



# NAHO NEWS

*...benefitting hearing officials  
and the individuals they serve...*

NATIONAL ASSOCIATION OF HEARING OFFICIALS

AUGUST 2016

## STILL TIME TO REGISTER – *Portland Awaits*

Jan Deshais, NAHO President

Conference 2016 is fast approaching, but it is not too late to register! As, we hope, most of you readers know, NAHO's professional development training conference is September 11 – 14 in beautiful Portland, Oregon. In addition to a great hotel site and Portland's wonderful restaurants and other attractions, the Conference promises to be yet another terrific opportunity to receive top-notch training from experts involved with administrative process and hearings practice. A special feature of this year's Conference is a live session of the Oregon Court of Appeals, which presents a unique opportunity to see an administrative appeal in action! Check our website, [www.naho.org](http://www.naho.org), for more information. You deserve to be at the 2016 Conference – hope to see you there! 🏠



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## THE PRESIDENT'S POST

## THE 2016 CONFERENCE

Janice Deshais (CT)

Where has the summer gone? It seems as if I just put my gloves and scarves away and pulled out my golfing gear and it is August already!! Oh well, at least there is an annual event in the fall that makes the passing of the summer more bearable – the NAHO annual professional development conference!

I can't wait for this year's event in September in beautiful Portland, Oregon. If you have never been to Portland, you owe it to yourself to go – it is truly a "bucket list" destination. There is so much to see and do in the area and the City. I recommend you come early or stay late. Visit [www.travelportland.com](http://www.travelportland.com) to see for yourself! I have already been a guest at the hotel for this year's conference. The Marriott – Downtown Waterfront is comfortable, convenient and classy. As usual, the Conference will have a welcome reception on Sunday night which is always a great time to socialize and meet colleagues from all across the country. The Monday luncheon is a welcome break for a meal and an interesting speaker on the first full day. Finally, the annual awards banquet on Tuesday evening is your chance to have some fun and celebrate the achievements of other NAHO members – or yourself.

Of course, the primary reason to be in Portland in September is to experience the exceptional training you will receive over the course of three days from outstanding instructors, including professors of administrative law, local appellate judges, and experienced administrative adjudicators. Featured speakers will include the Chief Justice of the Oregon Supreme Court, who will open the Conference, and, during the Monday luncheon, a former associate justice of that Court who will provide a look inside an appellate court conference room. This year's Conference also offers a unique and extraordinary opportunity for attendees to see and hear judicial

review in action when the Oregon Court of Appeals conducts a session at St. Mary's Academy, only blocks away from the hotel.

I encourage you to read the Conference Brochure thoroughly when making your course selections. You will see a wide range of sessions that cover general administrative law and practice, such as the evaluation of demeanor or evidence and credibility and recognizing constitutional issues in administrative hearings, and courses that can improve our skills as hearing officials, such as the always popular courses on ruling on objections and decision-writing and the ever-important review of due process considerations and ethical issues. Some courses call for self-reflection, such as how we can deal with our implicit biases and how we can remain neutral in the often "non-neutral" world of a state or federal administrative agency. Others give us a chance to hear from experienced judges and hearing officials on how to deal with difficult parties and hearsay evidence, frequent thorns in the procedural "bouquet of roses" we are given at a hearing. There are courses to help meet the challenge of handling a hearing and being a hearing official, such as how to manage high-volume hearings, how to work with interpreters, dealing with a pro se litigant, how to manage your decision-making process, and, for the first time, a session that will present effective communications strategies when working with disabled petitioners. In response to course and conference evaluations, NAHO has enhanced its curriculum to include more sessions that focus on specific subject areas. This year, courses will focus on issues that impact specialized areas such as special education, Medicaid, DUI and IPV hearings. One course even asks: "Dessert First? Because Life is Just Short Enough." Sounds like something I need to check out.

Finally, a sobering thought. As we are all too aware, the world in



Janice Deshais (CT)

which we live has changed. We work in the public arena for the public. We may often feel vulnerable to the threats that many of us never thought about until recently. As someone who has participated in mandatory "active shooter" training at my agency, I know this feeling all too well. We need to ensure safety for ourselves and the participants in our hearings. The Conference will include a timely and practical session on hearing site and personal safety by Lt. Timothy Fox of the Oregon State Police, an expert instructor on this subject. Lt. Fox is an experienced and entertaining lecturer who has specialized in developing and presenting protective protocols and precautions for judges and other government employees. This fast-paced and entertaining session will provide advice and instructions on dealing with issues none of us want to think about, but must.

As I said in my last Post, NAHO is here to support you as you work every day to provide a fair administrative process to a varied citizenry at state and federal agencies. You have a significant impact on the lives of the people who come before you, and you set the example they will have of what it means to have the right to be heard. Keep up the great work!

I wish you all a safe and happy late summer and look forward to seeing you all this fall. 🐾

## NAHO MEMBERSHIP DIRECTORY

In response to requests from members, the NAHO website will soon feature a "Membership Directory" that members can access to obtain members' names, addresses and phone numbers.

Please know that NAHO respects your privacy. NAHO will not, at any time, knowingly make information regarding its members available to the public and will not sell such information to advertisers or other groups. The information in the membership directory will be available only to other NAHO members.

