



NAHO News

March 2011

MANY FINE TUNES HEARD AT 2010 CONFERENCE

By Bonny Fetch (ND), NAHO President

In light of NAHO's mission to promote professionalism and provide training, continuing education, a national forum for discussion of issues and leadership concerning administrative hearings, the annual conference is the focus of who we are and what we do.

The 2010 Conference, Fine Tune Your Hearing Skills, "tuned into" that mission and provided plenty of opportunities to meet those objectives. The conference was held on September 26-29 in Nashville, the beautiful state capital of Tennessee. The Doubletree Hotel in downtown Nashville was the conference site. It was a great location and a very nice hotel.

The name "Tennessee" originated from an old Yuchi Indian word meaning "the meeting place" which seemed particularly appropriate as the conference is designed to not only be an education and training experience, but also an opportunity to meet with hearing officials from all over the country. Nashville was a great choice to host the conference as it has so much going for it. The beauty and historic interest of its stately Capitol building bears noting. And of course, Nashville is famed as "Music City USA". That gave us our theme which was used creatively and extensively by conference planners and presenters. It even inspired me to perform a tune at the banquet, assisted by two back-up singers, Hugo Franco and Peter Hemenway. Music is everywhere in Nashville, past and present. It is home to the Country Music Hall of Fame, the Grand Ole Opry, and historic RCA Studio B, the birthplace



of hits by Elvis Presley, Dolly Parton, Charley Pride, and many other great music artists. Performers are found in many of the honky-tonks on historic 2nd Avenue. Even if you're not a country music fan, it's a real treat to wander in and out of those joints on 2nd Avenue to partake of the free entertainment.

Music is not the only attraction in Nashville and the surrounding area. There are plantations and museums, and nearby is The Hermitage, home of President Andrew Jackson. Joy Wezelman and I attended an evening outdoor art glass exhibit of world-renowned glass artist Dale Chihuly at Cheekwood Botanical Gardens. It was spectacular! The huge art glass displays were of various designs, colors and arrangements. It was beautiful enough by daylight, but once darkness fell, they were lighted which made the colors breathtakingly vibrant. It was a welcome respite from the way too busy world, for me it was a feast for the eyes and for the soul.

As for the conference, it was a full agenda of interesting and useful educational presentations by excellent speakers and enjoyable events. The Honorable Cornelia Clark, Chief Justice of the Tennessee Supreme Court, and Julian Mann, III, Chief Administrative Law Judge and director of the North Carolina Office of Administrative Hearings, delivered exceptional keynote addresses, both of which are featured in articles in this issue. Bob Cooper, Attorney General



MEMBERSHIP MATTERS!

RECRUITMENT AWARDS PRESENTED IN NASHVILLE

Eric Moody (ID), chair of the NAHO Membership Committee, highlighted the importance of membership recruitment at the annual meeting in Nashville. Moody presented special recruitment recognition awards to Medgar Austin (MS) for bringing in the most new individual members and to the Minnesota Department of Administrative Hearings for recruiting the most new members from one agency. Joseph Rubenstein (MN) accepted the award on behalf of the Minnesota Department of Administrative Hearings.

As of December 31, 2010, NAHO had 303 regular and associate members. Operational changes in the way memberships are processed resulted in delays in handling membership renewal notices and in the processing of new membership applications. There have been significant strides toward resolution of the processing delays and we will make every attempt to maintain processing timeliness and in putting our efforts toward membership recruitment and retention.

for the state of Tennessee, gave the luncheon address, which is also featured in a separate article. The rest of the program covered a wide array of topics by a whole host of new presenters as well as some returning speakers, namely Larry Geller, Peter Hemenway, and Jim Gerl. On Sunday evening, we cruised the Cumberland River on board the General Jackson Showboat, a delightful event. We were served a delicious meal accompanied by a live musical show, a retrospective of country music which was performed by some very talented young entertainers.

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Seventeen Members Recognized for Earning Certification

One highlight of the annual professional development conference is the recognition of members who have attained their initial certification or their recertification. The NAHO certificate signifies that the hearing official has completed an array of rigorous educational requirements and is strongly motivated to achieve the highest level of professional competency.

At the time of the 2010 Professional Development Conference in Nashville, the following NAHO members had successfully completed the requirements to earn their initial certification:

Kenneth J. Cascio (TX)	CHO
Linda J. Snow (TX)	CHO
Pilar Vaile (NM)	CALJ
Diane C. Woodring (SC)	CHO

In addition to the members who completed the requirements for initial certification, the following NAHO members achieved recertification status effective January 1, 2011 through December 31, 2013 :

Kenneth K. Ayouby (MI)	CALJ
Scott Bieber (WA)	CHO
Pamela W. Boyd (TN)	CALJ
Ramona Collingsworth (TX)	CHO
Katherine D. Flores (WY)	CHO
John M. Gray (WA)	CALJ
Leticia D. Guerra (TX)	CHO
D'Laine Hagan (TX)	CHO
Jerry L. King (VA)	CHO
Sharon Kulp (KY)	CHO
Barbara A. Macdonald (TX)	CHO
Jacqueline McClenny (TX)	CHO
Diana F. Ragsdale (TX)	CHO



Congratulations to these dedicated members and professionals! Those members who were present at the Nashville conference were awarded their certificates in person. The deadline for applications for those members who wished to receive their recognition for certification or recertification at the September conference was July 31, 2010. The application deadline for all other members who wanted to receive their certification or recertification recognition for 2010 was December 31, 2010.

