



NAHO NEWS

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

NATIONAL ASSOCIATION OF HEARING OFFICIALS

NOVEMBER 2018

ANNUAL NAHO MEMBERSHIP MEETING

By Toni Boone, OR, Vice-President

Call to Order

The annual meeting of the membership took place on Tuesday, September 11. President Janice Deshais (CT) called the meeting to order at 8:30 AM. She began the proceedings by welcoming everyone and noting that the day was the 17th anniversary of 9/11 and asked those present to take a moment to remember the victims, the first responders, and those who worked many months at "Ground Zero" to try to remediate that horrible site. She also noted that praise is due the many men and women who have served in our military since that terrible event.

Approval of Minutes - September 12, 2017 Washington, DC

The membership, whose vote is counted at this meeting by the majority vote of members attending, approved the minutes of last year's annual membership meeting.

President's Report

Janice Deshais reported that NAHO continues to do its best to make continuing improvements to the website to keep it updated, easier to use, and to provide more resources and information

for members and others who are interested in NAHO.

Jan announced that the Board has met its goal to enlarge its presence on social media in 2018. Jan said that NAHO posts on Facebook, Twitter, and Instagram and thanked Bobbie Marshall (TX), the Board's member-at-large, for this achievement and for all her work to keep posting on a regular basis about NAHO and matters related to the work of its members. Jan noted Bobbie was not able to attend the Conference this year, but told the membership to use #NAHO2018 for conference posts. She told members that Bobbie started livestreaming and posting of events, classes and speakers from NAHO's Facebook page at last year's conference, which was a great success and great fun. She reminded everyone present to like us or share postings to help keep NAHO in the news and reach new audiences and potential members.

She noted NAHO is improving its educational services to members. She said NAHO plans to provide more instructional modules on Vimeo because NAHO recognizes the need to serve

the educational requirements of hearing officials who cannot attend in-person conferences. She announced that NAHO plans to present a one-hour nationwide webinar in 2019, which will provide one hour of CLE credit and is exploring the idea of podcasts for members to view. She asked the membership to let the Board know if there are topics that might be of interest.

As to other goals, Jan said that NAHO has created membership sections, which was implemented at this conference when participants at Sunday's Roundtable discussions were organized into sections for discussion groups. These sections are still being refined, but are intended to establish groups that reflect similar hearings and areas of practice. It is hoped that sections will assist with networking and interaction. NAHO has also produced and provided and distributed a roster of all consenting conference attendees for this conference, which was requested in conference evaluations.

Jan also made an important announcement about

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changes to certification requirements, which will be effective as of January 1, 2019. She said that more detail would be provided when the Certification Report is presented, but stated that the Board has agreed with the recommendation of that Committee's Chairman that the use of the interview process, which has been in place for recertification since January 1, 2018, be used for the certification process as well, starting January 1, 2019. She said that the interviews had been successful in achieving the goals of the enhanced certification process and the Board was sure it would do the same for the certification process.

Finishing her report, Jan discussed goals for 2019, which included continuing to grow NAHO's reputation for quality professional development, improving services to members, increasing the value of certification through the implementation of the new standards and further enlarging NAHO membership. Jan reminded the membership that she and the Board are always open to ideas and suggestions about how we can meet our goals and continue to improve as an organization to support hearing officials.

Vice President's Report

Toni Boone (OR) reported that as of the start of the conference, there were 101 attendees and some additional walk-in registrations were expected. She said that the one-hour classes, started in 2017, were continuing and explained two new changes for this year: first, the Tuesday night Awards Banquet had been moved to a luncheon on Tuesday to provide an additional free evening in San Diego and the lunch breaks had been expanded to accommodate the keynote address on Monday and the awards on Tuesday.

Toni outlined changes in the conference for 2019. The Sunday "soft opening" is being eliminated and classes will be offered all day on Wednesday, which will add six more classes to the curriculum and increase the CLEs available for attendees.

Toni announced that the 2019 conference will be held at the Renaissance New Orleans Pere Marquette French Quarter Hotel from November 4-6. She said that the hotel is near many attractions, such as the French Market and Bourbon Street, and promises to be a wonderful venue for the conference.

2020 is the year NAHO travels to the Eastern part of the country, and Toni said that cities

being considered for a conference include Cleveland, Ohio, Savannah, Georgia and Richmond, Virginia. She also noted that NAHO has been invited by the National Judicial College to use its campus and facilities in Reno, Nevada for the 2021 conference. Toni said NAHO understands the importance of finding a site that is accessible from all parts of the country and reminded members to include their suggestions in the conference evaluations.

Treasurer's Report

Linda Snow (TX) presented her report for fiscal year 2018. She reported that after conference expenses are paid for this year, NAHO will have approximately \$50,000 in assets. She explained that that amount is sufficient for expenses for the year and for any unexpected costs. Linda reported that NAHO's finances are stable and that the auditors are satisfied with NAHO's financial status. There were no questions and her report was approved by the membership.

Standing Committees Reports

By-Laws and Policies Committee- Sarah Huber (ND), Mountain Region Representative and Committee Chair, presented the proposed Bylaw Amendments, which were before the membership for approval. Many changes are intended to clarify existing language or to reflect updated procedures and practices of the NAHO Board. Significant Amendments are as follows.

Article III, § 1 – Membership – Expanded definition of "associate membership" to include those who are not hearing officials but support NAHO.

Article IV, § 2 – Officers – Because the Past President's Committee is being eliminated, the President is specifically tasked with working with Past Presidents of NAHO to ensure the continuity and stability of NAHO.

