



# NAHO NEWS

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

NATIONAL ASSOCIATION OF HEARING OFFICIALS

MAY 2018

## 2018 ANNUAL PROFESSIONAL DEVELOPMENT CONFERENCE



# SAN DIEGO... BY POPULAR DEMAND

By Toni Boone, OR, Vice-President

Each year, NAHO asks its Professional Development Conference attendees to complete a post-conference evaluation in order to access their completion certificate. Among the questions asked on that evaluation is: "In what city would you like NAHO to present a conference?" For several years, one of the cities requested most often has been San Diego. Thanks to NAHO Treasurer Jo Murphy, we have the perfect venue for a conference and, at long last, it is in San Diego.

The dates for the 2018 Annual Professional Development Conference are September 9 through 12. The weather for the conference should be perfect with an average daytime

temperature of 77 degrees and an overnight low of 66 degrees. NAHO has adjusted its conference schedule slightly to allow more time in the evenings to enjoy all that the San Diego bay area has to offer.

Our host hotel is Marriott Marquis and Marina at 333 West Harbor Drive in San Diego. The hotel is situated on the waterfront overlooking San Diego Bay in downtown San Diego. Many of the hotel's spacious rooms, offered to us at the federal per diem rate of \$153 per night, have a scenic waterfront view and some have private balconies. The hotel's amenities include an extensive fitness area and a full-service spa. The hotel is situated within easy walking distance of the Gaslamp

Quarter and the Embarcadero, so there are a variety of restaurants and shopping opportunities in the area adjacent to the hotel.

The hotel boasts two huge, heated, free-form outdoor pools, a separate children's pool and a whirlpool. This lush pool area is a tropical paradise with waterfalls, palm trees and exotic plants and flowers. NAHO's Sunday evening meet-and-greet Welcome Reception will be in this verdant pool area and will include heavy hors d'oeuvres near the hotel's poolside no-host Tiki Bar. Within the hotel there are four restaurants and a Starbucks to satisfy your dining needs and your caffeine addiction.

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## SAN DIEGO...BY POPULAR DEMAND

*From page 1.*



The Marina Walk connects the bay area with the downtown locale. A stroll along this waterfront walkway will take you through a number of parks and the marina. Both bicycle and boat rentals are available. If you'd like to visit Balboa Park, Old Town, Coronado, or San Diego's world-renowned zoo, there is a hop-on, hop-off trolley bus which stops directly outside the hotel and will take you to these locations.

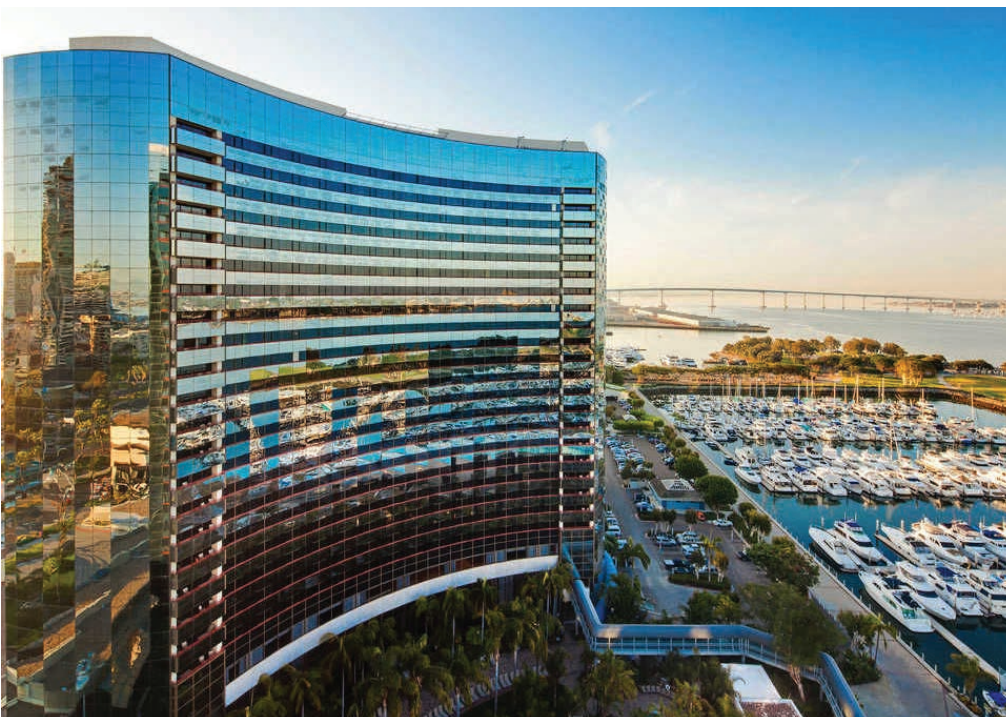
San Diego's Embarcadero is a testament to the region's colorful maritime history complete with historic ships, museums and harbor tours. San Diego is a popular cruise port for the west coast and the Embarcadero is the ideal place to watch a number of cruise lines dock. For history buffs, the U.S.S. Midway Museum is a ten-minute stroll from the hotel.