Detailed information about the NAHO certification program is available on the NAHO website at www.naho.org.

Florida Hearing Officer Is Recipient of 2010 NAHO Scholarship

NAHO's Scholarship Committee selected Margaret C. Poplin of the Florida Department of Children and Families, Office of Appeal Hearings, as the recipient of the 2010 NAHO scholarship. Poplin has been a hearing officer since December 2003 and a NAHO member in good standing since 2005. For the past few years NAHO's Board of Directors has authorized the award of a limited number of scholarships to assist NAHO members who want to attend the annual professional development conference but would not be able to attend without the assistance. Poplin, who is working toward her initial certification, stated: "As a result of being able to come to Nashville, I will be able to complete my initial certification by

the Santa Fe conference." Lady Luck is doing her part to ensure Poplin's hard work pays off. A drawing was held during the annual membership meeting for a "scholarship" to cover the registration fee for the 2011 meeting in Santa Fe next November. Poplin won the drawing.

The competitive NAHO scholarships are awarded based on the following criteria:

1. Financial need
2. Receipt of a previous scholarship



Margaret C. Poplin

3. Will receipt of a scholarship enable applicant to obtain certification or renewal
4. Whether funds are available from the applicant's agency
5. NAHO membership

Applicants must submit a written application to the Scholarship Committee by the specified date before the annual conference (the date varies each year, depending on the conference dates for that year). The application must contain detailed information on how the above criteria apply to the applicant.

All NAHO members are strongly encouraged to submit applications for scholarships to attend a future NAHO conference.

MANY FINE TUNES HEARD AT 2010 CONFERENCE *{continued from page 1}*

Despite a little leftover trepidation about the weather, which stemmed from the devastating flood in May, the weather was very pleasant. The conference was an all-around success. There were 119 conference attendees from 22 states and the Virgin Islands. As expected, the largest contingent of attendees came from Tennessee. The conference was co-sponsored by the Tennessee Department of Human Services, which provided invaluable support to the success of the 2010 Conference.

A national conference is a huge undertaking. More than two years typically goes into the planning, the work, and the endless details to make the conference a reality. It is indescribably satisfying when it all comes together successfully, but also bittersweet that it is now over. But, after taking a brief moment to catch our breath, we are hard at work on the 2011 Conference which will be in Santa Fe, New Mexico, on November 13-16. The conference site is the exquisite, historic La Fonda Hotel which is in downtown Santa Fe adjoining the historic plaza. You will want to make early reservations as we promise you another outstanding program and the La Fonda will fill up quickly.

I can't resist taking this opportunity to leave you with one more "fine tune". I wrote the following purely for the sake of comic relief. It is the tune I, along with my back-up singers Hugo and Peter, performed at the banquet. I doubt we will get any calls from recording companies, but hey, at least we can say we performed live in Nashville. Hope you enjoy it.

Set to the tune of "The Gambler" by Kenny Rogers.

The Hearing Officer

On a hotly contested issue in a hearing bound for nowhere,
I had to take a recess 'cause my butt could stand no more.
I went back to my office, stood staring out the window
then a colleague joined me and he began to speak.

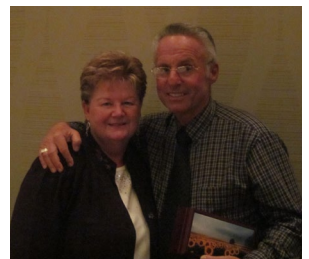
He said, judge I've made my business out of reading people's faces,
knowing if they're lying by the way they hold their eyes.
So if you don't mind my saying I can see you've had tough cases,
for a taste of your gourmet coffee I'll give you some advice.

The room got deathly quiet, his face lost all expression,
he drank my gourmet coffee, motioned for me to sit.
He looked me in the eye and gave me this insight,
"if you're gonna do the job, you got to do it right."

You got to know when to scold 'em,
know when to uphold 'em,
if a witness is running on
you got to get 'em back on track.
You never make your decision
when the parties are at the table,
there'll be time to weigh the evidence
when the hearing's done.

I smiled and I thanked him, I started for the door.
He put his hand on my shoulder and said remember one thing more.
In every case there's a winner, in every case there's a loser,
and the best that you can hope for is to get a good night's sleep.

Repeat refrain.



From the President

By *Bonny M. Fetch*, NAHO President



Bonny M. Fetch (ND)

I recently saw the movie, "The King's Speech." It has been getting a lot of hype and critical acclaim, and both are well-deserved. It's a wonderful movie.

The story is based on true events surrounding Britain's Prince Albert, the Duke of York, who accedes to the throne to become King George VI after his brother, King Edward VIII, abdicates to marry Wallis Simpson, an American divorcee. The title directs one to the focus of the movie, Albert's struggle to overcome stuttering, a thorny obstacle for someone who must speak publicly. Albert is introduced to Lionel Logue, an unorthodox speech therapist, to help him overcome his stutter. The two become friends as they work together, and after Albert becomes King George, the King relies on Lionel to help him make a radio broadcast at the beginning of World War II. Colin Firth delivers a superb, fascinating performance as King George. His acting is as fine as I have ever seen. That alone is reason enough to go see the movie. Geoffrey Rush is also excellent in the role of Lionel Logue.