The Directory will go live online October 1, 2016. Please review your membership information to make sure that is what you want in this Directory. You should use the email address you used on your membership application for the Directory; please update it if it has changed. To update or revise this information, log on to your membership account at [www.naho.org](http://www.naho.org). (Your "Log-in" is the email address you put on your NAHO membership application. Your "password" is your NAHO membership number.)

If you have any questions or problems logging into your account, please contact your regional representative, whose address can be found on the website. 🐾

# ASK THE BOARD

In the last issue, we invited members to submit questions to the Board about the governance of NAHO or any topic of general interest relevant to hearing officials.

Here are three inquiries and the Board's responses.

*1) My agency does not offer extra pay for the Certified Hearing Official certification, but can you explain the other benefits of becoming a Certified Hearing Official?*

While it is certainly a nice benefit when an agency compensates its hearing officers for achieving certification, there are other good reasons to obtain and maintain certification. In addition to your personal achievement, the requirements for certification help you develop, expand and sustain your professional skills and knowledge, which enriches your abilities as a hearing official and benefits those who appear before you. Having the initials CHO or CALJ after your name and your certificate on display many times has quietly answered the question of "What makes this person qualified to hold these hearings or make these decisions?" Your certification is also evidence of your commitment to NAHO's goal when it initiated its certification program in 1995 – the development of uniform standards of excellence and professionalism for hearing officials throughout the country.

*2) In the last newsletter, you mentioned the various committees. Can you give a brief description of what the different committees do, and what is the average amount of time commitment spent while serving on the volunteer committees (how often do you meet, email, communicate, projects, etc.)?*

Great question! NAHO relies on the work of its committees to support the wide range of its responsibilities and activities. Under its Bylaws, NAHO has seven standing committees: Nominating, Bylaws and Resolutions, Membership, Conference Planning,



*Top row (L-R) Brian Ford, Linda Snow, Peter Halbach, Eric Moody, Clayton Mansfield, Norman Patenaude, and Joe Rubenstein.  
Bottom row (L-R) Kayla Adams, Gregory Ozment, Toni Boone, Janice Deshais, and Jo Murphy*

Certification, Past Presidents, and Budget and Finance. NAHO's President can also create ad hoc committees and task forces as needed. NAHO's ad hoc committees include the Library, Communications, and Technology committees. All committees have a chairperson or two co-chairs and usually at least 2 to 3 members. You must be a member of NAHO to serve on a committee. Some committees require Board membership to serve, but others allow any member to join.

Committee membership is a great way to be part of NAHO in a way that suits the level of contribution you can make. Some committees are continually active, others work on an ad hoc basis to complete a particular project, and others have roles that require work only at certain times. Committees may "meet" via telephone conference call every few weeks, once a month, every six to eight weeks, quarterly, or just on an as-needed basis. Some committees accomplish their work primarily by email; others meet mainly on the phone. As you can see, it is hard to provide a general response to this question because NAHO committees are so varied and specialized. If you are interested in serving on a particular committee, you can contact its chair (firstname.lastname@naho.org) to learn more.

So, what do committees do? The following descriptions should help tell the tale...

The Nominating Committee identifies and recruits potential officers and representatives on an ongoing basis, but most of its work is done every other year when it conducts NAHO's election process. The recent implementation of an online election process has made the work of this Committee paperless. Gregory Ozment (FL) is the chairperson of this Committee.

The Bylaws and Resolutions Committee maintains the Bylaws and the policies set out in the NAHO General Policy Manual, working with the Board and other committees to develop and maintain the most viable governance structure and organization. As new Bylaws or policies are adopted, the Committee is responsible for updating the Bylaws and Policy Manual. Peter Halbach (ND) chairs this Committee.

The Membership Committee consists of a chairperson and the representatives from each of NAHO's six regions. This Committee manages new and renewing memberships, maintains an accurate listing of the membership and reviews and responds to member questions and concerns. The Committee is also responsible for recruiting and retaining NAHO members. Eric Moody (ID) serves as chair of this Committee.

The Conference Planning Committee is chaired by the

Vice President of NAHO, who is currently Toni Boone from Oregon. Among the many tasks associated with planning and presenting the annual conference, this committee prepares the curriculum and acquires the faculty and speakers for the conference, works with the host city and hotel to plan the events at the conference, manages the registration process, and oversees almost everything that takes place during the three-day event. This Committee is assisted by several other small committees to support a conference, such as the Merchandising and Scholarship Committees. Conference planning takes a capable chair and many hands, including volunteers for large and small projects and always welcomes volunteers, especially members from the next host city, which is Washington, DC in 2017.

The Certification Committee receives and reviews applications for certification and recertification, and makes recommendations on individual applications to the full Board. The Committee also assists candidates with questions on the certification or recertification process and works with the Board to maintain certification requirements. The Committee's chairman, Michael Blain (FL), and other committee members are also working with a task force on revisions to the certification process.

The membership of the Past Presidents' Committee is a select group. All of NAHO's past presidents can serve on this Committee, which offers advice and counsel to the Board, conducts special studies, and performs any other duties as requested by the Board or NAHO's President. A member of the Committee serves as its chair.

