NAHO NEWS

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

NATIONAL ASSOCIATION OF HEARING OFFICIALS — JANUARY 2017

NAHO Loses a Loyal Board Member and Friend:

Eric G. Moody (ID), Western Regional Representative, Dies Unexpectedly

Eric Moody, longtime NAHO Board member and Chairman of the Membership Committee, died unexpectedly at home in Eagle, Idaho on Sunday, December 18. Eric was not only a Board member and chair, he was also one of those essential people NAHO always counted on to do whatever was needed to assure the success of a NAHO project or conference, whether it was helping to stuff registration folders, sitting at the registration desk to greet attendees at the annual conference or selling NAHO t-shirts and caps, Eric was that special person who did what had to be done without fanfare or attention. Eric leaves his wife Kim and a son. We will miss Eric's laugh and contagious smile.

NAHO Needs You!

Advisory Committee to be Formed

Janice Deshais (CT)

Have you ever wanted to work with NAHO but don't have the time to serve as a Board member? Do you have an idea for a project you would like to have NAHO pursue but don't think you could make this happen without being a Board or committee member? Do you have a particular talent you'd like to share with NAHO but are not sure how to best let NAHO know? Are you interested in providing feedback but aren't sure how to do this effectively? Or, do you just want to express your reaction to an issue of concern but wonder if you would just be a voice crying out alone in the wilderness?

NAHO knows there are members who want to work with the Board or committees or have ideas for projects that would be great for NAHO to undertake. NAHO knows there are members whose untapped talents could help it with its work. As has been proven by post-conference evaluations, NAHO knows, when asked, members provide valuable feedback and ideas, even if it's a lone voice of one member.

In order to hear from its members and tap the many resources they represent, NAHO is organizing an advisory committee whose members will be called on to assist with projects or events, share ideas with the Board and help some of those turn into action or future plans, and provide reaction, opinion, criticism, compliments, and advice to help NAHO fulfill its mission. This committee will be an ad hoc committee of the Board, and will be made up of approximately 6 – 8 members, ideally a mix of members representing various regions of the country.

Are you interested in being a member of the Advisory Committee? I will be contacting some members I have met over the years who I think might like to serve on this Committee after the holiday craziness is over and we are back to work in early January. However, although I have met many of you, I don't know everyone and might not know you, where you are from, or why you'd be a great member of the Committee. If you are interested in being a member, let me know who you are, where you live, and why you'd like to serve at janice.deshais@naho.org.

IN THIS ISSUE

NEWSLETTER CREDITS

Editor:
Bonny M. Fetch (ND)

Assistant Editor:
Kayla Adams (TX)

Layout / Design:
Wendy Moen, Design Dimension
www.DesignAZ.net
www.facebook.com/DesignDimension

THE PRESIDENT'S POST

Autumn Reflections and Winter Reveries

Janice Deshais (CT)

The cool, clear, colorful days of autumn in New England have faded away and December is upon us. But, before I head into the long cold days and nights of January and February, I want to take time to note what made the fall such a special time for NAHO – and for me.

September brought the 2016 Conference in the "you've-got-to-have-a-conference-here" city of Portland, Oregon. Portland was as special a site for a conference as was promised by its promoter and conference planner extraordinaire, area resident and NAHO Vice President Toni Boone. Joined by her distinguished sidekick (and husband and valued NAHO supporter) Judge "Mick" Gillette, Toni delivered a great conference in a great place. The hotel was a wonderful venue, located right by a waterfront park and featuring windows in its classrooms (no stuffy or cold windowless hotel banquet rooms!). The events were fun and proved to be a great time to connect with friends and make new acquaintances. The Conference curriculum, highlighted by a rare treat to observe a live session of the Oregon Court of Appeals, presented exceptional opportunities to learn from outstanding instructors and to hear from interesting featured speakers. I hope everyone who was able to attend took away new information and insights and is enjoying the benefits of the fellowship and training they received at the 2016 Conference.

This year's Conference was also an especially satisfying experience for me personally, as it was my first as NAHO President. I was happy I could welcome everyone to the Conference and its events, introduce our featured speakers to attendees, and talk with NAHO members and others about their questions and suggestions about NAHO. Presiding at the annual membership meeting was also a happy task, as I was able to introduce the Board and its committee chairs to NAHO members, and listened with pleasure as they explained the work of their committees and the progress being made on various projects as well as future plans to benefit NAHO and its members. The best job I had this year was the chance to recognize special people at the awards banquet. It takes the work and dedication of many people to make NAHO work, and it was wonderful to let the award recipients know how much their efforts are appreciated. (Look for my article on the award recipients in this newsletter.)

As President, I am proud of NAHO and what it does for its members. Annual conferences are an essential part of NAHO's mission to provide training and support to hearing officials and others who work hard to deliver due process to the public in the countless administrative hearings we provide every day. I thank Toni, the NAHO Board, and all the others who work, often behind the scenes, to manage the countless tasks that made the Conference run smoothly and successfully.

And now, on to winter. After the fast-approaching holidays and the start of a new year, we all know the heart of winter will be here before we know it. I do like to ski and do like to watch freshly falling snow (from inside by the fireplace). But, the thought of sleet and freezing rain on a dark and cold night sitting in traffic does make me pause and think – "Yuk!"

Janice Deshais (CT)

Here's what I do like about winter. This is a (relatively) quiet season when the NAHO Board works away at its projects and plans. You will hear more about most of this in the coming weeks and months, but in addition to improvements on the website and a new presence on social media, NAHO is upgrading its library "video" service, which will allow for a better and easier training experience for NAHO members. NAHO's Certification program is also being improved to enhance the value of the credential of certification for those who achieve it. The NAHO Board hopes these "winter plans" will enhance the benefits of NAHO membership.

As I have said in my previous Posts but want to repeat again here, NAHO is here to support you. You have a significant impact on the lives of the people who come before you, and you set the example they will have of what it means to have the right to be heard. Keep up the great work!

Happy Holidays and my best to everyone in the New Year.

VIDEO ON DEMAND COMES TO NAHO

Clayton Mansfield (PA)

In the beginning, the NAHO Library was recorded on VHS videocassettes. They don't make VCRs anymore, and I now have a handy box of paperweights in my office.

Library 2.0 was conference workshops burned to DVDs. Members paid a viewing fee and a refundable deposit, and we mailed the DVDs. The system worked, but it was cumbersome to administer. Plus, DVDs get old, they freeze, they break and they get lost.

The world has gone digital, and NAHO is changing with the times. We are pleased to introduce Library 3.0: Video On Demand. You send a loan request and $25 to the librarian, and we send you a link to the video on Vimeo.com and a password. No deposit, no late fees, no mailing costs.

Our fee schedule has changed as well. The new fee schedule effective January 1 is as follows:

- On Demand Rentals: $25 viewing fee per video.
- DVD Rentals: $30 fee plus $30 refundable deposit for each video recording.

We're also introducing the opportunity to purchase library cards. Individual members may purchase a card for $100 per calendar year that entitles the member to rent up to 10 videos. Government agencies may purchase a card for $500 per calendar year.

What will Library 4.0 look like? The answer is up to you. We're looking for members who can help develop podcasts, webinars, live streams, recorded PowerPoint presentations, and other media that will help train and enhance the professionalism of hearing officers. If you'd like to help realize that vision, contact me at clayton.mansfield@naho.org.

Annual Membership Meeting Minutes

Jo Murphy (TN), NAHO Recording Secretary

President Janice Deshais called the Annual Membership Meeting to order at 8:00 a.m. local time on September 13, 2016, during the Conference in Portland, Oregon.

WELCOME FROM THE PRESIDENT – Janice Deshais, (CT)
Jan welcomed the membership and gave her opening remarks. She outlined the following goals and the action plan the NAHO Board is pursuing to achieve those goals.

(1) Improve NAHO's "Public Face" through the following means
   (a) New website (online for several months, being continually improved)
   (b) Social Media Presence (NAHO will be on Facebook soon)

(2) Improve NAHO's professional development services in the following areas
   (a) Library
   (b) Certification
   (c) Conferences

(3) Membership
   (a) Develop membership sections identified by the types of hearings members perform, keep membership list up-to-date
   (b) A Membership Directory will be available on the NAHO website as of October 1
   (c) Restructure the website to have some type of membership "bulletin board" on the site

(4) Continue to build a reputation for excellence in professional development through work in following areas
   (a) Conferences
   (b) Improved membership services
   (c) Improved certification program to enhance value of credential
   (d) Grow membership

Approval of the Minutes from October 27, 2015 – Jo Murphy (TN)
There were no questions or comments and the minutes were approved by consensus.

Vice President's Report – Toni Boone (OR)
Toni discussed the details of Conference 2016. She then announced that the NAHO Board has decided it will try to vary locations for conferences in a pattern of the East, the West and the center of the country. Next year's conference (2017) will be held in Washington D.C. San Diego is a possible site for 2018. The 2019 conference will be somewhere in the middle of the country. Toni also asked the membership to submit suggestions for conference courses.

