



NAHO NEWS

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

NATIONAL ASSOCIATION OF HEARING OFFICIALS

FEBRUARY 2022

ANNUAL MEMBERSHIP MEETING

The following are the highlights of the November 2, 2021, annual meeting of the NAHO membership.

President's Report

Toni Boone (OR) presided at the meeting, and began with her report. She first thanked Board members and said she is fortunate to have such a hard-working and dedicated Board. Toni announced the results of the elections, which were conducted pursuant to the By-laws by the Nominations Committee, which consisted of Sarah Huber (ND), Committee Chair, Janice Deshais (CT), and Wendy Long (TX). She also said that elections will be coming up in two years and encouraged members to nominate themselves or a colleague who may want to serve. She invited everyone, Board members or not, to join committees.

The following were elected or re-elected to serve for two years (January 1, 2022, to December 31, 2023).

President: Toni Boone (OR)

Vice President: Peter Halbach (ND)

Secretary: Colleen Ulrich (GA)

Treasurer: Cindy Antrim-Rutledge (GA)

Immediate Past President:
Janice Deshais (CT)

Central Region Representative:
Caroline Stephens-Ryker (IN)

Mountain Region Representative:
Dwain Fagerlund (ND)

Northeast Region Representative:
Mary Long (PA)

Southeast Region Representative:
Richard Murrell (TN)

Southwest Region Representative:
Bobbie Marshall (TX)

Western Region Representative:
Marilyn Slifman (CA)

Certification Committee

Jimmy Stokes (GA), Chairman of the Committee, introduced the members of this Committee to begin his annual report: Richard Murrell, Esq., Tennessee, Dr. Ben Brauer, Maryland, Mayor Robert Pullen-Miles, California; Michelle Guilfoyle-Douglass, Esq., Florida, and Dr. Jimmy C. Stokes, Georgia. He then shared the following information regarding the Committee's work.

Due to the pandemic and postponement of the 2020 conference, the NAHO Board extended the expiration date of all certifications by one year. Jimmy surmised that because of these reasons, the total number who applied for certification or re-certification was fairly low in 2020 and decreased in 2021. There were 11 (eleven) applications in 2020 and only 6 (six) applications in 2021. NAHO currently has 105 members either holding active certification or who could qualify for certification by attending a national conference.

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FROM THE EDITOR

I DIDN'T MAKE MY BED THIS MORNING

Bonny M. Fetch (ND) - 12/26/21

Christmas brought a snowstorm this year. I heard it howling through the night and when I looked outside early morning December 26 the ground was covered in several inches of new snow and it was still snowing and blowing. And with sub-zero temperatures it was not a day to be outside. I usually have a high energy level but on this morning I felt strangely lethargic, most likely brought on by a combination of the frigid weather and letdown I always feel after Christmas. One of the first things I do every morning is make my bed. I hate the messy look of an unmade bed. Besides, I can still hear a voice in my head saying, "you don't go anywhere until your bed is made." But this morning I intentionally turned my back and left the bed as it was when I got up from it.

The weather forecast told me I would not be going anywhere the whole day and very possibly the next day as well. So what to do with all this time? My mind began to create a rather large "to do" list of things I should do.

I should put away Christmas decorations

I should answer emails as I haven't looked at them for three days

I should clean out the refrigerator and pack up leftovers for the freezer

I should vacuum the gift wrapping litter off the floor

I should write my article for the newsletter

I should plan some new sequences for yoga classes

I should make my bed

And so on and so on and so on . . .

The mental list felt dreary and tiresome. I didn't want to do any of it. Mentally rebuking myself, I thought, "I'm just being lazy, I should be accomplishing something." Still, I ignored the compulsion to make my bed.

During the thirty-two years I worked as a hearing officer and Administrative Law Judge I had to account for every minute of my workday, recording billable hours for time spent on every case and every administrative task. That constant accountability instilled in me a drive to continually be working and accomplishing something. Taking time to relax was not an option as that was equivalent to doing nothing. And doing nothing was not acceptable. I maintained a heavy hearing schedule and worked under constant pressure to meet decision deadlines. I had not yet learned the value of relaxation, or even how to relax. Sound familiar?

Now and again I would think about a story I once heard. Paraphrasing as best I recall, it goes like this:

Two woodsmen were cutting wood in a forest. At mid-morning the first woodsman stopped for a 15-minute break while the second kept chopping wood. At mid-day the first woodsman took a 30-minute break while the second woodsman took only a few moments. At mid-afternoon the first woodsman again stopped for a 15-minute break while the second woodsman continued chopping wood. At the end of the day each had a sizable pile but the first woodsman's pile was larger. The second woodsman asked, "how can it be that you have a larger pile of wood when you took two 15-minute breaks and a 30-minute break while I kept chopping with only a short break at mid-day?" The first woodsman replied, "when I stopped to take a break, I also

sharpened my ax."

This reminds me of a recent daily horoscope for Libra (my sign) which read, "Though hard work can accomplish much, so much more will be accomplished today by going easy on yourself and others."

