



NAHO NEWS

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

NATIONAL ASSOCIATION OF HEARING OFFICIALS

JUNE 2020

How We Are Working

We asked our Board members to share their thoughts on working remotely during the current pandemic. Here are some of their responses.

**Dwain Fagerlund (MN),
Central Region Representative,
North Dakota DOT**

The Department has been using the Microsoft Teams platform to conduct video hearings. This has proven to be stable and flexible, allowing outside participants to be added by telephone if necessary. A virtual private network (VPN) is not needed to operate. Most of the law enforcement officers are using their smartphone video cameras with the free app to participate. To set up a TEAMS hearing, we just make an appointment in Microsoft Outlook specifying a TEAMS meeting. A link is sent to all the participants. When the time for the hearing arrives, they just click on the link to join the video conference. We have experienced very few problems with this solution.

**Toni Boone (OR),
NAHO President**

Since everyone in government (that I know of) and the majority of home-computer users uses Microsoft already, and probably already has a Microsoft account, this method has some added benefits: (1) It's simpler and easier to have the Microsoft Teams platform added to what is already in use; and (2) Microsoft is not a completely foreign system with a higher learning curve for operation. I have heard of a couple of agencies that are using this as well. The NJC just conducted a poll to find out what most courts (both Article III and adminis-

trative) were using to conduct preliminary or other hearings. The top two were WebEx and Zoom.

**Mary Long (PA), Northeast Region
Representative, PA Environmental
Hearing Board**

In the normal course of business I conduct hearings both in-person and by telephone. Complex cases are most often in person. Less complex cases are conducted by telephone. I am fortunate to have an agency-provided computer and I am able to log into our docket system to access exhibits, transcripts, etc. My primary challenges have been mostly related to infrastructure. Our agency has had to make some adjustments in our conferencing platform to accommodate a large number of participants for the complex cases that would normally be held in person. I am also accustomed to having access to a paper file and hard copies of exhibits during hearings. Utilizing electronic-only versions has been a challenge.

Since the court reporter is also appearing by telephone, I have had to become more conscious of reminding people to identify themselves when they speak and to speak slowly and one at a time. Regarding due process concerns, avoiding bias is always an issue. Awareness is key and I have found courses from NAHO, NJC and others to be very helpful. Notice of a hearing is always an issue as many of our parties are self-represented. Since sending hearing notices by email is not 'in the regular course of business' we cannot assume that the person received notice of the hearing if they fail

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THE PRESIDENT'S POST

NAHO's Role in the Coming Months

Toni Boone (OR)

The last few months have been a bit strange. We are living in unprecedented times.



Toni Boone (OR)

The first U.S. case of COVID-19 was confirmed on January 20. In less than six months, the disease has changed the way we live and work. Yes, there have been other pandemics, but not at a time when the world was so populous, the people so mobile, and the news regarding the pandemic so prolific. When there is an element of risk in leaving our homes to grocery shop or to visit a doctor, it forces us to recognize that our country faces serious issues related to the pandemic.

Most of us have had to learn new skills, or at least adapt our skills to new technology, to conduct hearings in different ways. We've also had to acquire new coping mechanisms to live under the unusual circumstances brought on by the pandemic: isolation, changes to our daily routine, and concern for the health of family and friends.

There is much we still do not know about COVID-19. There is no definite, reliable cure for COVID-19, though some treatments have been effective. There is no single, dependable test for COVID-19. Various medical laboratories have created tests but their efficacy varies. It has been estimated that as many as one third of all COVID-19 tests given in the U.S. produces a false result. The absence of symptoms is not an indicator of wellness. One Washington study concluded that approximately 40% of those who have COVID-19 are asymptomatic. Finally, we have no vaccine to prevent COVID-19 and are not likely to have one for some months to come.

While the full impact of COVID-19 in the coming months may be unknown, there are some things that we do know. Despite the reopening of our country, COVID-19 cases are rising rapidly in 15 states. The CDC predicts that another "wave" of COVID-19 may occur in the fall of 2020. Virtually all states are limiting event size to groups of 25 people or less. As a result of COVID-19, state and federal tax revenues are down and budgets are being cut due to shortfalls. Travel and training are typically among the first budget items to be cut when revenue is low. For these reasons, the NAHO Board of Directors unanimously voted to cancel its 2020 Annual Professional Development Conference that was scheduled for September 27 through 30. The Philadelphia confer-

ence will, instead, be held September 12 through 15, 2021.