The Gaslamp Quarter is a short, flat, easy walk from the hotel. It is on the National Registry of Historic Places, and dates back to 1850. This 16-block district, despite its quaint Victorian architecture and history, is one of the liveliest areas you're ever likely to visit. You can

enjoy a historic guided tour, either on foot or via trolley, and hear the dramatic and colorful tales of the "Stingaree" neighborhood. If you're interested in art, there are a number of galleries in the Quarter which you can enjoy with or without a libation from the gallery's own mixologist. The Quarter is a foodie's paradise with dining choices ranging from casual to upscale, perhaps alfresco on the sidewalks or at a rooftop lounge. For the shopper, there are over 80 stores in the Quarter—not only national retailers but fascinating boutiques selling art, books, crafts, and gifts. The entertainment available in the Quarter includes a variety of live music venues as well as comedy clubs.

Despite the many interesting sites that San Diego has to offer, it's important to remember that a NAHO conference is a "working vacation." Our keynote speaker for this year's conference is Judge John B. Owens of the U.S. Ninth Circuit Court of Appeals. NAHO is creating a curriculum that has something for everyone. Conference sessions on credibility, judicial ethics for hearing officials, decision writing, the Chevron doctrine and agency deference, rulemaking, decisional independence, overcoming bias, language and cultural barriers, and multiple sessions on evidence (both basic and advanced) are already planned.

Mark your calendars now for NAHO's 2018 Annual Professional Development Conference in San Diego, California, September 9 through 12. Join us for a conference that is sure to provide instruction on sound administrative adjudication theory and practice in one of the most beautiful and interesting cities in the U.S. 🏡



## THANK YOU TO KAYLA ADAMS, OUTGOING ASSISTANT EDITOR

Bonny Fetch, NAHO News Editor



*Kayla Adams (TX)*

**K**ayla Adams, Texas, Southwest Regional Representative, has served as Assistant Editor for the past two years. She not only did a very capable job, but was willing to take on whatever I requested of her with graciousness. Thank you, Kayla, for being so reliable and for all you did to enhance the quality of the newsletter. I will miss you being here in the trench with me, but appreciate that you will continue serving NAHO most capably as a dedicated Board member. 🏡

thank  
YOU  
SO  
much

# A REVIEWING COURT'S PERSPECTIVE OF A HEARING OFFICER'S WELL-REASONED DECISION

By Susan L. Bailey

*Susan is a general jurisdiction trial court judge in the East Central Judicial District in the State of North Dakota. She is a former Administrative Law Judge of the Office of Administrative Hearings for the State of North Dakota.*

**W**riting a well-reasoned decision is a difficult and time consuming task.<sup>1</sup> Acceptable styles and structures of decisions vary, but generally will address the nature of the case, the issue or issues, facts, applicable law, and legal reasoning applied to resolve the dispute. A hearing officer's decision has several audiences to serve and satisfy including litigants, attorneys, administrative agencies, and reviewing courts. This comment is from one reviewing court's perspective.