The Budget and Finance Committee is chaired by Linda Snow (TX), NAHO's treasurer. This Committee is responsible for establishing and maintaining adequate internal controls, verifying the accuracy of financial

*Continued on page 10...*

## FROM THE EDITOR

# THE IMPORTANCE OF SELF-EXAMINATION

Bonny Fetch, ND;  
Past-President, Editor

I recently retired from my position as Administrative Law Judge with the North Dakota Office of Administrative Hearings. I worked in that position 24 years, and 8 years prior to that as an agency Hearing Officer. Working that length of time conducting hearings might lead one to become complacent, cynical, or even jaded from time to time. It's not always easy to recognize those traits in ourselves, so I found it valuable to take stock of my performance periodically. In part, I did this by being as honest as I could in considering how those who appeared before me might feel they were being treated.

I encourage you to spend some time in self-examination periodically. Ask yourself these questions. Do you imagine yourself to be above others because of your title or what you do? Do you feel you are entitled to respect solely because of your job or your title? Do you feel those who appear before you must "obey" you? Do you feel others should be impressed because you are an adjudicator? In other words, are you full of self-importance?

Humility is a good quality for an adjudicator. It is an equalizer, which we may sometimes need to bring us back to the realization that the job we do, that is, the office we hold, is entitled to respect, but so is the position of everyone who comes before us. And just because the job we do is entitled to respect, we as persons doing the job are not automatically entitled to respect. We must earn it, by our demeanor and our performance in how well we conduct the hearing. Integrity and professionalism are crucial to being an effective adjudicator, and those qualities should be apparent to those who appear before us. Moreover, when we take stock of ourselves, we should be able to say without reservation that we are holding true to those qualities.

When taking stock of my performance, I wondered how those who



Bonny Fetch (ND)

appeared before me felt I treated them, whether they were claimants, attorneys, witnesses, agency representatives, or others. I hope they felt I validated their case by listening and hearing what they had to say. I hope they left feeling that I was genuinely interested in their positions and their arguments. I hope they never felt I was rude, judgmental, or disparaging of them or their case. I hope I made it clear, and that they understood, that however I ruled it would be based on the facts and the law, and not as a result of bias or ineptitude. And perhaps most of all, I really hope they felt they got a fair shake and that I treated them fairly.

We will all experience times in our lives where we are "on the other side of the table," so to speak. Some good examples might be when we see a medical professional, or if we are involved in a legal action as a participant, if we apply for a license, or anytime we are seeking to obtain something over which someone else has control. Consider how you want to be treated. And remember, Judge or Claimant, we are after all, just people who happen to be in different roles, but just people all the same.

In the final analysis, I caution you to never compromise your integrity or lower your professional standards, and no matter how stressful a hearing may be, keep your cool and do your job to the best of your ability. 🏠

# ONE AGENCY'S EXPERIENCE WITH THE NAHO SPEAKERS' BUREAU

Laura King, Chief, Program Review and Evaluation  
Division of Welfare and Supportive Services, Nevada  
Department of Health and Human Services

In 2013, the Nevada Division of Welfare and Supportive Services (DWSS) reached out to the NAHO Hearing Speakers' Bureau to provide training for our Hearing Officers. The tentative class would be small—only four Officers and me, their supervisor—so we were unsure whether the Bureau would be willing to provide training to a group this small. However, we met the Bureau's primary criteria; we were all members of NAHO and we could reimburse the instructors for the actual costs associated with providing the class.

After much discussion of our training needs, the Speakers' Bureau created a two-day class covering eleven different areas related to conducting administrative hearings. The training included 110 pages of printed materials which incorporated administrative case law specific to our state. Among the topics covered were history of administrative law, due process, pre-hearing practice, evidence, ethics, hearing management, credibility assessment, legal research and decision writing. Our Hearing Officers enjoyed the training. Our more recently-hired Hearing Officers, in particular, benefited from it. The training enabled one of our Hearing Officers to complete the necessary requirements for NAHO certification.

Recently, our Division identified weaknesses in our Administrative Hearing process involving the staff assigned to

represent the Agency's actions. These individuals have the obligation to present the Agency's case and provide policy and evidence to support the action the Agency took which is being appealed by the client. Unfortunately, these Agency staff members, over the years, had received varying and therefore inconsistent training. As a result, the quality of the DWSS hearing process was being negatively impacted.

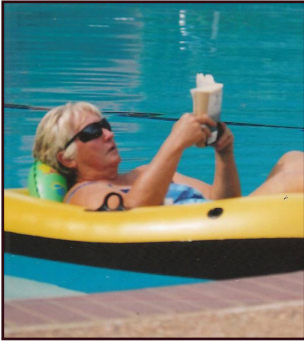
We reached out to NAHO's Speakers' Bureau again and, without any hesitation, they accepted the challenge. NAHO's instructors discussed our concerns thoroughly with us, requesting background information and applicable regulations on our administrative hearings processes. They took the time to understand our unique Administrative Hearings structure, procedures and guidelines. Armed with this information, they quickly tailored a one-day presentation which more than met our Agency's needs.

The details of the training were shared in advance and there was ample opportunity to review and provide feedback on the training material. An 85-page binder was prepared for the attendees covering applicable state and federal statutes and regulations, an overview of due process requirements, and extensive information on how to organize and present the Agency's case.

*Continued on page 9...*

# MEMBER SPOTLIGHTS

This issue we asked retired members to share where they are now, what they are doing, and how they have used their hearing officer skills after retirement.