To better serve our members in the coming months, NAHO is implementing these changes:

- NAHO has reduced its rental fee for a single instructional video from \$25 to \$15.
- NAHO will soon begin providing periodic one-hour webinars for its members.
- NAHO is planning an online mini-conference for the fall of 2020.
- NAHO's 2020 Annual Board Meeting and Membership Meeting will be live-streamed.
- NAHO webinars and mini-conference sessions will be recorded for future member use.

There are other changes we hope will benefit our members that are still in the planning stages. We want your input in planning NAHO's future. We want to hear from you regarding what your professional development needs are. Please watch your email inbox for a brief survey. We hope you'll complete the survey to let us know how we can better serve you. In the meantime, you may provide any suggestions you may have to your Regional Representative or to any NAHO Board Member. For contact email addresses see: <https://www.naho.org/Board/>. Stay safe and healthy! 🙌

Save the Date!

**FOR THE NATIONAL ASSOCIATION
OF HEARING OFFICIALS**

**2021 ANNUAL PROFESSIONAL
DEVELOPMENT CONFERENCE**

September 12-15

Philadelphia, PA

FROM THE EDITOR

Rise to the Challenge

Bonny Fetch (ND)

It's early morning. I'm sitting in my living room watching the sunrise, filled with awe at the brilliant splashes of red, orange, and gold spreading across the sky. The majesty of the breaking dawn always takes my breath away, and I enjoy a few moments of peaceful calm before the tasks of the day pull me into action. Funny, the world looks the same, but reality hits and I sigh as I remind myself just how drastically everything has changed in just a few short weeks. The first two weeks of February I was cruising the Caribbean, enjoying the ocean, the islands, and the company of good friends, unaware that a microscopic menace was already spreading across the globe and would soon change all our lives.

For many, their home has become their workplace. This presents some real challenges but may also provide some unique opportunities to find creative ways to continue to work. In this issue, several hearing officials share their experiences conducting hearings remotely. There are some very good tips you may be able to utilize in your own practice.

I am a retired Administrative Law Judge and now teach yoga and meditation. I was teaching several classes a week. Of course, in-person classes had to cease, so I had to make adjustments to find new ways to continue teaching. I found that teaching from home via Skype works very well and now that the weather is pleasant I am teaching a class outdoors, observing the required distancing. I have also taken advantage of the opportunity to acquire specialized training via ZOOM, earning additional certifications which would have required significant travel and expense otherwise. These are things which would not have been available or possible under normal circumstances. I am not saying any part of this pandemic is good. We have no control

over it, but we do have significant control over how we react to it. We can feel sorry for ourselves and see only the negative aspects, or we can choose to be flexible and find ways to make the best of our particular situation. Moreover, I believe we have an obligation to react responsibly and professionally and rise to higher ideals.

Many events which were planned through the rest of this year have canceled due to the pandemic. NAHO canceled its Annual Professional Development Conference, which was scheduled to be held in Philadelphia in September. Such decisions are not made lightly. Up until the current pandemic, 2001 stood out as the only year in which there had been no conference since NAHO's inception. NAHO's first conference was held in 1988, hosted by the National Judicial College in Reno, Nevada. The 2001 conference was scheduled to be held in Fort Worth, Texas, on September 23- 26, 2001, but was canceled due to the tragic events of September 11, 2001. Sharon Kulp, Kentucky, was president during that time. Sharon recalled the turmoil of that time and the painful decision the Board made to cancel the conference, contrasting the circumstances of that time with the current time.

"Prior to 9-11-2001 we had never experienced any terrorist activity on US soil of the magnitude we saw on that day. It left us afraid and unsure of what to expect next. All we wanted to do was hug our families and stay close to them, something we can't do at this time. In 2001, the events of 9-11 came out of nowhere, not even a moment's forewarning, and we had a mere 12 days before the start of our conference. Registration was complete, hotel reservations made, airlines booked and hotel catering arranged. We were given very few days by the hotel to make a decision on

whether to hold the conference as planned or come back to Fort Worth in another year.

