



NAHO NEWS

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

NATIONAL ASSOCIATION OF HEARING OFFICIALS

DECEMBER 2023

NAHO BOARD MEMBERS & OFFICERS ELECTED FOR 2024/2025

At the November 6 NAHO Board Meeting, President Toni Boone announced the Officers and Regional Representatives elected to serve on the Board for a two-year term beginning on January 1, 2024. After completion of her four successful years as President, Toni will continue to serve as Immediate Past President.

The results of the election were certified

and presented by the Nominating Committee, chaired by Immediate Past President Janice Deshais (CT) and including Secretary Colleen Ulrich (GA) and Treasurer Cindy Antrim (GA). Pursuant to the NAHO's bylaws, the Board consists of five officers and six regional representatives, plus up to four additional at-large members appointed by the President.

For the 2023 election, the regions were reorganized to balance the number of members in each region and the number of possible at-large appointees was increased to four. NAHO membership approved those bylaw changes at the September 12, 2023 Annual Membership Meeting in Reno, Nevada during the 2023 Professional Development Conference.

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CONFERENCE 2023 RENO, NV

Toni Boone (OR)

Well...that was different.

That's the first thing that came to my mind when I reflected on the conference NAHO recently held in Reno at the National Judicial College. And, it was different in a good way...a very good way.

Reno is dissimilar from many conference cities we've visited. For one thing, it is nestled at 4,500 feet above sea level in the Sierra Nevada mountains. Reno is considered “high desert,” but I knew that at that altitude and in September, the weather would be near perfect. And it was. Having perfect weather in the Sierra Nevada mountains is not something most NAHO conference attendees had experienced lately.

Then there was the venue for the classes—the National Judicial College. The National Judicial College (NJC) is the only educational institution in the

United States that teaches courtroom (or hearing room) skills to judges of all types from all over the world. Our conference was held at the same facility that has trained judges from Nigeria to Nicaragua. Utilizing a venue for our classes that was created for the specific purpose of training adjudicators was certainly out of the ordinary for NAHO, and ideal.

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THE NAHO NEWS EDITORIAL BOARD

This edition of NAHO News was put together by a new group of members who have decided to work as a team on the newsletter. The members of this Editorial Board are the following:

- JANICE B. DESHAIS
- JIM JOHNSON
- JONATHAN HUBER
- JENNIFER UKERITIS



"WELL THAT WAS DIFFERENT" **CONFERENCE 2023**

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Another atypical aspect of this conference was having breakfast and lunch together every day. Conference hotels charge exorbitant fees for meals and beverages—for example they charge hundreds of dollars for one gallon of coffee. The catering service for the University of Nevada was so reasonably priced that we could cover the cost of two meals and beverages for each of the three days of the conference. Eating at the NJC dining hall was convenient, it was another opportunity to get acquainted with colleagues, and the vast majority of the comments we received regarding the food were positive.

NAHO enjoyed the teaching ability of instructors from the NJC's administrative law curriculum, most of whom were new to NAHO attendees. Based on post-conference evaluations from attendees, "enjoyed" is exactly the right word. As one attendee enthusiastically described a class she had just attended, "It was the bomb!" NAHO's attendees seemed to favor the classes that, once again, were not the usual conference fare. Among the preferred classes were how traumatic testimony can impact decision-making, de-escalating a threatening hearing situation, using emojis, emoticons, and other wordless communication as evidence, the classes that were specific to a single type of hearing, and the mock hearings held in NJC's model courtroom.

No two conferences are alike. Although my opinion is hardly objective, I would not consider any NAHO conference run-of-the-mill. In 2024, the NAHO conference will be held in Savannah, Georgia—a destination that NAHO has yet to visit. NAHO will try, once again, to provide a conference that is distinctive from past conferences. Don't you want to come and take part in the classes and activities NAHO will provide in Savannah? Of course, you do! I hope to see you in Savannah in 2024. In the meantime, we can see each other during our regular NAHO webinars.

Toni Boone (OR)



MEET YOUR NEWLY ELECTED OFFICERS

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PETER HALBACH PRESIDENT (ND)

Peter is finishing his two-year term as Vice President, and serves as the Chief Hearing Officer for the North Dakota Department of Transportation. He joined NAHO in 2006 and became a NAHO Certified Hearing Official in 2011. He also served on the NAHO Board for four years as the Mountain Regional Representative.

Peter received his Bachelor of Arts in Political Science from the University of Minnesota and his Juris Doctor from the William Mitchell College of Law. He then worked for the Minnesota Attorney General's Office for five years, before entering private practice in North Dakota in 1988. While in private practice, he continued his public service as a part-time assistant state's attorney and as an adjunct college instructor. He became the Municipal Judge for Devils Lake North Dakota in 2002 and a Hearing Officer for the state's Department of Transportation the following year, before being designated the agency's Chief Hearing Officer in 2015.



BOBBI MARSHALL VICE PRESIDENT (TX)

Bobbie currently serves as NAHO's Southwest Regional Representative and is the Assistant Director of Fair and Fraud Hearings for the Texas Health and Human Services Commission. Since joining NAHO in September 2015, Bobbie assisted with updating NAHO's Facebook and Twitter accounts and created NAHO's Instagram and LinkedIn accounts. She continues to manage and update content for all of NAHO's social media accounts its website. She previously served on NAHO's Board of Directors as the Member-At-Large.

In her 15 years of service with the State of Texas, Bobbie served as Hearings Manager for two years, Lead Hearings Officer for two years and a Hearings Officer for four years. She obtained her Bachelor of Arts and Sciences degree from Texas Tech University.