## Barbara Macdonald

Past NAHO Board Member

I retired in 2005 when I turned 62. I've remained a member of NAHO because due process and the fairness it implies has always been a part of my life.

I serve on two city boards: Library and Crime Commission. Crime prevention has been an interest of mine for years. Besides the Crime Commission I'm a member of the city's Citizens Police Academy Alumni and I chair a Crime Watch program at the 122 unit condominium where I live.

I'm involved with the Texas Rangers Women's Club distributing promotions at home games for the most part. I have conducted grievances for

the club over the years.

I'm still an avid swimmer and put in a mile almost every day. Between the swimming and walking my 13 year old chow, I've stayed healthy. I'm in charge of the condominium's adult and children's pool committees during the swim season.

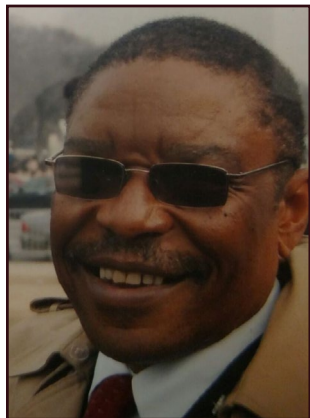
Continuing with the active schedule, I volunteer with Theater Arlington and the Uptown Theater in Grand Prairie. They use me for ushering and will call when there's a production or show going on.

Georgetown University uses me to interview prospective students for

their School of Foreign Service and Institute of Languages.

Although George, my husband of 39 years, died in 2014, I still travel when I can. I'm heading to Australia in January. After Australia, I'll be able to say I have been to all of the continents, including Antarctica! I have three states left: Arizona, South Dakota, and Nebraska. Those of you who knew George, know I really miss his terrific sense of humor.

I'm thankful that having been a hearing officer afforded me the opportunity to "break the ice" and talk with people and actually listen to what they have to say. ↵



## Travis E. Benford

NAHO Past-President

ing current with changing federal and state laws regarding human service policies in the State of Texas. In addition, I try to maintain an awareness of how our profession is responding to new technology as well as social issues raised by changing rules and policies.

I encourage current hearing officers and ALJs to reflect on the difficult issues that our profession deals with every day. As decision makers, it is our job to determine the facts and correctly apply the law to every case we hear. Doing so provides a well-deserved system of justice to every individual on every case that comes to hearing. We all know that when the hearing ends, a fair and just decision must be rendered.

Nowadays, many people speak about economic and social justice as if they were abstract concepts. However, our profession knows better. Many times since retirement I have recalled past decisions. I reflect on the broad impact that my application of legal concepts to facts presented during hearings has had in granting relief or denying benefits to appellants who appeared before me. I ask myself if the facts and the laws were applied correctly. I think about how my decisions may have impacted the life of the appellant and/or the lives of their families. We all know that the final decision will identify both a winner and a loser. Our only consolation is that we found all relevant

facts and correctly applied the law to these facts.

I do not believe people are born with all the natural instincts and skills needed to ignore their own biases and conduct hearings as disinterested civil servants. Indeed, one must have education and cultural awareness to be truly objective in every case. The hearing official must be highly skilled to administer justice fairly and impartially to individuals he knows little about.

I was four months into my job as a fair hearings officer with the State of Texas when I realized that doing this job correctly requires proper education. In fact, I realized that without proper training, one's experience often becomes a detriment. This is true because untrained individuals sometimes spend years practicing their own mistakes.

It was during this time in my career, when Susan Holland, my supervising attorney, learned that Bill Kane, a Connecticut hearings manager, was in Austin and wanted to set up a meeting to discuss the need for educating hearing officers and to find ways to keep that education up to date.

As a result of this initial meeting with Bill Kane, Susan Holland, and myself, General Counsel Simon Rodriguez committed the resources that allowed me (as well as my suc-

cessor from Texas) to work as a full partner in the effort to make NAHO a professional organization. From the beginning, NAHO membership was open to all hearing officials, whether lawyers or non-lawyers. The year was 1987. In 1988 the National Association of Hearing Officials was officially formed and the new organization held its first official conference in Reno, Nevada. We had gained support from the National Judicial College and our first big conference was highly successful. I am proud to say that with the cooperation and support from many of the fifty states, NAHO has grown into the professional organization that you see today. There were many dedicated people involved in the creation and growth of NAHO. I am just one of them. Therefore, all of our members can be proud of their organization.

As a former NAHO president, I would like to encourage more hearing officials from Texas, as well as the other 49 states and U.S. territories to join NAHO. In addition, I ask that you actively participate in the organization by attending conferences and completing our certification program. If you join and become active, you will find many benefits from participation. You will experience our first rate educational programs and you will enjoy the diversity in education, skills, and talents of your fellow members. ↵

“At this time we need education in the obvious more than investigation of the obscure.” Supreme Court Chief Justice Oliver Wendell Holmes.

After working for 25 years as a Health and Human Services hearing official, I am currently retired. Nevertheless, I often take time (from my new life as an organic farmer) to look back on the years when my public service experience was front and center in my life. Even though I am retired from state service, I still feel the need to maintain NAHO membership. I also enjoy attending conferences on occasion. I like keep-

MEMBER SPOTLIGHTS, *continued from page 5*

## Linda Jo Nicholson

C.H.O. (Retired)

*Editor's Note: Linda Jo also served on the NAHO Board for several years and was Registrar for several conferences. She received several awards for her many valuable contributions to NAHO.*

**O**n August 1, 2015, I retired from the Florida Department of Children and Families (FDCF) after 25 years of service. I was honored when Bonny asked me to write a brief article for the newsletter on the subject of NAHO from the perspective of a retired administrative hearing official. The first two things that came to mind were knowledge and friendship.

