appeals for the Armed Forces; and, the Supreme Court of United States.

Coast Guard Administrative Law Judges hear and decide Merchant Mariner Credential suspension and revocation cases as well as cases initiated by the Department of Homeland Security and other agencies the Coast Guard supports. Without a doubt, the nation's 210,000+ credentialed mariners want to know that when their credentials come into question from the regulatory branch that these matters will be handled fairly. To that end, the U.S. Coast Guard recently implemented Policies and Procedures to, among other things, improve communications during the suspension and revocation process. These include recently issued Commandant Instructions (5830.3) which implements policies and procedures concerning permissible and prohibited communications for personnel involved in investigating, prosecuting, adjudicating, and appealing suspension and revocation cases. We caught up with Judge Brudzinski in May, and he provided a primer on the sometimes misunderstood, but he says, fair and transparent methods with which the Coast Guard goes about this critically important function.

#### **Tell us about the 'S&R' Process in plain language.**

The suspension and revocation (S&R) process requires investigating, advocating, decision-making, adjudicating, and appealing. Initially, the Office of Investigations and Analysis oversees the investigation of marine casualties or matters pertaining to the conduct of persons applying for or holding a merchant mariner's credential. With the assistance of its S&R National Center of Expertise, it initiates S&R proceedings. The Office of the Chief Administrative Law Judge then conducts hearings and decides questions of fact or law while the Office of the Judge Advocate General provides legal advice to Coast Guard representatives. Finally, an independent entity within the Office of the Judge Advocate General reviews and prepares appeal decisions for the Commandant or Vice-Commandant's consideration.

#### **Communication, apparently, is an important part of these proceedings. Why?**

The S&R process relies upon careful coordination of activities among those personnel responsible for adjudication to ensure it is carried out expeditiously. It is therefore necessary that those personnel communicate regularly to dis-

discuss matters critical to the management of the Coast Guard S&R process. Those communications must also protect the due process rights of respondents from influences that are not part of the record or “ex parte” communications.

### **Tell us more about these ‘Ex Parte Communications.’**

The law prohibits ex parte communications. The Administrative Procedure Act at 5 U.S.C. § 551(14) defines “ex parte communication” as “an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports on any matter or proceeding covered by this subchapter.” The Coast Guard’s S&R procedural regulations at 33 C.F.R. § 20.205 provide ex parte communications are governed by 5 U.S.C. § 557(d). That U.S. Code section prohibits interested persons outside the agency from making an ex parte communication to the Administrative Law Judge (ALJ) relative to the merits of the proceeding or to persons in the agency responsible for the decision making process except as authorized by law. It also prohibits ALJs or other agency employees responsible for the decision making process from making ex parte communications relative to the merits of the proceeding to any interested person outside the agency. Title 5 U.S.C. § 554(d) (1) provides the presiding ALJ shall not “consult a person or party on a fact in issue unless on notice and opportunity for all parties to participate.” The prohibition of consultation found in section 554(d) (1) applies to persons inside or outside the agency concerning facts in issue. *Butz v. Economou*, 438 U.S. 478, 514 (1978).

### **Okay – Give us some general guidelines as to how personnel should conduct themselves.**

To preserve the integrity and decisional independence of the S&R process, the directive’s general guidelines prescribe that personnel conducting S&R matters are not to discuss the merits of any pending S&R case between or among themselves or with persons outside the Coast Guard until after final disposition. Final disposition occurs when all appeals have been exhausted or the time for appeal has expired. The merits of a pending matter are any substantive considerations, such as a fact in issue, taken into account in deciding a case. Procedural inquiries, status reports, settlement discussions, or other communications that are administrative in nature are not discussions on the merits and are not prohibited.

### **What is the Coast Guard doing about training in this important mission?**

The ALJ Program does not provide training to Coast Guard units. However, it does participate in meetings to

discuss legal updates affecting S&R proceedings. Representatives from other CG units may also attend. Any presentations or briefings, if in written or transmittable form, will be placed on the internet for public view at [http://www.uscg.mil/alj/general\\_info.asp](http://www.uscg.mil/alj/general_info.asp). The Office of Investigations and Analysis develops policies and procedures for training Investigating Officers in the field. Training Center Yorktown uses this information to develop the curriculum for the S&R and Investigating Officer training course. Personnel from components within the Office of the Judge Advocate General, the ALJ Docketing Center which is a detached unit of the Office of the Chief Administrative Law Judge, and the Headquarters Office of the Chief Administrative Law Judge may participate in the training courses in the capacity of providing an overview of their roles and missions. All Coast Guard personnel attending as instructors, lecturers, or students from all Coast Guard entities are not to discuss the merits of any pending S&R case.