MARY LONG SECRETARY (PA)

Mary currently is the Regional Representative for the Northeast Region and serves as the Continuing Education Committee Chair while serving the Pennsylvania Public Utility Commission as an Administrative Law Judge. She joined NAHO in 2018 and is a NAHO Certified ALJ.

Before her appointment to the PUC, Mary was counsel to the Environmental Hearing Board, advising the Chairman as to the resolution of water, air and land permitting disputes as well as the review of enforcement actions by the PA Department of Environmental Protection. A magna cum laude graduate from the Widener University School of Law, Mary clerked for the Honorable Joseph T. Doyle of the Pennsylvania Commonwealth Court, an intermediate appellate court for cases involving state and local administrative agencies. Mary received a dual degree in Political Science and Business from the University of Pittsburgh.



DUSTIN BRANDON TREASURER (TN)

Dustin has been an active member of NAHO since 2018 and has attended NAHO's annual Professional Development Conferences since 2019, while serving the Tennessee Department of Safety since 2015.

Dustin began his career with the Department as an attorney presiding over driver license suspension and revocation hearings and representing the agency in civil forfeiture cases throughout the state. He also has represented the Department in personnel matters, handgun instructor revocations, ignition interlock installer revocations, and driving school revocations. In 2022, Dustin was appointed as the Commissioner's Designee and placed in charge of the agency's Appeals Division. As Designee, he reviews and issues orders including straight forfeitures, voluntary dismissals, and reconsideration requests, while continuing to preside over driver license hearings. He has received extensive training in due process, procedure, evidence, legal writing, and administrative law through the National Association of Hearing Officials, National Judicial College, Tennessee Bar Association, and American Bar Association.

MEET YOUR REGIONAL REPRESENTATIVES

SHANON LEVIN PENNSYLVANIA

NORTHEAST REGION (Connecticut, Delaware, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont)

Shanon serves as an Administrative Judge for the Equal Employment Opportunity Commission where she adjudicates complaints of discrimination filed by federal employees. Shanon also volunteers as a Court Appointed Special Advocate for dependent children and adolescents. Prior to joining the EEOC, Shanon heard cases of discrimination in housing, employment, education, and public accommodations for the Pennsylvania Human Relations Commission.

Before presiding over cases, Shanon led the litigation activities at Disability Rights Pennsylvania, a nonprofit organization bringing civil rights cases on behalf of people with disabilities. She also was a shareholder at the law firm of Hangle, Aronchick, Segal, Pudlin & Schiller in Philadelphia. She earned her Bachelor of Arts degree from Penn State and a law degree from Temple University School of Law. Following law school, she served as a law clerk to the Honorable Berle M. Schiller of the United States District Court for the Eastern District of Pennsylvania.

CHARLES THOMAS WASHINGTON D.C.

MID-ATLANTIC REGION (District of Columbia, Maryland, Virginia, West Virginia)

Charles has served as the District of Columbia's first Administrative Law Judge since 2019. He currently presides over matters involving probable cause, detainee discipline, and employee grievances, terminations, and residency claims. He also hears matters before the Education Licensure Commission and disputes involving the Compulsory School Attendance Act. Charles also presides over administrative hearings relating to the revocation of juvenile parole rights, with the goal of providing a fair process for youth while balancing the need to ensure effective violence prevention. Before his current appointment, Charles served as a Hearing Officer for the DC Department of Youth Rehabilitation Services (DYRS), where he developed the comprehensive strategy to protect and expand the rights of individuals facing revocation of their liberty interests and freedoms in the District of Columbia.

Prior to his career at DYRS, Charles was a Policy Advisor for the Deputy Mayor for Health and Human Services providing technical assistance and recommendations on city-wide violence prevention, critical community responses, summer activity and funding planning, community-based grants, truancy, and various other matters. He began his career as a law clerk, then as an assistant general counsel with the District of Columbia's Child and Family Services Agency, where he spent approximately eight years. He received his Bachelor of Science degree from the University of South Carolina and his Juris Doctor from Western Michigan University Law School.

LORRI BENNETT SOUTH CAROLINA

SOUTHEAST REGION (Alabama, Florida, Georgia, Mississippi, North Carolina, Puerto Rico, South Carolina, U.S. Virgin Islands)

Lorri maintains her NAHO affiliation while in her current position as Manager of Administrative Hearings for the South Carolina Department of Corrections. She began her career with the Department in March 2011. Awarded her current position in September 2023, Lorri manages and directs staff responsible for governing violations and revocations hearings for youthful offenders. Her previous positions with the Department included Program Assistance, Intensive Supervision Officer, Intensive Supervision Officer II and Administrative Review Coordinator (Parole Hearing Official).

Lorri obtained her bachelor's degree in Business Administration from Pheiffer University in Misenheimer, North Carolina and a master's degree in Rehabilitation Counseling from SC State University. In addition, she is a Certified Gang Specialist and is the President of the South Carolina Probation and Parole Association. While serving as President, Lorri also volunteered to serve as the Secretary for South Carolina Correctional Association. In addition to NAHO, her many professional memberships include the American Correction Association, the South Carolina Probation and Parole Association, South Carolina Correctional Association, the National Association of University Women and the Charlotte Women's Leadership Association. She is also involved with many other state and national organizations involved with law enforcement and corrections.

CAROLINE STEPHENS RYKER INDIANA

CENTRAL REGION (Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Tennessee, Wisconsin)

Currently finishing her first two-year term as the Central Region Representative, Caroline serves as an Administrative Law Judge for the Equal Employment Opportunity Commission (Indianapolis Office). She also has served as an Administrative Law Judge for Indiana's Central Panel (the Indiana Office of Administrative Law Proceedings) and as an agency-embedded Administrative Law Judge with the Indiana Civil Rights Commission. Caroline is deeply passionate about administrative law and is excited to help support NAHO's mission to make great education available to hearing officials.