The lessons are everywhere that relaxation is not doing nothing or being lazy or failing to accomplish something. In fact, the opposite is true. Relaxation is essential to wellness and essential to the enjoyment of life. There are innumerable ways to achieve relaxation, from taking a few moments of time to days or weeks of time. Some things which have become constant with me are to take time to breathe, to meditate, and to appreciate life in smaller increments of time. Find your own ways to relax each and every day as if your life depends on it, because in a very real way it does. 🐾



Bonny M. Fetch (ND)

*Happy
New Year*
**MAY 2022 BRING YOU
GOOD HEALTH
AND A LIFE
FILLED WITH
KINDNESS AND JOY!**

An Adjudicator's Roadmap for New Hearing Officials

BASIC BENCH SKILLS – A PRIMER

Mary Long (PA)

Presented at NAHO Professional Development Conference, Philadelphia

As an administrative hearing official, you play an important role in ensuring that those who come before you leave with the impression that their government serves them. When planning and designing your hearings, the perception of the parties as to how they are treated has a greater impact on their acceptance of and compliance with court orders than the actual outcome of the hearings. Basic Bench Skills reviewed some practice elements for hearing officials to ensure that their hearings afford parties due process as well as procedural fairness.

Organization and Advance Planning is Essential

If you are disorganized and do not take the time to review your case assignments in advance of the hearing, you run the risk of making mistakes. Many procedural problems can be solved in advance of the hearing which saves resources and avoids wasting your time and the time of the parties. When reviewing a file, consider the parties and the subject matter of the dispute to make sure that you have a complete file which includes all of the pleadings, contact information for all of the parties and whether there are any procedural defects that need to be remedied or motions that require a decision in advance of the hearing. Advance file review will also give you an opportunity to consider the facts that you will need in your record to ensure that the hearing record is complete when you write your decision. If you are scrambling on the bench to become familiar with your case “on the fly” you will not have the mental bandwidth to ask intelligent questions and you will fail to enhance the perception that your hearing is fair.

Prehearing Orders and Prehearing Conferences

Every case should start with a prehearing order which explains the basic procedure for the hearing and includes the time and place of the hearing, how to contact you and the opposing party, and instructions for requesting a continuance. When your case involves a self-represented litigant be sure that your order is written in plain language and provides clear explanations.

Prehearing conferences can be valuable in certain cases where you have multiple parties or complex legal issues. A prehearing conference is a good time to introduce the notion of settlement and to set sensible deadlines for litigation, such as discovery, the filing of motions and the hearing dates.

The Conduct of the Hearing Continues to Build the Perception of Fairness

Your personal conduct and control of the parties and the record is important to building the perception of fairness. The Golden Rule prevails: treat your parties as you would like to be treated. Introduce yourself. Greet each party using the same terms (do not use personal greetings and first names). Make eye contact. Eye contact shows that you are paying attention and care what each party has to say.



Mary Long (PA)

Controlling the record and the conduct of the parties is also important. Keep the testimony clear – ask questions when necessary. Rule clearly on evidentiary objections, but do not get bogged down with lengthy explanations of your ruling. Do not permit counsel to argue with you or badger you to change your mind. Keep in mind that you do not want a “cluttered” record – you want relevant and probative evidence. Insist on civility.

Practice Helpers

There are many resources available to help hearing officials, both new and experienced, to improve their bench practices. Written scripts and checklists of questions in common types of cases can be helpful. An evidentiary objection handbook can be helpful in ruling on objections or you can create a “cheat sheet” with the rule of evidence or case law associated with common objections in your hearings. Colleagues and hearing officials in other tribunals are also an invaluable resource.

Reviewing your process and evaluating the effectiveness of your practice should be a continuing habit. If you take the time to design your proceedings with an eye to enhancing the perception of fairness, litigants are more likely to leave with a positive view of you as a hearing official, and of your agency. You may even feel more positively about your job and enjoy the important work that you do.

LEGAL TERMINOLOGY AND LEGAL RESEARCH

Conference Offerings for Non-Attorneys

Mary Long (PA)

Two courses were offered at the Philadelphia Professional Development Conference that were specially designed for hearing officials who are not trained as lawyers: *Legal Terminology for Non-Attorneys and Conducting Legal Research*. These courses were developed to assist non-lawyers in understanding the language of lawyers and judges and to provide a framework for locating and evaluating case law. Both of these courses are required for non-lawyer hearing officials seeking NAHO certification.

Legal Terminology focused on terms used in litigation and case law, including how parties are labeled, the definition and purpose of different types of pleadings, discovery, evidence and court review.

No course in legal terminology would be complete without a discussion of Latin terms commonly used in legal writing. Some terms such as *ex parte* (a communication with a hearing official that only includes one party; generally, an ethical “no-no”) and *de novo* (to hear a case anew) have specialized legal meanings and do not have a common English equivalent. Other Latin terms, such as *pro se* (self-represented) and *inter alia* (among other things) have accessible English equivalents which should be used instead of Latin for greater clarity in hearings and decision writing.

The focus of *Conducting Legal Research* was to provide an overview of the structure of the American legal system to aid the researcher in determining whether case law identified in legal research is appropriate to support a hearing official's legal conclusion. This course discussed the distinction between federal and state law and the role of primary

and secondary legal authority.