Article V Committees

§ 1 - Changes "Bylaws and Resolutions" Committee to "Bylaws and Policies" Committee to better reflect the nature of the Committee's work.

The Past President's Committee is removed; Committee has not functioned in years and several Past Presidents are involved in NAHO. Also President tasked with working with Past presidents.

§ 2 – The duties of the Nominations Committee and election processes are reworded to provide a chronological outline of the election process and the Committee's duties. Also to reflect changes to the election process due to the use of electronic balloting.

§ 3 – Specifies that the duties of the Bylaws and Policies Committee include the maintenance and review of the General Policy Manual.

§§ 4, 5, 6, and 8 – Minor revisions to more accurately reflect composition and work of all committees and explicitly the following: Membership; Conference Planning; and Certification.

These Amendments were unanimously approved by the membership.

Membership Committee – Kayla Adams (TX), Southwest Region Representative and Chair of the Committee, which is comprised of the six elected Regional Representatives, presented her report.

She reported that NAHO currently has 307 active members and the membership renewals are due on January 1, 2019. A \$10 late fee will be assessed if dues are not paid by February 28, 2019. Kayla also explained the membership fees will change as of January 1, 2019, to \$60 for 1 year and \$135 for 3 years for new memberships. Renewals will be \$50 for one year and \$100 for 3 years.

Certification Committee – Jimmy Stokes (GA), Committee Chairman, presented his report on behalf of the Committee, which is comprised of Richard Murrell (TN), Ben Brauer (MD), Robert Pullen-Miles (CA), and Michelle Guilfoyle-Douglass (FL).

Jimmy announced the newly certified and recertified hearing officials for this year. These new and recertified officials included hearing officers and administrative law judges from all areas of the country.

Jimmy explained that a new requirement for recertification had been in place since January 2018. Applicants for recertification were now required to be interviewed by a member of the Committee about their work and general concepts related to their duties as a hearing official as part of their application. He said that this process had worked out so well that the oral interview process would now be used for certification applications as of January 1, 2019, instead of a proposed written test requirement.

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He noted that the reasons for the enhancement to certification requirements were, in the opinion of the Committee, fulfilled by the oral interview and that the NAHO Board had agreed.

Ad Hoc Committee Reports

Continuing Education and Training Committee (formerly Library) – Clayton Mansfield (PA), Northeast Region Representative, announced that videos of many sessions of the conference were being made to enhance the library and thanked Bob Gorman, husband of Karen Gorman (CA) for his efforts in doing this. He reported that video requests are processed by this Committee for NAHO members who are part of the Certification Program or for continuing education. He noted that that library card system has reduced administrative time and costs. Clayton said that most of the library is stored digitally on Vimeo and that requests for videos are filled by sending a password link to the video. He reported that in 2019, NAHO will be exploring the use of livestreaming webinars, podcasts and other programming.

Communications/Technology

Website – Clayton reported that the NAHO website is maintained and updated by Board members who are the administrators of the site. He noted that the company Wild Apricot provides website management software for

the site. Clayton announced that in 2019, the Committee will explore a new service, such as an online store for NAHO merchandise and hopes to expand the “members only” content of the site.

Newsletter – Janice Deshais reported (in Samantha Simpkins’ (FL) absence) that the next edition of the newsletter is planned for November and will feature coverage of the Conference. She advised the members that they should contact Samantha or Bonny Fetch, editor of the newsletter, with any suggestions or photographs of the Conference. She noted that they should also consider writing an article for the next or any newsletter.

Scholarships

NAHO - Kelly Vargo (MN), Central Region Representative and Chair of the NAHO Scholarship Committee, reported that the recipient of the Eric Moody Memorial Scholarship was Mary B. Dempsey from the Montgomery County (Maryland) Public Schools and that the recipient of the scholarship reserved for an alumnus of the National Judicial College to attend this conference was Ursula Clemons of the California Occupational Safety and Health Board.

NJC – Toni Boone was joined by William Brunson, Director of Special Projects for the National Judicial College, to oversee the drawing of the names of two members present at the meeting for an NJC scholarship to attend an NJC class or view a class online. Congratulations to Dave Baumann (ID) and Susanne Hilles (CA).

Merchandising Committee – Toni Boone, Chair of this Committee, reported on the merchandise that had been sold at or since the 2017 Conference. She noted that the Committee is looking into selling NAHO-branded merchandise online.

Speakers’ Bureau – Toni Boone reported that there has been one Bureau presentation in 2018. She and Mick Gillette provided instruction for the National Association of State Contractors Licensing Agencies in August on the Role of the Board Attorney, Ethics for Board Attorneys and Board Member Immunity. She noted the Speakers Bureau will make a presentation for only the cost of speakers’ travel and related costs.

Adjournment – Janice Deshais announced that the next General Membership Meeting will be held on November 5, 2019, in New Orleans, Louisiana. The meeting was adjourned. 🗳️

THE PRESIDENT’S POST

Awards and Recognition for Service and Certification

Janice Deshais (CT)

One of my favorite tasks as NAHO President is the annual presentation of awards to people who have contributed to NAHO in a special way and the recognition of NAHO members for achieving certification and recertification. This year, this presentation was part of a luncheon on Tuesday, September 11, 2018.

I began the program by presenting Certificates of Appreciation to the members of the NAHO Board. I called

each member to the front of the room to receive his or her Certificate, so that Board members could be presented to the NAHO membership and other Conference attendees to be recognized for the work they do throughout the year for NAHO.