A summa cum laude graduate from the Robert H. McKinney School of Law in Indianapolis, Indiana, Caroline obtained her BA in English and her BA in Communications from Indiana University, Bloomington, along with a certificate in Political and Civil Engagement. Caroline attended her first NAHO conference in September of 2018, after which she became a NAHO member. In August of 2021, she completed NAHO's certification program to become a Certified Administrative Law Judge.

MEET YOUR REGIONAL REPRESENTATIVES

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MARK WEIBEL
TEXAS

SOUTH CENTRAL REGION (Arkansas, Louisiana, Oklahoma, Texas)

Mark has been a NAHO member for over seven years and is a Certified Hearing Officer. He has served as a Hearing Officer for the City of Fort Worth for 13 years, beginning as the Red Light Camera Hearing Officer before joining the Municipal Court in 2016. In that position, he is responsible for conducting civil hearings related to parking citations, junked vehicles, solid waste fees, booted vehicles, game room permits, and apartment complex registrations.

Before Mark’s appointment as a hearing officer, he served as a police officer for over 20 years. He retired as a police lieutenant with the Arlington Police Department. A summa cum laude graduate from Sam Houston State University with a BS degree in Law Enforcement and Police Science, Mark has a MA degree in Organizational Management from Dallas Baptist University. He also is certified in court dispute resolution.

KARL F. SELIGMAN
CALIFORNIA

WESTERN REGION (Alaska, American Samoa, Arizona California, Colorado, Guam, Hawaii, Idaho, Montana, Nevada, New Mexico, Northern Mariana Islands, Oregon, Utah, Washington, Wyoming)

Karl currently serves as an Administrative Law Judge at the California Department of Insurance. He was previously an ALJ at the California Public Employment Relations Board (PERB), a department of the California Labor & Workforce Development Agency, where he was the only ALJ with a statewide appointment. At the Department of Insurance, Karl is assigned settlement conferences, administrative trials and petitions to be decided on the papers. He is based in Oakland, but the agency also maintains courtroom and chamber facilities at the Ronald Reagan State Building in downtown Los Angeles, and he travels there as necessary to hear in-person proceedings at that location.

Prior his 2019 appointment to the administrative bench, Karl was a Regional Attorney in PERB’s Office of the General Counsel. Before entering public service, he practiced in transactions and litigation, representing both individuals and organizations while working at boutique law firms, as in-house counsel and in his own practice. He earned his Juris Doctor from Santa Clara University, where he participated in the law school’s Pro Bono Project and at graduation was awarded the High Technology and Public Interest Law Scholar certificates. He holds a Bachelor of Science in Business Administration, and a Bachelor of Arts in Labor, both from San Francisco State University. Karl also completed mediation training at Golden Gate University and the Straus Institute for Dispute Resolution at Pepperdine University.

MEMBERSHIP CORNER

Marilyn Slifman, Chair, Membership Committee

JOIN NAHO NOW AND MEMBERSHIP WILL BE EXTENDED FOR 2024

Please go online and apply at www.naho.org to the “Join NAHO” tab at <https://www.naho.org/page-18112>.

The application process will guide you through setting up a password, completing the application, and paying the application fee through the secured Affini payment portal. Prefer to mail a check? You can send it to the address in the box at right.

TO RENEW OR UPDATE YOUR EMAIL OR PASSWORD

Log into your profile at <https://www.naho.org/Sys/Profile>. Don’t know your password? Reset it here <https://www.naho.org/Sys/ResetPasswordRequest>

2024 MEMBERSHIP AND RENEWAL DATES

January 1-December 31; \$10 late fee after March 1

Please include the name of the member or a copy of your invoice if mailing a check to:

NAHO, PO Box 492286, Lawrenceville, GA 30049

GROUP MEMBERSHIPS

*If your agency has five or more members that are joining or renewing **AT THE SAME TIME**, your group is entitled to a special discount. Have the group administrator or managing member email me for a group invoice at marilyn.slifman@naho.org and to add new members or with any questions

MEMBERSHIP LEVEL	DUES	RENEWALS
NEW MEMBER - 1 YEAR	\$60.00	\$50.00
NEW MEMBER - 3 YEARS	\$135.00	\$115.00
NEW ASSOCIATE - 1 YEAR	\$45.00	\$35.00
NEW ASSOCIATE - 3 YEAR	\$120.00	\$100.00
*GROUPS OF 5+ - 1 YEAR	\$50.00 (EACH)	\$40.00 (EACH)
*GROUPS OF 5+ - 3 YEARS	\$120.00 (EACH)	\$115.00 (EACH)

MOCK HEARINGS: WATCHING HOW THE SAUSAGE IS MADE

Janice Deshais (CT)



This year's Conference presented two mock hearing sessions that provided another approach to learning how others "do what we do." Although listening to an informative lecture and having the chance to ask questions or comment on a topic is an important part of a NAHO conference, the mock hearings gave attendees the opportunity to observe a scripted presentation that could be part of any hearing and, through a moderated discussion, to discuss the situation and how it was handled, and to interact with others about how they would deal with the challenges presented.

The first mock hearing session, "Facing Uncommon But Challenging Issues," presented several skits that illustrated the problems faced when counsel is misleading a witness during a hearing, when a hearing officer must determine if self-represented litigants understand the terms of a settlement agreement, and when a hearing officer must maintain control of a hearing in the face of a difficult party who is trying to disrupt the process. The issue of when it is appropriate to take administrative notice of a proposed fact was also discussed in the context of another hypothetical situation that hearing officers may encounter.