Recite the issue presented. This not only immediately alerts the reviewing court to the issue to be decided, but can help the hearing officer stay focused on the issue identified throughout the decision writing process. Also, set out the legal test to be applied to the issue. The legal test may be a statute, rule, or case law. If there are competing arguments regarding the legal test to be applied, select the test to be used in your decision and explain why it is being applied over another. Accurate citation to the law is obligatory.

Make findings of fact accurately and completely. An understanding of the standard of review that a reviewing court has to apply to a hearing officer's decision, that is, generally deferential to the findings of fact and de novo to the conclusions of law, highlights the important role of the hearing officer as fact finder. Making concise findings of fact is not easy as it requires taking usually unorganized raw evidence and producing a comprehensible narrative. Include facts that are relevant to the ruling and avoid including irrelevant or unnecessary facts.

Ensure that there is sufficient evidence of record to support the factual findings. Make and explain evidentiary rulings as the circumstances require, especially concerning witness credibility. Address contrary evidence and why you didn't find it compelling.

Finally, make conclusions of law and resolve the dispute. Answer the questions raised in the litigation and explain the reasons upon

which the decision rests. A well-reasoned decision inevitably narrows the potential issues for review and is welcomed and appreciated by a reviewing court. A well-reasoned decision may satisfy even the unsuccessful litigant and avoid appeal altogether. ↗



*Susan L. Bailey (ND)*

S. I. Strong, *Writing Reasoned Decisions and Opinions: A Guide for Novice, Experienced, and Foreign Judges*, 2015 J. Disp. Resol. 93, 106 (2015) (citing *Hart v. Massanari*, 266 F.3d 1155, 1176-77 (9th Cir. 2001). Available at: <https://scholarship.law.missouri.edu/jdr/vol2015/iss1/7>.

## MEET SAMANTHA SIMPKINS – NEW ASSISTANT EDITOR

**Samantha M. Simpkins, CHO, Regulatory Program Specialist, is the new NAHO News Assistant Editor as of this issue. Here is her introduction.**

**I** am otherwise known as Sam, Mrs. Simpkins, Madam Hearing Officer, or “That lady at the DMV.” I received my Bachelor's degree in Criminology from Florida State University (Go Noles!), and I still live in Tallahassee with my husband, two cats, and a couple of mysterious creatures that eat all my food and have iPhones growing out of their hands, who I am told are generally referred to as “teenagers.” I'm a born and raised Floridian, but some wires got crossed somewhere, because I hate hot weather and love the cold. I'm an amateur photographer, a coffee addict, and a fervent believer in the Oxford comma.

For the past nine years I have worked for the Florida Department of Highway Safety and Motor Vehicles, and I have been with the Bureau of Administrative Reviews for that agency for seven years. My bureau handles administrative hearings related to all things

driving: Hardship license hearings for drivers who have been suspended or revoked but want a restricted license to drive for work or other necessities, administrative reviews for drivers who wish to contest a suspension or revocation of their license, investigations into drivers who may no longer be able to safely operate a vehicle due to a medical condition, and administrative hearings related to motor vehicle dealer licenses and driving schools. I was a full-time Hearing Officer for six years, and while I do still hold hearings, my current position as a Regulatory Program Specialist primarily has me conducting Hearing Officer training and quality assurance audits. I'm very fortunate that I love what I do; I often refer to myself as being “the right kind of crazy” for my job!

I'm very excited to begin my tenure as the Southeast Regional Representative on the NAHO Board, and the Assistant Editor of

the NAHO newsletter. I was extremely upset that I was unable to make the NAHO conference in Washington, D.C. last year. Unfortunately, a little something named Hurricane Irma derailed my plans. But, barring any more tropical weather interference, I'm looking forward to meeting everyone at the NAHO conference in San Diego in September. ↗



*Samantha Simpkins (FL)*

# ASK THE BOARD

*Editor's Note: In the last issue of the newsletter, Carl Hobbs asked if Board members would be willing to share their stories of how they ascended to their current positions, specifically, their career paths and any advice to younger attorneys who aspire to judgeships or other roles in the hearing official field. Each issue of the newsletter this year will feature the stories of four Board members. In this issue, look for Board Profiles of Janice Deshais, President; Bobbie Marshall, At-Large member; Clayton Mansfield, Northeast Regional Representative; and Linda Snow, Treasurer.*