Effective legal research involves developing a research plan to generate key words and terms to assist in searching legal databases:

1. Understand the documents and procedural posture to determine the facts and issues to research;
2. Use secondary sources to find an overview of the legal issue, terms and sources of primary law;
3. Review the primary law and search databases for additional law; and
4. Make sure the primary law that has been located is current.

The goal of an effective database search is to locate case law that supports the legal conclusion. However, a search that is too broad may return too many results to be useful. A search that is too narrow may not return any results at all. A researcher should always return to the keywords of the search. If there are too many results, determine if terms can be more specific. Consider combining your keywords with more specific words or terms of art used in your practice. Secondary sources and a general database such as Google can be helpful to generate more keywords if what is being looked for cannot be found. A database search using all or part of the citation of a statute or regulation also helps to locate case law or agency opinions which cite or interpret that statute or regulation. Finally, identifying the seminal cases in your practice area can be extremely useful in locating other court decisions that answer your legal research question. ↗

DECISION WRITING: VIEW FROM THE APPELLATE BENCH

Janice Deshais (CT)

NAHO members often request classes on decision writing when asked to suggest possible subjects for conferences and webinars. It is clear that hearing officials are always interested in how we can improve this skill that is the core of our work - writing clear, concise and high-quality decisions.

NAHO was pleased to provide a session on decision writing from the perspective of an appellate judge at the Conference. The Honorable Mary Hannah Leavitt, President Judge Emerita for the Commonwealth (PA) Court, presented her perspectives on effective decision writing for attendees, sharing her views and suggestions to improve our skills. Hearing from a member of the appellate bench provided valuable insights from a representative of judges who decide the fate of our decisions on appeal.

Judge Leavitt covered several substantive issues that are central to appellate review, including the impact of a challenge to jurisdiction, an agency's interpretation of its own statutes and regulations, and the influence of the issue of the validity of those governing laws. Leavitt noted the deference given to the facts found by a decision-writer and advised writers how to best present new information (but not new facts) in a decision. The Judge's discussion also included what should be significant to every writer - information and advice on writing style and other helpful and still important grammatical rules that can make our decisions easier to read and therefore easier to understand, resulting in more effective decisions. ↗

A HISTORY OF WOMEN, THE LAW, AND WOMEN PRACTICING LAW IN THE U.S.

Toni Boone (OR)

The idea for this article originated with a two-hour class taught at NAHO's recent professional development conference entitled "It Didn't Begin With the Notorious RBG: A History of Women in the Law in the U.S." However, the personalities and experiences of the women involved in this history were so fascinating that a two-hour class was insufficient to do them justice. Consequently, this is Part 1 of a story which will continue in subsequent issues of the NAHO News.

Most of us are familiar with the phrase: "Behind every great man there is a great woman," which became popular in the 1960s and 70s with the feminist movement.¹ Is it also true that behind every great woman is a great man? Not so much, it seems, when one reviews the history of U.S. law as it relates to women.

The first woman to appear in a court of common law in the New World was Margaret Brent, who appeared before the Maryland Assembly in 1648 requesting two votes—one for herself as a landowner and one as Lord Baltimore's attorney. She proceeded to claim a land grant, engaged in numerous business ventures, and traded in tobacco, indentured servants, and land. She appeared in court to sue for debts and to protect her interests and those of her brothers. Just ten years after her arrival in the new world, Margaret Brent was a prominent de facto attorney, a businesswoman, and a landowner. An auspicious start to women practicing law in the U.S., right? Again, not so much.

In a letter dated March 31, 1776, Abigail Adams wrote to her husband, John: "[I]n the new code of laws which I suppose it will be necessary for you to make, I desire you would remember the ladies and be more generous and favorable to them than your ancestors. Do not put such unlimited power into the hand of the husbands. Remember, all men would be tyrants if they could." Abigail knew whereof she spoke. When our nation was new, women gained the right to speak, worship, assemble, petition, and protest. However, women still could not own any type of property, sign legal documents, dispute abusive husbands, enter into a contract, sue or be sued, vote, serve on juries, or have custody of their own children.

To what source did men point to keep women in this subservient position? The Holy Bible, specifically I Timothy, Chapter 2, verses 11 and 12: "Let women learn in silence with all submissiveness. I do not suffer a woman to teach, nor to usurp authority over men, but to be silent." Indeed, women were not even permitted to teach young children in schools until the teacher shortage of the 1830s resulted in fewer male teachers. Teaching became the only job available to educated women, but at considerably less money than their male counterparts.

One of the tenets on which this country was built was religious freedom. Religious freedom was so important to our country's founders that it was addressed in the First Amendment to the Constitution. Ironically, true religious freedom was only available to the males of this country. The abolitionist feelings shared by many women grew from new-found religious fervor resulting from the Great Awakening.² This new religious zeal included the idea that all of God's human creatures should be free. This was an idea which many husbands did not share, which brings us to the story of Elizabeth Packard.

Elizabeth was the well-educated daughter of a minister and a graduate of the Amherst Female Seminary, where she studied, among other things, French and Algebra.



Toni Boone (OR)

She married a Calvinist minister and had six children. In 1860, without a commitment hearing or her consent, her husband had her committed to the Illinois Hospital for the Insane. What had been the basis for her commitment? She questioned her husband's religious beliefs and expressed religious beliefs of her own. She spent three years in the state insane asylum, where she was regularly questioned by her doctors but refused to agree that she was insane or to change her religious views.