Lest you think this is an oddly placed movie review, I do have a point. I was taken by the relationship which developed between King George and Lionel Logue. Despite their very different stations in life, Lionel early on insisted on being treated as an equal, even calling Prince Albert "Bertie", a name only the royal family used. Imagine, an ordinary person expecting a King to treat him as an equal.

It occurred to me that there might be a parallel here to our profession. I wondered how those who appear before Hearing Officers and Administrative Law Judges feel they are being

treated. It's good to take stock of ourselves periodically. Be honest, and consider this. Do you imagine yourself to be above others because of your title or what you do? Do you feel you are entitled to respect just because of your job or 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?

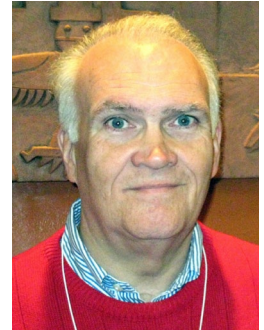
Humility is a good quality for an adjudicator. It is an equalizer, which we may sometimes need to bring us back to the realization that the job we do, that is, the office we hold, is entitled to respect, but so is the position of everyone who comes before us. And just because the job we do is entitled 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.

I like to take stock of my performance periodically. I wonder how those who appear before me feel I am treating them, whether they be claimants, attorneys, witnesses, agency representatives, or others. I hope they feel I am treating them with the same respect I expect from them. I hope they feel I am validating their case by listening and hearing what they have to say. I hope they leave feeling that I am genuinely interested in their positions and arguments. I hope they will understand that however I rule, it will be based on the facts and the law, and not as a result of bias or ineptitude. And I really hope they will feel they got a fair shake and that I treated them fairly.

King or Commoner, Judge or Claimant, we are after all, just people who happen to be in different roles, but just people all the same. In closing, I highly recommend the movie. In fact, I plan to see it again.

NAHO LIBRARY REPORT

Philip Snow (NC), NAHO Librarian, reported increased use of the library materials during the period between September 1, 2009 and August 31, 2010. The 66 DVD



tapes loaned out exceeded last year's rentals by 45 DVDs. Rentals generated \$1,452.00 of income. Expenses incurred during this same period were \$249.10. Expenses covered postage for mailing DVDs to members, labels, and the cost of transferring tapes to DVD format.

The procedure for obtaining the video sessions is available on the NAHO website www.naho.org. As of August 31, 2010, the NAHO Library had 46 video sessions (consisting of 54 DVDs) from past NAHO Conferences available for loan. These include a variety of topics which can also be viewed on the website under the Library link.

The recorded sessions from the 2010 Nashville conference are now on DVDs and will be listed on the NAHO website in the near future.

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NAHO Conference 2011

Santa Fe, New Mexico!

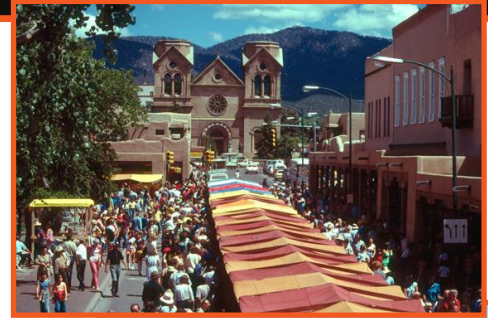
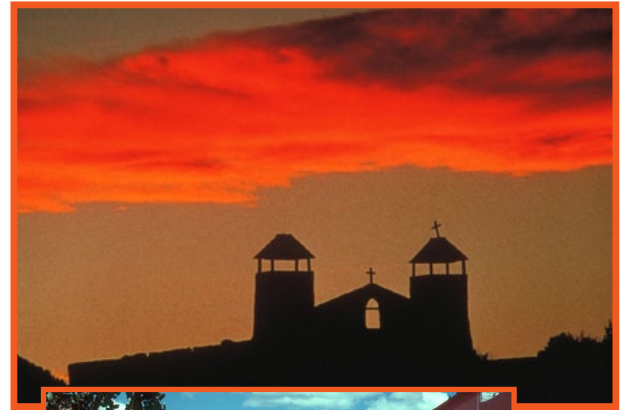
Janice Deshais (CT)

The 2011 annual professional development conference will be held in beautiful Santa Fe, New Mexico from November 13 to 15. Located high in the southern Rocky Mountains, Santa Fe is one of the great destination cities of the world. Santa Fe became the capital of the New Mexico province in 1610 and continues in this role today. From ancient native civilizations to today's thriving Native American, Spanish, and modern American cultures, Santa Fe is a rich multi-cultural historic city with wonderful restaurants, vibrant internationally-renowned art galleries and fascinating shopping venues, especially the outdoor jewelry market on the Plaza.

The Conference will be held at the historic Hotel La Fonda. A beautiful landmark hotel, the La Fonda is located on Santa Fe's downtown plaza, literally steps away from museums, fine dining, art and shopping. The current adobe building was built in the 1920s; however, the site has been used for nearly 400 years of hospitality – and is allegedly the home of several resident ghosts. In the 1800s the La Fonda was "the inn at the end of the Santa Fe Trail" for trappers, traders, mountain men, soldiers, politicians and other travelers. Attendees at the 2011 NAHO Conference will join this long and colorful line of visitors to the La Fonda.