Immediately after the events of 9-11 airlines were not flying and there was no way of knowing when they would be back to full capacity. In the first three to four days following 9-11 we had large numbers of Individuals canceling their registration and hotel reservations. It quickly became apparent that even if we held the conference we would not be able to meet the number of hotel reservations required so as not to incur a penalty.

There was no time to consider what might be best. A decision had to be made quickly so as not to incur major penalties. Luckily, this year's Board had time to take action to cancel prior to registration and prior to doing all the other last minute work involved in putting on a successful conference."

Back to our obligation to react responsibly and professionally, that is what the Board did in making the decision to cancel the conference this year and plan for next year. And in the final analysis, remember that there have been pandemics before and there were survivors. There will be this time too, do all you can to be one of them. 🏹



Bonny Fetch (ND)

The NAHO Library Goes Digital

Mary Long (PA)

A significant and unique benefit to NAHO members, especially during this time when we have to obtain much of our professional development online, is access to our video Library. At the annual training conferences, NAHO makes video recordings of faculty workshops on topics that include evidence, administrative law, credibility, decision writing, and much more. You can access this NAHO member benefit for your own professional development and to meet NAHO certification requirements.



Mary Long (PA)

This year marks big changes for the NAHO Library. I stepped into my position as the NAHO Librarian, a role formerly held by Clayton Mansfield. As the architect of NAHO's Vimeo platform and manager of

NAHO's large collection of conference videos, we owe him a debt of gratitude.

With the changing of the guard, you will notice a few changes to the Library section of the website. First, NAHO's library is now 100% online. We no longer provide video rentals by DVD sent through the mail. Second, the Library page on the NAHO website has been streamlined.

Third, the NAHO Board has adjusted the rental fees for 2020.

LIBRARY PAGE

Members will find the Library page of the NAHO website on the "Professional Development" pull down menu on NAHO's homepage. The Library page has been updated and simplified.

This new page includes instructions for video rentals and a link to the form to request video rentals. By scrolling to the bottom of the page, there are links to the complete Library inventory as well as links which include video titles which correspond to the certification requirements.

FEES

The NAHO Board voted to reduce the

rental fee for a single video from \$25 to \$15. NAHO also offers members a "Library card" which provides 10 rentals for \$100. I will let you know how many rentals you have left each time you request a video.

RENTAL PROCESS

The rental process is simple. NAHO is using the Vimeo platform to host the video collection. This simplifies the rental process and shortens the time it takes to fulfill rental requests. All you need to do is fill out the form (see the link on the Library page), sign the licensing agreement, and email it to mary.long@naho.org. I will forward an invoice to you to make payment. Once payment is received, you will receive another email with a Vimeo link to the video and a password. Written materials for conferences from 2016 to the present are available to members in the "Members" tab on the NAHO homepage.

QUESTIONS OR SPECIAL CIRCUMSTANCES

The NAHO Library exists to be of service to its members. If you have any difficulty with the rental procedure, have questions about renting videos for agency training, or any unusual situation, please contact me at mary.long@naho.org. 📧

HOW WE ARE WORKING *From page 1.*

to appear. In these cases, we have either attempted to reschedule the hearing or have dismissed the complaint without prejudice.

Cindy Antrim-Rutledge, Treasurer, and Colleen Ulrich, Secretary, Gwinnett County GA Public Schools, Student

Discipline and Behavioral Interventions

Cindy and I are "on hold" for our hearings. Once face-to-face school was shut down and moved to Digital Learning for our staff and students, all pending hearings for the school system were postponed until further notice. The students 'pending' a hearing were given the option to participate in Digital Learning with their local school with the understanding that once face-to-face school resumes, pending hearings will be rescheduled. However, some students have become creative with their technology skills and transferred

their rule violations to the online format as well. So, our work has been challenging in giving guidance to schools on how to investigate these situations in order to ensure that all parties are still able to give statements, Title IX allegations are fully addressed, and due process is followed, even remotely.