Treasurer's Report – Linda Snow (TX)
NAHO's assets currently total $69,533.30. The Board decided to limit our expenses and make some changes to increase income. Toni Boone made a motion to approve the Treasurer's Report. Peter Halbach seconded. The motion passed.

REPORTS FROM THE STANDING COMMITTEES
Nominating Committee – Gregory Ozment (FL)
Gregory discussed next year's election of the Board. He read the section of the By-laws concerning the election of officers and Board members, and explained that the committee will be taking nominations after the first of the year. The elections will take place during the latter part of the summer.

By-laws and Resolutions – Peter Halbach (ND)
The committee is continuing to review the By-laws and policies. They continue to communicate with the committee chairs and Board members regarding any updates or revisions.

Membership – Eric Moody (ID)
NAHO currently has 316 active members. Members will receive renewal information in November. Eric encouraged people to renew by email. We will have a new membership directory for NAHO member-only access that will go live on the website October 1. Everyone was encouraged to go to the directory and make certain their information is correct.

Certification – Michael Blain (FL)
Michael explained that the certification committee reviews applications, screens and sends candidates for certification to the Board for final approval. He reported that the committee has received 40 requests for certification or recertification at this point in the year. Joe Rubenstein, who is chairing a task force on revisions to the certification process, stated the goal of the revisions is to make certification more valuable as a credential for hearing officials. One of the ways this will be done is through a testing requirement for courses that are completed. He explained that more about this will be forthcoming.

AD HOC COMMITTEES/TASK FORCES
Library and Website – Clayton Mansfield (D.C.)
Clayton announced that "video on demand" will replace the DVD library in the near future. He also explained that to make access easier, members will soon have the opportunity to purchase library cards. Clayton stressed that in the future, the library service will be focused on knowledge management. He also noted the new NAHO website and encouraged members to log in as members. He encouraged everyone to check their membership profile.

Communications
Newsletter – Bonny Fetch (ND), Kayla Adams (TX)
Kayla, who assists Bonny Fetch with the newsletter, explained that she and Bonny are trying to make the newsletter a publication for every member. Kayla announced that the next issue will be coming out in December and asked members to let her know if they have ideas for articles. Kayla noted a new feature, "Ask the Board," has been added to the newsletter and she encouraged members to send questions to her.

Social Media – Clayton Mansfield (D.C.)
Clayton drafted a Social Media policy, which was adopted by the NAHO Board. This policy will govern NAHO's development and implementation of the use of social media to communicate with members and others about NAHO and its programs. He announced that NAHO members, Bobbie Marshall (TX) and Sarah Huber (ND) have agreed to assist with our Facebook page.

Scholarships – Norm Patenaude (NH)
Norm explained that there are 2 NAHO scholarships, which cover conference registration. He announced that this year's winners were Brandy Rickleff and Suzette Carlisle. He also explained that the National Judicial College awarded 2 $500 scholarships to apply towards any course NJC offers. Winners for this year are Denise Dutton and Joseph Lewis.

Merchandise – Linda Snow (TX)
Linda promoted the merchandise for sale at the Conference. She announced that there will be a raffle for a NAHO "padfolio" and explained how to purchase a ticket.

Speaker's Bureau – Toni Boone (OR)
Toni explained that the Speaker's Bureau consists of volunteers from NAHO who have experience in various aspects of the administrative hearings process to provide training as requested by members. She told members to contact NAHO with a request for training if that is something of interest and NAHO will contact a possible trainer and arrange for this service.

ADDITIONS TO THE AGENDA
Toni discussed the expenses NAHO incurs in hosting a conference, noting that more than half the cost is for food. She added that other significant costs are for AV and to bring in out-of-state instructors. NAHO, she stated, does well if it "breaks even."

Adjournment
Joe Rubenstein moved the meeting adjourn. Linda Snow seconded. The meeting adjourned at 8:55 a.m.

FROM THE EDITOR

A New Year's Reflection

Bonny Fetch, ND;
Past-President, Editor

I missed the Conference this year. I have attended 19 NAHO conferences, and had not missed one since 1999. But this year, with great regret, I decided to cancel due to health issues. I heard many of you noted my absence and inquired about me. I humbly appreciate your interest, and I can tell you that I very much missed the fellowship of my NAHO colleagues. The time spent at the Conference with you has for so many years been a mainstay of my professional life. And thanks to NAHO, I have many friends all over the country whom I look forward to seeing each year at the Conference. But this year it was not meant to be.

I had a mild heart attack (if there really is such a thing) in April, and some other related issues following that. I became quite familiar with emergency room and hospital staff. I apparently was popular with the nurses as they said they arm-wrestled to see who would be assigned to me. Wait, I assumed they meant they wanted to be my nurse, but maybe it was the other way around. Nah, I am sure they wanted me. Anyway, I did well in cardiac rehabilitation, and am doing extremely well now. So well, in fact, that my cardiologist said I have "no restrictions." I informed him that if he told me that, that I would be out trimming and hauling tree branches and lifting fifty pound bags of rocks. Well, he meant it, so I am back to my somewhat hyperactive self, slowing down only a little. In fact, I am taking up a new endeavor – I am in training to become a registered yoga instructor. And, no surprise, I am busy putting together the first ever yoga conference in North Dakota which will be held next Fall.

As I reflect on 2016, it has been a complicated year containing many ups and downs. But I have always felt that challenges make me stronger, and so I look forward to each day and each year with renewed enthusiasm and eagerness to take on what life brings. And so, I leave you with another of my poems, which I hope will inspire you or give you a moment's enjoyment. Although I wrote it in 1987, it seemed very relevant this year. Finally, it is my fervent hope to see you next year at the Conference in Washington D.C.

Bonny Fetch (ND)

A New Year's Reflection
In the twilight I went walking
as the snowflakes kissed my ear,
a voice so softly whispered
"it's that special time of year."

I spun around, amazed,
for there was no one else in sight.
I realized you hear things
when you're by yourself at night.

Then again I heard it,
a voice so soft and low,
and I opened up my heart
for it was floating on the snow.

"This year is almost over,
the next will soon begin,
think of where you're going
and think of where you've been.

"You take so little time
to reflect upon your life,
you let the best go by
in the turmoil of the strife.

"For you're given many lessons
to learn along the way
and if you do not learn them
you'll repeat them all one day."

I thought then of the pain and doubt
this year had brought for me.
"You don't learn from easy lessons,
it's the hardest ones, you see."

Then I stopped and all was quiet
as my tears fell on the snow.
I thanked God for the pain
and for all I'd come to know.

I looked up toward the starlight
at it's even, steady shine,
it would be all right, I knew,
the silent voice was mine.

Bonny M. Fetch © 12/87

SOCIAL MEDIA

We are excited to announce that NAHO is undertaking social media platforms for your enjoyment and benefit. With the use of Twitter and Facebook, our goal is to give more real time updates of what is happening in the administrative hearing realms, news that NAHO would like to share and most importantly to allow each of us to connect with others. NAHO has selected two managers for our social media platforms, and it is our pleasure to introduce Bobbie Marshall and Sarah Huber.

Bobbie Marshall, a

Bobbie Marshall-Shedd with daughters Baylee Marshall and Dylan Shedd

Hearings Officer from Lubbock, Texas, was introduced to NAHO by her supervisor and fellow diehard Texas Tech Red Raider fan, Kayla Adams. Bobbie is outgoing and has never met a stranger. If you have met Bobbie at a NAHO conference, you know she is a true, loud and proud Texas gal. She often uses Twitter to keep up with her favorite sport, college football, and to learn about up-and-coming football recruits. She has found more breaking news on Twitter, more trends, and once even turned to Twitter to see if there was a glitch with her bank (sure enough- her bank tweeted apps and accounts were down and not to worry). Her goal with Facebook and Twitter is to make it about you, to share information, to network with folks, and to have a little fun!

Sarah Huber, a hearing officer from North Dakota, was introduced to NAHO by Peter

Sarah Huber

Halbach, her regional representative. Sarah is very inquisitive and energetic and is excited to assist in the use of social media to communicate with NAHO Members. She wishes to get to know everyone better, and believes that Facebook and Twitter would be excellent spaces to share a bit about each other, to reach out and understand the differences each of us experience in our workplaces, but most importantly to give each of us a connection to others who are in similar places, people who understand the uniqueness of our chosen professions.

We hope you will join NAHO as we venture into the age of social media. When posting, we would like you to ask yourself these questions: is it true, is it necessary, and is it kind? We hope to see you soon on the web, and if you have any questions, have any difficulty locating us, or need social media 101, you can email us at bobbie.marshall@naho.org and sarah.huber@naho.org.
So be sure to follow us on Twitter @NAHOtweets & like our Facebook page at National Association of Hearing Officials or https://www.facebook.com/NAHOorg/.