In 1863, largely due to pressure from her children who wished her released, the doctors declared her "incurable" and discharged her. Upon her release, she was returned to her home where her husband locked her into the nursery and nailed the windows shut. Elizabeth nonetheless managed to drop a letter, complaining of her husband's treatment, out the window. A friend took the letter to a judge who issued a writ of habeas corpus ordering the husband to bring Elizabeth to his chambers to discuss the matter.

After speaking with Elizabeth, the judge scheduled a jury trial to determine Eliza-

Continued on page 6...

A HISTORY OF WOMEN

From page 5.

beth's sanity. At that trial, her attorneys called witnesses from the community who knew Elizabeth but were not members of her husband's church. One of the witnesses called was a Dr. Duncanson, who was both a physician and a theologian. He testified that he didn't necessarily agree with all her religious beliefs but believed her to be sane: "I pronounce her a sane woman and wish we had a nation of such women." It took only seven minutes for the all-male jury to find Elizabeth sane.

When Elizabeth returned to the home she'd shared with her husband, she found that her husband, on the night prior to her release, had rented their home to another family, had sold her furniture, had taken her money, wardrobe and children, and had left Illinois to live in Massachusetts.

Elizabeth had no legal recourse as married women had no legal rights to property or even their own children. Thus, Elizabeth began a decades-long reform campaign, fighting for married women's rights, their freedom of speech, the abolition of slavery, and for more just insanity laws. She published many books, earning enough to support her children and even her estranged husband. She petitioned both Illinois and Massachusetts legislatures to allow married women equal rights to property and custody of their children. Upon those bills being passed, her husband voluntarily ceded custody of their children back to Elizabeth and her children came to live with her in Chicago.

As the 1860s progressed, many women became involved in reform movements to abolish slavery or to promote alcohol moderation or abstinence. Some of them dared to dream that they might one day enter the legal profession. However, the 14th Amendment, which was passed in 1866 and ratified in 1868, gave voting rights only to former male slaves. Women who were formerly slaves were excluded, as were all other women, from "equal protection under the laws." Perhaps not

FEDERAL ADMINISTRATIVE LAW IN THE SPOTLIGHT

Janice Deshais (CT)

Although many hearing officials work in the worlds of state or local administrative law, issues at the federal level can signal changes and possible impacts for all hearing officials, often in very significant ways. NAHO was pleased to have Jill E. Family, Professor of Law and Director of the Law and Government Institute at the Commonwealth (PA) Law School, Widener University, present a session that highlighted the influence and importance of federal administrative law and reviewed several "hot topics" that might forecast changes to come.

Professor Family, who examines the relationships between the three branches of government in setting, implementing, and interpreting the laws, began her presentation by reviewing the sources of administrative law. Her discussion served as an excellent refresher as to how the U.S. Constitution and the Legislative and Executive branches of our government are the foundations of administrative law.

A practitioner and researcher in immigration law, Dr. Family based much of her presentation on examples associated with this subject; however, her discussion presented relevant and useful information for all areas of administrative law and practice. Dr. Family discussed developments and possible

trends in several key areas of interest, including the power of the executive branch to appoint or remove agency officials, the Congressional



Janice B. Deshais (CT)

delegation of authority to agencies, and the question of political control over rulemaking. An intriguing discussion regarding the power of administrative immigration judges versus administrative law judges highlighted an issue affecting the question of independence that is so important to every hearing officer.

For an interesting discussion of a study that challenges the internal control of federal agencies by the agencies themselves and shows the value of external control by Congress or the courts, see Family, Jill E., *An Invisible Border Wall and The Dangers of Internal Agency Control* (August 31, 2020). 25 *Lewis & Clark Law Review* 71, 2021, *Widener Law Commonwealth Research Paper No. 20-06*, Available at SSRN: <https://ssrn.com/abstract=3683801>. ↗

coincidentally, 1868 was the first year that women began to study the law with the goal of becoming attorneys.

To find out more about the fascinating women who blazed the trail for generations of women lawyers in the U.S., you'll have to read Part 2 of *A History of Women, the Law, and Women Practicing Law in the U.S.* in the next edition of the NAHO News. ↗



MEMBERSHIP CORNER

Marilyn Slifman (CA)
Chair NAHO Membership Committee

It is time to renew for 2022!

In 2021, NAHO's membership increased to 382 members from 249 in September 2020. Positive feedback from our new and sustaining members has been the consistent quality of NAHO's educational opportunities and the variety of the learning portals: the live and recorded virtual online learning, and the in-person Professional Development Conference which resumed in 2021.

In 2022, NAHO will offer the following Continuing Educational Opportunities:

- Live webinars (at least 6) free for members
- Spring live virtual Mini-Conference
- NAHO's Professional Development Conference in Chicago on August 7-10
- On-Demand library, available only to members, with most webinar, Mid-Year virtual and many previous conference class replays (remains at \$15 per title, \$100 bundle for 10, and pilot programs being developed for agencies)
- Custom online CLE training for agencies at no charge if all attendees are NAHO members

There is no increase in renewal fees. NAHO Membership runs from January 1 yearly. (A \$10 late fee applies after March 1).