From 1990 through 1996, I worked in Cash Assistance, Food Assistance and Medicaid programs as an Economic Self-Sufficiency Specialist, Senior Benefit Recovery Specialist and Economy Self-Sufficiency Specialist Supervisor. On January 1, 1997, I was promoted to Administrative Hearing Official. I brought with me an extensive knowledge of the

programs, but very little hearing experience.

My program administrators and supervisors provided excellent training and the tools to do my job. Additional training is always of benefit. The best and most economical of the choices was NAHO. I attended almost every NAHO conference from 1998 through 2014. In addition, I took video classes to obtain certification. The classes provided me with a better understanding of the history of the administrative hearing process, how to control a hearing, and dealing with the clients.

Attendance at the NAHO conferences gave me the opportunity to meet administrative hearing officials from all over the country.

Meeting both new and experienced administrative hearing officials opened many opportunities for networking and making friends.

As I am retired, I do not see these friends often, but we still stay in contact. I truly value what NAHO had to offer. I highly recommend NAHO conferences, NAHO certification, and NAHO continuing education to both new and experienced administrative hearing officials. See you at the 2016 NAHO Conference in Portland. 📍



## Frances Zuther

NAHO Registrar,  
Committee Member

*Editor's Note: I always felt Frances should be a member, considering her years of involvement with NAHO and her invaluable contributions. Most of you know her and frequently ask how she is. So here, in her own words, is an update on someone we miss at the conference.*

**T**his is not your typical member spotlight. While I've never been a member, I did work with NAHO for many years in a variety of positions. During that time, I met a lot of folks I still consider my friends.

For personal background -- my husband Zane and I have been married for 22 years, and I have five children and two grandchildren. My baby graduated from high school this past spring, but he is attending a local college for the first two years, so no empty nesting quite yet. Our family has been expanding -- we gained a son-in-law, a daughter-in-law, and a granddaughter in the last year alone!

I've been in the legal field since 1979, starting out as a legal

secretary in private practice. When the North Dakota Office of Administrative Hearings became an agency on July 1, 1991, I was lucky enough to be one of the original staff members, and became the office manager in 1996. We started out with three hearing officers and two support staff, did our word processing on the IBM System36, and kept our statistics by hand. Things have changed a lot since then!

I have Bonny Fetch to thank for my introduction to NAHO. She worked to bring the conference to Bismarck in 2006 with our office as a sponsor. I worked as the registrar and did so for the next seven conferences. I was also able to work with the membership committee and serve as the webmaster during that time. What an opportunity to watch

talented people in action, working together as a team to accomplish a common goal -- to put on a great professional educational conference for hearing officials.

Serving on the various committees taught me lessons I have been able to apply to my office work and to my home life. When you hear the phrase, "the devil is in the details," it is true. You learn to scan a setting and anticipate what is needed or what could be improved, and hope you brought what you needed to do it or start praying Staples was within walking distance!

Thank you, NAHO, for allowing me to be part of your great organization. I have greatly enjoyed and appreciated the privilege of knowing each and every one of you. 📍

# MEMBERSHIP RENEWALS AVAILABLE ONLINE

Eric Moody, ID, NAHO Membership, [membership@naho.org](mailto:membership@naho.org)

NAHO's website now allows a member to renew and pay their NAHO membership online. Simply go to NAHO's website ([naho.org](http://naho.org)), log in and then click on "View profile" located next to your name. To log into your profile, you will need enter the email address you provided to NAHO and then enter your membership number. Once inside your profile you can click on the renewal section on the bottom of the web page. Please note you can change the number of years you want to pay for your membership by clicking the "Change membership level".

If you are having problems logging into your NAHO profile, please contact your regional representative. Your representative's name and email address is located by clicking on "About Us" on NAHO's home page. You also can contact me at [membership@naho.org](mailto:membership@naho.org).

Remember, for five or more members who are from the same agency and renewing at the same time, the renewal fee is \$30 for each member. For a new member joining an agency of 5 or more NAHO members, the reduced membership fee is \$40 per new member. Please

contact me at [membership@naho.org](mailto:membership@naho.org) for additional information or if you have 25 or members from the same agency who will be renewing at the same time.

I would also encourage that while you are in the profile section to update the information that NAHO has on file for you. This can be done by clicking on the "Edit profile" button. Remember, in order to receive updates on conferences, membership renewal and NAHO's newsletter, please make sure your email address is current.