The program was turned over to Jimmy Stokes (GA), Chair of the Certification Committee, who presented recently certified and recertified members in attendance with the official certification of

their achievements. Newly certified hearing officers (CHO) are: Jerica Creswell, Erica Daves, Eula Mack and Christy Nicholson. Recertified hearing officers are: Cindy Antrim, Shawn Ashworth, Wade Blair, Benjamin Bauer, Brian L. Ford, Welton Lilley, Zandra Petersen, Donna Robinson, Cathy A. Skidmore, Linda Valentini, Lauren Ward-Allen and Dwayne “Buzz” Williams.

I was then delighted to present the following awards.



Janice Deshais (CT)

The Bill Kane Board of Directors’ Award is named for a former President of NAHO and recognizes someone who has made distinct and invaluable

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THE PRESIDENT'S POST

Awards and Recognition for Service and Certification *From page 3.*

contributions to NAHO. This award is chosen by the Board, and this year our choice was clear.

This year's recipient is Jimmy Stokes of Georgia, Chair of the Certification Committee. Jimmy is someone whose contribution to NAHO is very important to its mission of improving the administrative hearing process by promoting the professionalism of hearing officials through our certification credential. Although many know Jimmy or recognize his name, they may not know the amount of work he does to administer the certification and recertification application process, which he performs throughout the year with good humor and great dedication. This year, Jimmy led his Committee through the new requirement of oral interviews for recertification and recommended this option for certification as of January, 2019. This recommendation was based on this year's experience and his understanding of the goals of the certification process. NAHO is fortunate to have Jimmy doing this important work.

The NAHO Board of Directors was pleased to recognize Dr. Jimmy Stokes of Georgia with the Bill Kane Board of Directors' Award for his essential contributions to NAHO and its certification program.

The Outstanding Service Award is presented to someone who has consistently contributed above and beyond what is expected and who has made a lasting contribution to NAHO. I select this recipient as President and my choice was evident to me this year.

This year's recipient is NAHO's Treasurer Linda Snow of

Texas. Linda has consistently contributed to the work of the Board over many years and has supported NAHO in all its efforts, including important behind-the-scenes work. Linda has made a lasting contribution through her successful efforts to put NAHO's financial house in order and to use an electronic system to maintain sound financial records so NAHO is organized in its budgeting and stays informed about its financial status. Linda is also an eager supporter of NAHO's retail efforts. Known as NAHO's master salesperson, she tirelessly works to provide NAHO merchandise to all conference attendees at bargain prices. Linda also serves, and has served, on many Board committees, which are the backbone of its work, including the Certification Committee for many years and other essential committees where she has consistently made a lasting impact on NAHO.

Linda is essential to making NAHO a successful organization. I was pleased to award the Outstanding Service Award to NAHO's steadfast treasurer, supporter, worker, and "salesperson extraordinaire," Linda Snow of Texas.

The President's Award recognizes special assistance, mentoring, or support to the President. As has been the case throughout my Presidency, there is only one person, Vice President Toni Boone, who consistently provides all of this for me.

I rely on Toni for her untiring support and guidance in all things NAHO. I can also count on her to get things done – even things I did not know I should do. Toni always makes a valuable suggestion or recommendation as to how

to get a task accomplished. Most important to me and this organization, this annual conference would not happen without Toni. In addition to planning the conference and its curriculum, she also contributes to that program of courses by teaching at least a few sessions. It is impossible to list here all the details necessary to make a conference happen. Suffice to say it is a fulltime effort akin to spinning plates on poles (for those of us old enough to understand this reference). When Toni is asked for help, she always does what is needed, whether it is serving on a task force, a committee, or a working group of a few Board members. I know we will only truly appreciate Toni when she finally decides – hopefully in the distant future - to move on and take her experience and wisdom with her.

It was with my sincere appreciation and admiration that the 2018 President's Award was awarded to NAHO Vice President Toni Boone.

The Special Assistance Award is given to an individual to recognize help in a specific area or to recognize certain unique work on a committee. This year's recipient, Bobbie Marshall (TX), Member-at-Large on the Board, has provided help in a specific area and was recognized her for her unique work she has provided to NAHO as part of the Communications Committee.

Bobbie has not only opened the world of social media to the Board; she has presented NAHO to that world. The Board has watched as Bobbie has not only posted ads for this conference but has continually posted NAHO-related articles and shared information to advance NAHO's mission as a network for hearing officials

and others interested in administrative hearings. Last year, she live-streamed the Conference proceedings and classes and had a great photo booth at the conference too. Probably my favorite posts are the cartoons and humor she posts for NAHO – who knew administrative law could be fun? Bobbie is an enthusiastic, positive contributor and member of the Board and we are glad she is serving with such commitment.

This award is well-deserved. This year, Bobbie could not be at the Conference as she was home in Texas recovering from a recent surgery but this honor could not wait for another year. Kayla Adams, a colleague of Bobbie's, accepted the award for Bobbie and recorded the presentation on social media for her to see!

I presented one additional award this year, a Special Award for Superior Hotel Selection and Management, to Jo Murphy of Tennessee (and Florida). Jo serves as NAHO Secretary, and is also the person who found the wonderful hotel for the conference and worked on all the items needed to put on this conference, including room registrations, food and event organization and planning, and a thousand other things. (Jo, we couldn't have "been here and done this" without you!)