MEMBER SPOTLIGHTS

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

Nancy Freudenberg

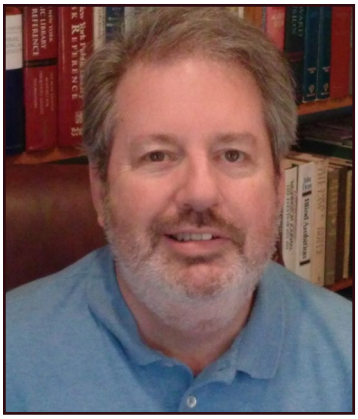
I have worked for the Iowa Department of Human Services (DHS) for 34 years. I began my career as an Income Maintenance specialist in a county office processing applications for Food Assistance, Medicaid and financial assistance. From there I was promoted to the central office and served as program manager in the Divisions of Economic Assistance and Medical Services. I have also worked as a trainer in our Bureau of Training Services and was responsible for training new and ongoing workers and providers in a variety of DHS programs.

In 1988 DHS determined it would no longer hire their own hearing officers due to a potential conflict of interest. As a result a new state agency was created, the Iowa Department of Inspections and Appeals. I was hired to develop the DHS Appeals Section, a unit that would review all DHS appeals to determine if they met the criteria for hearing. Those appeals eligible for hearing are certified to the Department of Inspections and Appeals to schedule the hearing, hold the hearing and issue a proposed decision. Once the proposed decision is issued the appeal file is returned to DHS and the Appeals Section is responsible for issuing the final decision.

Any party can request review of the proposed decision by the Director of DHS. I serve as one of two reviewers on behalf of the Director. We review appeals for all programs of DHS including financial assistance such as Medicaid, food assistance, child care, provider appeals, child support and service appeals such as child abuse, foster care and adoption. I meet weekly with our agency director to review and discuss the appeals that have requested review and issue final decisions. I also serve as the lead worker for the Appeals Section.

While the Appeals Section was being organized in 1988 I had the opportunity to attend the NAHO conference in Reno, Nevada, at the time NAHO was first being organized. Over the years I have attended NAHO conferences as funding has allowed. I have been a member of NAHO throughout the years.

I find the annual conference provides an opportunity for me to network with a variety of people across the county. It allows me to discover how other agencies/states are implementing new programs and federal mandates. NAHO provides training opportunities to brush up on core skills and also provides opportunities to expand my knowledge base. I look forward to discussion of topics that cover current areas that my state is encountering such as the expansion of Medicaid, and how other states are implementing paperless files. Course materials are a great resource and can be used for ongoing reviews. NAHO provides access to resource materials and people doing a similar job that I do. In addition, people that you meet from year to year can become great friends!!!



John Gray

My first NAHO conference was in Seattle in 1997. Since Seattle is only 60 miles up I-5 from Olympia, where I live and work, that was convenient. I attended Louisville in 1998, Santa Fe in 1999, Anchorage in 2002, and Fort Worth in 2004. Then came a long, dry spell until Scottsdale in 2015 and Portland in 2016. Portland is twice as far away from Olympia as Seattle, but I would rather drive to Portland because the traffic is much less. Portland also has Powell's Books. In the time I have lived in Washington State (arriving here in 1970), the population has more than doubled. At any given time, they are all in front of me on I-5.

I think it was in the first part of the 2000s that I served as the Western Regional Rep. It was also during that time that I was chair of the certification committee. I have been lucky to meet a lot of good people from across the country attending these conferences.

I have been impressed by the speakers at NAHO conferences. Their presentations give me some new ways of looking at an issue. If you reach a point where you are comfortable with your knowledge as an ALJ or HO, go to one of these sessions. I usually leave thinking, "you know, that's a good idea. I should incorporate that into the way I do things."

I work part-time these days, semi-retired, as an ALJ pro tem at the Washington State Office of Administrative Hearings. My hearing caseload consists of unemployment benefit appeals, and appeals from the state Gambling Commission, the Liquor and Cannabis Board (I'm a martini man myself, if you are wondering), and various licensing cases from the Department of Labor & Industries. I retired from the Washington State Department of Revenue, where I was an in-house ALJ for many years. Before that, I was an assistant attorney general for over twelve years. My wife, Marjorie, and I met in the Attorney General's Office and have been married for 36 years now. She is a review judge at the Department of Social and Health Services and plans to retire on January 31. She is also a NAHO member and a certified ALJ. I give credit to her for much of my success in life because she gives excellent advice. We have one son, Michael, who lives locally.

NAHO members have some challenges ahead of us. Budget cutbacks just keep coming. Increasingly, it is harder to hear a case and to issue a decision within the time limits given to us. This month alone, I have had a number of cases in which the decision was due the same day as the hearing. The challenge will be to do that job without compromising on due process to the parties. Another challenge will be to be sure the state treats all people equally. There was a bumper sticker I saw on cars locally several years ago: "If it's not equal, it's not justice." I doubt the people whose cars bore that bumper sticker were thinking in terms of hearing procedures, but were probably thinking in broader terms. Still, it is something I try to keep in mind.

MEMBER SPOTLIGHTS, *continued from page 5*

Donna G. Michaels, PhD.

I am a self employed CHO who works for both Charter and Public K-12 school districts in the State of Arizona. I have been on the Arizona Department of Education Hearing Officer roster since 2009. I became interested in adjudicating cases in student disciplinary and school personnel matters for Arizona school districts because it is imperative that students, educators and school personnel have a fair, objective and consistent due process proceeding. My interest in this field began during my education while pursuing a PhD in social welfare and public policy. Related to this interest, I designed and taught graduate level courses in administration, conflict management and social policy, co-authored graduate social welfare texts for Schools of Social Work and Administration and am a contributing primary author regarding capital campaigns in Health Care settings. I continued this pursuit by founding the Arizona Yavapai County's Education Service Agency which provides services for both the County and school districts state wide. These experiences have provided the framework and much of the foundation for my 25 years of consultation I have provided across the State of Arizona in matters involving education that include K-12, community college and universities. It was through this type of engagement with our state's school districts leadership that I was recruited to become a Certified Hearing Official. I have not conducted a hearing for the last three years primarily due to statewide budgetary constraints and personal health challenges. However, I have continued my close work and association with Arizona education for the last two years by assisting in the initiation and conduction of the Verde Valley Forum for Public Affairs (www.vvforum.org) which focuses on how to better meet the post secondary needs of our rural Verde Valley students and life-long learners where I reside. This Forum has statewide educational leaders, policy experts and national educational leaders from such places as the Aspen Institute. During the Forum, Dr. Joshua Wyner, Director of the Aspen Institute Excellence Education presented, for example, best practices that could be useful for our rural communities to consider implementing. I tell you all of this because like many other states, Arizona struggles with resources in recruiting and retaining both highly qualified education professionals and in the financial ability to meet, let alone improve, our educational offerings and evidence-based outcomes for students. This crisis has been exacerbated by policy decisions in the state legislature that have resulted in years of significant budget reductions which have also affected teacher pay and retention. As you may surmise or have experienced personally, "doing more, with less" in both financial and qualified professionals can result in poor outcomes. Arizona is ranked among the lowest nationally in student test scores, graduation, success in community college, university and work force development which underscores this sobering reality. Our state needs the services of Hearing Officers but often district administrators, who because of budget shortfalls, choose to not engage a hearing officer but rather "do the hearing themselves" or "trade with other nearby superintendents" to conduct the hearing themselves.

As a Hearing Officer for school districts since 2009, my primary focus is in conducting hearings regarding student and school personnel disciplinary matters. This experience includes Arizona State law and Arizona School Board Association (ASBA) guidelines-based long term suspensions and expulsions proceedings. Hearings conducted are based upon U.S. Constitutional law as to procedural due process, free speech, and search and seizure. This process always includes a detailed review of all relevant materials, testimony, exhibits, witnesses, police, school administrator reports, and any relevant legal or other material evidence or information in order to ensure a fair and impartial decision or recommendation. After considering all of the information and evidence presented by all parties, I carefully compose an extensive written "Findings of Fact Recommendation" or "Decision" for the record to be submitted within 5 days of the hearing, which must then be approved by the school board of the district in which the matter occurred. There is an appeals process in each case that can be exercised if the criteria for doing so are met.

I have relied upon the tools from NAHO which have been provided by both the NAHO video library and at NAHO conferences. In addition, I have attended classes and received certification for in-service training here in Arizona, conducting mock and real hearings with the training and assistance of a law firm specializing in school disciplinary matters for the state. I also utilized a "Hearing Officer Coach". These avenues of training provided a path for me to become a CHO and also a way to continue my work to improve upon the certification foundational skills while increasing my competency to conduct hearings. There are many areas of very specific skill acquisition that this requires. A few essential ones that NAHO provided for me in my certification and continuing education process include an understanding of due process, conduct and control of administrative hearings, evidence in hearings, legal research, ethics, judicial demeanor and temperament, safety, how to write findings of fact and much more. Attending past NAHO conferences has proved invaluable in honing these core competencies as well as given me a context for understanding the other types of due process hearings conducted across the country while becoming acquainted with highly experienced hearing officials. I look forward to becoming more active once again in attending future conferences. An Arizona Hearing Officer will not fulfill their legal responsibility without the necessary tools and skills to conduct a fair hearing. These tools are made available and provided by NAHO in order to conduct impartial hearings based on state statutes pertaining to education and school district policies set by the Arizona School Board Association. Using these tools allows for a consistent, fact-based and defensible hearing process. I hope others in our state will take advantage of NAHO training and certification so that hearing outcomes will always meet the mandate in providing fair and consistent due process for our students and personnel in schools across the state of Arizona.