*Eric Moody*

Of course if you still do not want to use NAHO's website to renew your membership you can renew this year by mail. Renewal applications/reminders will be sent to all current NAHO members this November by both mail and email. 📧

# RULING ON OBJECTIONS

Jim Gerl, Attorney, Scotti & Gerl, Lewisburg, WV

## Introduction

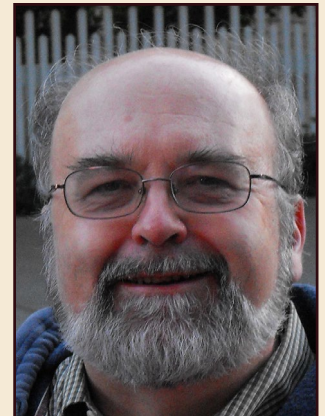
One of the many things that hearing officers do is to rule upon objections. One of the courses that I teach at the extremely valuable NAHO annual conferences is "Ruling on Objections." We rule on serious objections, ridiculous objections, valid objections and absurd objections. We get objections based upon relevance, hearsay, lack of foundation, and form of the question. Most people just see us ruling by saying "sustained," or "overruled." But much more is involved.

For most of us, the formal court rules of evidence do not apply. Administrative agencies that do adjudicatory hearings rarely apply the formal courthouse rules of evidence. Generally, evidence is admissible in an administrative hearing if it is relevant to the issues presented, it is reasonably reliable and it is not privileged. For example, the federal administrative procedure act provides as follows: "Any ... evidence maybe received, but the agency... shall provide for the

exclusion of irrelevant, immaterial or unduly repetitious evidence. A(n order) ... may not be...issued except on consideration of the whole record ... and supported by ... reliable, probative and substantial evidence... A party is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence and to conduct such cross-examination as may be required for a full and fair disclosure of the facts..." 5 U.S.C. Section 556(d). Although the evidentiary standards of the federal administrative procedure act are not binding upon the non-federal hearing officer, they provide an illustration of the type of rules of evidence generally applicable in an adjudicatory administrative hearing.

Some state agencies follow the state Administrative Procedure Act for basic procedures. Other agencies have adopted a hearing officer manual or guide. See for example, Texas Workforce agency's Hearing Officer Handbook, [\[man1.html\]\(http://man1.html\), and the state of Alaska Hearing Officer's Manual, \[http://www.law.state.ak.us/pdf/manuals/hearing\\\_officer.pdf\]\(http://www.law.state.ak.us/pdf/manuals/hearing\_officer.pdf\). Even where such manuals or procedure statutes exist, however, there will be many situations which the hearing officer must address that are not covered by the manual. It is within these areas that the hearing officer must exercise discretion.](http://www.twc.state.tx.us/ui/app/app_</a></p>
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The reason why the administrative hearing officer is vested with substantial discretion in ruling upon objections is that discretion "... is indispensable whenever individuality is needed...The administrative process allows discretion in order to take care of the need for individualized justice..." *Old Abe Co. v. New Mexico Mining Comm.* 908 P.2d 776, 121 N.M. 83 (NM S.Ct. 12/11/95). In other words, discretion permits the hearing officer to rule fairly upon a particular objection based upon the facts and circumstances of the case. The hearing officer utilizes discretion to ensure that rulings



*Jim Gerl*

on objections are fair and just given the situation presented.

The good news here is that because we are granted wide discretion in ruling on objections, a hearing officer's rulings regarding the admission or exclusion of evidence will not be disturbed upon review by a court unless there has been an abuse of discretion. *M. J. Ontario, Inc. v. Daley* 861 N.E.2d 1161 (Ill. App. Ct. 1/10/07). A reviewing court will not overturn an evidentiary ruling by a hearing officer unless it affects the fairness of the proceedings or the correctness of

*Continued on page 8...*

## RULING ON OBJECTIONS

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the decision. *Gadsden State Bank v. Department of Banking, et al* 369 So.2d 375 (Fla.Ct.App. 3/27/79). Evidentiary findings made at an administrative hearing will not be reversed unless clearly wrong. *Loyal Order of Moose Lodge No. 120 v. State Tax Commission No. 32842* \_\_\_\_ S.E.2d \_\_\_\_ (WVa S.Ct. 7/14/06). See, *Bar-Av v. Psychology Examining Board* 728 N.W.2d 722, 735 (Wis. Ct. App. 10/11/05); *Austin Chevrolet, Inc v. Motor Vehicle Bd.* 212 S.W.2d 425 (Tex.Ct.App. 2006); *Owen City Bd of Commrs v. Indiana Dept. of Workforce Development* 861 N.E.2d 1282 (Indiana Ct. App. 3/1/07).

### Best Practices

It is important to explain to the parties and attorneys at the outset of a hearing, or earlier, that the formal rules of evidence do not apply. A more detailed explanation, in plain language, is necessary if a party does not have legal representation. It is also important to be reasonably consistent throughout the hearing with your rulings on objections. Firm and decisive rulings by the hearing officer are critical.

In ruling on objections and motions that are raised during the hearing, be decisive. Allow each party to address an objection briefly, unless you direct otherwise, on a particular objection you want help with, and then rule firmly. Do not permit attorneys or pro se parties to argue with you after you have ruled. If difficult lawyers contest your rulings after you have made them, simply state "Your comments are noted for the record. Please proceed."

Some attorneys will ask you to "take it for what it's worth," after you have excluded "it." I never do this. If the proponent of an exhibit cannot explain clearly how it is relevant, it's not worth anything. In any event, it is important to be decisive in ruling and to stick by your rulings once you have ruled. Otherwise overly aggressive lawyers will consume an unreasonable amount of hearing time contesting your rulings or trying to make you doubt yourself.