Well, that's all for this Post. I look forward to doing this presentation all over again in New Orleans next November with new deserving award recipients and more certified hearing officials. Hope to see you all there! 🐾

FROM THE EDITOR

IF I COULD SAVE TIME

Bonny Fetch, ND, Past-President, Editor

This is not an article about time management. It is about time itself.

I recently heard someone say we have two accounts, our bank account and our time account. We know exactly how much we have in our bank account, and we have control over management of what we have in it. In contrast, we have no idea of how much we have in our time account, and we have no control over the length of time we have. But, we do have a lot of control over how we use it.

There must be hundreds of songs written about time. One of my favorites is, "Time In A Bottle," by Jim Croce. I have often thought about how precious that would be, to be able to preserve time and maybe even have an endless supply. Of course, no matter what we do, we have only a finite amount granted to us. So why am I writing about time? We can't save time in a bottle for future use, but perhaps we can slow down to better appreciate the time we have.

As hearing officers, we have rigorous schedules and decision deadlines. It seems like there is never enough time to get the work done. I know I sometimes felt like time was my enemy, going way too fast and I was always trying to catch up. And then there was the other side of that coin, looking ahead and wishing time away to get to some place in the future where I hoped things might slow down. The passage in Jim's song which resonates most with me is:

"But there never seems to be enough time to do the things you want to do once you find them."

What I finally learned is that



Bonny Fetch (ND)

nothing would change just by hoping, and that I am the only one who has the power to control how I use my time. It sounds simplistic, but the first thing is to realize a change needs to be made. And then, the real work begins. I wish I had a list of wise suggestions, or a "recipe" of what to do, but the thing is, what works for one person may not be the answer for another.

For me, I looked at the timeline of my life, estimated where I was on that timeline and then considered how I wanted to spend the time I had left. That helped me make the decision to retire and seek different experiences and new interests. Some I happened upon, some I created. Some things which have become constant with me are to take time to breathe, to meditate, and to appreciate life in smaller increments of time. Perhaps the most significant change is that I strive to be present in each moment, recognizing that life is all about what is happening here and now.

Going back to Jim Croce's song, I leave you to consider:

"If I could save time in a bottle, the first thing that I'd like to do..."

You fill in the blank. 🐘

Certification Changes Coming January 1, 2019

Janice B. Deshais (CT)

As of January 1, 2018, candidates for recertification were required to have an interview with a member of the Certification Committee as part of their application process. This interview will now be required for applicants for initial certification as of January 1, 2019.

This phone interview assures the interviewer that conducting hearings is or was a significant part of an applicant's job and that the applicant has a working knowledge of how to address situations and issues that routinely arise during hearings. The Committee member conducting the interview can confirm that a candidate for recertification has not only completed the required course work, but that the applicant is an active or retired hearing official who has the knowledge to apply the fundamental principles of administrative law to the hearing process.

This interview process has been a successful undertaking. Members of the Committee report that they have had many constructive conversations with applicants for recertification who demonstrate their broad experience and knowledge during the interview. Committee members feel that this additional information further enhances the basis of their recommendations. Applicants also report that the interview has been a positive experience, confirming what they know and how they do their jobs. These interviews may also

identify what applicants need to know to enhance their work, revealing or suggesting areas for new or additional NAHO training.

The interview process has proven to be an effective method to support the work of the Certification Committee and a good way to assure the Board that a recommended candidate is or was a practicing hearing official with the knowledge base required to successfully provide a fair hearing process. Given this success, the Committee recommended to the Board that an interview also be required for certification. The Task Force that has been evaluating testing options for certification agrees that an interview provides information that would be obtained by a written test, but without the complications possible with that process.

The Board has therefore determined that an interview will be required for all candidates for initial certification, beginning January 1, 2019, in lieu of any written testing requirements. Directions for applicants for initial certification will be included in the Certification Program information on the NAHO website at www.naho.org by December 1, 2018. 🐘

A Look at the Class on Impartiality, Independence and Integrity

By Peter Hemenway

This class was presented at the 2018 Conference. Impartiality includes lack of bias, and that was discussed in several other classes. We reviewed briefly the biases which were prohibited by law (such as discrimination based on race, color, creed, sex, etc.) and those which were not (such as attractiveness, manner of speech, dress, similar or different backgrounds). All such biases are inappropriate in hearings, as they do or could lead to a result based not on the evidence and the law, but on the hearing officer's personal feelings. And whether such feelings lead to a particular result or just give the impression that they are important to the hearing officer, their existence can undermine the person's rights to an actual impartial hearing.

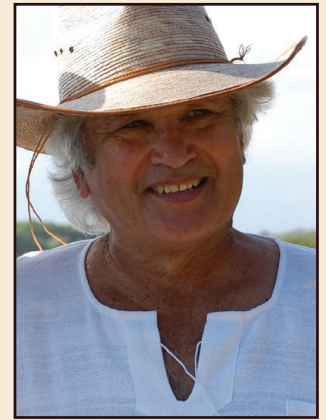
Then there are those things that may indicate partiality but are not caused by the hearing officer. They include hearings

that are held in the offices of the agency, or apparent familiarity or friendship with the hearing officer by one of the parties, or the fact that the hearing officer is employed by the same agency which is one of the parties at the hearing. These facts may require the hearing officer to explain to the other party that while there may be apparent bias, it will affect neither the conduct of the hearing nor the decision.

Also, it is important to remember that the questions the hearing officer asks may favor one party or the other. If the agency presents bad evidence, while it may have good evidence in its possession, what should the hearing officer do? (One thing she should not do is find for the agency based on the belief that the agency may have the actual person who could testify as to what happened, or the actual document to which the agency referred.) And what if the appellant doesn't understand

what evidence needs to be presented in order to prevail, or does not understand what the rules require in order for him to prevail? Or if one party is represented but the other is not, what should the hearing officer do to level the playing field, if anything?