MEMBERSHIP DUES

Eric Moody (ID)

After approximately eight years of membership dues remaining unchanged, on March 01, 2017, NAHO membership dues will change to the following:

- Renewal for one year $ 50.00
- Renewal for three years $115.00
- Renewal of five or more members from the same agency (one year only) $40.00
- New member one year $60.00
- New member three years $135.00
- Five or more new members from the same agency (one year only) $50.00.

There will no longer be a discount for 25 or more members.

For those agencies that have five or more members registering at the same time, please contact me so that I can provide you with a discount code.

Remember, if you renew your membership dues on or after March 1, 2017, you will be subject to a $10 per member late fee.

Please contact your regional representative if you have any questions or believe your membership expires this year and have not received a notice to renew.

CLASSES ON APPELLATE JUDICIAL REVIEW PLOW NEW GROUND

Justice W. Michael Gillette, Oregon Supreme Court (retired)

Question: No matter what subject they deal with, what do all hearing officers, referees, and administrative law judges have in common?

Answer: Their decisions are subject to "judicial review" in the traditional court system.

And that was the premise that led the planners for our Portland meeting to schedule a unique double class on Judicial Review—the first half concerned with theoretical considerations, and the second half a practical experience watching judicial review in action. The first half ("Appellate Judicial Review," taught on Sunday), was a traditional discussion of the methodology and standards used by appellate courts in reviewing quasi-judicial decisions. That class seemed to go well, judging by the participation of the attendees and the reviews of the class.

But the second half (conducted on Tuesday morning) was, to use the vernacular, "something else." A majority of the attendees at the Portland conference walked several blocks from our hotel to St. Mary's Academy, a private high school for young women in downtown Portland, and joined the St. Mary's students in watching an actual Oregon Court of Appeals hearing conducted before three judges of that court in the high school auditorium.

The case involved a psychologist who had become emotionally attracted to her patient (as it happened, he was a gay man who did not reciprocate the affection). Although the relationship was never romantic, the psychologist's personal life had become significantly intertwined with that of her patient over the years. When she finally realized that the situation was unprofessional, she ended it. Unfortunately, she did so without assuring that her former client would have a successor counselor. The combination of circumstances came to the attention of her licensing board, which held a hearing and decided to revoke her license. The proceeding at St. Mary's Academy was the oral argument part of the judicial review of that administrative decision. (At the date of this writing, the Court of Appeals has not announced its decision in the case.)

The NAHO attendees at the Court of Appeals session had received written summaries of the briefs of the parties, and therefore understood the outline of the case. But most had not actually seen an oral argument in any kind of case, much less an argument concerning one of their own decisions, and so the experience gave them a new perspective on what happens when one of their decisions is "taken up." In particular, comments from attendees shortly after the argument mentioned surprise at the limited scope of the issues on review, and the evident respect the court had for the administrative decision-making process. Much of the discussion at a later plenary meeting of the attendees also focused on various aspects of the judicial review process, suggesting that the experience was interesting and informative to most of the NAHO members who attended.

This "field trip" was part of an on-going effort by the NAHO board to expand the horizons of annual education programs. The particular form of this Oregon experience was made possible only through the cooperation of the Oregon Court of Appeals, which altered its September hearing schedule to arrange to hear cases at St. Mary's Academy, and St. Mary's Academy itself, which expended a great deal of time and energy in preparing for and hosting the event.

Hearing Site and Personal Security for Administrative Adjudicators

Captain Tim Fox, Oregon State Police

The prevalence of violence against judges has been escalating in American society. While you may not have the title or wear the robes of a judge, your job is a similar one and has similar risks associated with it. Consequently, violence against administrative adjudicators has been reported and should be of concern to you.

Judges are at risk because they are perceived to threaten people's family or home life, their income or employment, and their pride or self-image. Because hearing officers and administrative law judges have the authority to take away licenses, benefits or privileges, they, too, are perceived as a threat by many individuals.

Petitioners in administrative hearings sometimes exhibit aggressive behavior. Aggressive behavior is typically reactive. It's a reaction to things said or done during the hearing that the petitioner perceives as a threat. That aggressive behavior, if left unchecked, can result in violence against the administrative adjudicator.

The adjudicator's typical response to a petitioner who is out of control is to call attention to the inappropriate behavior; however, this technique often makes the situation worse rather than better. To deescalate aggressive behavior that occurs during the course of a hearing, and the violence that might result from that behavior, use the HEART technique:

H **H**ear them out. Listen to why they are so upset. Let them tell their story.

E **E**mpathize. Let them know that you understand why they feel angry and threatened.

A **A**sk questions. Show interest in them. **A**ffirm your interest and understanding of their feelings.

R **R**espond in a way that is calming. An angry or overly authoritative response makes matters worse.

T **T**hank them for sharing their story with you. **T**hank them for regaining control of their emotions.

It is myth that it is the person who is outwardly aggressive is more likely to do you physical harm. Violence against judges, and indeed against administrative adjudicators, can be targeted and predatory.

One clue to identifying the predatory petitioner is to carefully review correspondence addressed to you. If you are contacted by mail, by email or if a note is left for you, look for the following indicators of predatory behavior: any reference to a special history between you and the party or to "destiny," any religious or historical themes in the correspondence, any threats to commit suicide or any mention of death, an obsessive desire to contact you, a mention of a debt that is owed, any reference to persons that have been attacked or have carried out attacks and any mention of or evidence of mental illness.

Because targeted or predatory behavior is more difficult to predict or detect, it is best to prepare for it assuming that it could happen at any time—*because it can*. Below are some useful tips to protect you from predatory or targeted violence.

Security tips for information technology devices and/or social media:

- Be discreet about personal information. Be careful with whom you share any personal data.
- Delete all emails that have personal information as soon as you have read them.
- When you turn away from your computer or put down your cell phone, log out or turn it off.
- Discuss posting on social media with your kids—they can be targeted, too.
- Don't post photos with objects in the background that could provide personal information.
- Never use the geolocation features of social media to indicate where you are at any time.

Security tips for your workplace:

- Park in a well- lit area.

- Do not park in a reserved parking spot that identifies you as an adjudicator.
- Do not leave your employee ID or any other identifying information in your vehicle.
- Leave the building from a rear or side door.
- Pause to scan the parking lot and check your surroundings before moving toward your vehicle.
- Try to enter and leave the building in teams of two or more, particularly if it's dark outside.
- Unlock doors immediately before reaching your vehicle.
- Quickly scan the interior of the vehicle before getting into it.
- Once you enter the vehicle, lock it and keep it locked.

Security tips for travel/vehicular safety:

- Do not use vanity plates or display bumper stickers that might give a clue to your identity.
- Do not announce travel plans in court (when docketing) or on put them on in-out boards.
- If followed, do not confront the follower, drive recklessly or drive home; go to a police station.
- Vary times and routes when driving to and from your office.

Security tips for your residence:

- Be alert to unexpected changes in and around your home.
- Do not hide keys anywhere outside your home.
- Keep shrubs trimmed around windows or doorways to prevent concealment.
- Use solid core doors with deadbolt locks and a peephole.
- Don't open the door until you know who it is (use the peephole).
- Keep doors and windows locked.
- Secure sliding doors with pins to prevent horizontal and vertical movement.
- Draw all curtains and blinds during evening hours.
- Illuminate dark areas outside your home (motion detector lights work well).
- Install an alarm system with a battery backup.
- Do not put house numbers or your name on your mailbox.

Finally, have a plan in case a situation arises where you feel threatened. Make sure your staff knows what that plan is. Arrange your hearing room so that you have an escape route, particularly if the room has more than one door. Above all, don't panic. Keep calm and use your common sense.

NAHO Hearing Official (HO) and Administrative Law Judge (CALJ) Certification

Michael G. Blain, CHO (FL)

2016 has been an exciting year for the NAHO Certification program. Much progress has been made in increasing the value and prestige of NAHO CALJ and CHO certifications. Improvements are still being finalized and will be announced soon. Stay tuned for more information and added value.

Twenty judges completed requirements for initial certification as a CHO or CALJ. An additional sixteen completed the requirements for recertification. These efforts led to thirty-six judges having the title of Certified Administrative Law Judge or Certified Hearing Official bestowed on them by NAHO President Janice Deshais during the 2016 Annual Professional Development Conference in Portland, Oregon. There are three other certification applications whose requirements are still under review.

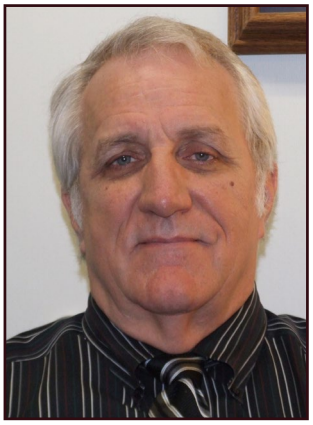
Obtaining initial certification as a CALJ or CHO requires years of work and dedication. In order to obtain initial certification an applicant must have accumulated a minimum of eight years of combined education and experience as a hearing official. In addition, the applicant must have completed a minimum of fifty-two hours of training in specific areas of study. Upon attaining the required experience and training the applicant must submit a completed application, accompanying documentation and the required application fee.