Marilyn Slifman, Western Region Representative, Contract Hearing Officer, Orange County (CA) Animal Care

I already conduct hearings specifically on due process in search and seizures under the CA Penal Code, usually without a warrant, where the appellant may be criminally charged, or may already be in custody, and hopefully this affords me a heightened awareness of my responsibilities in remote hearings. In preparation for the telephonic hearings, I reviewed NAHO materials, in particular Toni

Boone's "Conducting Telephonic Hearings - Due Process and Credibility Assessment", and pulled notes on my decisions when I had to decide credibility between conflicting witnesses. I modified my prefatory statements to parties regarding the format and how the hearing would be conducted, how party and witness testimony would be taken, how evidence would be (or was) received, how objections would be made, and how and when rulings would be made, i.e., if further evidence was to be forwarded.

As many of you might have seen, we have also posted on our social media accounts asking for your stories - how you are coping, remote hearings, new kinds of hearings, changes in workload, etc. Share with NAHO on Facebook, Twitter, and Instagram. 📧

Tips for Conducting Hearings During the COVID Crisis

Janice B. Deshais (CT)

Many NAHO members have held some or all of their hearings remotely for years. For others, this is a new world. The following tips on conducting hearings remotely (and working from home) come from experienced NAHO members and are provided as part of NAHO's effort to provide helpful information to its members during this uncertain and changing time.

Planning for Remote Hearings

- Use an agency-approved technology. You might want to use ZOOM, but your agency may not allow you to. Check to be sure you are not violating agency policy.
- Confirm that your agency has the infrastructure to support the software program you are going to use. For example, make sure your agency has updated its communication technologies to accommodate your needs for conducting a hearing, such as holding a meeting or hearing for a large number of participants.
- Make sure you understand the technology and how to use it. If you are unsure, practice conducting a hearing with a friend or colleague. Anticipate problems and how you will handle them.
- Make sure the devices you will use for a hearing are fully charged, connected to a power source, and are fully operational. Make sure your microphones, speakers, headphones, or earbuds are working well so you will be able to hear clearly.
- Plan how you will handle certain aspects of in-person hearings that will change your practices. For example,

you might be used to having access to a paper file and hard copies of exhibits. Utilizing electronic-only versions may be a challenge you may have to get used to.

- Set up your "hearing room." Find a quiet room, preferably with a door, where you can conduct your hearings. If you will appear on video, check out the background as it will appear onscreen. Remove anything which might appear controversial or overly personal. It does not need to be devoid of decoration, but should be tasteful and neutral.
- Have a conversation with the members of your household so that they understand that you cannot be interrupted when you are conducting a hearing unless the house is on fire. Make sure your pets are secure. A barking dog is a sure-fire way to erode your authority with the parties.

Pre-Hearing Practices

Notice and Pre-Hearing Orders

- Make sure the notice of hearing includes all the information required by statute or regulation to comply with due process and advises that the hearing will be held remotely. Provide information about the technology that will be used, and how to access that method for conducting the hearing.
- Notice of a hearing may be an issue if parties are self-represented. Sending hearing notices by email may not be "in the regular course of business" for many agencies so it cannot be assumed that the person received notice of the hearing if they fail to appear. In these cases, the hearing may have to be rescheduled or a complaint dismissed without



Janice B. Deshais (CT)

prejudice so a complainant can refile at a later date.

- Provide instructions for non-English speakers, if necessary. Arrange for any needed translation services.
- Include language that advises that this proceeding will be considered a "formal" or "official" hearing and will be conducted in accordance with the agency's regulations. This will ensure that no participant is mistaken that the circumstances under which the hearing is being conducted will change a proceeding to an informal or unofficial process.
- Draft and distribute procedural rules or guidelines, particularly for more complicated hearings.
- Make sure the parties know what has to be done before the hearing, including the filing of any exhibits, and provide an opportunity for the submission of pre-hearing questions if you believe that will be helpful in expediting the hearing.

The Hearing

- Open the hearing by testing everyone's ability to hear and be seen (if relevant).

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Tips for Conducting Hearings During the COVID Crisis From page 5.