**Q Stephen Walter, CHO**  
UTC Senior Liaison Officer, Region 6, Bureau of Records, Division of Motorist Services, Department of Highway Safety & Motor Vehicles, Tampa, Florida

"I read on your site you have raised your certification fee to \$100 in addition to requiring more training than was required before. In the past we have always been able to use classes taught by the National Judicial College for an unlimited time. I expect you will be losing some members. Me for one."

**A Jan Deshais, NAHO President**

Let me clarify the points you raise below.

Yes, we have raised our fees for recertification to \$100 for members who have not attended a NAHO conference in the past three years. Our increased fees reflect that fact that NAHO has taken steps to enhance the certification program and has incurred costs to do so. We are asking members who seek that credential to help us with the costs NAHO incurs by providing this program. The extra fee for members who have not attended a conference reflects the fact that members who attend a conference have spent money to attend those conferences.

*Continued on page 7...*

## BOARD PROFILE

President

### Janice B. Deshais, Esq., CT

**A**s I reflect back on my career, I realize that much of my journey to my current position as Director of Adjudications, Connecticut Department of Energy and Environmental Protection, was the result of being in the right place at the right time. I do not mean to imply that I got a job or advanced due to pure luck, although I am sure luck played some part. Rather, I believe being in the "right place" means having the right skills and experience when the "right time" presents itself.

I was lucky to start my legal life in a place that gave me a great foundation for my work today. As a new lawyer, I took a job as a staff attorney in the office of the Chief Staff Attorney for the Connecticut Supreme and Appellate Courts. There, I learned how to review the record of a case that had been appealed, determine whether the matter was properly before the court (i.e., jurisdiction, timeliness, proper procedure), and outline the issues presented to the court. After that, I had to draft a brief "bench memo" for the judges to read, understand, and use on the bench. Judges counted on staff attorneys to cull through an often voluminous record and arguments presented by the parties and present the information they needed in a clear and concise way.

After several years, I became a law clerk for one of the appellate judges whom I had served as a staff attorney. My job was to read those bench memos I had prepared as a staff attorney, and, following the observation of arguments made to the court, perform legal research and start a draft of the opinion my judge had to write. Most of my job then became writing, re-writing, writing and re-writing, etc. (you know the drill), as I helped the judge draft his decision. As a clerk, I also peer-reviewed the work of other clerks, so I became a fairly proficient editor of others'

work. I was fortunate that the judge for whom I clerked was a stickler for facts and details to support the law on which his decision was based. (Sounds like a good judge to me!)

I loved my time as a staff attorney and clerk, but I decided to try private practice. After a few years I decided it wasn't for me, and I returned to the public sector as an Assistant "AG" with the Connecticut Office of the Attorney General. I was assigned to serve as counsel for several state agencies working on a fairly new project - locating a disposal facility for hazardous waste in the State. After a new AG was elected, I left that office to take the position of Executive Director of the Northeast Waste Management Commission, one of the agencies I had served as the AAG for the waste siting project.

My years at the Commission were challenging and interesting as I worked with the private sector, other states, and federal agencies to find solutions for waste management. I honed my writing skills in new ways and had become involved with hearing processes, both state and federal agency and public hearings. The siting project resulted in a long-term arrangement for the state's waste. Success, but I was facing eventual unemployment.

Along came my "right time." There was a position as Director of Adjudications at the Connecticut Department of Environmental Protection (Energy was added in 2011, creating the agency now known as DEEP). But, was I in the "right place"?

The answer was, thankfully, yes. I was able to put together an application and interview that demonstrated that I had the required experience and skills for the job. I had subject



*Janice Deshais (CT)*

matter expertise after many years of working with the laws and regulations that governed DEEP's work. I had years of writing experience, from press releases and notices to decisions and legal briefs. I had managed people as a boss and as a leader of colleagues on the siting project. I had been involved in public hearings and meetings as part of the Commission. Along the way, I had experiences outside of my work life that involved community leadership and, as a college adjunct professor, I had taught administrative law and process. In short, I could demonstrate that I had not only the experience but also the skills necessary to serve as a hearing officer, a manager of hearing officers, and as an advisor on the administrative hearing process.