A hearing officer is not required to explain rulings on objections or motions (unless, of course, your state has a rule, regulation, policy, or manual to the contrary.) Unlike your decision, which is required to have findings of fact and conclusions of law and should include an explanation of your reasoning, your rulings during the hearing require no explanation. Of course, if explaining a ruling, particularly early on when the lawyers are unsure of the rules of evidence, etc., will help the lawyers or parties understand how to proceed for the remainder of the hearing, then by all means explain the ruling.

Evidence comes in two primary forms: the testimony of witnesses and exhibits, which are generally documents or tangible things. Only evidence that is admitted by the hearing officer at the hearing may be considered by the hearing officer in deciding the case, and you should inform parties of that at the outset.

The most important rule of evidence for administrative hearings is relevance. By requiring the lawyers and pro se parties to stick to the issues presented and to only present evidence which tends to prove or disprove facts related to the issues, the amount of time the hearing takes is greatly shortened. If a hearing officer is lax about the concept of relevance, a two-day hearing can be inadvertently converted into a two-week hearing. Even in the absence of an objection, the hearing officer should require an explanation of where a line of questioning is leading if a lawyer or witness seems to be off track. One caution about relevance- be careful not to exclude evidence you may need for your decision, including facts concerning relief issues.

The reliability of any particular piece of evidence, like so many evidentiary issues, is a judgment call. Privileges are matters where confidentiality of the evidence is protected by law. Privilege questions are legal issues, and where unsure, a hearing officer should seek legal advice.

In cases where you do exclude one or more exhibits, it is a good idea to have the exhibit placed in a sealed envelope and mark the exhibit number and "not admitted" on the envelope. You may then place the sealed envelope with the admitted exhibits so that a reviewing body or court may be able to consider the evidence without the necessity for a remand in the event that the court disagrees with your conclusion as to admissibility. See, *In Re Student with a Disability* 102 LRP 1774 (SEA WV 2000).

Where a lawyer keeps raising the same, or a substantially similar, objection repeatedly, it is advisable to note a continuing objection for the record so that the lawyer does not have to keep interrupting the testimony.

Don't let an objection get you angry or disrupt your judicial temperament. Many times a lawyer will raise an objection to preserve a point for appeal. But even if a lawyer or litigant is trying to get you mad, don't take the bait. You are an impartial hearing officer, and your demeanor should reflect that.

On cross-examination, the hearing officer should allow the attorney or pro se party wide latitude. Because cross-examination is generally an important component of due process, see *Goldberg v. Kelly* 397 U.S. 254 (1970), and because fairness requires that a party to a hearing be allowed to reasonably present his case, severe limits on cross-examination are met with disfavor by reviewing courts.

Every witness testifying during an administrative hearing is entitled to respect. Some lawyers get "in the face of" a witness or stand too close or hover over a witness. A hearing officer should not permit any such mistreatment of a witness. See, *In Re Student with a Disability* 102 LRP 1866 (SEA WV 1997).

It is very helpful if, during the hearing, the hearing officer maintains a list of witnesses, an exhibit log, and takes other notes, especially charts concerning which pieces of evidence either support or negate each element of each issue in the case. The witness list should include the correct spelling

of the name of every witness and a notation as to the date and time (or at least am vs. pm) that the testimony began. Witness notes should also include credibility factors for each witness as he or she testifies.

An exhibit log should specify each exhibit number (or letter) and a brief description of each exhibit. A code should be used to designate whether the exhibit was offered and/or admitted into evidence. Whenever an offered exhibit is not admitted into evidence, the hearing officer should make a notation as to the reason why the exhibit was excluded. Parties should be directed to submit exhibits in a three ring binder and to bring copies for the hearing officer, their opponent and the witness. Once the hearing is over, the copy for the witness can be given to the court reporter.

The hearing officer should also keep a "scorecard," which will make writing the decision much easier. By "scorecard," I mean that there should be a set of notes that specifies which pieces of testimony or exhibits concern each element of each issue in the case. This can either be included in the hearing officer's contemporaneous hearing notes or on a separate pad of paper. Using multiple colors of ink to code different types of notes is a useful tool. For example, black ink could signify regular notes, blue ink could be used to note possible areas where the hearing officer might want to ask a question, and red ink could designate important testimony or exhibits to be highlighted.

Hearing officers who handle a high volume of cases might find the above-mentioned witness lists, exhibit logs and scorecards particularly useful. Where the hearing officer must keep track of multiple hearings involving the same or similar issues, such note-taking shortcuts can be particularly helpful when writing the decision.

### Conclusion

When ruling on an objection, the hearing officer should rule firmly and fairly, applying the appropriate administrative rules of evidence, and then move on with the hearing. This is an important part of our jobs. 🏠



# NAHO HEARING OFFICIAL (CHO) AND ADMINISTRATIVE LAW JUDGE (CALJ) CERTIFICATION 2016

## OMENS OF THINGS TO COME!

Michael Blain, FL  
Certification Committee Chair

**A**n omen (also called portent or presage) is a phenomenon that is believed to foretell the future, often signifying the advent of change.

It would be my guess that a few of you have a fishing license. It would also be my guess that a few of you have a driver's license. And I would also guess that more than a few of you have a Certificate of Certification as an Administrative Law Judge or Hearing Official issued by the National Association of Hearing Officials. How many of those certificates are proudly displayed on the wall in your office or in your home? How about those fishing and driver's licenses? Are any of those framed and hanging on your wall? Probably not.