- Introduce yourself and have the parties do the same. Remind the participants that the proceeding is as formal as an in-person hearing.
 - Use a hearing “script,” especially for your opening remarks and to keep the order of the hearing if it is complex. Try to avoid sounding robotic or reading too fast. Having a script will ensure you cover everything you need to cover. A script can calm people down and get them in the frame of mind that the hearing is starting. Be sure you take the roll and ask each participant to identify themselves.
 - The written script is very helpful for making sure you cover all the information you want to convey before the hearing. The script can also establish the ground rules and procedures for the hearing. Discuss the format and how the hearing will be conducted, how testimony will be taken, how other evidence will be (or was) received, how objections can be made and how rulings will be made. Remind the parties that decorum and civility are expected just as they are at an in-person hearing.
 - Be conscious of reminding participants to identify themselves when they speak and to speak slowly. Be careful that people speak one at a time and do not interrupt others. Explain how the court reporter works. Remind the parties that they will have to speak clearly throughout the proceeding, especially if a court reporter is recording the hearing or making a stenographic record. If the parties have difficulty speaking clearly, you may have to repeat this throughout. In a complex hearing with many parties, it may be particularly necessary to have speakers periodically identify themselves for the benefit of the reporter or to clarify for the recording.
 - Make sure you keep control of the hearing. Set a firm and formal tone in your opening remarks and make sure participants speak one at a time and do not interrupt each other or you. Keep the parties on track and stop uncivil behaviors as soon as they happen. It is difficult to give a stern look remotely, but you can still provide a harsh warning and back it up with actions if necessary.
 - Utilize the tools you use now to assess credibility and character. Judging credibility may seem challenging, but you will find that most of the time you are able to make proper determinations by listening carefully and reviewing your record before you make your decision. Also, the courses in the NAHO Library may provide other useful tips and information.
 - Take the same care as you do now when you conduct in-person hearings to avoid actual bias or the appearance of bias. Your voice, face and actions are still evident, even if the parties or the public are on the telephone, a computer screen or in a chat screen.
 - Make sure that the record is complete before you close out the hearing. Take care that you have not missed something due to the distraction of a remote hearing.
- Miscellaneous Ideas to Improve Your Hearing Practice- And Your Life as a Remote Worker**
- Keep your calendar current, organized, and detailed (Outlook Calendar is recommended). Include the reasons for reschedules or pre-hearing conferences, the appeal ID, and the case name. This saves so much time for everyone and can serve as a reminder for your procedural history when you write the decision and are trying to recall the reason the hearing was rescheduled.
 - Take your full lunch break! It is too easy to just stay at your dining room table and keep working, but you need the break! Don't be tempted to work after hours. Use those boxes you have from all your online shopping () to keep your files in until you can return to the office.
 - Remember, practice makes perfect! You will soon be skilled at conducting hearings remotely and will be able to do so with the same ability and professionalism that you currently possess.
 - The NAHO Library also has helpful materials, including a video regarding telephone hearing techniques: Conducting Telephonic & Video Hearings and Assessing Credibility by Telephone (2019-02). NAHO members can access the NAHO Library by going to the Members section of the website at www.NAHO.org and downloading a Library request form.
- I invite anyone who wishes to share additional tips and advice to send them to me at Janice.Deshais@naho.org. Your responses will be published on the website, on our social media posts, or in another newsletter article. 📧

Membership Committee – Every Member’s Resource

Marilyn Slifman (CA)

I’m honored to serve as the new chair of the Membership Committee. My first contact with NAHO was with the membership chair in 2017, whose welcoming and informative response presented an outstanding first impression of the organization. I joined NAHO soon after and received my certification in 2018.



Marilyn Slifman (CA)

I am also newly elected to the Board for 2020-2022 as the Western Regional Representative. I had the pleasure of meeting many of you at the last three conferences, and I look forward to renewing those friendships and meeting many other members in Philadelphia in 2021.

I was a full-time practicing attorney in Southern California for 37 years when I was appointed in Orange County as a Hearing Officer in 2015. I have a BSL and a Juris Doctorate from Western State University and have been admitted to the California Bar since 1978. I’m also admitted to the US Central District and the US Supreme Court. Now I continue to serve part-time as an independent contract Administrative Hearing Officer for the County for Animal Care. I hear cases involving post-seizure animal cruelty (i.e. lawfulness of seizure usually without a warrant, including mammals, birds, reptiles, amphibians and fish), abatements and vicious dog cases.

So, who makes up the Membership Committee? And what do we do? More importantly, how can we best serve you, our members, in these dynamic times?

Since NAHO’s membership is not only geographically diverse, but also spans a broad range of employment sectors, NAHO’s By-Laws provide for six regional representatives elected from their respective regions to the Board of Directors for a 2-year term. These regional “Reps” make up the Membership Committee.