The last part of the class dealt with independence and integrity. Independence means that the hearing officer can conduct the hearing and write the decision based on what she thinks is legally and ethically (in the sense of appropriate hearing officer conduct) correct. But the problem arises when there are pressures exerted on the hearing officer by the agency, the supervisor, fellow hearing officers, or the public. What does the hearing officer do then? What happens, as once happened to me, when one is threatened with being fired or demoted if one won't go along with the agency? When one sincerely



Peter Hemenway

believes the agency is wrong and there is no legal authority cited which would support the agency position, does one persist or acquiesce? From my experience, most hearing officers go along with the agency when those are the choices. They lack independence, and while it may be the best thing for their careers and their families to go along, it is hard to say that their integrity has not been compromised.

I believe the class was very well received, the most common criticism being that there was insufficient time to cover the subject matter. 🏹

Stress Management Coping Skills

Tom Olson, EAP Counselor

More people are feeling stress in the world we live and work in. It is a fast-paced place, and we fall into the trap of believing we have to be going as fast as everyone else. We need to slow down and learn to relax and reduce stress in our lives.

Eustress is a positive stress resulting from an exhilarating experience, such as winning a lottery or getting a promotion, which can be good and motivate us. Distress is stress from losing, failing or overworking and not coping well.

Stress can be external, such as the death of a loved one, divorce, financial problems, lack of sleep

or even a simple argument. Stress also can be internal, including values, beliefs, faith, self-esteem or expectations of self and others. Some common symptoms can be physical, emotional, behavioral, cognitive, spiritual or relational. How do we learn about coping with stress? Do we need to learn better coping skills?

Learning something new can be exciting, but it can also feel odd or weird. We may even think learning visualizations or deep-breathing techniques are only for those who have significant problems. Millions of people use relaxation techniques around the world and have for centuries.

Common stress management

coping skills are deep breathing, exercising, guided imagery or visualization, yoga, being organized, good nutrition, having fun and using humor, journaling, progressive muscle relaxation, meditation, Tai Chi Chi, listening to music, prayer or massage. I suggest trying different techniques and pick one or two that work best, then practice it. I have been meditating for more than 35 years and have found it helpful and enlightening.

Helpful hints to help decrease stress include knowing your limits, being realistic and setting boundaries. Change your attitude by learning to see stressful situations as a challenge or opportunity. Learn to say "no." You can alter, avoid or

simply accept stressful situations.

Here is a simple breathing technique to practice. Inhale through the nose and count to four. Hold and count to seven. Exhale through the mouth and count to eight. Do that four or more times. When using deep-breathing techniques, it releases serotonin, a stress-fighting hormone, which flows into the bloodstream and to the brain. Using any of these techniques can be of benefit.

Tom Olson is a counselor at CHI St. Alexius Health Employee Assistance Program in Bismarck, ND, where he specializes in individual, couple and family therapy. This article was initially printed in the May 2017 issue of NAHO News with permission of the author and is reprinted in this issue. 🏹

Why Legal Research?

Toni Boone, OR

As you probably know, the National Association of Hearing Officials has the only national program for certification of administrative hearing officials. What does that certification mean? It means that NAHO has certified you as someone who “knows their stuff” as far as administrative adjudication is concerned—that you know how to conduct a “due process” hearing and render a decision, following that hearing, based on the evidence in the record and the application of the appropriate law. Because law schools don’t teach administrative adjudication, the scholastic requirements to obtain NAHO certification are largely the same for lawyers and non-lawyers. However, there are a couple of additional classes that non-lawyers must take in order to attain certification. Those classes involve legal terminology and/or legal research.

Why must non-lawyers take legal research classes? Why is it important to know how to conduct legal research? It’s because there is law that is pertinent to your work as a hearing official that can’t be found in the books of statutes and regulations with which you were provided when you began your career. You need the skills to find that portion of the law beyond statutes and regulations at its source.

In 30 years as a hearing official and 18 years of teaching administrative adjudicators across the country, both for NAHO and the National Judicial College, I’ve found one statement from newly-appointed hearing officials to be remarkably consistent—the initial on-the-job training they receive regarding how to conduct a hearing is woefully inadequate. Hearing officers are typically trained on what to do but are sometimes

given very little information on why they are doing it.

For example, a hearing officer being trained might be told: “If you get an objection to that type of hearsay, overrule it. That type of hearsay is always admissible.” Or, “A declaration like this is always admissible, even though it’s not in affidavit form.” Or, “If they ask you to exclude that piece of evidence, don’t do it; it’s admissible.” Yet, in reading the statutes and regulations pertaining to the hearings you’ll conduct, you find nothing that would justify the admission of the aforementioned. And no one has told you why they would be admissible. In instances like this, it’s likely that an appellate court has ruled the hearsay or declaration or other evidence admissible in an administrative hearing. How do you find the courts’ rulings? You must conduct legal research.

But legal research can do so much more than explain why certain evidence is admissible. For instance, legal research can provide:

- Understanding of key legal terms or “terms of art”;
- Knowledge about legal precedents that have been established;
- A blueprint for the way that appellate courts answer legal questions or solve legal problems;
- Interpretation of statutes and regulations that might otherwise be confusing; and
- Mastery in the particular area of law on which your hearings are based.