The second session, "A Gambler Wants to Win," focused on an administrative appeal taken by a gambler who was trying to obtain his winnings but had been prevented from doing so by procedural and legal obstacles. This mock hearing took a deep dive into the hearing process and presented attendees with a more focused opportunity to discuss that process in detail and to consider options for improving the process.

The mock hearing sessions were not only another tool to acquire new ideas on how to handle the challenges of being a hearing officer but were also a fun way to display the acting skills of a group NAHO thespians. Who knew NAHO had such talent in its midst?

NEED A NEW ARROW IN YOUR QUIVER? TRY ON DEMAND.

Ongoing training is essential to your important work as an adjudicator. The NAHO On Demand video library can help you polish skills you already have or provide you with a foundation for new skills you want to acquire.

Did you miss one of the great webinars offered in 2023? Never used the On Demand library? Take advantage of this important member benefit. (This is a great way to use an On Demand Credit you may have received for renewing your membership in 2023.)

The NAHO On-Demand library has grown to include over 100 titles. Since the spring issue of NAHO News, we have added three new titles:

- 2023-06 Conducting a Prehearing Conference
- 2023-07 Prehearing Preparation for High Volume Hearing Officials
- 2023-08 Prepare for Medicaid Unwinding

The most popular titles of 2023 in the NAHO library include:

- 2018-04 How to be An Administrative Hearing Officer
- 2018-05 Examining & Eliminating Implicit Biases
- 2019-06 Procedural Due Process: Essential Elements
- 2021-05 Organizing and Writing Findings of Fact, Conclusions of Law and Orders
- 2022-14 Default and Due Process

Everything you need to know about this important member benefit can be found on the NAHO website. For detailed information about renting On Demand titles and a list of NAHO's full video inventory:

www.naho.org/library

Mary D. Long, On Demand Administrator
Mary.long@naho.org



BUILDING BRIDGES WITH WORDS

Jonathan Huber (ND)

A highlight of the 2023 Professional Development Conference was a session entitled, *Pride and Pronouns: Practical Tools to Address Gender Identity and Expression in the Hearing Room and Beyond*. Professor Todd Brower, Judicial Education Director for the Williams Institute at the UCLA School of Law, shed light on this less understood subject.

Have you ever found yourself preparing for a hearing, practicing all possible pronunciations of an odd surname, and simply filling in a Mr. or Ms. (based on, perhaps, information in the case file) prior to the surname? Repeating that honorific and name over and over, trying different variations, attempting to find one that will hopefully not upset the subject too much, but will earn us no more than a simple correction? Suddenly, the person you were led to believe was Ms. Y appears before you and presents as Mr. Y. Now what would you do?

Professor Brower's presentation began with information regarding the prevalence of transgender and gender nonbinary people in the United States from The Williams Institute. He then eased attendees into the subject matter by discussing some of the nuances in sex and gender terminology, building upon fairly familiar terms like sexual orientation (lesbian, gay, bisexual) and biological sex/sex assigned at birth (male, female, intersex), before moving into less conversant terms such as gender identity (transgender/trans, cisgender) and gender expression (gender nonbinary/diverse, or how someone feels in terms of gender, as well as gender nonconforming, or how a person expresses gender).

Throughout the presentation, Professor Brower asked revealing questions regarding transgender and gender nonbinary individuals' interactions with the legal system. Without giving away the questions or answers, both seemed equally revealing of the both the attendees' perceptions (and perhaps biases) as well as the surprising statistics.

As the presentation continued, Professor Brower engaged with attendees, discussing hypothetical scenarios such as how to address a self-represented individual with a traditionally masculine name who presents with a traditionally female appearance, as well as how to address an agency that decides to refer to this person as a man. Another scenario involved writing a fact pattern that encompassed events before and after a transgender individual's transition. This was followed by a discussion of how to address the issue of a printed name on an older document that did not match the current name of a witness.

Other materials offered during the presentation included a legal writing guide by Savannah Blackwell entitled, "When to Stay Away From Him, Her, and Them;" a Benchcard from The New York State Unified Court System entitled, "Using LGBTQ+ Inclusive Language and Pronouns;" a piece prepared by U.S. Magistrate Judge Mustafa T. Kasubhai entitled "Pronouns and The Courts;" and a list of links prepared by Professor Brower to materials concerning Transgender and Gender Non-Conforming Persons, LGBT and Gender Non-Conforming

Youth Issues. The article by Savannah Blackwell presents simple formal writing solutions to the issue of how to address an individual in writing when the author is unsure of the person's preferred pronoun or gender identity. Similarly, the benchcard gave tips for addressing individuals while creating a record. All conference materials are available for download at NAHO's website.

After having lived one of the scenarios noted above, I was compelled to take in this session. I left feeling a little more connected, not only the quite infrequent transgender or nonbinary individual I may serve in the future, but to other individuals who lack experience and seek better understanding. I feel better prepared to be a bridge by seeing, addressing, and asking

the people I serve how to make them as comfortable as possible in what is an already undoubtedly stressful situation. At the same time, the course also prepared me to address others' questions when life and people are not as simply characterized as some folks might prefer. I am thankful to Professor Brower for this enlightening and thought provoking experience.



A FAVORITE INSTRUCTOR

Jennifer Ukeritis (NY)

I chose two of my classes for Reno based solely on the words “retired U.S. Marshall”.