Upon receiving the application, preliminary screening is conducted by a member of the Certification Committee. Upon passing the initial screening, the application is forwarded to the full membership of the Certification Committee. If the application receives a favorable vote by the full membership, it is forwarded to the NAHO Board of Directors for a vote. The Board's vote is the final decision. The results of the vote are then relayed to the applicant. All applicants approved by the Board of Directors are presented their certificate at the next Annual Professional Development Conference.

Certification is valid for three years. For recertification, a member must complete a minimum of twelve hours of training pertinent to hearing officials (or must have attended at least one NAHO Annual Professional Development Conference) during their three-year certification period. He or she would then submit an application for recertification with proof of completion of a NAHO conference or other approved training along with the required recertification fee.

Members attaining certification during 2016 were: Shawn Ashworth (MD), Wade Blair (MD), Andrea Boardman (CT), Patricia Bradach (WY), Hummfree Brann (MD), Benjamin T. Brauer (MD), David Bruzga (MD), Tonya Detrick-Grove (MD), Heyward Hinton (SC), Welton Lilley (MD), Susan Lorow (MD), Dionne Mayfield (MD), Jacqueline Naves (MD), David Simmons (SC), Alice L. Swift (MD), Rachel Thompson (MD), Robin Walker (MD), Lauren Ward-Allen (MD), Deon Wilform (SC), and Dwayne Williams (MD).

Members attaining recertification during 2016



Michael Blain

were: Sherry Coomes (IN), Valerie W. Henry (MS), Christine Anderson (FL), Debrah Armstrong (FL), Eileen Bishop (FL), Carolyn Brett (FL), Geralean Davis (FL), Bonnie Griffis (FL), Diane Henry (SC), Vernon Howell, III (FL), Miriam Jrade (FL), Linda Labbe (FL), Richard M. Murrell (TN), Gregory Ozment (FL), Linda Snow (TX), and Stephen Walter (FL).

Congratulations to all CALJs and CHOs receiving certification or recertification this year.

Remember, if your three-year certification expires on December 31, 2016, you must submit your application for recertification prior to the expiration date or you will be required to complete the entire initial certification process again to have it reinstated.

The 2016 Certification Committee is comprised of: Richard Murrell (TN), Jimmy Stokes (GA), Robert Pullman-Miles (CA), Eric Moody (ID), Benjamin T. Brauer (MD), and Committee Chairman Michael G. Blain (FL).

Evaluating Credibility: Who Do You Believe?

Peter Hemenway and Laurence H. Geller (CA) Admininstrative Law Judges (Retired)

A common complaint about our written decisions from appellants, lawyers, and agency representatives flows from this sentence: "Based on the [non] credible testimony of [person] I find that the child [was] [was not] in the home at the time under review." Unless that sentence is followed by an explanation of what made the testimony credible or not credible, it is impossible to know why the Hearing Official (HO) determined as she did.

So if we want our decisions, and the hearing process, to be reasoned and impartial, it is imperative that we explain why testimony is credible or not credible. What tools should we use to make that determination?

From our perspective, some of the worst tools are those based on the so-called "demeanor" of the person testifying, or from our personal experiences. To us, this is just another way of saying that our learned biases should, or could, be the basis of our credibility determinations.

HOs over the years have said they found someone not to be credible because he did not make eye contact, or that she hesitated in giving answers, or that he appeared nervous. Or the person was not credible because the HO knew people of that ilk mostly lied or told the truth, or that in his experience cops [were] [were not] honest. (Sadly, an HO has also said that the kind of shoes

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Evaluating Credibility: Who Do You Believe?

continued from page 9

a woman wore were the way he judged credibility, but that is an outlier.)

If eye contact, hesitancy, nervousness, your life experience with that kind of person, or how you felt about cops, was the real reason for your credibility finding, how comfortable would you be writing that in the decision? How do you think the person reading the decision would feel about your grounds for disbelief?

It is our position that using these sorts of bases for credibility findings is a form of bias. They are different from legally prohibited biases, such as those which are supposed to shield people from discrimination based on race, color, creed, ethnicity, national origin. But these experiential biases are, in our judgment, no more acceptable for use in making credibility determinations. Can you argue that your decision is based on the evidence in the case if all you are using for your credibility determinations is those experiential biases?

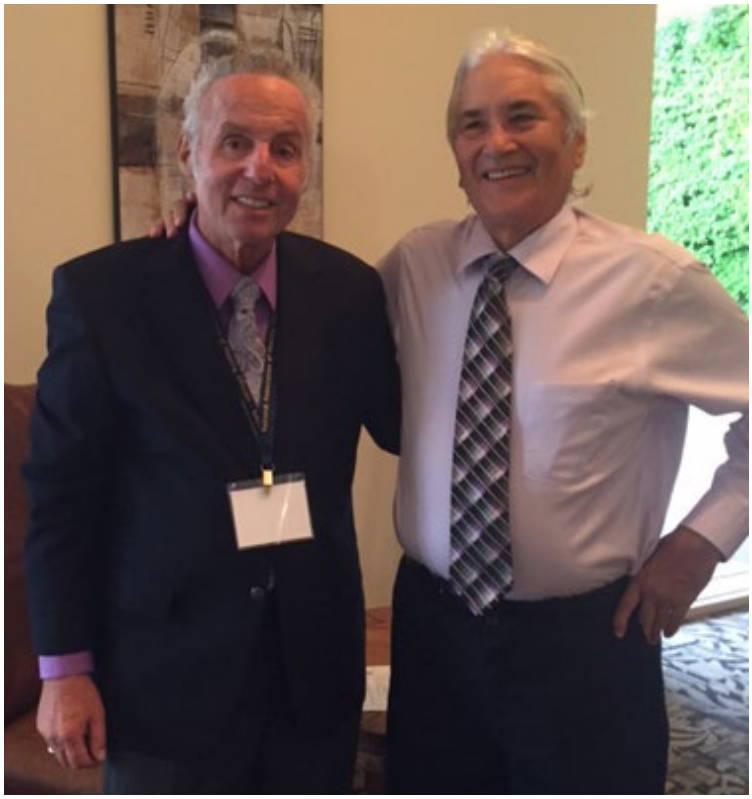
Let's examine the different kinds of biases, what they are, and how we might minimize if not eliminate them when we are acting as HOs.

Delving into American history we find a number of instances where serious bias was used to deprive others of rights, freedoms and even their lives. The following will amplify this point:

The US has, from its inception, been a nation of individuals which exhibited bias against those who were different from them. From the time the early settlers came here, we were mostly white, male and ostensibly Christian. We killed much of the native population, and when we made treaties, we ignored or breached those treaties. We enslaved blacks, and denied blacks and women (and non-property owners) the right to vote. As our nation developed, after about 90 years we abolished slavery, but we kept our Jim Crow laws, and outlawed interracial marriage in many of the states. We discriminated against the Chinese who came here, and later incarcerated law abiding Japanese, and stole their property, during World War II. Women were finally given the right to vote after almost 140 years, but we refused to ratify the Equal Rights Amendment. Until the 1920s, there never was a non-Christian on the SCOTUS. In our current era we do not see the lynching of blacks we used to see throughout the south, but throughout the entire country blacks are killed, with relative impunity, by white police officers. And most recently we elected to our highest office a white male ostensibly Christian who wants a wall built to keep out Mexican rapists, wants to keep all Muslims from entering the USA and treats women as if they were inferior to men.

Also from our country's recent election, we find very strong feelings exist against Mexicans and Muslims who have come to America or who want to come to America. How do you deal with this bias if a Mexican or Muslim is the claimant in one of your hearings?

So can we overcome these American biases? Probably not completely. Many studies have indicated that we make judgments almost instantaneously, and that those judgments reflect our society. Think about race bias. In many studies, blacks or people whose names make them more likely to be black, are seen as more dangerous, and not as acceptable as tenants or employees. But when we see a black person in a hearing, or



Laurence Geller and Peter Hemenway

hear what we take to be a black voice on a telephone call, or see what looks to us like a black name, we should be immediately on high alert that when we talk to them, listen to them, and then write about their credibility, we need to be extra careful that it is not our biases, but something else, that is leading us to our conclusions. [1]

It is more difficult to see our biases when they are based on our life experiences. After all, we are who we are. We may not like people who are fat, sloppy, loud, aggressive, but surely that does not cloud our judgment. But we think it does. When such a person appears before "a biased Hearing Official" that person has at least one strike and maybe several against him or her. He or she is not our kind, and everyone, from the birth of humans, has wanted to be with their tribe. We make allowance for our tribal members, and give short shrift to those who are not part of us.

Our approach to minimizing these biases is to explain carefully why we came to the credibility determination we made, and make sure the reasons we articulate are the real reasons for our decision. We think credibility determinations should be based, to the extent possible, on objective rather than subjective bases. Is the person's testimony consistent with past written or oral statements, or is it different? Is there any document or other person who can corroborate what the individual is now testifying to? Is the person untruthful in part of his testimony, such as saying he never said something when there is an oral or written record of his making that statement?

