



NAHO News

January 2013

2012 CONFERENCE *President's Wrap Up*

I take great pride in reporting that this year's conference in San Antonio, TX was a huge success! The evaluations I read and the comments I received revealed that the participants gave high marks to the training program, the social activities, the hotel facilities along the Riverwalk and the welcoming city of San Antonio. We had 135 participants who learned a lot from an outstanding faculty, several new participants became NAHO members and many more embarked on the prestigious certification program. Participants came from all over the country and the Virgin Islands and had the opportunity to observe NAHO in action and to network with hearing officials from everywhere. The promotional items like T-shirts, bags and pins flew off the table as fast as the volunteers could restock them.



Norman Patenaude (NH)

I want to thank the registration table team that assisted Frances Zuther in welcoming our guests, the promotional table team that assisted ALJ Toni Boone with the displays, the pre-conference publicity team that assisted Jo Murphy in getting the word out about the conference, the faculty recruitment team that assembled an outstanding cast of instructors in so many subjects, the Texas Health and Human Services Commission and Director Kara Oslick in the hearings bureau for great logistical support, the hotel staff for working so well with us on the banquet, the receptions, and the classroom set-ups, the finance team for keeping us within budget, and especially the Vice-President and Conference Planning Chair, Janice Deshais, who spent many months overseeing all the teams and coordinating countless details to make this conference the success that it was.

The 2013 conference team is already at work on the program that will be held at the Crowne Plaza Hotel in Minneapolis-St. Paul, MN next September 15-18 and I look forward to welcoming all of you there.

Best regards,
Norman J. Patenaude, President

PAUL LECHE, ESQ

Andrea Boardman, (CT)

The National Association of Hearing Officials was honored to have Paul Leche, Esq., Special Counsel for Appeals, Texas Health & Human Services Commission as our opening keynote speaker at the 2012 Professional Development Conference in San Antonio, Texas. An accomplished individual, Attorney Leche spoke about San Antonio and urged us to see things in the area in addition to the



Paule Leche, Esq.

Alamo. He suggested that we visit the Marketplace and sample some authentic Tex Mex dishes, as well as a homemade Margarita, without ice and not from a machine.

Attorney Leche gave an interesting history of San Antonio which was much appreciated by the first time visitor, which encompassed most Conference attendees. He spoke about Davey Crockett's place in the battle of the Alamo and that he was a Congressman from Texas.

This opening keynote went into a fascinating and "down to earth" discussion about "ethics". He stated that attendees need to be humble enough to know what we would do in certain situations. Attorney Leche spoke about how communications and technological advancements relate to ethics and values. He stated that using plain English at work is an ethical choice. He urged us to know our client, avoid jargon, use the present tense and an active voice. He advised us to use good grammar, short sentences, and avoid words that confuse rather than help. NAHO thanks Paul Leche for his valuable and impressive opening to what continued to be a successful 2012 Professional Development Conference.

Paul Leche earned his J. D. at the University of Texas School of Law in 1975 and has served on a variety of local and national boards, has been a speaker and/or moderator for numerous conferences and has advised numerous charities. As Past-President of the American Association of Public Welfare Attorneys, Mr. Leche serves on the organizations Executive Committee. The author of several articles including "Government Regulations and the Plain English Movement," Mr. Leche also help found a Catholic lawyer's group in Austin and currently serves on the board of Trustees for the St. Bonaventure Indian Mission and School. He is also a member of the Board of Trustees for Austin's classical music public radio station.

CERTIFICATION COMMITTEE

Linda Snow (TX)

The Certification Committee consists of Barbara Ann Macdonald (TX), Cynthia Staggs (OH); co-chair Ramona Collingsworth, (TX) lead co-chair Linda Snow (TX). Cynthia Staggs (OH) retires in December 2012, and chose to end

her service on the Certification Committee at that time. Effective November 2012, Certified Hearing Officer Kayla Adams (TX) joins the Certification Committee to learn the processes the Certification Committee follows and to fill the vacancy left by Cynthia Staggs (OH).



Since the beginning of the year, the Committee received nine applications for initial certification. Of those nine applications, the Committee made recommendations for certification for all but two. Those two applications remain open for additional supporting documentation.