I knew the classes taught by John Muffler would be interesting and a break from more typical classes on how to do my job as an administrative law judge better. Statistics on safety are very often especially important to females, and we should learn to pay attention to more things, by watching and listening, when the other half of the population doesn’t necessarily need to know. I assumed these classes would build on those long-engrained practices, and I wasn’t wrong. But like all things, there are always new things to learn.

Security Precautions Every Hearing Official Should Know

John Muffler, former U.S. Marshall and faculty at the NJC since 2008, taught this class, and made all of us in the audience realize just how vulnerable most hearing officers are compared to court judges. While a few have metal detectors and security that can come at the push of a button, the vast majority of us have zero security. School resource officers face angry, combative parents and students. Many of the rest of us go to random buildings to hold hearings, sometimes with hundreds of people in attendance. So, the take-home message, for me at least, was more on how to set up what you can to keep yourself safest where you end up. Some things were old hat: staying out of unlit areas alone, paying attention to your surroundings. Others were new for my new role: keep sharp things away from other people, take the chair with wheels, and make the most space between you



and the parties.

Mr. Muffler was engaging and personable, even as he pointed out the challenges hearing officers face. He gave us real world examples, challenged us to think hard about situations we had been in, and to point out the issues we each noticed. He made us laugh, but always kept the key point, that your safety is in your own hands, front and center. He also offered advice when specific questions were asked and offered his own email for questions that arose later.

The materials are detailed and interesting and the graphic image Mr. Muffler used is a fun yet specific reminder of the key safety points: pay attention to your surroundings, don’t announce your or family’s information with stickers, don’t get close enough to people for them to touch you, set up your space so it is safest for you, and most importantly, trust your instincts.

There is a quote from the movie Ronin that my friends and I remind ourselves about a lot... “If there are doubts, there are no doubts.”

De-Escalation Techniques for Administrative Hearings

This class built upon the information we learned in the first one and made us, the audience, point out the issues we saw as Mr. Muffler and Judge Katherine MacDonald role played an angry parent and a school hearing officer.

One key tip was to not have sharp things like scissors and pencils where others can reach them. They advised us to make sure your back is not to a door and to watch the body language and mannerisms of the participants... Is the person making fists and raising their voice? Or is the person shifting in their seat and avoiding eye contact?

Body language tends to signal intent to others before the physical action takes place and this role play demonstrated that well... along with challenging the audience to name all the red flags before the angry outburst.

Both instructors were engaging and realistic. The class reminded us yet again that we are in charge of our own safety both in the choices we make in setting up a hearing room AND in choosing how to react to the people in the hearing room. Our job is to hear all sides fairly and give the appearance of being unbiased. Not to appear disinterested, but to engage all the parties and treat them all fairly, starting with listening and hearing them. Judge MacDonald demonstrated numerous de-escalation techniques as the hearing officer. Mr. Muffler demonstrated how sometimes they can work, and sometimes, they may not, in his role as an angry parent.

Both classes were interesting breaks from the more day-to-day aspects of being a hearing officer, but they were still filled with a lot of key information for the job.



NAHO HOLDS ANNUAL MEMBERSHIP MEETING

NAHO held its Annual Membership Meeting on Tuesday, September 12, 2023, at 8:30am (PT) in Reno, Nevada. A plethora of information was shared with all participating members by President Toni Boone, Vice President Peter Halbach, and various NAHO Board members. Read on for the highlights!

The members were welcomed, and the meeting started with the approval of the minutes of last year's meeting. The FY 2023 Treasurer Reports, prepared by Treasurer Cindy Antrim, were then highlighted, outlining the income and expenses incurred by NAHO as a non-profit organization. The Reports were approved by consensus.

Marilyn Slifman, Membership Committee Chair, shared that as of the date of the conference NAHO reported 426 active members, adding 106 new members in 2023. Jimmy Stokes, Certification Committee Chair, reported that 16 individuals earned their NAHO certification/recertification in 2023, bringing the current total to 130 members holding active certification. What a fantastic year for membership and certification! Dr. Stokes also encouraged members to reach out with questions as the goal of NAHO is to help members become certified. What is stopping you? It is time to expand your horizons and reach for certification!

Have you visited the NAHO On-Demand Video Library lately? Do you need to add additional digital learning classes to your certification efforts? Look no further! Mary Long, Chair of the On-Demand Learning and Continuing Education Committee, shared with members that NAHO now has over 100 titles included in the video library, including recordings from the 2020-2023 webinars and mini-conferences! Contact Mary to order recordings by title or save money by purchasing a bundle of 5 titles!

Past President Janice Deshais shared the mission and vision of NAHO News, which is a joint effort of the Editorial Board and NAHO members. NAHO News is a valuable resource for NAHO members and is actively recruiting additional reporters to enhance the content shared within our organization. Contact Jan and join NAHO News!

Current Vice President Peter Halbach outlined the numerous professional learning classes that were offered by NAHO virtually between September 2022 to September 2023. Additionally, Peter shared the plans for continuing our popular webinars and virtual mini conference during the coming year and announced that the exciting location of Savannah, Georgia will be the site of the 2024 NAHO Conference. Peter also said that NAHO will be moving toward adding section-based networking and class sessions. Mark your calendar for the Welcome Reception on Monday, December 2nd and class sessions for Tuesday, December 3rd through Thursday, December 5th. You don't want to miss it!

President Toni Boone discussed important proposed revisions to the Bylaws that are needed to reapportion regions and balance membership numbers in each region. Proposed changes include creating six regions with 65-78 members each, with new region designations of Northeast, Mid-Atlantic, Southeast, Central, South Central, and Western. The motion was approved by consensus.