In fact, gaining expertise in the particular area of law on which your hearings are based would be difficult, if not impossible,

without the ability to identify and retrieve the information necessary to answer all the legal questions with which you might be faced.

What’s the starting point for legal research? Your state’s intranet. Each state has a private network that is usually accessible only to state employees. Among the information that can be accessed on the intranet are the decisions of your state’s appellate courts. There may be opinions from the attorney general’s office on interpreting statutes and regulations relating to the hearings you conduct, as well.

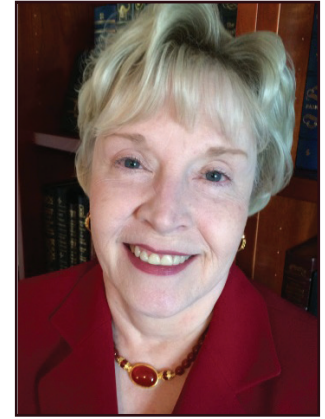
The legal research process includes both primary and secondary sources of law. Primary sources consist of federal and state constitutions, legislation (statutes), regulations and case law decisions. Secondary sources of law include legal dictionaries and encyclopedias, American Law Reports (compilations of law), legal treatises, and law journal articles.

Fifteen or even ten years ago, it was very difficult to conduct much legal research without an expensive subscription to Lexis Nexus or Westlaw. However, in recent years a number of free online legal research databases have been established by court systems, law schools and libraries. A list of the most popular and most useful databases for legal research follows:

Cornell University Legal Information Institute (LII)
<http://www.law.cornell.edu/>

Justia
<https://www.justia.com/>

Findlaw
<http://caselaw.findlaw.com/>



Toni Boone


Public Library of Law
<http://www.plo.org/Pages/Search.aspx>

Casetext
<https://casetext.com/>

Court Links
<http://www.uscourts.gov/about-federal-courts/federal-courts-public/court-website-links>

United States Supreme Court
<https://www.supremecourt.gov/opinions/opinions.aspx>

Finally, every state in the United States has its own legal database. Some are better than others. All can be accessed through a portal provided by the National Center for State Courts (NCSC) at:
<http://www.ncsc.org/Information-and-Resources/Browse-by-State.aspx>

If you approach legal research as a boring and laborious process, it probably will be. But as you conduct legal research and improve your legal research skills, you’ll find it’s really more like a scavenger hunt for interesting and valuable information. However, be forewarned! Once you get started, it can become addictive. It can start with a thought-provoking legal dictionary statement which leads you to an absorbing law journal article which takes you to an intriguing appellate case and on and on and on... 

Calming Upset People with EAR

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Introduction

Any administrative adjudicator who has been at the job for a while has had experiences with parties who became disgruntled, upset or downright angry during the course of a hearing and act out in a way that is unacceptable. Typically, the correct approach for correcting the behavior of such a person is to calmly advise them that their behavior is inappropriate for a setting such as a legal hearing and is not helpful to the presentation of their case. But that technique doesn't always work. In fact, sometimes that technique just makes things worse. Wouldn't it be nice to know, in advance, which hearing participants are going to have an adverse reaction to the usual calming techniques? And, better yet, wouldn't it be nice to know how to effectively respond to these uncharacteristically hostile folks?

Bill Eddy is a lawyer, therapist, mediator, and co-founder of the High Conflict Institute. As adjunct faculty for the Pepperdine University School of Law and the National Judicial College, he provides training to lawyers, judges, law enforcement and other professionals on how to deal with disruptive people in legal settings. Many years ago, he developed a theory regarding a state of mind bordering on a personality disorder which he described as the "High Conflict Personality" (HCP).

A chief trait of the HCP is the inability to accept any blame for the adverse circumstances in which the HCP finds himself. HCPs seem to be incapable of recognizing their own destructive behavior—they are preoccupied with blaming others for their problems while avoiding any responsibility for their predicament. Sound familiar? It should. It is estimated that 15% of our society may suffer from this disorder.

At our recent Professional

Development Conference, Administrative Law Judge Richard Murrell, who has studied under Bill Eddy, provided two hours of instruction on how to deal with the "High Conflict Personality." Richard, with permission from Bill, provides the following article to help us all calm the upset people in our hearings.

Everyone gets upset some of the time. High conflict people get upset a lot of the time. A simple technique called an "EAR Statement" can help you calm others down. This is especially helpful if you are in a close relationship or a position of authority. High conflict people tend to emotionally attack those closest to them and those in authority, especially when they are frustrated and can't manage their own emotions. The intensity of their uncontrolled emotions can really catch you off-guard. But if you practice making EAR Statements you can connect with upset people and usually help them calm down.

EAR Statement

EARSM stands for Empathy, Attention and Respect. It is the opposite of what you feel like giving someone when he or she is upset and verbally attacking YOU! Yet you will be amazed at how effective this is when you do it right.

An EAR Statement connects with the person's experience, with their feelings. For example, let's say that someone verbally attacks you for not returning a phone call as quickly as he or she would have liked. "You don't respect me! You don't care how long I have to wait to deal with this problem! You're not doing your job!"

Rather than defending yourself, give the person an EAR Statement, such as: "Wow, I can hear how upset you are. Tell me what's going on. I share your concerns about this problem and respect your efforts to solve it."

This statement included:

EMPATHY: "I can hear how upset you are."

ATTENTION: "Tell me what's going on."

RESPECT: "I respect your efforts."