At the 2012 NAHO conference in San Antonio, the following individuals were recognized for their initial certifications as either Certified Hearing Officers or Certified Administrative Law Judges:

Michael Blain, FL
Karen Gorman, CA
Valerie Henry, MS
Dustin Jansen, NM
Lorena Metro, FL
Donna Michaels, AZ
Wendy Stone, FL

The following individuals were recognized for meeting the requirements to attain recertification as either Certified Hearing Officers or Certified Administrative Law Judges:

Bonny Fetch, ND
Marjorie Gray, WA
Aubrey Lee, VI
Eric Moody, ID
Zandra Petersen, VI
Linda Valentini, PA
Elizabeth Webb, OK
Monika Weiss, TX

Throughout the year, the Certification Committee responded to numerous questions and inquires regarding initial certification.

Individuals seeking certification or recertification recognition at the 2013 Conference in Minneapolis, MN should submit complete applications with the appropriate processing fee by June 30, 2013. For applicants still wishing to receive certification or recertification for calendar year 2012, the application deadline is December 31, 2012. The Certification Committee will be conducting an informational session during the 2013 Conference for NAHO members interested in pursuing certification or renewing their certification. Detailed information about certification program requirements, application forms, fees, and Committee contacts are also available in the Certification section on the NAHO website at www.NAHO.org.

2012 Conference Was Cooking With Special Events



Jo Murphy (TN)

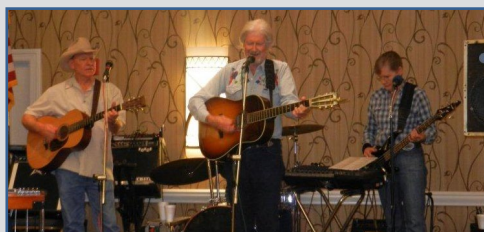
When you combine excellent classes with great social events you have the recipe for a terrific conference. Based on what we shared in San Antonio things were cooking, and we did have a great conference.

Beginning with a Welcome Reception in the hotel's Skyline Atrium on Sunday evening, attendees experienced a great kick off to the 2012 Professional Development Conference. While enjoying a delicious buffet of Southwestern themed food, the group socialized with friends, guests and other hearing officials. This is an excellent opportunity to learn by sharing personal experiences with NAHO members from other states and agencies.

Monday evening everyone met at the hotel's Rio Vista level beside the Riverwalk. Conference attendees and guests then hopped on board four of the famous Riverwalk "barges" for an hour of excitement. We enjoyed cruising up and down the river while taking in the sights and sipping our favorite cocktails or soft drinks. What a great way to end a day of learning.

Of course, we enjoyed two additional special events. Monday's luncheon and Tuesday evening's banquet were filled with good food, wonderful speakers, exciting awards and topped off by a real cowboy band. There will be more information to follow on these events in other areas of the newsletter.

As you can see, the perfect recipe was created for a well rounded learning experience with a little fun thrown in on the side.



Axioms of Appellate Judicial Review: The Twilight Saga Continues or Vampires, Werewolves and Zombies: Oh My!

This article was written by CALJ Toni Boone and Justice W. Michael Gillette (Oregon Supreme Court, Senior Status) as a follow-up to their conference presentations on appellate judicial review and the analysis of appellate opinions.

An administrative hearing referee will often cringe when he or she hears that an appellate judge will be reviewing his or her administrative decision. However, some hearing referees may be unaware that appellate judges don't want to review their administrative decisions any more than the hearing officers want them reviewed. A wide-spread trend in the popular culture of today is a fascination with

vampires, werewolves and zombies. Many appellate judges regard administrative appeals as being as undesirable and as problematic as one of those dangerous, undead night-stalkers. They approach administrative appeals as if they needed garlic in hand to ward off their evil characteristics. Some axioms of appellate judicial review do seem to fit right in with this current mystical craze in popular culture. So, get out your wooden stakes and crosses, your garlic and your wolf-bane and read on:

Exhaustion of Administrative Remedies: The doctrine regarding the exhaustion of administrative remedies generally requires that all administrative procedures established by statute be initiated, followed and concluded before an adversely affected party may seek relief from the courts. In other words, "Has all the blood been drained from this Petitioner, or should he be forced to go through one more appearance before the agency so that his blood supply is truly exhausted?"