### **Are there specific guidelines for any pending cases?**

Coast Guard personnel participating in a pending S&R case or who have developed or are developing a position in a pending case are not to communicate on the merits of that case with any ALJ or ALJ employee who advises an ALJ in that case or any factually related case except on the record. Any senior member in the chain of command of a Coast Guard member or employee participating in an S&R hearing is to avoid communicating with any ALJ or ALJ employee regarding the merits of a pending case or any factually related case. A Coast Guard ALJ’s Paralegal Specialist is the appropriate point of contact for questions concerning a case’s status, pre-hearing conferences, procedural issues, or other questions unrelated to the merits of a pending case. All persons may contact the ALJ Docketing Center to inquire on a case’s status, procedural issues, technical questions, website assistance, as well as other questions unrelated to the merits of a pending case. The ALJ Docketing Center is staffed by two attorneys, the hearing docket clerk, two court reporter/legal assistants, and two administrative assistants. ALJ Docketing Center personnel are not prosecutors or investigators but they do provide support to the ALJs and interested parties. The Office of Investigations and Analysis exercises program oversight for investigation and prosecution of S&R cases with assistance from the U.S. Coast Guard’s S&R National Center of Expertise and the Investigations National Center of Expertise. As such, there are no prohibitions on communications within and between these entities, and with Investigating Officers. The Office of Maritime and International Law, within the Office of the Judge Advocate

General, provides counsel to the Office of Investigations and Analysis in all legal matters including S&R proceedings. As such, there are no prohibitions on communications between these entities. However, there must be no discussion on the merits of pending S&R cases by these entities with other personnel in the Office of the Judge Advocate General assigned to prepare proposed decisions on appeal or review. Those preparing proposed decisions may, however, seek general assistance or guidance from the Office of Maritime and International Law, the Office of Investigations and Analysis, or other CG entities regarding current laws, recent decisions, Coast Guard policies, or marine safety practices to aid them in preparing appeal decisions as long as the merits of any pending S&R case are not discussed.

Communication guidelines for individuals reporting or investigating an incident of alleged ALJ misconduct must follow procedures established at:

[www.uscg.mil/alj/docs/ALJIPP\\_5830.1\\_ALJ\\_Program\\_Investigations\\_and\\_Complaints\\_Against\\_ALJs.pdf](http://www.uscg.mil/alj/docs/ALJIPP_5830.1_ALJ_Program_Investigations_and_Complaints_Against_ALJs.pdf).

The directive does not prohibit communications among the above referenced entities concerning data bases or relevant systems and procedures necessary for the efficient administration of the S&R program such as the Marine Information System for Law Enforcement (MISLE).

### **Are there guidelines prepared to guide Administrative Law Judges in how they conduct themselves and handle individual cases?**

Coast Guard ALJs are permitted to consult with ALJ Program attorneys on all matters including the merits of pending cases. ALJ Program attorneys are responsible for advising and assisting Coast Guard ALJs in carrying out their responsibilities. ALJ Program attorneys are also permitted to consult with other ALJ Program attorneys but are expected to avoid ex parte discussions with an ALJ Program attorney that previously assisted an ALJ disqualified from hearing that case and with decision makers responsible for preparing proposed decisions on appeal. Coast Guard ALJs are also permitted to consult with one another on pending matters but are expected to avoid ex parte discussions with an ALJ previously disqualified from hearing that case and with decision makers responsible for preparing proposed decisions on appeal or review. Taking action to address known misconduct is the ALJ's obligation under the Model Code of Judicial Conduct. To avoid communications with investigators, prosecutors, or appellate review personnel, ALJs shall report incidents of misconduct by a Coast Guard Representative to the Director of Judicial Administration who will report the incident to the appropriate authority

within the Office of Investigations and Analysis or the Office of the Judge Advocate General for further inquiry. In the event an ex parte communication involving the merits of a pending case occurs, the presiding ALJ will place it in the record in accordance with 5 U.S.C. § 557(d)(1)(C).

### **What about Guidelines for the Office of the Chief Administrative Law Judge?**

As the advisor and special assistant to the Commandant on S&R matters and as adviser to the Judge Advocate General in the preparation of the final action of S&R proceedings, advisory communications are permitted under 46 C.F.R. § 1.01-20(c) and may include discussions of the law or case administration but not facts relevant to the merits of a pending case. In handling inquiries and requests to examine and copy records, ALJ Docketing Center personnel are guided by procedures in 33 C.F.R. § 20.903 and 46 C.F.R. Part 5 and are not to discuss the merits of any pending case or reveal pre-decisional information. When coordinating responses to Freedom of Information Act requests with CG-094, personnel in the Office of the Chief Administrative Law Judge are not to discuss the merits of pending S&R cases or reveal pre-decisional information. Personnel in the Office of the Chief Administrative Law Judge are not to discuss the merits of pending S&R cases with other members of the Coast Guard during congressional inquiries and regulatory meetings.

### **What is the S&R Proceedings Working Group and what do they do?**

To ensure the integrity and efficient administration of the S&R process, the Vice Commandant established an S&R Working Group consisting of personnel from the Office of Investigations and Analysis, to include the S&R National Center of Expertise, the Office of the Chief Administrative Law Judge, and the Office of the Judge Advocate General. It will meet semi-annually to discuss regulatory issues or concerns, congressional inquiries, MISLE issues or concerns, procedural issues or concerns, training, action items, and new business. S&R Working Group meetings are not to discuss the merits of any pending S&R case.

### **Sum up for us the core values of your group of Coast Guard professionals.**

Coast Guard ALJ's carry out duties in an environment that reflects the Coast Guard's core values of honor, respect, and devotion to duty. ALJ's are dedicated to performing their duties fairly, impartially, and in a manner that secures the trust and confidence of the regulated community, the Coast Guard, and the general public.