The Importance of Empathy

Empathy is different from sympathy. Having empathy for someone means that you can feel the pain and frustration that they are feeling, and probably have felt similar feelings in your own life. These are normal human emotions and they are normally triggered in people close by because emotions are contagious. When you show empathy for another person, you are treating them as a peer who you are concerned about and can relate to as an equal in distress.

Sympathy is when you see someone else in a bad situation that you are not in. You may feel sorry for them and have sympathy or pity for them, but it is often a one-up and one-down position. There is more of a separation between those who give sympathy and those who receive it.

But, you don't even have to use the word "empathy" to make a statement that shows empathy. Here are some examples:

- "I can see how important this is to you."
- "I understand this can be frustrating."
- "I know this process can be confusing."
- "I'm sorry to see that you're in this situation."
- "I'd like to help you if I can."
- "Let's see if we can solve this together."

The Importance of Attention

Getting attention is one of the most important concerns of high conflict people. They often feel ignored or disrespected and get

into conflicts as a way of getting attention from those around them. Many have a lifetime history of alienating the people around them, so they look to others – professionals, friends and new acquaintances – to give them attention. Yet they rarely feel satisfied and keep trying to get more attention. If you show that you are willing to pay full attention for a little while, they often calm down.

There are many ways to let a person know that you will pay attention. For example, you can say:

- "I will listen as carefully as I can."
- "I will pay attention to your concerns."
- "Tell me what's going on."
- "Tell me more!"

You can also show attention non-verbally, such as:

- Have good "eye contact" (keeping your eyes focused on the person).
- Nod your head up and down to show that you are attentive to their concerns.
- Lean in to pay closer attention.
- Put your hand near them, such as on the table beside them.

(Be careful about touching an upset HCP – it may be misinterpreted as a threat, a come-on, or a put-down).

The Importance of Respect

Anyone in distress, and especially HCPs, need respect from others. Even the most difficult and upset person usually has some quality that you can respect. By recognizing that quality, you can calm a person who is desperate to be respected.

Many high conflict people are used to being disrespected and being independent and "not needing others." This

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characteristic often leads them into conflict with those around them, who don't wish to see them as superior and are tempted to try to put them down. This just makes the HCP even more upset.

Here are several statements showing respect:

- "I can see that you are a hard worker."
- "I respect your commitment to solving this problem."
- "I respect your efforts on this."
- "I respect your success at accomplishing _____."
- "You have important skills that we need here."

Why EAR is so Important

Upset people, especially high conflict people, may not be getting empathy, attention and respect anywhere else. They have usually alienated most of the people around them. It is the last thing that anyone wants to give them. They are used to being rejected, abandoned, insulted, ignored, and disrespected by those around them. They are starving for empathy, attention and respect. They are looking for it anywhere they can get it. So just give it to them. It's free and you don't sacrifice anything. You can still set limits, give bad news, and keep a social or professional distance. It just means that you can connect with them around solving a particular problem and treat them like an equal human being, whether you agree or strongly disagree with their part in the problem.

Many HCPs also have a hard time managing their own emotions. Since brain researchers have learned that we "mirror" each other's emotional expressions, it makes sense to respond to upset people with a calm and matter of fact manner – so that they will mirror us, rather than us mirroring their upset mood (which is what most people do much of the time – and it just makes things worse).

Managing Your Amygdala

Of course, this is the opposite of what we feel like doing. You may think to yourself: "No way I'm going to listen to this after the way I've been verbally attacked!" But that's just your amygdala talking, in an effort to protect you from danger. Our brains are very sensitive to threats, especially our amygdalas (you have one in the middle of your right brain and one in the middle of your left). Most people, while growing up, learn to manage the impulsive, protective responses of their amygdalas and over-ride them with a rational analysis of the situation, using their prefrontal cortex behind the forehead.

In fact, that is a lot of what adolescence is about: learning what is a crisis needing an instant, protective response (amygdala) and learning what situations are not a crisis and instead need a calm and rational response (prefrontal cortex). High conflict people often were abused or entitled growing up, and didn't have the secure, balanced connection necessary to learn these skills of emotional self-management. Therefore, you can help them by helping yourself not over-react to them. Just use your own prefrontal cortex to manage your own amygdala – which will help the upset person manage theirs.

It's Not About You!

To help you stay calm in the face of the other person's upset, remind yourself "it's not about you!" Don't take it personally. It's about the person's own upset and lack of sufficient skills to manage his or her own emotions. Try making E.A.R. statements and you will find they often end the attack and calm the person down. This is especially true for high conflict people (HCPs) who regularly have a hard time calming themselves down. All of the E.A.R. statements above are calming statements. They let the other person know that you want to connect with him or her, rather than threaten him or her. It's their issue and you don't have to

defend or explain yourself. It's not about you!

What to Avoid About EAR

Don't Lie:

Upset people are often hypersensitive to lying. If you really can't feel empathy for the person, find something that you can respect that he or she has done. If you really can't respect the person, then simply pay attention. You can always just say: "Tell me more." This calms the person, because it tells him or her that you will listen without needing to be persuaded to do so. If your body language shows you are open to listening, most upset people feel better and will calm down enough to tell you what's going on.

You don't have to listen forever: EAR doesn't mean just listening. It's a statement in response to the person's upset mood, which you can use at any time. It can help you wrap up a conversation, if you need to do something else. High conflict people are known for talking endlessly. Keep in mind that high conflict people often don't get a sense of relief from telling their story or talking about their pain – they have told it many times and it is stuck. Often, they are stuck trying to get others to give them empathy, attention and respect, so that if you just give them an EAR statement, they may not feel the need to keep talking or talk so long. You can interrupt an upset person much of the time, by saying how you can empathize with and respect the person.