CALJ Toni Boone



Justice W. Michael Gillette

Standing: When one hears that "standing" is required to participate in an action before a court or administrative tribunal, it sounds as if someone sitting or lying down can't get justice. Must a party arise, like a zombie from the grave, in order to have standing? No. Standing, or *locus standi*, is merely the term for the ability of a party to demonstrate that he or she has suffered or will suffer harm from the action of an administrative agency sufficient to support that party's participation in a case. Rest easy, vampires. You can still have standing while lying in your coffins.

Adversely Affected: What does it take to be adversely affected? Is a stake through the heart enough or is a silver bullet required? A person is adversely affected when that person has suffered negative consequences or when there is a reasonable likelihood the person will suffer negative consequences. Thus, the mere threat of a stake through the heart might be sufficient to constitute an adverse effect.

Error Preservation: Why would anybody want to preserve an error? Aren't errors supposed to be avoided? What does it mean to "preserve" an error? Do we need to fill the error with formaldehyde and place it in a tomb? No. An appellate court will not address an error that has been alleged on appeal unless the matter was ruled upon by the lower tribunal. In other words, appeals courts will not address an alleged error if the party failed to complain (and thereby preserve) the error in the lower tribunal. No formaldehyde required.

Abuse of Discretion: How do you abuse discretion? Will a mirror show its reflection? Will direct sunlight do it in? Discretion is abused when a decision is rendered without giving the facts and law relating to a particular matter proper consideration. Discretion can also be abused when a court or tribunal takes an unreasonable departure from precedent, sunlight and mirrors notwithstanding.

Yes, administrative appeals are viewed as being about as desirable as a vicious attack by zombies. But are they really such a bad thing? Imagine

being an administrative hearing referee without any case law on which to rely. The opinions of appellate judges provide guidance that helps administrative hearing referees make decisions. Without that guidance, the job would be much tougher. Unlike vampires, werewolves and zombies, appellate courts are a *necessary evil*.

The moon holds a mystical place in the history of the Earth. The appearance of werewolves, vampires and zombies is often blamed on a full moon. An appeal is like someone howling at a full moon. But does the howling come from a party with standing that has truly been adversely affected or is it merely the wailing of a werewolf on the prowl? It is the job of the appellate judge to separate those who are legitimately injured from the lycanthropic complainers.

The next time you learn that a decision you rendered has been appealed, think of the appellate judge reviewing your decision with a string of garlic around his neck, a wooden stake in one hand and a bottle of wolf-bane in the other and remember that he or she may find the task of reviewing your decision more daunting than you find the prospect of having your decision reviewed.



NAHO News

Newsletter Credits:

Editor: Andrea Boardman (CT)

Layout & Design:

Wendy Moen, Design Dimension

www.DesignAZ.net

www.facebook.com/DesignDimension

**Special thanks to Katherine Flores
for assisting with photography.**

WRITING SKILLS 101: WRITING CLEAR AND CONCISE DECISIONS

Andrea Lee (VA)

Judge Paul Keeper has been an Administrative Law Judge with the Texas State Office of Administrative Hearings for eight years. Judge Keeper also serves as a mediator and arbitrator.



Judge Paul Keeper

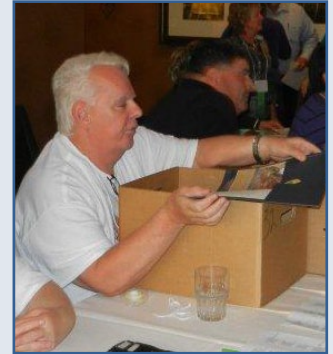
In Writing Skills 101: Writing Clear and Concise Decisions, Judge Keeper emphasized four general principles: 1) consider the “poor reader”, 2) tell the parties’ story, 3) give your reasoning, and 4) be your own best editor. When we consider the “poor reader”, we should strive for clarity, brevity, completeness, and accuracy. By telling the parties’ story, we should make the elements of the story easy for the reader to understand, make the conflict easy for the reader to understand, lay out the evidence clearly and fairly, and identify the conflicts that are the issues. When we give our reasoning, we should frame the issues clearly, use the tools of logic and transition, and refer to the standards that will be upheld on judicial review. Judge Keeper’s tips for being our own best editor included using a style manual, leaving time to put the draft aside, asking a colleague to review the draft, and reading the draft through the eyes of a “poor reader”. Judge Keeper used audience participation to remind us how confusing it is to read and process poor writing. He encouraged hearing officials to use short words and short sentences, be understandable, know the audiences’ needs, and frame the issues by organizing the facts. To help us fully understand Judge Keeper’s legal writing principles, we practiced writing exercises throughout the course. Each attendee received a notebook of exercises and bibliographic materials. By the end of the course, attendees were empowered with knowledge to organize, draft, and edit decisions.