To renew, log in with your email and password at www.naho.org. You can always reset your email or password at the link on the homepage, or email me for assistance.

- 1 Year-\$50 (Associate Members \$35)



Marilyn Slifman (CA)

- 3 Years-\$115 (Associate members \$100)

New for 2021: Renew for 3 years and receive a \$30 On-Demand library credit.

(Click on the drop-down box to change to 3-year renewal from 1-year).

Groups of 5 or more renewing at the same time: \$40 each for 1 year.

For groups and group members: If your agency has five or more members looking to join NAHO or renewing at the same time, have your Administrator email me at marilyn.slifman@naho.org for a group invoice with the group discount or with any other questions about membership, including adding new members to your group.

If you are a new applicant or a former member who is reapplying, please click on Join NAHO or the "Join NAHO" tab at www.naho.org.

As always, you can contact your Regional Representative if you have any questions about NAHO or want to bring attention to current issues in administrative law. Their regions and email links are all listed at the About Us-Board tab on the NAHO homepage.

Happy New Year to all. 🎉

THE ANNUAL CONFERENCE IS BACK – LIVE AND IN-PERSON!

We are thrilled to report that NAHO is back to holding a live Annual Professional Development Conference! After a year's delay, due to "that-which-will-not-be-named", the in-person 2021 Conference was held at the Element Hotel in Philadelphia October 31 to November 3. In addition to offering over 50 hours of MCLE instruction for hearing officials and others involved in the administrative hearing process, the Conference was a long-awaited opportunity to re-connect or meet others from across the nation to exchange ideas and experiences in both formal and informal settings.

Courses included an exploration of the sanctioning authority of hearing officials, lessons on how to avoid being sued (e.g., stick to what you're supposed to do), essential techniques for hearings involving self-represented litigants (do not call them pro bono, please), and a panel discussion on qualifying expert witnesses. Other courses are described in this newsletter and give a sense of the diverse and wonderful curriculum. Almost as important as the training, attendees at the Conference told us that they were thrilled to be out and about and appreciated the opportunity to have live training and to "see friends and associates and share life again."

This edition of NAHO News not only celebrates the Conference, but also reports on NAHO business, including the abundant online opportunities for education and training NAHO has provided for its members during the challenges of 2021 and those that it will provide in the year ahead. Read on for new information – we hope you will be informed and entertained! 🎉

EZ CROSS-X: Breaking Rules to Make Your Difficult Job Easier

Dwain Fagerlund (MN)

When confronted with conflicting evidence on important issues, administrative hearing officials must make difficult decisions. There is an old cross-examination rule of thumb that you may have heard: “Never ask a question to which you don’t know the answer.” That is conventional wisdom for jury trials. At an administrative hearing, however, you may need more information to make your decision.

Another old rule of thumb for cross-examination is: “Always use leading questions.” Leading questions can be used to control uncooperative witnesses. A classic litigation strategy is to muddy the waters. Your objective is to seek clarity. When leading a witness, have them agree or disagree to only one statement of fact at a time.

Rules of thumb are developed to be helpful. In situations where they are not helpful, consider breaking them. As an administrative finder of fact, you have the experience and expertise to sort through the evidence and only consider what is proper and relevant. Because the file that you were provided may be limited, you may need to ask questions to which you don’t know the answer. You can use open-ended questions during cross-examination to explore further for context. You can also cross-examine on matters unrelated to your statutory/regulatory elements to measure witness credibility, e.g., memory, bias, or interest in the outcome.

With the more informal atmosphere of an administrative hearing, the witness may be cooperative. If we are respectful and ask open-ended questions, often a witness will volunteer information. Such new information may support or defeat the statutory/regulatory elements of proof. Sometimes, the volunteered information will contradict what the witness said earlier.

Your jurisdiction’s standard jury instructions can provide helpful guidelines to plan cross-examination. Below is an example from the U.S. 8th Circuit District Judges:

Civil Jury Instructions 3.03 CREDIBILITY OF WITNESSES

You may consider a witness’s intelligence; the opportunity the witness had to see or hear the things testified about; a witness’s memory, knowledge, education, and experience; any reasons a witness might have for testifying a certain way; how a witness acted while testifying; whether a witness said something different at another time; whether a witness’s testimony sounded reasonable; and whether or to what extent a witness’s testimony is consistent with other evidence you believe.

8th Circuit U.S. District Judges Civil Jury Instructions, https://ecf.mowd.uscourts.gov/jmi/civil_instructions.htm.

Guides such as these teach us to listen carefully, pay attention to what is said, how it was said, and how the witness knows it. With your experience and education, you can then use this credibility information to analyze the testimony before comparing it to the other evidence in your administrative record.

Often a witness will make a very broad statement of fact. When confronted with an outlandish statement, we often defend ourselves by saying, “Consider the source.” The same wisdom is applicable in an administrative hearing. Our task is to find out how the witness came to know that “fact.” To borrow from another profession, we can use the journalist method to ask who, what, when, where, why, and how to explore what the witness knows (and how they know it). Inspect for cracks in the foundation that underlie the witness’s testimony.