It is not biased to question someone's testimony when they have perfect recall of their rehearsed testimony, but cannot remember when asked questions about the same time period when those questions are asked at the hearing. There may be an explanation for these memory lapses, but the HO should clarify what the explanation is.

There have been many articles written based on

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TWO WIN NJC SCHOLARSHIPS

The National Judicial College presented NAHO with two $500 scholarships to be given away in a drawing at the Conference. The scholarships enable the winners to apply the amount towards attendance at the National Judicial College. This year, the two people who each won a $500 scholarship are Denise Dutton and Joseph Lewis, pictured here with Bryan Walker, an NJC Judicial Education Manager, and Toni Boone.

TWO MEMBERS RECEIVE 2016 SCHOLARSHIPS

Norman J. Patenaude, CALJ, Scholarship Committee Chair

At the 2016 conference in Portland, Oregon, in September, NAHO awarded a scholarship to Brandy Ricklefs. She works as a hearings officer for the Florida Department of Families and Children and hears appeals in child support enforcement and disability determination cases. She has begun to work on attaining certification as a hearings officer. The scholarship covered the full registration fee.

The National Judicial College also awarded a scholarship and this year's recipient was Suzette Carlisle. She is employed as an Administrative Law Judge for the Missouri Division of Workers' Compensation. The scholarship covers one free course online or on the campus of NJC.

The Board of Directors joined all attendees in congratulating the winners!

NAHO Board

Front row: (left to right) Norman Patenaude, Toni Boone, Jo Murphy, Gregory Ozment, Janice Deshais, Kayla Adams (Also pictured: Michael Blain) Back row: (left to right) Peter Halbach, Linda Snow, Joseph Rubenstein, Eric Moody, Clayton Mansfield (Not pictured: Brian Ford)

SOCIAL HOUR CANDIDS

2016 NAHO Award Recipients

Janice Deshais (CT)

One of the most rewarding jobs I have as President is recognizing special people like those listed here with annual awards at the Conference Banquet. NAHO thanks all of you for your time, talent and dedication.

The Bill Kane Board of Directors' Award **– Andrea Lee, Virginia**
Named for one of NAHO's past presidents, this award recognizes someone who has made unique and invaluable contributions to NAHO. This award recipient is selected by the Board of Directors.

Andrea Lee is one of those people you ask to take on a task or a project if you want that job to get done. If you need someone to help at the Conference registration table or perform any of the countless behind the scenes tasks at a conference, this is the person you ask. If you want to be sure NAHO's Bylaws and General Policies are kept up-to date and accurate, Andrea, a longtime member of the Bylaws and Resolutions Committee, is the person you ask. If you want to make sure the right person will do the important, but often thankless, job of Secretary, this is the person who you get – and the Board got – to take on this role for years. If you want to make sure you get to know a gracious and generous friend to NAHO, Andrea is this person.

The Outstanding Service Award **– Clayton Mansfield, Washington, DC**
This award is given to someone who has consistently contributed above and beyond what is expected and who has made a lasting contribution to NAHO.

As Chairman of the Library Committee, Clayton keeps the library's offerings as current as possible, and has recommended and will be implementing enhancements made possible by new technologies. As the Northeast Region representative, he reaches out to make sure those members know what is happening in NAHO. As a Board member, Clayton has helped the Board make use of new technologies and he is an important contributor to many activities of numerous committees and task forces. Clayton also makes an essential contribution by proposing new ideas and thoughtful suggestions for Board action to keep the Board's work moving forward efficiently and most important, successfully.

The Special Assistance Award **- Jo Murphy, Tennessee**
This award recognizes assistance in a specific area to distinguish essential and unique work done on NAHO's behalf.

Jo Murphy provides a unique and vital service for NAHO through her work on the conference site selection process and management of hotel services at a conference site. Jo travels to future conference sites and visits hotels to negotiate terms of a contract to help the Board make a site selection. Jo also tours an area to see what a city will offer conference attendees. Using her talents and Southern charm, Jo is not afraid to tell hotel sales, catering or audio visual services exactly what NAHO needs to put on a successful conference – and get it. At a conference, Jo makes sure all the pieces are in place for events and meals, an important part of a successful conference. Jo just finds a way to make sure all the details turn out. She is the one who makes sure the events happen as they should, the food is good, the bar stays open, and the coffee stays hot. Her role may be behind the scenes, but conferences could not happen without her indispensable contribution to their success.

The President's Award **– Toni Boone, Oregon**
This award recognizes someone who has provided special help, mentoring, or support to the President. This year's recipient provides continual and vital assistance in countless ways to the Board and NAHO and to me.

Toni is a tireless advocate of the administrative process and as an exceptional teacher of its principles to thousands of students who have benefitted from her courses at NAHO, NJC, state and federal agencies, and at countless other forums throughout the nation. Her teaching expertise is a key reason why NAHO's conference curriculum continues to expand and improve. Toni is someone who gets things done, as she works tirelessly to see ideas turn into action. She is often so far ahead of the curve that you have to run to catch up with her. This trait was vital this year as Toni managed the complicated planning, multifaceted coordination, precise organization, and vigilant administration of this annual conference. Suffice to say, without her we would have not been in Portland to enjoy the 2016 Conference.

The Truett R. DeMoisey Professionalism Award **– W. Michael "Mick" Gillette, Oregon**
One of NAHO's early presidents, DeMoisey was a friend and mentor to NAHO, and he is remembered for his leadership and gentlemanly manner. This award recognizes an individual who demonstrates ethical behavior and the highest ideals of professionalism.

This year's recipient, retired Oregon Supreme Court Justice "Mick "Gillette, personifies this description, right down to his gracious ways. Judge (as he prefers to be addressed) Gillette has been a model of an ethical professional throughout his distinguished career as a lawyer and judge. Judge Gillette is always willing to share his expertise on appellate review and the hearing process from a judge's perspective. As a member of NAHO's Ethics Committee, he is relied on for advice on ethical issues. For many years and conferences, Judge Gillette has been an instructor, panelist, and speaker and has served as a mentor to new hearing officials, most notably through the roundtable he presents with his wife Toni Boone for those who are new to our profession. Judge Gillette is that person who will always say yes if you ask if he has a few minutes to answer a question or provide some advice, or if you ask him to take more time to do something for NAHO. We thank him for being in our corner.

Civility

(Excerpts from a speech by Chief Justice Thomas A. Balmer, Oregon Supreme Court)

Toni Boone (OR)

It is not surprising that the courtesy and civility that was once common to courtrooms and administrative hearing rooms has diminished substantially. People are uncivil and communicate in a crude, coarse way even in coffee shops. Internet postings, such as those on Facebook, are largely unfiltered. Political divisions are worse than ever. Seemingly, everyone is at one political extreme or the other and those who occupy those extremes appear incapable of understanding or conversing respectfully with one another.

In the legal community, rudeness seems to be the rule of the day. Parties, witnesses and attorneys are unnecessarily antagonistic to one another. When they behave inconsiderately or impolitely, judges and hearing officials often respond in kind. Nowadays, it is even difficult to persuade parties to stipulate to undisputed facts—they'd rather be disagreeable even when there is no benefit to it. Hearing participants, whether in the courtroom or the administrative hearing room, seem to be imitating media examples such as the overly dramatic and hostile proceedings that take place in Judge Judy's studio courtroom.

Cultural and economic changes might explain some of the incivility exhibited in our hearings but another explanation may be a lack of mentoring from experienced judges and hearing officials. Without a mentor to demonstrate fairness, cooperation and civility, the new or inexperienced judge or hearing official may not realize that it is neither necessary nor desirable to be hardnosed and unreasonable. An experienced adjudicator knows that the bluster and hyperbole displayed by some attorneys is dreadfully ineffective in the long run and can coach the new or inexperienced adjudicator in how to properly handle such behavior.