Plans for the conference are still being made, but members of the NAHO Board of Directors promise that the 2011 conference will combine speeches, seminars and scholarship with ample opportunities for networking, sight-seeing and fun both as a group and on your own. November is a wonderful time to visit Santa Fe. Although nights can be chilly, abundant sunshine and daily temperatures in the 50s will provide just the right weather for enjoying this desert city without the summertime tourists or the winter rush of folks escaping the snow. (For those of you grinding your way through this winter, we promise – no snow in Santa Fe!)

So, mark your calendars and plan to join your colleagues and friends for the 2011 NAHO Conference November 13-15, 2011. As they say in Santa Fe: "Bienvenido y Diviertanse"! More details will be posted on the NAHO website at www.naho.org.



From the New Editor's Desk

By Janice Deshais

Hello from the new editor of NAHO News! I thank NAHO President Bonny Fetch (ND) and former editor Joy Wezelman (ND) for their confidence in me and my ability to continue this newsletter as an important source of information and support for all NAHO members. I will do my best to maintain the high standards set by Joy during her tenure as editor; Joy has given me big shoes to fill, but has

set out a clear course for me to follow.

By way of introduction, I am the Director of the Office of Adjudications for the Connecticut Department of Environmental Protection, the office that hears contested cases that come before the Department. I have been with the DEP for almost twelve years and a member of NAHO for most of those years. As the editor of this newsletter, I will do my best to provide you with NAHO information and

news, including upcoming conferences and other training opportunities. I am also pledging to provide this information on a timely basis; the winter weather and some logistical issues delayed the release date of this issue, but I look forward to better days ahead!

I am also anxious to hear from you and invite all readers to contact me with comments, ideas, and even contributions! I can be reached at janice.deshais@ct.gov.

CHANGING OF THE GUARD (EDITORS)

Joy Wezelman (ND)



Joy L. Wezelman (ND)

Yes, there is a new name in the “credits” for this issue of the NAHO newsletter. Janice Deshais (CT) cheerfully answered the call for an assistant editor a little over a year ago, with the understanding that she would assume the title role on January 1, 2011. Not only did Jan jump right in at the 2010 midyear board meeting in Nashville, she also took charge of putting together a special pre-conference issue in late summer. Ideally, I would still have been “editor”

for the post-conference issue that was to have come out in late 2010. A variety of factors, some of which we had no control over, converged to delay the post-conference issue for another two months. So instead of this being my “final” reflection as editor, it is my sincere and profound

“thank you” as past editor. I thank President Bonny Fetch for giving me the opportunity to serve as newsletter editor for several years since that also provided the opportunity to learn so much about NAHO, its past, its present, and hopefully its future. I thank all of you who helped me as I tried to make the newsletter more of a communication tool that was informative for both the general membership and someone who might be considering joining NAHO. Most of all, I thank Jan Deshais and her fellow board member from Connecticut, Andrea Boardman, who as new and enthusiastic NAHO board members made sure that we covered the Nashville conference in depth. This delayed post-conference issue would have been even more delayed had it not been for Jan. Your new editor is extremely competent and creative. I have no doubt that under her direction NAHO’s newsletter will be better than ever and that just as I was fortunate to have so much help and cooperation, Jan will also be able to count on NAHO’s members to help where needed.

Ten Fine Tunes to Improve Your Record

Andrea Boardman (CT)

It is not often that Hearing Officials have the chance to listen to how we might improve the record by an esteemed reviewing official of the court. Attendees at the NAHO 2010, Annual Professional Development Conference had an exceptional opportunity to experience Cornelia Clark, Chief Justice, Tennessee Supreme Courts’ presentation, *Judicial Review of Administrative Decisions: Ten Fine Tunes to Improve Your Record*.

This Keynote address was informative and valuable, whether one is a new or experienced Hearing Official. Chief Justice Clark shared her top-ten list of what could be done to insure that our rulings will always be upheld with energy and a bit of humor. In a nod to Nashville, Justice Clark linked a recording artist and their popular “hit” to each tip. Chief Justice reminded us that Hearing Officers have a



Cornelia Clark, Chief Justice,
Tennessee Supreme Court

10. Know what the standard of appellate review will be; in the reviewing court; it can determine the outcome of the case. (Willie Nelson - “Always on my mind”)

9. Know what standard of proof is required to make your findings. (Elvis Presley - “Suspicion”)
8. Know the rules of evidence and rules of procedure that apply to your hearing. (Kenny Rogers - “The Gambler”)

7. Know and follow applicable ex parte rules, but help parties understand why. (War - “Why Can’t We Be Friends”)

6. An administrative agency is not a court but does possess judicial as well as legislative and/or executive characteristics. (Johnny Cash - “I Walk the Line”)
5. Do not forget constitutional due process concerns. (Lee Greenwood - “God Bless the USA”)
4. Be respectful of the persons before you. (Aretha Franklin - “Respect”)
3. Make a good record. (Beatles - “Tell Me Why”)
2. Do your work promptly and timely. (Elton John - “Don’t Let the Sun Go Down On Me”)
1. The work of hearing officers is important; be proud of it! (Journey - “Don’t Stop Believing”)

And don’t ever forget Johnny Paycheck, “Take This Job and Love It - I Ain’t Going Anywhere.”

