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Description of document: US Coast Guard (USCG) Memorandum of Agreement (MOA) between The Department of Homeland Security (DHS) and USCG Office of the Chief Administrative Law Judge 2007

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**U.S. Department of  
Homeland Security**

**United States  
Coast Guard**



United States Coast Guard  
Office of the Chief Administrative Law Judge

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5720  
2015-CGFO-02949  
February 22, 2018

This letter is the final response of CG-00J (Office of the Chief Administrative Law Judge) to your September 2, 2015 Freedom of Information Act (FOIA) request to the U.S. Coast Guard (USCG), assigned FOIA request number 2015-CGFO-02949. In your request you sought:

1. A copy of the Memorandum of Agreement of Memorandum of Understanding between DHS and the USCG Office of the Chief Administrative Judge, regarding the handling of FOIA Appeals.
2. A copy of the internal manual used by the USCG Office of the Chief Administrative Judge, for handing of FOIA Appeals.

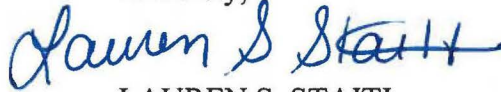
A comprehensive search of the Office of the Administrative Law Judge yielded 7 pages of responsive documents. All 7 pages are being released to you in their entirety. The Office of the Chief Administrative Law Judge does not have an internal manual for the handling of FOIA appeals; the office processed FOIA appeals in accordance with the regulations found 6 C.F.R. § 5.9. Finally, there are no fees assessed for this FOIA request.

You may contact OGIS at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road – OGIS, College Park, Maryland, 20740-6001, e-mail at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with the response to this request, you may administratively appeal this decision by sending an appeal to: Associate General Counsel (General Law), U.S. Department of Homeland Security, Washington, D.C. 20528, following the procedures outlined in the DHS regulations at 6 C.F.R. § 5.8. Your envelope should be marked "FOIA Appeal" and either postmarked or electronically transmitted within 90 days of the date of this response. Copies of the FOIA and DHS regulations are available at [www.dhs.gov/foia](http://www.dhs.gov/foia).

If I can be of any further assistance please contact me at the above number or via email.

Sincerely,



LAUREN S. STAITI  
Senior Attorney Advisor  
United States Coast Guard  
Office of the Chief Administrative Law Judge

**MEMORANDUM OF AGREEMENT  
BETWEEN THE  
DEPARTMENT OF HOMELAND SECURITY,  
OFFICE OF THE GENERAL COUNSEL  
AND THE  
UNITED STATES COAST GUARD,  
OFFICE OF THE CHIEF ADMINISTRATIVE LAW JUDGE**

**EXECUTIVE SUMMARY**

The purpose of the proposed Memorandum of Agreement (MOA) is to create a vehicle for DHS Headquarters and any DHS Component to obtain the services of U.S. Coast Guard Administrative Law Judges (ALJs). The MOA contains all the terms and conditions that will govern requests for ALJ services.

DHS Headquarters offices and DHS Components often need impartial administrative adjudication, and it is a sensible course of action to create an effective master agreement instead of requiring the U.S. Coast Guard and each office or component to negotiate individual terms and conditions. Under this MOA, DHS offices and components need only to negotiate the level of services needed and then determine the applicable costs.

**MEMORANDUM OF AGREEMENT  
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**I. PARTIES**

The parties to this Memorandum of Agreement (MOA) for reimbursable Administrative Law Judge services (the "MOA") are the United States Coast Guard, Office of Administrative Law Judge ("Coast Guard OALJ") and the Department of Homeland Security ("DHS").

**II. PURPOSE**

The purpose of this MOA is to set forth the terms and conditions under which DHS Headquarters and DHS components will utilize the services of the Coast Guard OALJ to perform adjudicatory and case management functions with respect to adjudications brought by the DHS OCG or other DHS components. Under this MOA, the Coast Guard OALJ will process, manage, and adjudicate all DHS administrative cases referred. This MOA contemplates the issuance of future Intra Agency reimbursable agreements (IAAs) when specific services are required in accordance with Section VI B.

**III. AUTHORITY**

The authority entering into this MOA and to obtain reimbursement for ALJ services is 14 U.S.C. § 141, Cooperation with other agencies, States, territories and political subdivisions.

This MOA is executed according to the requirements of the DHS Interagency Agreement Directive No. 125-02, under the authority and terms of current DHS Management Directives concerning interagency agreements. August 15, 2008.

**IV. EFFECTIVE DATE AND TERM OF THE MOA**

The term of this MOA commences when it is signed by both DHS and the Coast Guard. The effective date will be the date of the last signature. This MOA shall continue in effect until terminated at the request of either party according to Section X of this MOA.