Several of the Reps are long standing members of NAHO and are involved with many other NAHO functions: Richard Murrell (TN-SE Rep) and the Vice-Chair of the Committee is often an instructor at conferences; Bobbie Marshall (TX-SW Rep) has brought NAHO into the social media era of Facebook; and Sarah Huber (ND-Mountain Rep) gave the opening address at the 2019 conference. Each Rep has their own NAHO email address that you can find at the “About Us” tab at the top of the website home page. Each has a brief bio posted at the same tab under “Board.”

As Committee Chair, I maintain our membership database, implement the new member review process, and am the contact person for “group” discounts with agency administrators. I can also assist you with resetting log-ins and general membership questions. The Committee’s duties include reviewing and approving an applicant’s eligibility for membership, developing and implementing plans to increase and sustain membership, and addressing member needs, and I coordinate these efforts. The Committee is not only limited to longstanding members;

newer members are definitely encouraged to participate. I can personally attest to that!

NAHO’s Annual Professional Development Conference attracts many new members each year. Given the absence of this great resource this year, NAHO has been working on addressing member needs. Other NAHO committees are developing webinars and have greatly increased our social media presence in an effort to remain connected. Library fees were reduced. Mary Long (PA-NE Rep), now the new NAHO Librarian, has added more content to this valuable member benefit. The Membership Committee will work to keep you informed with these additional resources.

In the last newsletter, Janice Deshais, Immediate Past-President, encouraged any members who might be interested in serving on a committee or working on a project, to get in touch with us. Personally, I think one of the best attributes of NAHO is that they value every member’s contribution. The Committee has an active voice with the Board, so as Reps, we can voice your interest, or bring attention to your input.

On a final note, given the extraordinary circumstances of the pandemic, it’s important to keep your email address current with us. Even if your membership has lapsed, you have changed jobs, or are not able to change your contact information, feel free to email us so we can keep you on the mailing list. I can also add any new acquaintances you have made or new agencies who are interested in NAHO and would like more information.

I’ll see you in Philadelphia in 2021! 🐾

Work of Certification Committee Continues

Jimmy Stokes (GA)

The Certification Committee continues to process applications for certification and recertification despite the current situation. Since the start of the year, the Committee has processed, and the Board has approved, the following four applications for recertification: Becky Ophus (ID), CALJ; Patricia Bradach (WY), CHO; Susan Dixon (FL), CHO; and Rodney Moorehead (VI), CHO. One other application is in process.

Now might be a great time to enhance or maintain your professional credentials by applying for certification or making sure your certification status is current. The NAHO Library has materials to help you meet your education requirements for certification or recertification, and other professional organizations have online resources as well. The NAHO website has complete instructions and information about the certification program and the Committee welcomes your questions. Jimmy Stokes, the Committee Chair, may be reached at jstokes@gael.org. Other members of the Certification Committee are: Richard Murrell, Tennessee; Ben Brauer, Maryland; Robert Pullen-Miles, California; and Michelle Guilfoyle-Douglass, Florida. 📧

NAHO Resource – Reaching Out For Answers

Tim Dawson

A member in a state just beginning remote hearings reached out to NAHO for information from other hearing officers regarding holding benefit hearings remotely in light of the pandemic. Timothy Dawson, Director of the North Dakota Office of Administrative Hearings responded. The hearing officer's questions and Director Dawson's answers are printed here for the benefit of others who may have the same concerns.

Q: Do you hold hearings from home/remotely?

A: Yes. Most are by telephone and due to the virus one of our Administrative Law Judges is conducting all hearings from home and by phone.

Q: Are all your files (exhibits, docket sheet, decisions) electronic?

A: No. Although we may use electronic files, we use paper files in the vast majority of hearings.

Q: What equipment/programs do you use? Is it owned by the state or your own?

A: We use ProLaw for case management. We are a state agency so everything is owned by the state.

Q: How do you record a hearing?

A: We record with a digital recorder and yo-yo microphones.

Q: Do claimants participate from home by phone? Normally do they report to agency hearing rooms?

A: Normally the claimants participate at the agency and we call the agency. We

have allowed claimants to participate from home by phone in the past if there was a reason, and now due to the virus, we are call-ing all the participants at home. The governor has, for the most part, sent everyone home to work from home and has closed all state offices.