Heretofore No More: Clear and Concise Legal Writing

Janice Deshais (CT)

Whether decision-writing is your favorite task or you struggle to find the right words to put down on paper, the ability to write clearly is a necessary and important part of your job. Susan McDonald is a Nashville attorney who provides legal research and writing services. As part of our efforts to “fine tune” our hearing skills, Ms. McDonald provided valuable information and advice on improving our writing skills.

Ms. McDonald asked members of the class to think about what kind of writer we are (e.g., sloppy, creative, organized) and to think about how that impacts our writing process. She advised that a good writer is organized, knows exactly what he or she wants to say and to whom it is being said, says it clearly and concisely, and proofreads and edits as many times as necessary. A clear and concise writer uses short and straightforward sentences and uses words wisely, including simple and efficient words and avoiding complex sentences, “legalese” and clichés. Ms. McDonald also provided a quick review of some of the more troublesome aspects of punctuation and grammar, those tools from grade school that we should use every time we write, but often forget to apply. Her examples of common issues and solutions reminded many of us of the simple rules we should remember to apply - and keep a style guide or usage manual handy for quick reference while we write.

Ms. McDonald advised that format devices such as white space and fonts can be used to highlight and clarify. Headings should be specific enough to be informative and clear enough to help readers find their way around a document. She

reminded us that text in all caps or underlined is difficult to read, and noted that quotations can interrupt flow and should be used sparingly. Ms. McDonald noted that if something is important enough to be included in a document, it should be in the text of that document and not in a footnote; if it is truly parenthetical information, it should be between parentheses in the text. McDonald stressed that information should be placed in a document where it will be the least disruptive, a good idea for those of us who deal with myriad facts when writing decisions.

To write persuasively and compellingly, Ms. McDonald advised: do not waste a single word; maintain the flow to keep the reader reading; make the reader feel smart (i.e., provide a good analysis); and use active voice to provide direct and emphatic language. Finally, McDonald reminded us all of the value of proofreading and editing. Quoting Justice Brandeis (“There’s no such thing as good writing – there’s only good rewriting.”), McDonald shared proofreading tips and provided four stages for proofreading and editing: mechanics (grammar, sentence length, and legalese); accuracy (facts, citations); flow of thought; and format (spelling, typos and headings).

Whether you happily or reluctantly put pen to paper (or, more accurately, fingers to a keyboard) this session provided excellent advice and information. Writing is a basic skill that we all need to employ, and, thanks to opportunities such as this session to learn or relearn tips for better writing, we can all look forward to being better prepared and informed the next time we sit down to write.

The 10 Commandments of Due Process Opening Keynote Address by ALJ Julian Mann Provides Valuable Guideposts

Janice Deshais (CT)

The 2010 Conference began with an interesting and instructive start with an opening keynote address from Judge Julian Mann, North Carolina Chief Administrative Law Judge and the Director of the North Carolina Office of Administrative Hearings. Judge Mann offered ten “commandments” to provide due process to

participants in administrative hearings. This guidance was even more significant given Judge Mann’s message about the key role played by administrative law in providing procedural due process.

In his 2008 law journal article, “Due Process; A Detached Judge and Enemy Combatants,”

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Welcome TO OUR NEW NAHO MEMBERS AND ASSOCIATE MEMBERS

NAHO extends its welcome to ten new members and associate members who have joined since June 25, 2010. Listing is alphabetical by last name. Only the member’s state and agency, where applicable, is listed. The list does not include new members who joined as part of the 2010 Nashville conference registration. Those names will be included in the next newsletter. Our apologies if we have inadvertently omitted someone, misspelled a name, or made some other error in this list. Please direct any corrections to the editor’s attention and we will include those in the next list.

Kenneth F. Cascio (TX),
Texas Health and Human Services
Commission

Brian J. Ford (PA),
Office for Dispute Resolution

Karla Forsythe (OR),
Oregon Office of Administrative Hearings

Karen Gorman (CA),
Los Angeles Metropolitan
Transportation Authority

James A. Johnson (PA),
Pennsylvania Insurance Department

Amber Marchant-Lee (AZ),
Camp Verde Unified School District

Mary S. Morales (TX),
Texas Health and
Human Services Commission

Donnie E. Perry (GA)

Catherine Pitfield (CA),
Los Angeles Metropolitan
Transportation Authority

Carolyn Roberts-Gutierrez (AZ),
Arizona Department
of Juvenile Corrections

Aboard the General Jackson: A Connecticut Yankee in Country Music's Court

Janice Deshais (CT)

Country music is not a musical genre that is unknown to me, a New England native living in the currently frozen tundra of Connecticut. I know the names and music of some of the classic stars, including Loretta Lynn and Willie Nelson, and have seen television performances by new stars such as Carrie Underwood and Sugarland, but I would not call myself a country music fan. Although I was not taken prisoner by a knight in armor and carried away to Camelot and King Arthur's Court, I was in Nashville for the NAHO Conference. Like any good Connecticut Yankee, I could not pass up the chance to explore country music while in "Music City, USA."