TWO NAHO BOARD MEMBERS RETIRING AT THE END OF THE YEAR

Norman J. Patenaude, President (NH)

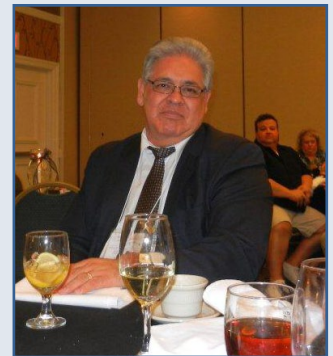
Two NAHO board members have announced their retirement from the NAHO board of directors at the end of this year. Michael Trammel from Indiana is the treasurer and a member of the executive committee and Hugo Franco from Arizona is an at-large member of the board.

Michael Trammel graduated from Purdue University with a Bachelor’s degree in education and a Master’s degree in counseling. He has been with the Indiana Family and Social Services Administration for over thirty-seven years first as a quality control reviewer for five years, then as a supervisor of that unit for six years and finally as a hearings officer for twenty-six years. He is leaving the agency on December 31. He joined NAHO in 1998, served as its librarian for four years from 2002 through 2005, as Central Regional alternate board member for two years from 2004 to 2006 and as treasurer for the past seven years. He completed the NAHO certification program in 2000 and received his first certificate at the conference held in Norfolk, VA and he was re-certified in 2003, 2006 and 2009. In his capacity as treasurer, Attorney Trammel managed the organization’s bank accounts and prepared monthly financial reports for the board. He was a fixture at the annual conference as a volunteer at the registration table where he warmly greeted our registrants.



Michael Trammel

Attorney Franco started his career as an administrative law judge in the Office of Appeals and then as a member of the Appeals Board for the Arizona Department of Economic Security in Phoenix in 1983 and belongs to the National Association of Unemployment Insurance Appeals Professionals. He plans to leave the agency sometime in 2013. He has been a presenter at several annual conferences for that organization as well as for NAHO and received his legal training at Arizona State University. He joined NAHO in 1989 and served on the NAHO board of directors as a representative of the Southwest Region before assuming his current position two years ago as an at-large member. I first met Hugo when I joined NAHO and attended my first conference in Santa Fe, NM in 1999 and I had the pleasure of working with him on a year-long assignment at his agency ten years ago. I quickly came to value his counsel, wisdom and friendship and I will miss his thoughtful insight into the many issues the board addressed during his tenure. Gracias, amigo!



Hugo Franco

Gentlemen, on behalf of all the members of NAHO and the members of the board, past and present, I express our sincere gratitude for your devoted service to NAHO and wish you both a great retirement!

CONFERENCE CLOSES WITH A WORLDLY PERSPECTIVE

Means of Adjudication: The Quest for Universality in Process

Janice Deshais NAHO Vice-President (CT)

After several days that focused on state and federal hearing principles and processes in the United States, the final session of the 2012 Conference offered a new point of view. In his closing address, Professor Gerald S. Reamey of the Law School of St. Mary's University in San Antonio compared the American legal system and methods of adjudication with the systems and methods of several other countries. Professor Reamey described how apparent differences are less evident when actual practices are examined and explained how a growing convergence of the world's legal systems is moving both toward and away from the American legal process and adjudicative procedure.



Gerald S. Reamey

Professor Reamey argued that although there are differences between the principles on which common law and civil law systems are based, a look beyond theory and generalities reveals increasing similarities. Reamey noted that this country's increasing reliance on statutory law is moving us closer to the civil law rule that is common in other parts of the world. Reamey described reforms in other countries that have made those processes more adversarial, particularly in criminal trials, but said that even our adversarial tradition is changing. Pointing out some of the non-adversarial processes we embrace as part of our judicial process such as the use of the grand jury, Reamey said that even our sacrosanct jury-controlled process has been shaken up by judicial assumption of power. He noted the "baby shaking" case of Nanny Louise Woodward, where the judge reduced a second degree murder conviction to involuntary manslaughter.