Q: How do claimants get exhibits - do you use email? Is it encrypted? A portal?

A: The agency is required to mail (or otherwise deliver) the exhibits to the claimant. We do not keep the record but return it to the agency. We return it in hard copy.

Q: Do you mail out copies of hearing notices and decisions or are they emailed?

A: We mail by snail mail.

Timothy Dawson can be reached at tjdawson@nd.gov.



Save the Date!

FOR THE NATIONAL ASSOCIATION
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2021 ANNUAL PROFESSIONAL
DEVELOPMENT CONFERENCE

September 12-15
Philadelphia, PA

What About Due Process In Remote Hearings?

Since agencies have had to move to conducting hearings remotely, there are all kinds of things to consider, much of which are being covered in this newsletter. Paul Keeper, Gregory Ogden, and Jim Gerl, all long-time presenters at NAHO conferences, provided their expert input on the following questions as to what due process pitfalls and considerations hearing officers need to be aware of.

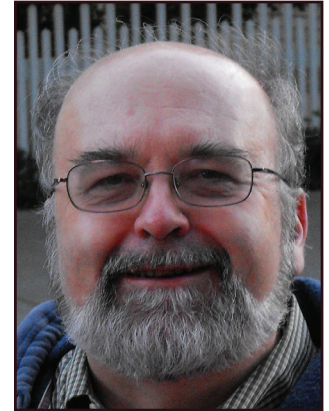
Paul Keeper, ALJ (retired), Texas State Office of Administrative Hearings



Paul Keeper



Gregory Ogden



Jim Gerl

1. What are the due process considerations for conducting hearings remotely? “The primary due process consideration in using videoconferencing is whether the hearing officer knows how to manage the software and hardware.”

2. How might hearing officers avoid any pitfalls of conducting hearings remotely? “Hearing officers need training, both in using the equipment and in helping the parties when failures happen.”

3. If an error results from falling into one of the pitfalls identified above, how should it be remedied? “The hearing should be suspended until the technical issues are resolved.”

4. Do you think working remotely might create additional stress for hearing officials? “Of course. Every time we move from in-person to remote procedures, we create new opportunities for problems.”

5. What advice would you give to hearing officials in this regard? “If possible, get training. If possible, have IT backup available.”

6. Is there anything else you would like to impart to hearing officials at this time? “Welcome to the future.”

Gregory Ogden, Professor of Law, Caruso School of Law, Pepperdine University, CA

“Paul’s comments are very thoughtful. We have had a smooth transition to online education in the last three months using Zoom and with tech savvy students. This may not be the case across the board with ALJs, lawyers, and participants in hearings. That said, there are a lot of central panels that have successfully used video conferencing technology for the last 15 years or so, and UI hearing officers have used telephone hearings for much longer. A big issue here is whether the participants in the hearing have the right to a live hearing when there are credibility issues at stake. The key contrary cases are *Whitesides v. State*, (2001) 20 P.3d 1130 (Alaska Supreme Court) (telephone hearings violate due process of law when credibility issues are at stake), and *Babcock v. Employment Division* (1985) 695 P. 2d 19 (telephone hearings do not violate due process of law when credibility issues are at stake).”

Jim Gerl, Hearing Officer, Pennsylvania Office of Dispute Resolution, Harrisburg, PA

“Paul and Greg make some good points. One of the major due process hurdles

that I am hearing about involves whether certain groups of people might have less access to computer technology, for example, certain elderly and poor litigants. Some of the pitfalls may include allowing more time for hearing by a virtual platform because they generally have unanticipated issues. If an error or disruption occurs because of technology or otherwise, as always, the hearing officer should acknowledge the problem and try to be fair yet flexible in fixing it.

If you do it right, being a hearing officer is always difficult, but remote hearings come with their own issues and can indeed be very stressful. Hearing officers should take care of themselves. Also, networking with fellow hearing officers is very important. Being active in an organization like NAHO is a great way to stay current on techniques and to discuss various best practices.

The key requirements for hearing officers in a virtual hearing are patience and flexibility while still being fair but firm in conducting an administrative hearing.

I stress that these are just preliminary thoughts and that they reflect my own ideas and should not be construed to constitute legal advice.” 🗡️