So, what is my advice for you? Make sure you are in the "right place" when the "right time" comes along. Find out what skills and experience you will need to be hired as a hearing officer or advance in your career. Make sure you have what you need in your list of qualifications. If you can't find a way to gain experience and skills in your current job, volunteer or do something in addition to your present work, like teaching or community service. Finally, give yourself time to develop into what you know you can be. 🚀

## FROM THE EDITOR

# THE IMPORTANCE OF SELF-EXAMINATION

Bonny Fetch, ND, Past-President, Editor

*(Reprinted from an article published in the August 2016 edition of NAHO News.)*

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

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

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



*Bonny Fetch (ND)*

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

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

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

# BOARD PROFILE

At-Large Member

## Bobbie Marshall, TX

**"The long and winding road that leads to your door, will never disappear." - The Beatles**

**M**y name is Bobbie Marshall, and I am currently a Lead Hearings Officer for Texas Health and Human Services Commission (HHSC). I also serve on NAHO's Board as the At-Large Board Member, and I am very active in promoting NAHO on our social media sites, such as Facebook, Instagram, and Twitter.



*Bobbie Marshall (TX)*

In response to a question in a previous newsletter, I am sharing my career path and offering advice for those interested in Administrative Hearings.

I first began my career with HHSC as a temporary Texas Works clerk (secretary). The state had undergone massive changes and as result, many tenured staff left Texas Works, and the state was forced to hire temporary workers to meet demands. My mom, who has spent over 30 years with Child Protective Services (CPS), told me about the job and said it might be boring, but the hours, holidays, and insurance were good. After working long hours in the automotive repair industry for 10 years, where no one wants to spend money, much less speak to you, a boring job sounded refreshing!

When I started with the state, I quickly found that my mother could not have been more wrong! Working with the state, specifically at the front desk of the food stamp office was quite busy and never dull. I quickly moved up to a temporary Texas Works Advisor, determining eligibility for food stamps, Medicaid, and cash assistance. Then I moved to the Department of Aging and Disability Services, where I worked with the aged and disabled population and assisted my clients with living safely in their homes, rather than being placed in a nursing facility. I truly loved this job and all of my clients, but in state government, things quickly change and my position was privatized.

I decided it was time for a change, and I became a worker with CPS. There, I learned quite a bit about legal writing and presenting cases to the district attorney and county judges. The lessons I learned dealing with clients, difficult situations, attorneys, and judges were invaluable. While working for CPS, I was contacted by a former co-worker from Texas Works. She was in the Hearings Division and told me they finally had an opening for a hearings officer. An opening in hearings department was like a miracle- no one leaves, so there is very little turnover.

My experience with legal writing, problem solving, and agency knowledge from many diverse state programs really helped me as a hearings officer. Honestly, each one of my previous jobs prepared me for my current position- even automotive work! I am not an attorney or paralegal; in fact, I attended college to become a teacher, so my advice might differ somewhat from those with a legal background. First, I would advise you to maintain your work contacts and networks because you never know who will tell you about an opportunity. If you work for a state agency, seize jobs that will help distinguish you from others if your long term goal is to become a hearings officer. Finally, I would also advise you to join NAHO, attend conferences for valuable, recognized training, and volunteer to assist the various NAHO committees because you will make contacts that span across the nation and will last a lifetime. 🏹

# MEMBER SPOTLIGHT

This issue we asked featured members several questions. We received one response. Here are the questions. *What agency do you work for? What is your job title? Describe what type of hearings you do or how your job is related to hearings. What difficulties are associated with your job? How long have you been a NAHO member? Have you attended NAHO conferences? Has NAHO helped you with the difficulties you indicated in your job? Is there anything you would like to see NAHO do which would be of more help to you as a member?*



## Shawn W. Ashworth, Ed.D., Anne Arundel County Public Schools

practices, and trauma-informed classrooms. As a Special Assistant, I conduct school-based administrative hearings/ investigations when students violate the County's Student Code of Conduct, that requires school leadership to request suspension from school 11-45 days. I have been conducting administrative hearings off and on since 2008, however, over the last three years I have served in this role more consistently. I have been a member of NAHO going on three years.