President Toni Boone shared information regarding the 2023 NAHO Elections, with Sarah Huber reading a resolution into record that would allow an election to be held now to fill all Board positions (officers and regional representatives) that will be expiring at the end of the year. The resolution was approved. A call for nominations was announced, which will continue to September 27. Ballots will be distributed (via Survey Monkey) on October 19 for all opposed candidates and will be due by October 27. The Nominating Committee will certify the results at the November 6 Board meeting and the results will be announced as soon as possible thereafter. The new Board members, who will assume office on January 1, 2024, will be invited to attend the December Board meeting.

Would you like to join a committee or run for a position on the Board? As always, NAHO invites all members to get involved at a high level! Bring your strengths and share your expertise with colleagues across the nation!

The Annual Membership Meeting was adjourned at 9:40am (PT).

COMMENTS FROM FIRST-TIME CONFERENCE ATTENDEES

Hands down the NAHO conference was one of the top two most useful and relevant conferences that I've attended in my career. I appreciated all the instructors and participants—everyone was helpful, engaging, and respectful. I look forward to attending my next NAHO conference."

–Julie Dattes, Staff Attorney, State of Connecticut Department of Consumer Protection

"First let me begin by stating that I am not a judge, but I might be a little judgmental. Next, let me say that I thoroughly enjoyed the NAHO Conference. The sessions were perfect and the location matched the sessions and information. I certainly intend to become nationally certified at some point in the future. Finally, I met some truly amazing people from all over the world that really impressed me. I definitely would like to return."

- Jabari Cobb, Director of Behavior Supports & Discipline, Clarke County (GA) School District

"I really enjoyed the conference and found it to be totally relevant to my job. I also enjoyed the opportunity to meet other people from across the country who are in similar roles to mine. I am looking forward to attending the conference again in the future."

– Jonathan Fly, Administrative Judge, Tennessee Department of Human Services

"As a recent member of NAHO, I decided to attend my first NAHO conference this year. The instructors were knowledgeable, the courses were informative, and the conference was well organized. I hope to attend another conference in the future."

– Adrienne Lord Sorensen, Administrative Hearing Office, Federal Railroad Administration

"The conference was wonderful and very enlightening. In the future, I would love to have the hearing officers I work with attend the classes on Presiding Pointers for Non-Attorney Adjudicators and Best Practices for Hearings Involving Self-Represented Litigants. I shared information from both classes with my staff and hope to send them the NAHO Conferences in the future."

– Rick Langford, Appeals Bureau Chief, Unemployment Insurance / Appeals, Idaho Department of Labor

"The NAHO Conference was absolutely amazing. The staff, the instructors, and the participants helped to provide knowledge and a sense of belonging. I have started to implement some of the strategies that I learned from the presenters. I look forward to attending the conference in Savannah, Georgia in December of 2024."

– Rodney Swanson, Clarke County (GA) School District

"As an attorney, I have often dreaded having to attend CLEs that have little-to-nothing to do with my areas of practice. My first NAHO Conference was a refreshing 180-degrees from that! The hardest part was occasionally having to pick one class over another, when I would have liked to attend two (or all three) at the same time. Holding the conference at the National Judicial College gave me the nostalgic feeling of being back in school without the awkward first day of school feelings because the conference presenters and attendees were outgoing and made me feel welcome. Thank you!"

– Jonathan Huber, Hearing Office, North Dakota Department of Transportation



AXON ENTERPRISE, INC

W. Michael (Mick) Gillette (OR)

In a very recent CLE for members of NAHO, I was caught out by my unfamiliarity with the very recent decision of the Supreme Court of the United States in *Axon Enterprise, Inc. v. FTC*, 598 U.S. 175 (2023). The case is important, not for any issue which one of our NAHO members normally has to decide, but because it provides a building block on the road that leads to issues that may involve our members, i.e., whether our members may lack authority to decide the cases in front of them because there is insufficient constitutional authority (state or federal) for their appointment as hearing officials in the first place.

The cases began as separate enforcement actions—Axon before the FTC, and Cochran before the SEC. The federal statutes governing both agencies' enforcement authority allowed each agency to address alleged statutory violations either by bringing civil actions in federal district court or by instituting the agencies' own in-house administrative processes. In each of the two cases before the Court, the agency had chosen to bring an administrative proceeding. Each proceeding was delegated to an ALJ for a hearing and decision. A losing party in such a proceeding is authorized to seek review of the decision by the relevant Commission. If no party seeks review, the decision becomes the decision of the Commission.

And now came the rub: Decisions by the two Commissions in question are subject to judicial review in the relevant federal circuit court of appeals; the district courts play no role in that process. What came next in each case is what made the two cases important. As the Court described it:

"The cases before us, though, did not take the above-described course. In each, the respondent in an administrative enforcement action sued in district court prior to an ALJ decision, seeking to enjoin the Commission's proceeding. Each suit charged that some fundamental aspect of the Commission's structure violates the Constitution; that the violation made the entire proceeding unlawful; and that being subjected to such an illegitimate proceeding causes legal injury (independent of any rulings the ALJ might make). Finally, each suit premised jurisdiction on district courts' ordinary federal-question authority—their power, under 28 U. S. C. §1331, to resolve 'civil actions arising under the Constitution, laws, or treaties of the United States.' . . . [W]hat we have just said they have in common is really all it is necessary to know."

Axon, 598 U.S. at 182.