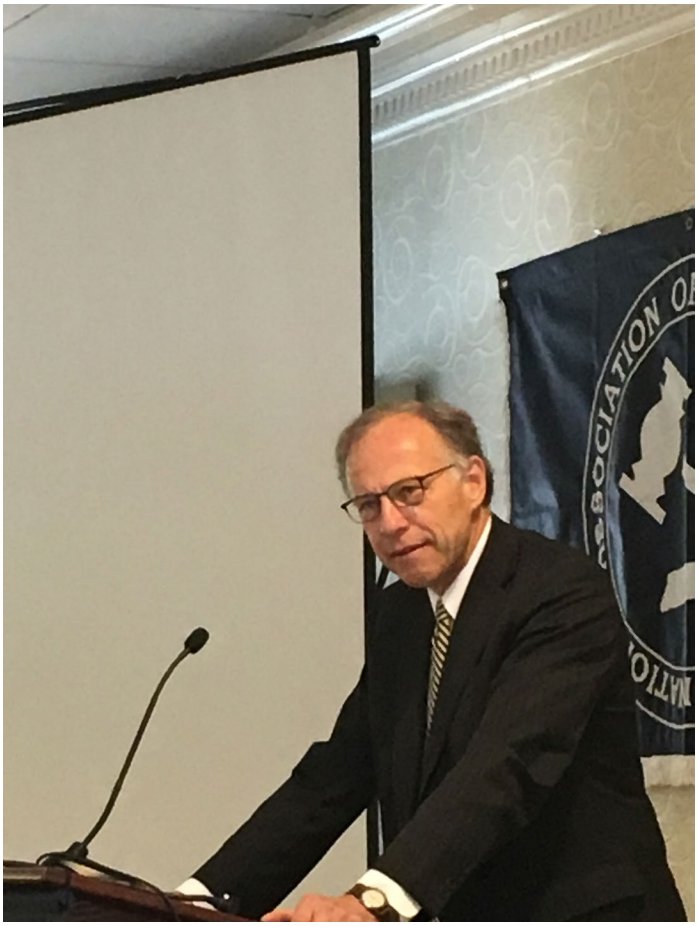
Those who preside over hearings, whether judicial or quasi-judicial, should foster civility and cooperative behavior among all hearing participants. Perhaps the best way to do so is to model the good behavior that we would like to see in our proceedings. We must never discriminate based on race, gender, economic status or sexual orientation. We must always remain civil and keep our tempers, even when all about us are losing theirs.

We control the proceeding. We should keep in mind that each case is not just *their* case, it is *our* case. Some judges treat attorneys with too much deference, because they want attorneys to like them. But taking control of the hearing and maintaining that control is far more important than being popular with the bar.

Think of your hearing as a committee meeting which you chair. Be a firm but thoughtful chairperson. Allow people to have their say, but be resolute in your control of the situation. (Try to act like a federal judge but without the attitude.)

Rule one of promoting civility in the hearing context is education—it is your duty to reach a just, speedy and inexpensive determination of every civil action before you. Emphasize this to all hearing participants.

In many instances, we must provide remedial education even to the bar. Many attorneys are unfamiliar with the evidentiary rules appropriate to an administrative hearing. They may also be unaware of the limited scope of administrative hearings. As the presiding administrative adjudicator, you know more about the administrative process and the rules related to it, include rules regarding the admissibility of evidence, than even an experienced attorney. As the most knowledgeable person in the room, it is your responsibility to educate parties, counsel and witnesses regarding the process, the rules, and the type of behavior that is preferred and expected. Be authoritative but not authoritarian.



Be cognizant of the effect that the physical surroundings for the hearing can have on the demeanor and behavior of hearing participants. In Madras and La Grande, Oregon, they have long needed new courthouses. Now that those new courtrooms have been completed and are in use, judges are finding that the behavior of hearing participants is more polite and less hostile. While informality, particularly in an administrative hearing, can be a good thing, being a little more formal can model the sort of behavior you'd like to see in your hearings.

Our work, and particularly conducting administrative hearings day-in and day-out, can be depressing and can become overwhelming. How can we find meaning and satisfaction in our careers? We need to remember that we are all a part of the justice system. While we seldom receive the recognition or respect that judges in the traditional judiciary receive, the work that we do—the service that we provide—is just as much a public good as the traditional judiciary. Perhaps, remembering that, we can find it easier to model the behavior we'd like to see in our hearings and mentor new and inexperienced adjudicators to become the hearing officials that the system needs and deserves.

Conference 2016: *Successful By (Almost) Any Measure*

Toni Boone (OR)

What makes a conference successful? Is it the relevance or the variety of the curriculum? Is it the quality of the speakers? Is it the conference location and surrounding area? Is it the opportunity for social interaction and networking? Based on the observations of the attendees and the comments in the evaluations, by whatever yardstick you evaluate this conference, it was a success.

There were 114 attendees at this year's conference, which included 15 attendees from Oregon. They enjoyed virtually perfect weather—mild temperatures and sunny skies prevailed during the entire conference.

As the conference opened on September 11, it began with a moment of silence to honor those who lost their lives in the terrorist attacks on the World Trade Center, the Pentagon and the crash of United Airlines Flight 93. The opening session found two past-presidents in attendance who were recognized for their contributions to NAHO: Ellen Anderson and Norman Patenaude.

Among the items discussed at the general membership meeting were the creation of Sections representing the various types of administrative hearings conducted by our membership to better enable members to contact other hearing officials who conduct the same type of hearings. Also featured at the membership meeting was the donation of $1,500 by the Portland law firm of Harrang, Long, Gary and Rudnick to help defray the costs associated with providing the conference.

The centerpiece of this year's conference was a "field trip" to observe a live oral argument regarding an administrative agency decision before the Oregon Court of Appeals. While judicial review of administrative agency decisions was a featured part of the conference, the curriculum was quite varied. NAHO strives to provide the training that its members need. Consequently, about 80% of the topics selected for the 2016 curriculum came directly from 2015 conference or class evaluations. This year's conference, because of those evaluations, offered more classes that were specific to a particular type of administrative hearing. Conference faculty included NAHO favorites and a number of local speakers including the Chief Justice of the Oregon Supreme Court.

Portland is a city that is easy to enjoy on foot. Based on the comments of attendees, many took advantage of Portland's walkability, viewing its many parks and sampling its distinctive cuisine.

However successful the Portland conference is deemed, the NAHO Board hopes that it is surpassed by the 2017 conference in Washington, DC. The Board is already actively planning that conference which promises to be exceptional.

"The District" is one of the most visited cities in the world, and for good reason: the National Mall alone features the Washington Monument, the Lincoln and Jefferson Memorials, the World War II, Korean and Viet Nam War Memorials. Adjacent to the mall are the Smithsonian's collection of museums: The Natural History Museum, the Museum of American History, the Museum of the American Indian, the National Museum of African American History and Culture, the Air and Space Museum, the National Portrait Gallery, the American Art Museum and several others. All are easily access from the NAHO conference site, the Embassy Suites Washington DC Convention Center.

If you attended this year's conference, I hope you found it enjoyable and of benefit to your work. If you were unable to attend Conference 2016, be sure and mark your calendars for Conference 2017, September 10-13, in Washington DC. Who knows? Maybe there will be another "field trip."

A USER'S GUIDE TO NAHO.ORG

Brian Ford (PA) and Clayton Mansfield (PA)

To quote an old commercial, membership has its privileges. This has never been more true for NAHO. Members can now log in to the NAHO website for exclusive content and to manage their own accounts. This article will explain how to log in, and what you can do after you log in.

Logging In

To log in to the NAHO website, go to www.naho.org. There you will see spaces to enter your user name and password, and a login button. When you log in to the NAHO website for the first time, use the email address on your membership application as your user name, and the initial password provided to you.

If all else fails, send a message to membership@naho.org. We will send you a temporary password.

Password Problems

If you did not get an initial password, or forgot your password, click on the "forgot password" link, which is located directly under the login button. You will be guided through the steps to make a new password.

I'm in! Now what?

The first time you log in, we suggest that you create a new password. A link to change your password will appear at the top of the NAHO website after you log in. After you make a new password, use your email address and new password to log into the NAHO website. It is important to remember your password. But, if you forget it, just follow the steps above.

You can also view and edit your NAHO membership profile. After you log in, just click "view profile" at the top of the NAHO website. There, you can see and edit your membership information. This is the best way to update NAHO if your email address changes. This is also how you can see and change the information about you that is displayed in the membership directory. Please note that if your email address changes, use your old email address and password to log in until you edit your profile.

Lastly, after you log in, you will have access to a members-only page with an archive of Board Minutes and Treasurer Reports. You can get to these documents by clicking "members" on the NAHO website's navigation bar. The members section is visible only after you log in.

We are here to help!

In conclusion, you can now manage your membership and access members only content on the NAHO website, www.naho.org. To do that, you will need to log in to the website using the email address you gave to NAHO, and your password. If you do not have a password, or forgot it, you can reset your password using the "forgot password" link.

If you have questions about the website that are not addressed in this newsletter, please reach out to us! We welcome your feedback as well.

Clayton Mansfield
clayton.mansfield@naho.org

Brian Ford
brian.ford@naho.org

LISTENING AT THE CURTAIN:

Rants and Raves on Administrative Law from Inside an Appellate Court Conference Room

Hon. Robert D. Durham, Associate Justice (Ret.) Oregon Supreme Court

(**A summary of remarks delivered on September 12, 2016, in Portland, Oregon, to the annual conference of the National Association of Administrative Law Judges.**)

Before retiring from the Oregon Supreme Court in December 2012, I had attended several hundred appellate court conferences on two appellate courts over more than two decades. Those courts - the Oregon Supreme Court and the Oregon Court of Appeals - addressed some of the most significant issues in the field of administrative law and, in doing so, reviewed the records of hundreds if not thousands of administrative law hearings.

The conferences of those courts are, and will remain, confidential. This article will not disclose any confidential statement by any judge, including me, during a court conference or other confidential discussion.

I can say at the outset that the appellate judges with whom I am familiar are keenly aware of the critically important role played by the hearing officers in the administrative law process. They are equally aware of the deep learning and expertise that most hearing officers bring to their jobs and that they are the heart and soul of the American administrative law system that represents justice in the lives of millions of our citizens.