The administrative hearings that my Office handles are school-based. When students violate the Student Code of Conduct according to serious infractions that require suspension from school 11-45 days, my role as Special Assistant is activated. The priority in my

role in conducting investigations/ administrative hearings is to first ensure that the school has followed all due process procedures, and that the families understand due process and my role in conducting the hearing.

My background is as a School Counselor, so one of my favorite aspects of my job is being able to utilize my counseling skills and embed them in the structure and procedures of an administrative hearing officer. I believe utilizing these skills allows me to conduct my hearings with objectivity, with people-focused, laser-focused and with integrity.

I really do not experience difficulty with my job, however, if I had to identify one thing it would be when school-based staff have

not followed due process or have not followed through with critical components of preparing for my arrival.

I believe the best advice I have received over the years, and echoed a lot in our State Hearing Officer meetings, is to ensure that we establish an atmosphere that is inviting, safe, and equitable. I do this at the very beginning of my hearings by welcoming everyone, and letting everyone know how the conference will be conducted, the order of conversation, and the role each person will serve in the conference. For parents, who usually attend with a lot of pre-anxiety and not knowing what to expect, this causes them to become more relaxed knowing that they and their son/daughter will have an opportunity to be heard. 📌

**M**y name is Shawn W. Ashworth, Ed.D. and I am employed with Anne Arundel County Public Schools. I serve in a dual role in the Office of Safe and Orderly Schools. As a Program Specialist, I support schools in creating a safe and positive school environment. This is carried out by delivering professional development to teachers in the areas of classroom management, equitable discipline

## BOARD PROFILE Northeast Regional Representative

### Clayton Mansfield, PA

**I** started in private practice as an attorney in San Francisco handling claims arising from the failed savings & loan scandal during the 1980s. After a few years, I decided insurance defense litigation wasn't for me, so I went into the private sector as a claims analyst for Charles Schwab. Eventually, Schwab moved my department to Phoenix. I didn't want to move, so I left the company.

The best piece of career advice I ever got was that, if networking isn't your strength, look for a job with the government and don't be afraid to start on the ground floor. So I did, and latched on to the Internal Revenue Service. After a year as a Collections Representative, I zigged to a job as an auditor for the International Division of the IRS, figuring that was a growth area. It was a fascinating

five years, dealing with tax issues of employees of foreign embassies and consulates, American citizens who live overseas, and foreign citizens residing in the United States.

My skills have always tended toward dispute resolution through negotiation, mediation and arbitration. My stint as a Tax Compliance Officer honed those skills as they related to a tax dispute. So, when a position opened up in IRS Appeals, I jumped at it.

That led me to my current position as an Appeals Officer. My role is to independently review tax disputes, and try to resolve the issue in a way that is fair for both the government and the taxpayer without the need for litigation. My experience in banking and financial services, combined with my training as an arbitrator and

mediator, have made me successful in this position. In fact, not long after I started my new life in Philadelphia, I got a call from a guy named Norm Patenaude who was looking to replace the Northeast Regional Representative to the NAHO Board of Directors. And the rest, as they say, is history. 📌



Clayton Mansfield (PA)

## ASK THE BOARD

*From page 4.*

NAHO is trying to enhance the certification credential by requiring more training. One reason for this is so more states and federal agencies recognize that hearing officials who are NAHO-certified have more value because of that status. We know that a few states give a higher salary to those who are certified. NAHO hopes this action will help others receive this benefit as well.