In Cochran's case, she argued that the statutory tenure and protections that ALJs hold ("for cause" removal, which must be validated by the Merit System Protection Board, whose members in turn can only be removed by the President for "good cause") violated the separation of powers and, specifically, violated Article II, section 2, clause 2 (the "appointments clause") of the Constitution. (See *Lucia v. SEC*, 138 S Ct 2044 (2018) (so holding re SEC ALJs)). Axon made a similar claim, along with asserting that the combination of prosecutorial and adjudicative powers in a single agency violates the principle of separation of powers and makes the agency's actions unconstitutional. And, both parties contended, they should not be compelled to submit to the entire agency order/circuit court review process but should be entitled to point out and to prevail on their constitutional arguments immediately. The agencies, for their part, insisted that the parties must exhaust their remedies within the agencies, and could not shortcut those processes by resorting to the general power of the district court under §1331 to address the constitutional arguments they were making. On circuit court review of the two §1331 matters, the pertinent circuit courts split as to the answer:

the Fifth Circuit (in *Cochran*) held that the statutory review process prescribed for the SEC did not oust federal district court jurisdiction; the Ninth Circuit (in *Axon*) held that the essentially identical review process for the FTC did oust the district court of jurisdiction. The Court allowed certiorari to resolve the obvious conflict in the circuits.

The Court began by recognizing that, as a general matter, a specific statutory review scheme of the type used for both the SEC and FTC can serve to oust district court jurisdiction under §1331. Certainly, Congress has the power to parcel out review authority in that way. See *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200, 207 (stating proposition). However, the Court noted, "[A] statutory review scheme of that kind does not necessarily extend to every claim concerning agency action." It still was necessary to determine whether the particular claims at issue in a proposed district court case were "of the type Congress intended to be reviewed within this statutory structure. 510 U.S. at 208, 212." And that question, the Court explained, depended on the answers to three questions:

- Could precluding district court jurisdiction "foreclose all meaningful judicial review" of the claim?
- Is the claim "wholly collateral to [the] statute's review provisions?"
- Is the claim "outside the agency's expertise?"

Id., at 212-213. If the answer to all three of those questions is "yes," the *Axon* Court stated, "we presume that Congress does not intend to limit jurisdiction [under §1331]." 598 U.S. at 186 (citing *Free Enterprise Fund v. Public Company Accounting Oversight Bd.*, 561 U. S. 477, 489 (2010)). Indeed, the Court stated, "the same conclusion might follow if the factors point in different directions." *Ibid.*

Turning to the cases before it, the Court had no difficulty in determining that the issues in the district court cases called for a "yes" to each of the Thunder Basin factors: (1) There is eventual judicial review available, but not until after the two complaining parties are forced to go through an agency process that merely begins with enduring a hearing before an ALJ who is not entitled to hold it; (2) challenges to a Commission's power to proceed at all are objections to the commission's very existence—an issue collateral to the work that the Commission is authorized by the Congress to perform; and (3) the constitutional arguments on which the outcome of these cases turn are in no sense arguments aimed at the kind of expertise that an agency is designed to bring to solution of the problems that the agency is designed to solve. Based on the foregoing, the Court remanded the cases back for further consideration (by the respective federal district courts, one presumes).

One further point needs to be made: The Court's decision, authored by Justice Kagan, was unanimous. (Justice Gorsuch filed a concurrence, and Justice Thomas only went so far as to concur in the judgment, but unanimity is unanimity.)



National Association
of Hearing Officials

EDITORIAL BOARD

JANICE B. DESHAIS

Jan retired from the Connecticut Department of Energy and Environmental Protection (DEEP) in June of this year after serving as the Director of Adjudications for that agency since 1999. As Director, Jan led an office of other hearing officers and managed her own docket that included hearings on environmental permits, appeals of enforcement orders, and mediations of contested cases. She also trained DEEP staff on the hearing process and provided advice to senior staff and the Commissioner on matters implicating administrative hearings. In addition to her continuing involvement with NAHO, Jan is staying busy in retirement by doing some part-time adjudications work for the Connecticut Department of Agriculture and pursuing many of her personal interests.

Jan received a BA in History and Political Science from Saint Joseph College (now the University of St. Joseph) in West Hartford, Connecticut and an MA in Public Policy Studies from Trinity College in Hartford, Connecticut. She also received mediation training and certification from the University of Connecticut. Admitted to the state and federal bars for Connecticut and Massachusetts, Jan received her JD from Western New England University School of Law in Springfield, Massachusetts. Jan has lectured at the University of Connecticut School of Law and has served as an adjunct professor at the University of St. Joseph in West Hartford.

Jan has long been an active member of NAHO, serving as the Northeast Region Representative, Vice-President, and as President from 2016 - 2019. She was an editor of NAHO News for many years and is now part of the Editorial Board. She remains on the NAHO Board of Directors as Immediate Past President. She received her NAHO certification in 2014.

JIM JOHNSON

Jim Johnson lives in New Cumberland, Pennsylvania, having recently retired as Chief Administrative Judge for the Pennsylvania Insurance Department, a position which he held for over 25 years. Prior to joining the agency, he devoted thirteen years in private practice primarily involving business and administrative law litigation and continues to be admitted to practice before the courts and agencies in Pennsylvania, the U.S. Eastern and Middle Districts of Pennsylvania and the U.S. Court of Appeals Third Circuit.

He received a degree in Psychology from Penn State, and graduated magna cum laude in 1983 from the University of Pittsburgh School of Law where he was an editor on the Law Review. Jim also completed the Fair Hearing and Advanced Administrative Law courses at the National Judicial College and holds the NAHO designation as a Certified Administrative Law Judge. As a member of the Pennsylvania Bar Association, he belongs to its Administrative Law Section and Government Lawyers Committee. He also has served as course planner, presenter and author for various topics involving administrative law and procedure.