I offer the following as my own impression of the sorts of problems, both procedural and substantive, that arise repeatedly in administrative law cases and that ordinarily require an above average level of competence on the part of the responsible administrative hearing officer to produce a correct disposition. All too often, judges on appellate courts that review those cases see, shall we say, the full spectrum of the potential responses of hearing officers to those problems. On the one hand, judges are palpably relieved when they sense from their review of the record that a capable, thoroughly trained and prepared administrative hearing officer has correctly perceived the issue in a case and has demonstrated a proper awareness of the legal and factual context in which the problem arises. On the other hand, judges also can recognize when their workload probably has gotten a bit heavier because a hearing officer, often with the best of intentions, has skewed the issue in a case, or missed it entirely, and has steered the proceeding off the rails. Not all judges "rant" when a problem like this comes before them, but many are guilty of emitting mournful sighs.

Appellate judges often debate the sources of particular problems that arise during administrative proceedings, and their descriptions of the reasons for many errors can seem endless. However, if I am pressed for an answer about the chief reasons that many hearing officers fall into error, two come quickly to mind.

The first is rooted in the task of statutory interpretation and its close relative, rule interpretation. Legislatures create administrative agencies, as the name implies, to function as agents of state government in carrying out a particular task. Statutes and rules are the means by which legislatures direct and control agencies in their business of implementing state policies through case adjudication. In disposing of administrative claims, the hearing officer's main function is to implement the legislature's policies, set out in all the pertinent statutes and rules, about how the case should be tried and how it should be resolved.

In view of the centrality of statutes and rules to the hearing officer's function, it is surprising, to say the least, how frequently appellate courts must remand administrative cases for reconsideration under a correct understanding of a statute or rule that, during the hearing, was overlooked or misconstrued. Part of the problem is the unfortunate pressure of decisional deadlines in administrative proceedings. When the rules impose artificial or impractically tight deadlines for a decision, there is a heightened risk that the harried hearing officer may be tempted to curtail necessary statutory research or short-circuit the time-consuming task of divining legislative intent from all parts of a complex statutory scheme.

But deadlines are not the main problem here. Hearing officers function at their best when, through careful study, they are able to internalize and put to practical use the canons of statutory interpretation that the courts have developed over the centuries. The canons are tools that aid in the interpretive exercise. I will not review all the canons here, but I will mention the canon that seems to stress the most basic component of statutory interpretation.

Justice Durham

The legislature intends every word and every phrase in a statute to have meaning. Consequently, the interpreter should reject a proposed statutory interpretation that renders any word or phrase meaningless or redundant. That principle commands that the interpreter carefully follow the most rudimentary responsibility in any legal analysis: read the statute, and read every word as a meaningful message from the legislature that wrote the statute. View with suspicion any proposed construction of a statute or rule that fails to ascribe meaning to every part of the author's message.

Hearing officers should not view the task of applying the canons of construction as mere busy work. I can state from experience that appellate judges apply the canons of construction all the time.

The second source of difficulty for many hearing officers lies in a misperception of the concept of "discretion." Statutes and rules that govern administrative adjudications commonly recite that the hearing officer or administrative agency "may" take a described action or reach a described conclusion, and courts commonly refer to those actions and decisions as "discretionary" in nature. The term "may" in a statute or rule is one of the most common signals that a drafter can employ to indicate that the agency or hearing officer can take the described action or decide the particular issue by using their "discretion."

When a statute or rule calls for the exercise of discretion, it refers to the concept of discretion in its legal sense, not in an everyday lay sense of that term. It is a mistake to assume that a grant of discretion to, for example,

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Listening at the Curtain

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schedule an administrative hearing is literally an invitation to set the hearing at any time, day or night, on any day that the hearing officer might desire, regardless of any hardship on the parties. That is because "discretion," when used or implied in its legal sense, always incorporates modifiers that limit its scope.

The first implied modifier is the word "reasonable." Every exercise of discretion by an administrative agency or hearing officer must be reasonable in all the circumstances. The exercise of discretionary authority, for example, to schedule a hearing is subject to attack on the ground that the scheduling decision was not reasonable for some concrete reason. The discretionary nature of an administrative decision will receive appropriate deference from an appellate court, that is, the court will sustain the decision if it is reasonable but not otherwise. Agencies may enjoy reasonable discretion to set their hearings when they want, but not on a day, for example, when a party is due to deliver a baby. Courts refer to an agency's imposition of an unreasonable result in this context as an "abuse" of discretion.

One of the chief signs that an agency decision fails to reflect a reasonable exercise of discretion is that it fails to comply with some applicable statute or rule. Statutes and rules are the other implied modifiers of the legal concept of discretion. Returning again to our scheduling example, an agency would be hard pressed to justify, as a reasonable exercise of discretion, a decision to set a hearing on a legal holiday. That is because, at least in part, such a scheduling decision would conflict with a state statute that creates legal holidays as occasions when the state does not transact legal business. Even then, a sufficient emergency circumstance might render reasonable the setting of a hearing on a day that otherwise would be reserved by statute as a holiday.

Courts afford considerable deference to agencies and hearing officers in making decisions about what I refer to as the procedural profile and process of a case. As already noted, the scheduling of the date, time, and duration of daily hearings is treated as a matter of discretion in most circumstances. In the absence of a controlling statute or rule, agencies also can decide in their discretion whether to consolidate multiple cases for a single hearing or to bifurcate claims, proceedings, or issues into multiple hearings to advance the efficiency of the decisional process. They may decide whether to allow a nonparty to participate as an "amicus curiae" to emphasize a particular point of view or to state an argument that no party has raised. Questions surrounding the presentation of oral arguments, written briefs, and requests for reconsideration frequently are addressed in agency rules. But if not, the agency usually can decide those matters in its discretion.

The rules of evidence applicable in an agency proceeding commonly are specified in either statutes or rules. Evidentiary rules often state in text that a particular decision about the admissibility or the evaluation of certain evidence is at the discretion of the agency or hearing officer. As I noted earlier, that message incorporates a standard of reasonableness, not one of boundless power to choose any outcome.

Administrative codes often vest agencies with certain discretionary remedial authority. Appellate courts spend long hours studying hearing records to determine whether an agency's exercise of its power to impose or deny a particular remedy reflected a reasonable exercise or an abuse of discretion. Especially in high stakes cases that may involve an appeal, a hearing officer is well-advised to incorporate in a final order a complete explanation of the reasons, including references to key factual findings, for the grant or denial of all or part of the relief sought in the proceeding.

Finally, a hearing officer's discretionary authority during a hearing will not shield the officer from responsibility for compliance with applicable codes of professional responsibility. Beyond questions of ethics, the hearing officer must recognize an institutional responsibility within the system of administrative justice that limits the exercise of rights that might apply in another context. In a recent extreme case, a hearing officer responded to an attorney's uproarious conduct during a hearing by filing an action for damages against the lawyer for the intentional infliction of extreme emotional distress. An appellate court imposed a suspension on the hearing officer for ethical misconduct. The hearing officer's main problem was in failing to acknowledge that, as a quasi-judicial official representing the government of the state, the officer's institutional role precluded the use of the courts to attack an administrative litigant for alleged tortious misconduct. That case is a reminder that, in the hearing process, the hearing officer's duties in carrying out the public's business can limit what the hearing officer might be entitled to do in some other setting.

Appellate judges, as noted above, are the first to acknowledge the central role that hearing officers play in the process of administrative justice. As a former appellate judge, I offer the suggestions and reminders set out above in the hope that they will aid both hearing officers and appellate judges in enforcing the rule of law in the context of administrative proceedings.

Evaluating Credibility: Who Do You Believe?

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studies as to whether anyone is able to spot a liar. The results are not good. We are not trained as to what to look for, and it is so hard for us not to categorize people that at best it takes us a long time to see if there are "tells", certain things that this particular individual does when he is not telling the truth. And we do not have that time to evaluate at a short hearing, nor can we ask questions which are irrelevant to the case but might help us determine credibility. [2]

In conclusion, we ask you to accept that you probably have biases of which you are unaware, and biases which you know you have. Try and treat each individual as an individual, not as a part of a group. Set down your credibility findings clearly, articulating what made you believe or disbelieve the individual. Read the findings over, and see if they are based to the extent possible on objective, rather than subjective, evidence. No one succeeds in every case, but it is always best, as Tennyson wrote, "to strive, to seek, to find, and not to yield".

We are not doing our jobs as HOs unless we are as impartial as it is possible for us to be. Impartiality does not come naturally. There has to be a conscious and continuing effort on our part. If we want, we can be the kind of HO we would like to be, but nobody says it is easy. Good luck to all of you.

Footnotes:

(1) See, e.g.,"Racial Biases Even when we Have Good Intentions", Sendhal Mullainathan, New York Times, 01/03/15; "Our Biased Brains", Nicholas Kristof, New York Times, 05/07/15.

(2) See, e.g.,"Why We Suck at Spotting Liars", Dr. Carol Kinsey Goman, Forbes, 02/23/15.