On Sunday, September 26, 2010, I joined other Conference attendees for a three-hour cruise down the Cumberland River in Nashville aboard the General Jackson Showboat, a 300-foot paddlewheel Riverboat. After cocktails and music aboard its large decks on a warm Tennessee evening, we were directed "below" where a family-style meal was served in a beautiful Victorian theater. Surrounded on three sides by an elaborate wrought iron balcony and a large stage at the front of the room, we were to be entertained with a live musical show, "Country Music USA." I wondered if I would enjoy or even know most of the music that would be presented and what exactly that music would be. I was pleasantly surprised – and entertained.

The show, a cast of three young women and two young men, was a review that began with the songs of Opryland icons like Hank Williams and Patsy Cline, continued through the decades that featured performers such as Dolly Parton, Reba McEntyre and Garth Brooks and ended with the blockbuster hits of country music today from artists such as Sugarland and Carrie Underwood. The entertainers, not even born when certain songs debuted, did their best to sing in the style and voice of the country music icons. More often than not, these young singers succeeded and were very entertaining. This musical journey was a wonderful overview of the history of country music through the songs and voices of its stars. It did not take the magic of Merlin – just an entertaining show – to count me in as someone with a new appreciation for country music and its long and impressive roster of stars.



FIVE RECOGNIZED FOR OUTSTANDING SERVICE TO NAHO

NAHO functions only because of the dedication of its members and supporters who give so generously of their time and talent. A few years ago the NAHO Board established several awards to recognize those who make outstanding contributions. One highlight of every NAHO president's term is to present these awards and other recognitions at the annual conference. President Bonny Fetch honored five NAHO members and supporters in Nashville at the 2010 annual conference banquet.

Truett R. DeMoisey Professionalism Award: **Laurence Geller**

This award is named for one of NAHO's early

presidents. Truett was a true friend and mentor to NAHO, remembered for his leadership and gentlemanly manner. The President chooses the recipient of this award that recognizes an individual who demonstrates ethical behavior and the highest ideals of professionalism. This year the award was presented to Laurence Geller. In presenting the award, President Fetch noted that Geller (known to NAHO members simply as "Larry") is a long-time NAHO member and has presented at NAHO conferences since 1989. He has also been a NAHO Board member and was editor of the newsletter for seven years. In Fetch's words, Geller "teaches from his experience and from his heart." She noted that Geller takes adjudication seriously, having

worked for the state of California Department of Social Services as a hearing officer, assistant chief hearing officer, chief referee and presiding ALJ for 32 years. Geller has done much to "advance the profession of adjudication" and has done it in a professional manner.

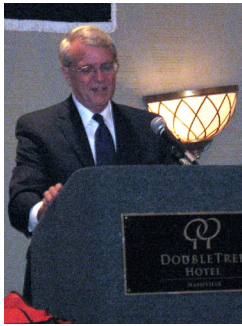
Bill Kane Board of Directors Award: **Peter Hemenway**

This award is also named for one of NAHO's past presidents. The Board of Directors chooses the recipient of this award that recognizes unique and invaluable contributions to NAHO. This year's recipient is Peter Hemenway, who

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The 10 Commandments of Due Process *{continued from page 7}*

Mann reveals that when a plurality of the U.S. Supreme Court needed to define the degree of procedural due process to be accorded a U.S. citizen who challenged his status as an enemy through a habeas corpus petition, the Court resolved the issue under administrative law principles such as notice and an opportunity to present evidence before an impartial decision-maker. This reliance on administrative law principles, Mann concludes, demonstrates its status as an important source of procedural due process for citizens. Not incidentally, he also notes that citizen “litigants” in administrative law proceedings who are dissatisfied with the process they are provided in such a forum often lose faith in government. Hearing officers therefore play a significant role in providing the due process rights to participants in administrative law hearings. Judge Mann proposed the following “Ten Commandments” to help hearing officials provide due process in all their administrative proceedings.



*Judge Julian Mann,
North Carolina Chief
Administrative Law
Judge and the Director
of the North Carolina
Office of Administrative
Hearings*

1. A healthy organization is an efficient organization. Effective case management, including a reduction in delays and other enhancements, is essential to this outcome.
2. The exhaustion of administrative remedies doctrine requires that hearing officials be both judge and jury. Hearing officials are the protectors of a participant's right to a jury.
3. Make a conscious decision to delete personal pronouns when referring to what belongs to people. Impartial hearing officials work for the people, not a person.
4. Join professional organizations and commit to the ethical standards of those organizations (e.g., NAHO Model Code of Ethics). “Society is well governed when its people obey the magistrates, and the magistrates obey the law.” Solon (Ancient Greek statesman, lawmaker, 638 BC–558 BC.)

5. You cannot be the judge of your own case. Make your decisions by applying the law to the facts in the record.
6. Respect the Constitution and the Constitutional authority of the three branches of government. Respect the office, (even if you do not respect the office-holder).
7. Respect all who come before you and are in your “courtroom.” Remember, a judge is not necessarily the smartest person in the room.
8. Courtroom security is a commandment but so is a free and open court. Do not use security to exclude the public or the media.
9. Resolving issues of credibility is not an issue of what others think is right. Hearing officials must make independent decisions.
10. Due process of law will not tolerate a mock trial. Even though an administrative proceeding is usually less formal than a courtroom trial, it must supply more than minimum due process.