Why do those certificates hang on the wall and not the licenses? While there may also be other reasons, I would suggest that it is because of the sense of pride we derive from having attained those certificates as compared to the fairly simple act of applying and paying for the licenses. Assuming that to be true for just a minute, this brings a question to mind. Why do we derive such a sense of pride from those certificates as opposed to the licenses? I would suggest the answer to that question has to do with the effort, time and energy that we had to put into obtaining the NAHO hearing official or ALJ certification.

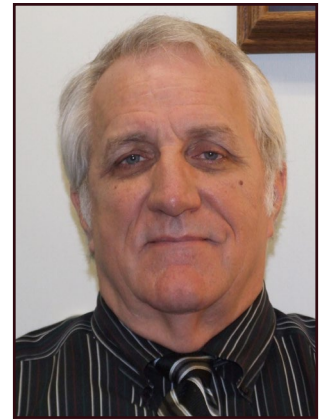
Not only do we seem to derive a deeper sense of pride from the things we must earn as opposed to the things we merely purchase—we also seem to place a higher

value on the things that are more difficult to attain. Others also assign more value to things which are more difficult to attain. The degree to which we are esteemed for an attainment is often in direct proportion to the difficulty involved in reaching that goal.

Enter the process of attaining certification as an ALJ or HO from NAHO. You, I and anyone who has completed the process or is working to complete that process knows that there are a large number of hours of training, years of experience and much learning and effort involved in the task. On the other hand, what is the appearance to those that gaze upon our prestigious certificates? Did you have to pass any tests to get that certificate or demonstrate your knowledge in any way? Well, no, I just had to sit through some classes and pay \$20.00 or \$35.00 or maybe even \$60.00. The perception from outside our

community can be a little less than impressive. You mean you could have just sat in the back of the classroom sleeping and then paid a fee and they would have sent you the certificate? Well yes, but really, I did not do that.

In an effort to add more value and prestige to those certificates, the NAHO Board of Directors are reviewing the certification process. Soon there will be changes made to the process. Some of these will aid the applicants in more easily attaining the training required to meet the requirements. Some of the changes will more clearly define the required training and use more industry standard terms to describe the courses that meet the requirements. Some of these changes will include the necessity to demonstrate the knowledge gained. Therefore, NAHO will soon be implementing an online testing program. Naturally the added resources to allow for online



Michael Blain

training will come with an added cost. That cost will take the form of higher application fees for both initial and re-certifications.

The details of these changes are still being formulated. So, stand by for more news in the coming weeks concerning changes to the certification process.

That certificate that you so proudly display on your office wall will soon speak even louder in reflecting your dedication to your chosen field and your efforts to make the administrative hearing process the best that it can be. 📌

## ONE AGENCY'S EXPERIENCE WITH THE NAHO SPEAKERS' BUREAU

*continued from page 4*

The day-long training was professionally presented. Although reference materials were provided to participants, the lecture was extremely fluid and allowed ample time for discussions and questions. Everyone who attended was overwhelmingly impressed with the quality of the training and was extremely appreciative of the information they received.

As a result of the training, the

quality of the cases presented by our Agency hearing representatives has improved significantly. Understanding due process, documentary evidence standards and administrative hearing protocol has greatly enhanced their appreciation for their role in the process. The exposure to such meaningful information has generated a new sense of personal pride and accomplishment throughout their daily activities.

Overall, our experience with NAHO's Speakers' Bureau has far exceeded our initial expectations. NAHO is committed to promoting professionalism within the Administrative Hearing process and the training we received certainly reflected this philosophy. I highly recommend this valuable service. 📌

**ASK THE BOARD***continued from page 3*


records and ensuring that NAHO complies with state and federal laws.

Ad hoc committees have been established to support specific NAHO services or projects, and include the following. The Library Committee, chaired by Clayton Mansfield (DC), manages NAHO's library of DVDs that are used by members for training and to meet certification and re-certification requirements. At present, this Committee is actively exploring options for online training, including videos and recorded Power Point classes. The Communications Committee, co-chaired by Bonny Fetch (ND) and Kayla Adams (TX), is primarily responsible for producing NAHO's newsletter, but also works to help keep the information on the NAHO website current and informative. The Technology Committee, chaired by Brian Ford (PA) and Clayton Mansfield, is responsible for NAHO's updated website and works to bring new technologies (such as the online election process) to NAHO to help make its processes more efficient and effective.

Interested? For more information, you can review committee descriptions on the website at [www.naho.org](http://www.naho.org), review minutes of Board meetings in the members-only section of the website, or watch for reports on committee work in editions of NAHO News. You can also talk to any Board member at the upcoming Portland Conference. We'd love to have you aboard!!

*3) If we take pictures during the NAHO conference, who can we send them to?*

We would welcome your pictures taken during the conference. Please be sure to include your name and a caption for each picture which identifies the person or persons in the picture and explains the event or activity during which the picture was taken. Pictures may be emailed to Kayla Adams at [kayla.adams@naho.org](mailto:kayla.adams@naho.org) or Toni Boone at [toni.boone@naho.org](mailto:toni.boone@naho.org). 📧



The 2016 NAHO  
Professional Development Conference  
will be held in beautiful  
Portland, Oregon,  
from September 11-14.

*Be  
part of  
it!*