By asking who, what, when, where, why, and how, we can determine whether the witness is making assumptions, minimizing, or exaggerating. Did the information come from someone who appears biased or unusually interested in the outcome of the matter? Was the information based upon an old memory or was it written down at the time of the event? Was the information based upon personal observation? If not, explore what information was relied upon. Was the witness in a position to see or hear? The answers will allow you to test the reasonableness of the witness’s conclusion.

If you listen carefully to each answer, you can follow up with more questions. Be curious. You may feel freer to explore during cross-examination than would an advocate. Just by asking, you may find some witnesses commit to positions that are inconsistent with other evidence.

Perseverance can be effective. As your questions become more and more specific, you will often start to hear “I don’t know” or “I don’t remember.” At some point, the testimony may be impeached.

Sometimes cross-examination will strengthen the witness’s testimony. That can also help you make a difficult decision.

When you have conflicts or gaps in the evidence, take courage and cross-examine the witness. Like a judge, your jurisdiction may provide you the authority to question witnesses. Don’t worry so much about getting the “wrong” answer to your questions. The information that you glean may help you reconcile inconsistencies and get to the whole truth. The information will also help you better explain the reasons for your findings. As a result, you will have a higher level of confidence when making those difficult findings of fact. 🏹

NAHO 2022 WEBINARS AND MINI CONFERENCES

Peter Halbach (ND)

With the 2022 NAHO Annual Professional Development Conference scheduled to be held in Chicago from August 7th through the 10th, much earlier than most annual conferences, NAHO is redistributing other opportunities throughout the year.

We are still planning on 6 webinars of at least 60 minutes each and 2 days of virtual conferencing, 3 hours each, but those offerings will be both early and late in the year, surrounding what is essentially a summer, in person conference.

Starting the pattern of events on the third Thursday of most months, on January 20, 2022*, we kicked off with a webinar pre-

sented by NAHO Past President, Certified ALJ, and Registered Yoga Teacher Bonny Fetch, entitled, EASE STRESS AND FOSTER WELLNESS. This 60-minute webinar is free to NAHO members. The webinar was recorded and is available by sending a request to Mary Long at mary.long@naho.org.

We will then skip February as we gear up



Peter Halbach (ND)

for the Virtual Mini Conference (Part I), on Thursday, March 17, 2022. The sequel to the virtual conference (Part II) is planned for Thursday, November 17, 2022. NAHO intends the virtual mini conferences to be at least 3 hours each, at a cost of \$35 for members and \$70 for non-members.

Additional webinars (free to members) will be held in the Spring, on Thursday, April 21, 2022, and Thursday, May 19, 2022. Following the August Chicago conference, the webinars will resume on Thursday, September 15, 2022, Thursday, October 20, 2022, and Thursday, December 15, 2022.

*Time: 8:00 a.m. Hawaii; 9:00 a.m. Alaska; 10:00 a.m. Pacific; 11:00 a.m. Mountain; 12 noon Central; 1:00 p.m. Eastern. 🏔️

BOARD MEMBERS AND LONG-TIME CONTRIBUTORS TO NAHO RECOGNIZED FOR SERVICE

Peter Halbach (ND)

NAHO is a comparatively small non-profit organization. It has no paid employees. The work of NAHO is largely performed by its twelve-member Board of Directors and a few other dedicated NAHO members.

There are many everyday tasks that are assumed by various members of the Board: managing the membership process and keeping those records, managing the certification program and the records associated with certification, updating NAHO's website and social media pages, managing NAHO's on-demand video library of administrative law workshops and seminars, keeping the account books for the organization, taking and maintaining the records of every monthly Board meeting, updating NAHO's Bylaws and Policies, and myriad other duties.

Elsewhere in this newsletter you can see that despite its small size NAHO manages to offer at least six monthly webinars, two one-day online mini-conferences, and a three-day professional development conference each year. These instructional offerings require curriculum planning, the creation of ads and brochures, the issuance of completion certificates, and countless other tasks.

Each year, NAHO honors a few of its members who were extraordinarily generous in giving their time and talents to NAHO. At NAHO's 2021 Professional Development Conference, the following NAHO members were honored:

Longtime conference presenters Laurence H. Geller and Peter Hemenway were presented with the Bill Kane Board of Directors' Award, which rec-

ognizes unique and invaluable service to NAHO. Through the decades they have educated thousands of NAHO members at professional development conferences, encouraging them to pursue the highest levels of professionalism.

NAHO Vice-President Peter Halbach received the President's Award for providing essential assistance to the President. The Vice-President is responsible for coordinating all aspects of curriculum planning for NAHO's class offerings and chairs the Conference Planning Committee for the Annual Professional Development Conference. Without Peter's efforts in these areas, NAHO could not fulfill its mission to provide continuing education on administrative adjudication.

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ANNUAL MEMBERSHIP MEETING *From page 1.*

Certifications in 2021 were:

Pilar Vaile, Recertified, CALJ

Zandra Petersen, Recertified, CHO

Stacy M. Murrell, Certified, CHO

Caroline Stephens-Ryker, Certified, CALJ

Marilyn Slifman, Recertified, CHO

Suzanne Windsor, Recertified, CHO

Jimmy also mentioned that he and Dr. Diane Arnold will qualify for re-certification shortly due to attending this conference, pending the approval of the Board. Jimmy also noted that the purpose of the Certification Committee is to help members become certified. He invited anyone having questions to reach out to the committee for help.