**V. ROLES AND RESPONSIBILITIES**

**A. DHS represents that:**

1. Sufficient funds will be available to pay the estimated reimbursable costs (as defined herein) associated with each specific request for use of Coast Guard OALJ services;
2. Obtaining such services is in the best interest of the government; and

3. The services cannot be provided by contract via commercial enterprise as cheaply or conveniently.

B. DHS agrees to:

1. Forward hearing requests and associated necessary documents, to the OALJ Docketing Specialist at the Coast Guard OALJ Docketing Center.
2. Provide adequate copies of prior ALJ decisions and appellate cases with indices thereto.
3. Inform the OALJ Docket Specialist when administrative decisions are appealed to the DHS decision-maker.

C. The Coast Guard OALJ agrees to:

1. Control and conduct each assigned case in accordance with the appropriate procedural regulations. In the absence of any specified procedural regulations, the Rules of Practice, Procedure and Evidence as specified in 33 C.F.R. Part 20 may be used.
2. Receive petitions, charging letters, complaints or other initiating documents, discovery requests, orders, consent agreements, associated transmittal memoranda, and other documents forwarded by DHS.
3. Enter the case information into a database system, maintain accurate paper files and continuously track the status of the cases.
4. Inform all parties that a Coast Guard OALJ will be presiding over these cases.
5. Issue notices of assignment of an OALJ once the respondent has filed its response to the DHS initiating instrument or the filing deadline has passed.
6. Forward the case file to the assigned ALJ for adjudication.
7. Render decisions, recommendations or findings of fact as necessary, forward a written report to the DHS counsel of record, and forward the record upon which the decision, recommendations, or findings of fact were made and certify that the record is complete and accurate.
8. Provide, in the billing statements to the DHS Headquarters or Component Office requesting services, monthly reports indicating the status of DHS cases; The status information should include the following:
  - a. The number of cases docketed during the reporting period.
  - b. The number of cases settled, withdrawn or dismissed during the reporting period.

- c. The number of formal hearings held during the reporting period;
    - d. The number of initial decisions rendered during the reporting period and whether decision favored the petitioner or respondent.
    - e. The number of pending cases that remain pending during the reporting period, the length of time pending and the reason they are still pending.
  - 9. Distribute decisions to the parties, including DHS counsel of record.
  - 10. Certify and forward case files requested by DHS in the event of an administrative or judicial appeal. In the event that no appeal has been filed, then close records at the conclusion of the appeal period, or after settlement or dismissal, and forward the case to the DHS counsel of record.
  - 11. Maintain a closed docket with respect to DHS cases and refer requests by third parties for records or information pertaining to those cases to the DHS Freedom of Information Act Office for processing. The Docketing Center will maintain these records so as to protect information that is prohibited from public disclosure. Including Security Information and Personally Identifiable Information, and any other Privacy Protected Information
  - 12. Ensure that the Chief ALJ, ALJ, attorney support staff, law clerk, administrative support personnel, field legal assistants and any contractors that may be required, have appropriate security clearances as necessary on a case by case basis.
- D. DHS and Coast Guard OALJ. Both DHS and the Coast Guard OALJ agree to conduct quarterly meetings as deemed necessary to discuss issues and problems arising pursuant to case management and this MOA.

## **VI. COSTS, FUNDING AND PAYMENT PROCEDURES**

### **A. Costs**

- 1. DHS agrees to pay the following types of reimbursable costs:
  - a. Travel Costs.
    - i DHS will be charged actual travel expenses relating to DHS cases.
    - ii When travel costs incurred are related to both Coast Guard and DHS cases, costs will be apportioned between the Coast Guard and DHS.
  - b. Court Reporting. DHS will reimburse Court reporting costs based on invoices filed by court reporters.
  - c. Personnel Costs. DHS and Coast Guard agree that all Coast Guard OALJ personnel costs including, Chief ALJ, ALJ, attorney support staff, law

clerk, administrative support and field legal assistants, are provided to DHS on a reimbursable basis based on Coast Guard standard rates for personnel costs for reimbursable agreements current at the time services are requested). (The current U.S. Coast Guard rates are found in Commandant Instruction 7310.1L, Coast Guard Reimbursable Standard Rates, April 9, 2008; a copy is attached. The rates will be updated as updated by the U.S. Coast Guard.)

- d. **Administrative Expenses.** DHS will reimburse actual costs of mail, overnight delivery services and office supplies used in Agency cases. These costs include expenses incurred for security measures and controls necessary to hear Agency cases.
- e. **Supplemental Contract Support.** DHS shall reimburse the Coast Guard OALJ for supplemental contract support as needed and agreed upon in writing between the parties before any costs are incurred.

**B. Inter Agency Agreement**

When services are required, the DHS Headquarters or Component office requiring services and OALJ will enter into an IAA incorporating this MOA. The IAA shall set out the accounting data and contact information for billing purposes and the total estimated costs for the services/costs in accordance with the types of costs described in this MOA.