Judge Mann's address was the perfect opening for this Conference being held to “fine tune” our skills as hearing officials. These “commandments” will help to assure that our administrative proceedings continue to provide due process to participants.

IS THIS A CIRCUS OR AN ADMINISTRATIVE HEARING? How to Ensure Control and Conduct an Impartial Administrative Hearing When The Media Is Present

Andrea Boardman (CT)

This session was a relevant, informative, enjoyable and high energy experience that engaged all participants and provided valuable new skills. This workshop, led by Michelle Mowery Johnson and Vincent Troia, allowed Hearing Officials who interact with the media to hone those skills and pose questions or share dilemmas with experienced professionals. This session exposed Hearing Officials who do not deal with the media as part of their responsibilities to this facet of the job.

This writer as well as other Hearing Officials had the opportunity to participate in a mock practicum with these two professionals, drawing from their experience as television and print news media regarding a high profile hearing that was held. Participants wore microphones and the interview was recorded, resulting in a reality based experience. The participants did very well and the positive feedback received from these professionals was valuable and will be relied on in our capacity as Hearing Officials.

A packet of material providing guidance on many aspects of dealing with the media including how to work with reporters, interviewing tips and even media landmines was supplied to all participants and provides hands on, specific guidance that one can reference in the future. This material is particularly valuable coming from instructors with vast media experience. A few of the tips include writing a brief list of talking points in advance to collect your thoughts and to remember the microphone is always on! We were reminded to relay important facts first or you may not get them in at all and if you make an error during an interview, feel free to correct yourself.

¹Michelle Mowery Johnson currently oversees internal and external communications for Tennessee's Department of Human Services and works with local and national media in this capacity. Ms. Mowery Johnson has more than a decade of experience in the television news business in Tennessee and Virginia, specializing in investigations, which exposed abuses in Memphis nursing homes and violence on buses in a rural Tennessee school district. Ms. Mowery Johnson was awarded the Virginia Associated Press Award for a Feature Story and the Tennessee Governor's Highway Safety Award and was nominated for an Emmy and Associated Press awards.

²Vincent Troia is a veteran print journalist, with 30-plus years; split almost equally between California and Tennessee. Vince joined Tennessee's Department of Human Services as an Information Officer in May of 2010. Mr. Troia was part of the Pulitzer Prize-winning Oakland Tribune photo team in 1989 when he helped select images, write captions and design photo pages following the 1989 Loma Prieta quake; and as one of a four-reporter investigative news team that put together the Nashville Banner's award-winning 1997 series on Nashville's crack cocaine epidemic of the mid-1990's. Vince maintains that his role as a journalist was to be a public servant whose written words could give voice to the voiceless, so his move to the Department of Human Services helps him continue that service.

OUTSTANDING SERVICE TO NAHO *{continued from page 8}*

along with Larry Geller, has been a presenter at NAHO conferences since 1989. Hemenway has been in private practice as well as serving as a hearing officer and ALJ for the state of California from 1972-2003. He is a guest professor at four California law schools, has been a presenter at many statewide and national conferences, and has published numerous articles and co-authored a book with Geller. President Fetch emphasized that Hemenway is a dedicated teacher and has been committed to NAHO throughout its “growing pains” and the peaks and valleys that any organization goes through. Furthermore, Hemenway is “open-minded as well” as he demonstrated when he attended the 2006 conference in North Dakota, a place the “big city California guy” was not enthusiastic about and from which he did not expect much. The moment that won him over to North Dakota’s charm was during a riverboat cruise when the captain brought the boat to a nearly complete stop to avoid running over a fawn that was swimming across the river in the moonlight. As President Fetch stated, “There is no question that Peter’s generous contributions of his time and talent have been invaluable to NAHO.”

Outstanding Service Award:

Hugo Franco

In announcing Hugo Franco as recipient of the 2010 Outstanding Service Award, President Fetch expressed particular appreciation for Franco’s unfailing reliability as a colleague, Board member, and friend. Franco is a familiar face to all who have attended NAHO conferences since 1989, when he went to his first conference. He has served NAHO as a presenter, a Board member for many years including a stint as Vice-President, and always steps up to the plate to help whenever and where ever needed. The word “no” is not in his vocabulary when asked

to take on any task for NAHO. Franco’s calm and steady manner makes the inevitable stresses that pile up seem manageable. He has given much effort, time and attention over the years to maintaining NAHO’s course and mission and has helped the rest of us stay focused on what really matters. May we continue to hear Hugo say “no problem” for many years to come.

Special Assistance Awards:

LeeAnne Bruce Boone and Jo Murphy

In presenting the 2010 Special Assistance Awards to LeeAnne Bruce Boone and Jo Murphy, President Fetch stated that putting on a national conference is no small undertaking and NAHO was fortunate to have two individuals in Tennessee who made the Nashville conference possible. Bruce Boone is Assistant Commissioner of the Appeals and Hearings Division of the Tennessee Department of Human Services, co-sponsor of the Nashville conference. She obtained most of the speakers for the conference and was responsible for the considerable contribution of resources from her agency, including materials and the assistance of her staff. Murphy recently retired from the Tennessee Department of Human Services, Appeals and Hearings Division. She worked on the hotel arrangements and assisted with many other administrative details that are necessary for a successful conference, all done with a warm smile and warm voice. President Fetch was “pleased to present these two 2010 Special Assistance Awards to LeeAnne and Jo with admiration and gratitude for their tireless work to ensure the success of the 2010 Conference.”