Discussing administrative processes in several countries, Reamey said that even where trials are becoming more adversarial, hearings remain non-adversarial and follow civil law tenets. Noting that our hearing processes are also non-adversarial, Reamey discussed some of the similarities and differences in other countries. For example, in Italy all facts are established by documents. Parties in hearings in China have a right to "debate" before a presiding panel (an intriguing concept).

In his final thoughts, Reamey provided his insights as to why the world's legal systems have moved closer together. He theorized that international tribunals, established to deal with WWII war crimes, use both common and civil law judges. As a result, these courts of justice have developed procedures that are a hybrid model with features of each legal system. Reamey also said the confluence is the result of international trading blocks, which bring people and legal systems together. Finally, Reamey posited the fascinating theory of the influence of Hollywood. Movies and television programs often provide the only exposure to legal proceedings for not only Americans, but also for the rest of the world. As a result, people think our system is the standard for trials and legal processes!

In his concluding remarks, Professor Reamey said that despite the movement towards uniformity, he believes there will never be one universal process for at least two reasons. First, because culture plays an important role in a country's legal process, global diversity will sustain a world of varied legal processes. Second, a basic truism will always be a part of our world -- every country will always think that their way is the best way to get things done!

NAHO is grateful to Professor Reamey for his interesting presentation. This was a perfect "wrap up" for the Conference, leaving attendees with a broader perspective of the context in which we perform our work as hearing officials.

NAHO BOARD

Front Row Left to Right:

Katherine Flores, Toni Boone, Jo Murphy, Norman Patenaude, Bonny Fetch, Karla Forsythe, Michael Trammel, Andrea Boardman, Andrea Lee.

Back Row Left to Right:

Ronald Frampton, Hugo Franco, Eric Moody, Peter Halbach, Janice Deshais, Francis Mulhall, Linda Snow.



2012 NAHO SPECIAL SERVICE AWARDS

Karla Forsythe (OR)

The Special Service Awards presented at the NAHO Annual Professional Development Conference recognize the distinguished and dedicated service of the volunteers who selflessly give of their time to make NAHO a great organization.

This year, President Norm Patenaude recognized eight outstanding contributors with awards in the shape of the State of Texas, which was the conference site (although the awards actually were produced in his home state of New Hampshire).

The Truett R. DeMoisey Professionalism Award was awarded to **Andrea Boardman**. 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 gracious manner. The President chooses the recipient of this award which recognizes an individual who demonstrates ethical behavior and the highest ideals of professionalism.

Ms. Boardman has worked with the State of Connecticut Department of Social Services for 34 years, and served as a hearing officer for the last 18 years. She plays a major role in keeping NAHO in the forefront of high-value professional organizations, through her work as Recording Secretary and editing the NAHO newsletter.

"I can always rely on Ms. Boardman to provide first rate support", said President Patenaude, "and it is a complete pleasure to work with her. She is truly deserving of this award."

The Outstanding Service Award was presented to three recipients: **Andrea Lee**, **Deputy Commissioner for the Virginia Workers'**



Compensation Commission, **Eric Moody**, **Hearing Officer with the Idaho Department of Transportation**, and **Linda Snow**, a lead Hearing

Officer with the Texas Health and Human Services Commission. President Patenaude lauded these individuals for their significant and continuing contributions: Ms. Lee for her service on innumerable projects and as past Recording Secretary, Mr. Moody for his faithful service as Chair of the Membership Committee which requires keeping the database up to date and sending renewal notices, and Ms. Snow for chairing the Certification Committee and assuring that credits attained by all applicants are properly tracked. "NAHO could not function without the tireless efforts of these three members", said President Patenaude.

The Bill Kane Board of Directors' Award is named for one of NAHO's past presidents.



The Board of Directors chooses the recipient of this award which recognizes unique and invaluable contributions to NAHO. This year, the award was presented to **W. Michael Gillette**, Oregon Supreme Court Justice (Senior Status) who has served as an Oregon appellate judge for 33 years and a teacher at the National Judicial College for 30 years. "Justice Gillette's service to the organization has been unique and outstanding in all regards." This sentiment is echoed in the evaluations of those attending conference sessions at which he served as faculty, and whom had nothing but praise for his presentations.