EAR doesn't mean you agree or disagree:

Giving your empathy, attention and respect helps you connect with an upset person as a human being. It doesn't mean that you agree or disagree with their point of view. Too often, people get stuck on arguing about an "issue." But with high conflict people "the issue's not the issue" – it's their inability to manage their own emotions and, sometimes, their behavior. If you are challenged

about whether you agree or not, simply explain that you care or want to be helpful.

Maintain an "arms-length" relationship: Giving your empathy, attention and respect to an upset person doesn't mean that you have to have a close relationship. You can still maintain a professional relationship, co-worker relationship, neighbor relationship, etc. In fact, it is wise not to become too close to a high conflict person, so that you don't raise their expectations of you becoming responsible for their welfare or planning to spend more time together than you intend.

Conclusion

Everyone gets upset some of the time. You don't have to be a high conflict person to be upset. At moments of trauma, anger and sadness, we really need the human connection of knowing that someone has empathy for us, is paying attention and still has respect for us. You can give anyone an EAR Statement to help them calm down. Nothing in this article is intended to mean that only HCPs get upset.

Making EAR Statements – or non-verbally showing your Empathy, Attention and Respect – may help you calm or avoid many potentially high-conflict situations. It can save you time, money and emotional energy for years to come. But it takes lots of practice. 📌

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Bill Eddy is a lawyer, therapist and mediator. He is the President of High Conflict Institute, which provides training and consultation for dealing with high-conflict people and situations. He is the author of several books on high-conflict personalities and has developed the following methods for managing high-conflict people in any situation: New Ways for FamiliesSM, New Ways for MediationSM, New Ways for WorkSM, The CARs MethodSM and BIFF ResponseSM. To learn more about our training, coaching, consultation and videos, visit us at www.HighConflictInstitute.com.

In Pictures...

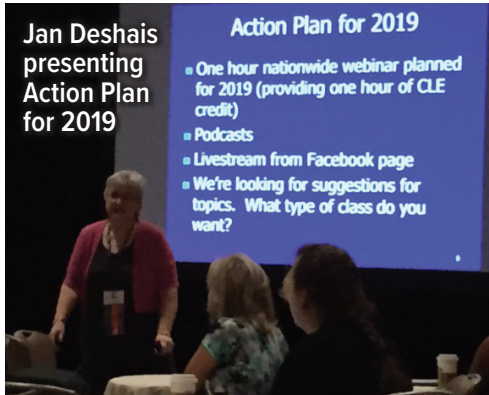
AT THE 2018 ANNUAL PROFESSIONAL DEVELOPMENT CONFERENCE



Clayton Mansfield, Jan Deshais, Andrea Lee, Bonny Fetch, Louise Wetzel in Little Italy.



Zandra Petersen and Virgin Islands members



Jan Deshais presenting Action Plan for 2019

Action Plan for 2019

- One hour nationwide webinar planned for 2019 (providing one hour of CLE credit)
- Podcasts
- Livestream from Facebook page
- We're looking for suggestions for topics. What type of class do you want?



Toni Boone reporting to membership



Next year's Conference site

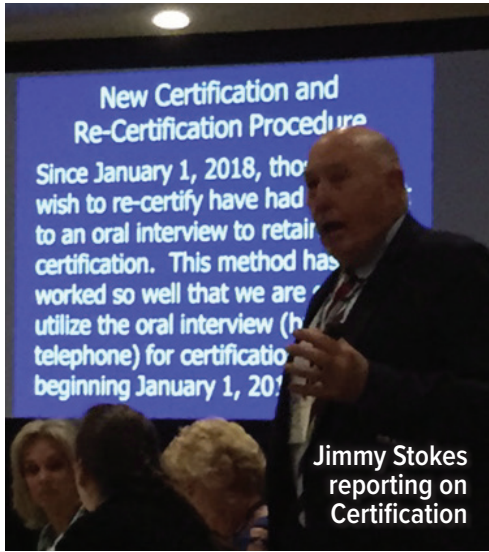
Renaissance New Orleans Pere Marquette French Quarter Hotel
November 4 – 6, 2019



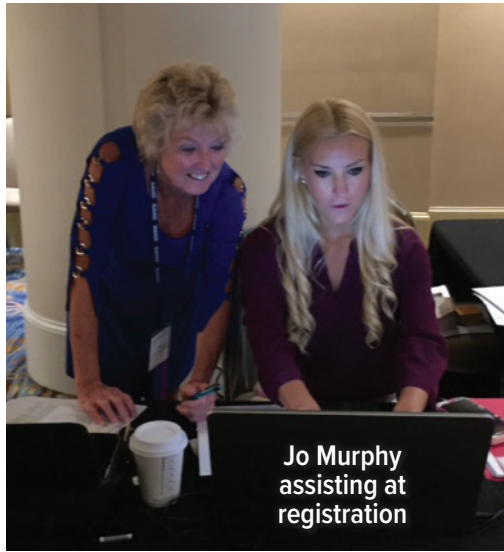
Conference attendees

In Pictures...

AT THE 2018 ANNUAL PROFESSIONAL DEVELOPMENT CONFERENCE



Jimmy Stokes reporting on Certification



Jo Murphy assisting at registration



Linda Snow fitting Paul Keeper with a NAHO T-shirt



A famous site in San Diego



Jan Deshais, Louise Wetzel, Norm Patenaude, Bonny Fetch



Sea lions on beautiful San Diego beach