Regarding classes taught by the National Judicial College, we have, for as many years as I can recall, required that classes must have been completed in the past 5 years for credit towards certification or re-certification, except for NAHO-sponsored courses or classes offered by the NJC. In other words, that limitation does not apply to NAHO or NJC classes. The only change to the courses used for credit is that as of January 1, 2019, we will not give credit for classes taken to earn an academic degree, such as a BA, as we have found that most of the courses taken for an academic degree are not the same as specific training in administrative hearings practice and theory.

We hope that enhancing the value of the certification credential will advance NAHO's program and provide more benefits for the members who work to earn this status.

**Q James Gerl**, Esquire, West Virginia  
“What the hell were you thinking when you ruined the former exemplary certification program without putting it to a vote of the membership?”

**A Toni Boone**,  
NAHO Vice-President

As you know, we established an “Ask the Board” feature in our newsletter in order to encourage discussion of the Board's work between annual meetings. The question we now address involves the new certification/re-certification procedures scheduled to be implemented on January 1, 2019. The question, however, reflects both a misunderstanding of what we are trying to do, and a misimpression of what we've already done. Here is the question:

“What the hell were you thinking when you ruined the former exemplary certification program without putting it to a vote of the membership?”

First of all, it should not be necessary to explain that insulting and dismissive questions like this one have no place in a professional organization like ours. People may ask

whatever they please, but “tone” matters, and it is shameful to treat fellow members (in this case, the Board) in such a condescending way. But free speech begins at home, and we are not going to ignore a question because we do not like the tone of the questioner. There's too much of that going around in this country already.

Turning to the merits of the question: It speaks of our “exemplary” certification program. How was the previous program “exemplary?” Was it exemplary merely because it was the first and only process that attempted to demonstrate a certain level of competence? And, if that was what made it exemplary, were we not (as a professional organization) aiming too low? The current certification program allows hearing officers and ALJs to put some letters after their names, but what do those letters mean? Up until now, what have the hearing officers who have those letters after their names done to demonstrate that they are truly learned in their work? What did it take to earn that certification?

Two different but related circumstances led the Board to change the certification process:

First of all, many hearing officers, upon reporting to their presiding hearing official that they had obtained NAHO certification, were asked this question: “That's good news. How did you score on the test?” When the official was informed that no test was involved, that supervisor often responded by prevented use of the designations “CHO” or “CALJ” after the hearing officer's name. When the Board received these reports, it took them to be an indication that NAHO certification had no practical value to those who were certified and no significance to the agencies for whom they worked.

In addition, and based on numerous comments made over the years during past NAHO conferences by certified hearing officers regarding the work that they do, the Board became concerned that many hearing officers, although certified, don't “get it.” NAHO does a disservice to those hearing officers by misleading them into believing they have all the knowledge necessary to conduct a fair hearing, build a thorough record and make correct evidentiary rulings when, based on their own statements and conversations, they do not.

An “upgrade” in the certification program seemed to be needed. Therefore, to improve knowledge and understanding on the part of

all of us, the Board sought to slightly increase the number of hours required for certification and to implement a simple examination that—again, in the Board's view—tests the most basic knowledge and skills necessary for all of us to do the work that we do. Furthermore, and after some of our members expressed concerns about their ability to pass a test, we've modified and re-modified the testing procedure to try to create a test that demonstrates a minimum understanding of the most basic and fundamental requirements of the job. The Board truly believes that no hearing officer who pays attention to NAHO instructional DVDs or during NAHO's conference sessions could help but pass the test. However, short of giving the membership the tests in advance to demonstrate how fundamental they are, which would make administering the test meaningless, some members doubtless will continue to be anxious about whether they can pass the test. Take our word for it: they can.

With respect to the question of the Board's authority to modify the certification program without a vote of the membership, two notes should suffice: (1) No provision of NAHO's by-laws require that changes in the certification process be submitted to the membership; and (2) the Board has made many changes to the certification program over the years without receiving objections from the membership. In other words, although lack of any contrary requirement in the by-laws should be sufficient to permit the Board's action, a long history of contrary practice on this very subject surely seals the deal.