Vice President's Report

Peter thanked Toni Boone and Janice Deshais for helping him “learn” the role of Conference Chair and shared that there were seventy-eight registered attendees as of 10/25/21, but said that the total should increase. He was pleased with this number, given the circumstances of COVID and travel obstacles for some. He also announced that the Conference has fifty-one hours of instruction from which to choose and Pennsylvania has approved the Conference for 17 hours of CLE credits including two hours of Ethics and up to five hours of Diversity, Equity, and Inclusion.

Peter then provided information regarding 2020/2021 professional development. Although the Fall 2020 NAHO Conference was cancelled due to COVID, NAHO did offer various professional learning opportunities for our members via Zoom webinars during 2020-2021. Nine webinars were offered at no cost to NAHO members, including:

- Virtual Access to Justice: Conducting Remote Hearings Using Video-Conferencing Platforms: 90 minutes, Thursday, September 24, 2020 (Boone)
- Developing the Hearing Record for In-Person and Virtual Hearings: 90 minutes, Thursday, November 19, 2020 (Boone & Gillette)
- Online & In-Person Security Recommendations for Administrative Adjudicators: 90 minutes, Thursday, January 21, 2021 (Marshal John Muffler)
- Hearsay at Hearings: 90 minutes, Thursday, March 25, 2021 (Halbach)
- Judicial Demeanor: 120 minutes, Thursday, July 15, 2021 (Murrell)

The 2021 Midyear Professional Development Conference (Virtual Mini-Conference) was held on April 21 and 22, 2021. This professional development opportunity provided 3.25 hours of CLE instruction each day, for a total of 6.50 hours of CLE credits. He thanked the instructors who contributed their time and talents.

Peter announced that continuing education opportunities will be available for 2022. A minimum of six webinars are planned, and will be free of charge to NAHO members. These webinars are tentatively scheduled for the same time on the third Thursday of the month. An economically-priced midyear online Mini-Conference is also planned, probably in April. Peter also said that customized online CLE training is available to agencies, at no cost to the agency if all attendees are NAHO members. (Watch for announcements of dates and topics!) Peter praised Marilyn Slifman for her assistance with all the background assistance with the webinars and mini-conference.

Peter reminded all to watch for announcements regarding the 2022 Conference. Toni shared how to access the NAHO website for Board email addresses to send any suggestions or comments.

Treasurer's Report

Cindy Antrim presented her report, noting income and expenses from July 2020 – June 2021. She explained that due to the postponement of the 2020 Conference at this hotel, NAHO was required to place a \$27,000 deposit for the hotel for the 2021 conference. The total balance held in NAHO's account is \$58,787.17. (Additional information is available by contacting Cindy at www.treasurer@naho.org.)

Membership Report

Marilyn Slifman (CA), Chair of the Membership Committee, introduced the current members of the Committee: Mary Long, Richard Murrell, Dwain Fagerlund, Marilyn Slifman, Bobbie Marshall, and Sarah Huber. The 2022 Membership Committee Members will be Mary Long, Richard Murrell, Caroline Stephens Ryker, Dwain Fagerlund, Marilyn Slifman and Bobbie Marshall. Marilyn shared the following information regarding the membership:

- As of 10/26/21, there are 369 active members, 35 lapsed members, 1 pending member, and 468 database contacts. The membership committee has approved 136 new members in 2021.
- Membership on 9/20/20 at the General Meeting was 249. An additional 22 members were admitted through the end of 2020.
- Regional membership: SE – 110; NE-86; Central- 65; West – 56; SW – 36; Mountain – 16.

Membership is for a calendar year. Exception: for those who joined NAHO on or after September 1, their membership is good through December 31 of the following year. Membership fees are due on January 1, 2022. There is a \$10 late fee if not paid by March 1, 2022.

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ANNUAL MEMBERSHIP MEETING *From page 10.*

NAHO 2021 Membership Dues:

	Membership Dues	Renewal
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 years	\$120.00	\$100.00
Groups of 5 or more at same time from same agency – 1 year	\$50.00 each	\$40.00 each
Groups of 5 or more at same time from same agency – 3 years	\$120.00 each	n/a

The following By-Law changes regarding membership were suggested.

- Add Northern Mariana Islands to Western Region
- Add Puerto Rico to Southeast Region
- Regarding 3-year Group Memberships, create a policy that allows transfer of a membership or a credit toward membership (Richard Murrell will present petition on behalf of 17 members in the Southeast Region).
- Addition to the policy memorandum: Group membership of five or more people for a period of three years be \$120.00.

Continuing Education and Professional Development

Mary Long (PA), Committee Chair, thanked all present members for coming to the meeting and shared how she became a member of NAHO and the benefits of the CLE credits she has received through NAHO. She spoke about the importance of becoming involved as a member, exploring areas to help the organization grow.

Mary reported the following developments regarding the NAHO “library” since January 2021.

Most of the webinars that were offered in

2020 and 2021 have been recorded and are available to borrow.

The Midyear Professional Development Conference sessions are also available to borrow

In 2022, she said that members should look for the following:

- “Showcases”—small collections of videos on a particular topic or area of training through Vimeo.
- Continued review by the Board of video content for video and audio quality.
- The addition of new material from upcoming webcasts.