Recognitions

President Fetch also extended special recognition and thanks to the officers, board members, committee chairs and committee members, and the conference registrar.

Where Immunity Ends and Liability Begins

Janice Deshais (CT)

On Monday, September 27, 2010, NAHO was privileged to have Tennessee Attorney General Robert Cooper at the Conference luncheon to speak on how to preserve governmental immunity as hearing officials. The Attorney General’s office defends state employees in a variety of lawsuits, including issues that involve the responsibilities of those employees. Mr. Cooper was therefore well-qualified to remind everyone how important it is to preserve our immunity as hearing officials to avoid personal liability.



*Robert Cooper,
Tennessee Attorney
General*

Mr. Cooper gave a brief background on the concepts of absolute and qualified immunity, emphasizing the importance of absolute immunity to protect judicial independence and impartiality. A more limited qualified immunity is conferred on the executive or administrative acts of hearing officials because this status does not threaten that judicial role.

Mr. Cooper warned that two types of willful or wanton actions can threaten the immunities enjoyed by hearing officials: those that are outside the scope of employment (i.e., not part of the executive or judicial roles) and those that are not conducted within the jurisdiction or authority of a hearing official. Absolute immunity is particularly important in situations where decisions are appealed as it prevents suits against judges or hearing officers in their personal capacities. In either case, attendees were sent away with a clear message: be mindful of all of our actions and do not knowingly act in such a way that could threaten our immunities.

NAHO Guidelines for Safety and Security at Administrative Hearings

Editor's note: The following guidelines appear on the NAHO website, along with NAHO's policy regarding safety and security at hearings. This is meant to give you an overview of various options for employing agencies to address safety and security and to remind us all of the need to be vigilant. Please refer to the website for more information.

Administrative hearing officials and participants at hearings are at increasing risk for harm. The following guidelines are adopted by NAHO for agency consideration in the administration of the fair hearing process. These broad guidelines are suggestions, acknowledging that fiscal constraints are a unique factor for each agency, and intending to provide the equivalent of baseline criteria for the wide variety of circumstances in which agencies employ hearing officials.

Identification of Safety and Security Concerns

Agencies employing administrative hearing officials should identify violent incidents occurring at hearings as well as real and potential threats to the safety and security of participants and property at hearings. Consideration should be given to safety and security needs and concerns as applicable regarding:

- screening for weapons or devices of violence;
- ingress and egress to hearing official working areas;
- hearing official access to security personnel;
- hearing official access to telecommunications while in a hearing;
- ability to lock secure areas;
- creating secure areas or limiting public access to certain areas;
- adequacy of lighting both within and outside of the hearing room; and
- safety of parking areas for participants.

Written Policy

Agencies employing administrative hearing officials should have a written policy addressing safety and security issues related to hearings. It is recommended that the policy be tailored to meet the needs of the particular agency, but with an objective to maximize coordination with other agencies and policies as appropriate. The policy should include:

- all safety and security procedures adopted by the agency;
- provisions for the reporting of safety and security incidents;
- a plan for hearing officials to follow in the

NAHO Board of Directors – Plans for 2011

Janice Deshaïs (CT)

The NAHO Board of Directors works to sustain the NAHO mission for the benefit of its members and the people served by the administrative hearing process. The Board's plans for 2011 reflect this commitment. In addition to continuing to maintain the fiscal stability of the organization and to preserve and grow NAHO membership, the Board is reviewing its current structure to ensure that the organization is sustainable in the years to come.



The Board recognizes the value of providing opportunities for regular communication with NAHO members. A new and enhanced NAHO website will be "up and running" soon! This newsletter, as well as others planned for 2011, is also an important source for information on past conferences and upcoming NAHO events.

Continuing to provide relevant and useful training for hearing officials continues to be one of the most significant activities for NAHO. The Board has appointed a task force that is currently exploring ways to increase training opportunities for NAHO members, such as online learning or mini-conferences in regions throughout the country.

Other plans for 2011 are less visible than an improved website or new educational options; however, they are just as important to NAHO. To assure that professional standards are maintained, the Ethics Committee is drafting a new complaint process to carry out the NAHO Ethics Code. A Board committee is also finalizing a Procedures Manual so that the processes that keep the organization running smoothly persevere even when Board members change.

Of course, the Board's busy agenda includes planning the 2011 annual Conference in Santa Fe, New Mexico on November 13-16, 2011. Details will be provided soon -- watch for announcements on the website. As always, the Board welcomes your comments and suggestions; you may contact any Board member through the links at www.naho.org.

event of a safety or security emergency in connection with the administrative hearing process; and

- acknowledgement of and coordination as appropriate with all government homeland security mechanisms and related emergency services.

Policies should be reviewed and updated periodically, and communicated to hearing officials and staff.

Training

Upon being hired, all hearing officials and

their staff should undergo training in safety and security matters related to their hearing circumstances, to identify potential problems and to familiarize the individuals with agency policy and procedures in these matters. Training should be updated and periodically repeated as necessary for experienced hearing officials and staff.

Design of Hearing Facilities and Equipment

Agencies should consider safety and security needs and concerns when constructing and remodeling hearing facilities or when modifying, even temporarily, borrowed hearing facilities.