The Board offers this final note: It would have been far easier to have left things as they were than to instead spend the many hours spent by Board members and others on various versions of the revised certification process. But that would have left us as we were, and the Board believes that we should aspire to something better. NAHO has the chance to be a beacon in its efforts to educate and improve its members. And success at that will mean that, in the future, saying that a member is certified by NAHO will have the meaning that we all want it to have—It will say: “This person knows her business.” As Judge Andre Davis, the keynote speaker at our 2017 conference, often says: “No judge aspires to be average.” Certainly, the Board does not feel that NAHO should have such low expectations of itself, its membership, or its work.

**Jim Gerl** – “I apologize if I have offended anyone. It was not my intent.” 🐼

# BOARD PROFILE

## Treasurer

### Linda Snow, TX

I served on the NAHO Certification Committee from 2005 until the end of 2013. In January 2013, then-NAHO President Norman Patenaude asked me to complete the last year of Michael Trammell's two-year term as Treasurer when Michael retired from the NAHO Board. I accepted the temporary position, and served as the NAHO Treasurer for 2013. I ran for and was elected as the Southwest Regional Representative, and served in this capacity for 2014 and 2015. I ran for and was elected as the Treasurer, and I am now serving my second term in this duly-elected capacity for NAHO. Many of you may recognize me from the NAHO conferences where I sell NAHO merchandise, and present class sessions.

I began my career with the Texas Department of Human Services in December 1994 as an Eligibility Specialist determining whether applicants were eligible to receive assistance for Food Stamps, Aid to Families with Dependent Children (AFDC), and Medicaid for children and pregnant women. In 1996, when welfare reform was a hot topic, the position changed names to Texas Works Advisor, and AFDC became Temporary Assistance for Needy Families (TANF). In

1998, I was promoted to a Texas Works Advisor IV (assistant supervisor) and assisted the Dallas / Fort Worth area in opening the first call-in Change Center in the State of Texas. In 2000, I moved from regular eligibility determination work to a training unit for newly hired Texas Works Advisors. While working as a Training Unit Supervisor, the agency's name changed to Texas Health and Human Services Commission. I served as a Training Unit Supervisor for almost five years before being promoted to the position of Hearings Officer in January 2005.

I held the position of Hearings Officer for five years before being promoted to Lead Hearings Officer and conducting more high-profile hearings. The position of Hearings Officer/Lead Hearings Officer afforded me amazing skill growth. I am not legally trained; therefore, I set out to learn as much as possible in order to ensure all due process requirements were met, and I issued a legally-defendable decision. I attended the two-week Administrative Law course at the National Judicial College in August 2005, and my first NAHO conference on October 2005. Over the course of six years, I attended eight weeks of courses at the National Judicial College,

and received a Certificate of Administrative Law Adjudication Skills. I also attended every NAHO conference since I joined NAHO in January 2005 with the exception of the one held in Boise, ID, and became a NAHO Certified Hearing Official which I maintain even today. The skills I learned and honed over the years included my ability to analyze the legal references provided and apply them to the facts of the case before me. These skills came in handy when I decided to apply for other positions within the agency.

In October 2012, I returned to management with the field staff serving as the Dallas/Fort Worth and surrounding area's Service Improvement Coordinator. In this position, I reviewed the Quality Control errors for the area, and created ways to minimize the area's chances for similar errors in the future.

After working to minimize errors for about two and a half years, I was promoted to a Program Manager in Quality Control which afforded me an opportunity to use my analytic skills while reviewing cases later sent to the Food and Nutrition Service for the State of Texas Quality Control error rate. My knowledge of the Code of Fed-



Linda Snow (TX)

eral Regulations and the Texas Administrative Code allowed me to present solidly written legal documents that went before the Food and Nutrition Service arbitrator. In each instance in which I directly participated in the written documents, the State of Texas won the arbitration.

In December 2017, I was promoted to the position of Quality Assurance State Office Section Manager. This position is similar to the Service Improvement Coordinator position, but instead of covering just a portion of Texas, like the Dallas/Fort Worth area, I now cover the entire State of Texas.

I believe each job I have held since becoming a Hearings Officer directly relates to the knowledge, skills, and abilities I attained while conducting hearings. Without those skills, I would not have been able to reach the statewide level I now hold.

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