Mary announced what has not changed:

- The reduced fee of \$15 per title.
- The On-Demand Bundle remains available. The bundle permits the borrower to rent 10 titles for \$100 per calendar year (Pilot program to allow agency use.)
- Simple rental process: fill out the rental agreement form; receive an invoice and arrange for payment; receive your video links and password.
- Conference Materials from conferences

held 2016-2019 remain available to NAHO members in the “Members” section of the NAHO website. After the 2021 Conference, all materials will be transferred over to the On-Demand library.

- And, finally, NAHO’s commitment to maintaining a Library which serves the professional development needs of its members.

Technology Committee

Bobbie Marshall (TX), Chair, shared that the NAHO website is maintained and updated by Board members who are the administrators of the site. Wild Apricot provides website management software. She noted that anyone can follow NAHO on Facebook, Instagram, and LinkedIn. Bobbie said that NAHO hopes to give its website a facelift and make it more useful and user-friendly in 2022.

Bobbie also announced that #NAHO2021 should be used for Conference posts, and reported the following information on NAHO’s social media presence. Facebook: www.facebook.com/NAHOorg -- 138 followers, Twitter: @NAHOTweets – 108 followers, Instagram: 154 followers, and LinkedIn: 25 followers

NAHO is also on LinkedIn <https://www.linkedin.com/company/national-association-of-hearing-officials-inc/>

Bobbie said she will give a prize to the first person who shows her that they are now following NAHO on Facebook. Bobbie can be reached by “Instant Messenger” Bobbie through Facebook; she asked to send her anything that might be added to NAHO’s social media.

Communications

Janice Deshais (CT), Associate Editor, reminded everyone that the purpose of the newsletter is to inform, entertain and support NAHO members and others involved in administrative adjudications. She advised all to watch for the post-conference edition of the NAHO News which will feature coverage of this Conference. Jan said that

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BOARD MEMBERS AND LONG-TIME CONTRIBUTORS TO NAHO RECOGNIZED FOR SERVICE *From page 9.*



Mary Long and Marilyn Slifman with 2021 awards.

Western Region Representative Marilyn Slifman received the Outstanding Service Award for her efforts as Chair of the Membership Committee. Marilyn's tireless efforts in integrating the membership process into the website management programming for the NAHO website has resulted in a seamless membership application process and trouble-free registration for NAHO monthly webinars. During her tenure as Membership Committee Chair, NAHO's membership has increased significantly. This is due, in no small part, to Marilyn's diligence in recruiting and in seeing that NAHO members renew their membership promptly.

Northeast Region Representative Mary Long received the Special Assistance Award for taking over management of the NAHO On-Demand Video Library, including reviewing all the videos in the library, eliminating those of

poor quality, and creating a complete list of the remaining videos which included descriptions of each class. In addition, Mary provided vital assistance in publicizing the Philadelphia conference.

Southeast Region Representative Richard Murrell received the Leadership Award. Richard is an administrative judge with the Tennessee Administrative Procedures Division under the Secretary of State. Richard tirelessly encouraged his administrative judge colleagues to join NAHO and, using NAHO's certification program as a model, to adopt a plan for their professional development. All of Richard's colleagues are now NAHO members and regular participants in NAHO's monthly webinars.

Choosing which Board members to honor at the Annual Professional Development Conference is always difficult because all NAHO Board members work vigorously to keep NAHO functioning smoothly and growing as an organization. Without their tireless efforts, NAHO could not provide all the benefits it offers to its members while keeping the price of membership much lower than other professional organizations. I, for one, am very grateful for their efforts. You should be, too. 🙏

ANNUAL MEMBERSHIP MEETING *From page 11.*

NAHO is very excited to be back in-person and would love to highlight all the great networking happening at this Conference in the newsletter. Jan asked all to forward photographs taken during this Conference to her and invited everyone to suggest articles or feel free to write an article for the newsletter.

New Business

Toni shared that NAHO will be giving away Instructional Video Rentals, Merchandise Bundles, and NJC scholarships at the Honors Luncheon tomorrow. Toni then opened the floor for discussion and suggestions. Highlights of that participation included:

An outreach campaign regarding hearing officials and their importance to the legal system, e.g., a video or series of videos regarding "Who Are We, What Do We Do", etc.

A question about certification. It was noted that questions can be asked of the Certification Committee.

A forum to share "job alike" questions and networking would be beneficial. Toni suggested that we may be able to host Zoom sessions that would allow for "live" Q&A sessions.

A member suggested a focus on school disciplinary hearings with training in that area for the next conference. Toni shared the school hearing officers are our second largest group. Toni suggested Zoom as a possibility for open forums as well.

The meeting was adjourned after an informative and productive session. Many thanks for all members for attending! 🙏



A group of attendees enjoy the Conference



*Alice Newton (MD)
Won an
NJC Scholarship*



Peter Halbach and Toni Boone



Selling NAHO merchandise at the 2021 Conference



Mary Long teaching Bench Skills



Toni Boone and Peter Hemenway



*Peter Halbach, Richard Murrell
and Toni Boone at awards luncheon*



Peter Hemenway speaking