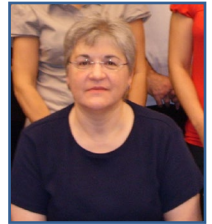
The 2012 Special Assistance Award was presented to **Bonny Fetch**, past President of NAHO and also to **Toni Boone**, NAHO board member. Ms. Fetch currently serves



as a Commissioner with the North Dakota Public Service Commission, and is taking a leave of absence from the North Dakota Office of Administrative hearings where she has served as an ALJ since 1991. Ms. Fetch served as NAHO President for two terms from 2008-2011. President Patenaude reflected on his

five years working with her as vice-president before he became president, and complimented her on assuring a smooth transition. "Ms. Fetch has a unique ability to relate to individuals with different interests, personalities and backgrounds. She has worked hard and given her best for NAHO over the past ten years", said President Patenaude, "and I am personally grateful for all her support." Ms. Boone serves on the faculty of the National Judicial Council, works as a DMV Hearing Officer in Nevada, and is responsible for NAHO merchandise. Currently her efforts are focused on the Instructional Task Force. "She has worked tirelessly both as a presenter and as a Board member who rolls up her sleeves and gets things done, said President Patenaude. "We are so fortunate that Ms. Fetch and Ms. Boone choose to give NAHO their time and considerable talents."

The President's Award is presented to an individual who has given special assistance and support to the President. The 2012 recipient is **Janice Deshais** of



Connecticut who serves as NAHO's Vice-President and chaired this year's conference. Ms. Deshais is Director of the Office of Adjudications for the Connecticut Department of Energy and Environmental Protection. The conference was a huge success, featuring great opportunities to network with others in our profession, and a wide variety of instructional sessions which will enhance our professionalism. "Let's give a well-deserved round of applause to Ms. Deshais" said President Patenaude as he led the room of banquet attendees in a standing ovation.



NAHO News

First Offering of NAHO Conference T-Shirt Results in Sell-Out

Toni Boone (NV)

During the 2011 NAHO professional development conference in Santa Fe, NAHO—for the first time—offered apparel and other items on which the NAHO logo was embroidered. Members expressed interest in the embroidered NAHO items and several members placed orders for them. However, many of the members requested that NAHO create a t-shirt for purchase at future conferences.

At the 2012 conference in San Antonio, by popular demand, a custom-designed t-shirt was made available at the introductory price of \$10. On the front of the t-shirt was a colorful depiction of the San Antonio Riverwalk, the conference theme (Roundup on the Riverwalk), and the date and location of the conference, making the t-shirt a unique souvenir of the conference. The t-shirts quickly sold out.

NAHO continues to offer items embroidered with the NAHO logo such as polo shirts, sweatshirts, fleece vests, fleece jackets and a



Hugo Franco - Helping to sell NAHO merchandise.

sturdy woven computer case with interior and exterior pockets and a zipper closure. Crewneck sweatshirts, in a variety of colors, are available for \$20 for sizes S through XL and \$25 for sizes 2XL and larger. Long-sleeved fleece zip-front jackets and sleeveless fleece zip-front vests are available in navy, gray, black, forest green and burgundy for \$30 for sizes S through XL and for \$35 for sizes 2XL and larger. Both short-sleeved and long-sleeved button-front

shirts with button-down collars are available in white, royal, navy, red, burgundy and forest green for \$25 for sizes S through XL and \$28 for sizes 2XL and up. Short-sleeved knit polo (golf) shirts are also available in numerous colors for \$16 for sizes S through XL and \$20 for sizes 2XL and larger. The royal blue and black laptop computer bag embroidered with the NAHO logo can be purchased \$20. Any of these woven items may be ordered with a customized, embroidered personalization for a small additional charge.

NAHO will, once again, offer a commemorative NAHO t-shirt at the 2013 professional development conference in St. Paul, Minnesota. NAHO also plans to offer NAHO merchandise through its website in the near future. Until that time, if you wish to order embroidered NAHO merchandise, you may obtain more information by contacting Merchandise Committee Chair, Toni Boone, at tboone@dmv.nv.gov.

CANDID GALLERY