In retirement, he continues to enjoy traveling and trail running, and has rediscovered reading and writing purely for fun. He also gets to spend more time with his family which includes Pippa, a spirited beagle/border collie mix who enjoys running with Jim on the roads and trails of Pennsylvania.

JONATHAN HUBER

Jonathan graduated from Minnesota State University at Moorhead with a Bachelor of Arts degree in Criminal Justice. From there, he proceeded to Creighton University School of Law in Omaha, Nebraska, from which he received his Juris Doctor.

After law school, Jonathan worked as a solo practitioner and for a small boutique law firm. His practice focused on family law, probate, estate planning, oil and gas (title, leasing, acquisition and sale of mineral and non-operating rights as well as title curative projects), contracts and small business formation. Seeking extensive career change, Jonathan became a Hearing Officer for the North Dakota Department of Transportation in August of 2022. In this position, he hears matters including implied consent (DUI) cases, IFTA/IRP Audit disputes, and others pertaining to the transportation of people and goods on the roads of North Dakota. Jonathan joined NAHO in September of 2022 and became an editor for NAHO News in September of 2023.

Outside of work, Jonathan is an avid gym rat who enjoys motorcycling, hockey, golf, hiking, and traveling. Other interests include live music, theater, and movies. He is licensed to practice law in North Dakota.

JENNIFER UKERITIS

Jenn worked for the NYS Department of Environmental Conservation as an assistant regional attorney for 12 years before being hired as an ALJ, starting in November 2021. Jenn worked in the Region 1 Long Island office for over eight years and then the Region 7 Syracuse office for about three years. As an assistant regional attorney, Jenn handled all types of matters for the department in administrative matters: tidal and freshwater wetlands permit violations, waste tire matters, solid waste cases, petroleum bulk storage enforcement, commercial marine fisheries enforcement, mining. Now Jenn presides over those matters that proceed to hearing, and also presides over public comment hearings for large permit matters, rulemakings, and permit denial matters. Jenn also spent 21 months working for the NYS DOH Office of Medicaid Inspector General. Jenn has a BS in Wildlife Ecology from UMaine Orono, a JD from Pace Law School with Certificates in Environmental and International Law, and an LLM in Environmental Law from Vermont Law School. Jenn still grades briefs and usually judges Pace's National Environmental Law Moot Court Competition.

Jenn is an identical twin, a newly former EMT, and attorney turned administrative law judge. The original also works for NYSDEC, but as an environmental educator who will be able to retire from state service 7 years before me! (Jenn is younger by 2 minutes and therefore the copy.) Yes, the vast majority of people who see Jenn in the 14-floor office building think she is the Educator who works based out of the Syracuse office, even though they know we are twins and Jenn now works in the main office in Albany.

Jenn joined NAHO in 2022 for the mini conference, and volunteered for the editorial board when Janice first asked this year.



CONFERENCE 2024

SAVANNAH, GA



THINGS TO DO IN SAVANNAH, GEORGIA

- Forsyth Park
- Savannah City Market
- History & Architecture
- Riverside District



DECEMBER 3-5, 2024

2024 NAHO Conference in Savannah, Georgia

What do you think of when you think of Savannah? Ancient oak trees dripping with Spanish Moss, the beautiful park-like squares all over the city, welcoming Southern Hospitality, historic architecture, fabulous weather, and incredible Southern cooking? Savannah has all that and so much more. Savannah was established in 1733, is Georgia's oldest city, and is considered America's first planned city. Savannah is picturesque, full of history, utterly unpretentious, and down-home friendly. The average daily high temperature for Savannah in December is 65 degrees.

NAHO's host hotel, the DeSoto, was built on the site of the original DeSoto hotel which existed at this location—15 East Liberty Street on Madison Square—from 1890 until 1965. The hotel is nestled in the center of one of the nation's largest Landmark Historic Districts and offers a walkable location to the city's historic sites and mansions, garden squares, theaters, the City Market, fine dining, pubs, and boutiques and some unique museums—the American Prohibition Museum, the Mercer-Williams House Museum, Georgia State Railroad Museum, Ships of the Sea Maritime Museum, and the National Museum of the Mighty Eighth Air Force. You don't even have to leave the hotel to see one of the most magnificent art collections in Savannah. The DeSoto has the distinction of being named one of the top 25 historic hotels in the U.S. It received a multi-million-dollar renovation in 2017 and was recently updated and refurbished. The upper floors offer spectacular views of Savannah.

The DeSoto boasts three unique places to dine. Proof and Provision is a gastropub and full-service craft bar that offers breakfast, lunch, and dinner and serves modern Southern-inspired fare including small plates, sandwiches, and snacks. The 1540 Room provides a dining experience, including an award-winning chef, a top-rated wine list, and meals made with fresh ingredients from local farmers and fishermen. Buffalo Bayou Coffee offers light bites, sandwiches, pastries, salads, and soups in addition to a wide variety of coffee and espresso varietals that are locally sourced.

Aside from strolling around the Historic District and the Garden District, which will be all decked out for the holidays, there are unique museums to visit. Savannah also has a lovely and popular European-style Christmas market along the waterfront—you can finish your holiday shopping there. NAHO is looking into the possibility of a group riverboat cruise. Wouldn't that be fun?

If you need further incentive to attend next year's conference, NAHO is already planning a curriculum that includes courses specific to hearing type, articulating credibility findings in written decisions, multiple classes on evidence and ethics, a course on constitutional law for ALJs, diversity, equity, and inclusion, and so much more. NAHO has engaged some wonderful speakers that are local to the region whom you will find enlightening and enjoyable.