**C. Availability of Funds**

- 1. This MOA, in and of itself, does not result in the transfer of funds or other financial obligation between the parties. The Coast Guard will undertake no action on behalf of DHS until an IAA has been issued which obligates funds.
- 2. No provision of this MOA shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341, as amended. This reimbursement for costs incurred by Coast Guard under (any IAA issued pursuant to this MOA) is subject to the availability of funds.
- 3. The Coast Guard OALJ may not incur costs that exceed the funding obligated pursuant to an IAA. The Coast Guard OALJ will notify the IAA point of contact by written explanation in advance of expenditures should the funds available for payment is determined insufficient to cover costs.
- 4. The U.S.C.G. shall provide each IAA-holder a funding accounting 90 days before the IAA expires. The parties shall determine whether a funding increase will be necessary, whether it is appropriate to deobligate funding or whether no action is necessary.



**D. Invoices**

1. Invoices for billing services will be submitted as agreed under the IAAs issued under this MOA. Appropriate budget allowance and accounting information for the term will be provided. All reimbursable costs will be billed.
2. The invoice shall include all documentation to support the amounts billed to date, including:
  - a. Identification and number of DHS cases heard during the travel period.
  - b. Actual invoices submitted to the OALJ by court reporters.
  - c. Postage costs and invoices for overnight delivery costs.
  - d. Other costs that may arise under IAAs issued pursuant to this MOA shall be reimbursed based on the actual cost paid. Before it is incurred, the Coast Guard must notify the IAA point of contact of any potential cost that was not included in the IAA.
  - e. Invoices, which do not include required supporting documentation and the exhibits thereto, will be rejected and returned to the Coast Guard.
  - f. Invoices will be issued each quarter unless the IAA requires a more frequent invoicing schedule.

**VII. AMENDMENTS AND REVIEW**

This MOA may be amended in writing at any time by mutual consent of the parties. Further, the parties may elect to conduct an audit on an annual basis.

**VIII. OTHER PROVISIONS**

- A. Nothing herein is intended to conflict with current Office of Management and Budget, Office of Personnel Management, Department of Homeland Security, Agency, or Coast Guard directives. If the terms of this MOA are inconsistent with any existing directives of these agencies, then those portions of this MOA which are determined to be inconsistent shall be invalid. However, the remaining terms and conditions of this MOA not affected by the inconsistency shall remain in full force and effect.
- B. From time to time, the parties may review the MOA and such changes as are deemed necessary will be effected by either an amendment to this MOA, or by entering into a new MOA, whichever is deemed expedient to the interests of both parties.
- C. This MOA is not intended to create any right, nor does it create any right, to administrative or judicial review, or to any substantive, or procedural right, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

- D. Points of Contact. The points of contact for this MOA are listed below. The individual points of contact for will be designated in each IAA.

FOR DHS

Michael D. Russell  
Acting Associate General Counsel  
for General Law

FOR Coast Guard

George J. Jordan  
Director of Judicial Administration  
Office of Chief Administrative Law  
Judge, Commandant (CG-00J)

**IX. DISPUTES**

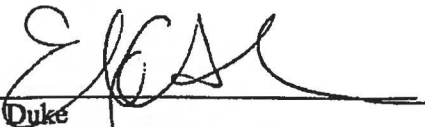
Where possible disputes will be resolved by informal discussion between the DHS Representative and the Director of Judicial Administration for the OALJ. In the event the DHS Representative and the Director for Judicial Administration for the OALJ are unable to resolve the dispute, the matters shall be elevated to the Coast Guard Chief ALJ and the DHS General Counsel for resolution.

**X. TERMINATION OF THE MOA**

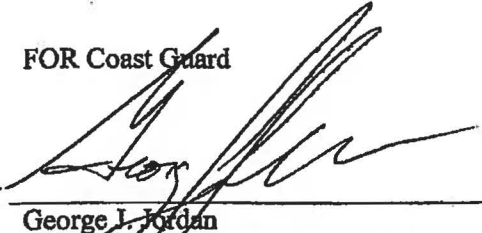
This MOA will remain in effect until terminated at the request of either party. The party requesting termination shall provide written notice to the other party no later than sixty (60) days before the proposed termination date. Reimbursable costs properly incurred before the MOA is terminated will be paid; no new services will be requested after the date of termination of this MOA.

**AGREED TO AND ACCEPTED BY:**

FOR DHS

  
Elaine C. Duke  
Under Secretary for Management  
Department of Homeland Security

FOR Coast Guard

  
George J. Jordan  
Director of Judicial Administration  
Office of Chief Administrative Law  
Judge,  
Commandant (CG-00JJ)  
U.S. Coast Guard

Date: 03 April 2005

Date: 14 Apr / 2007