

2010 CONFERENCE COURSE DESCRIPTIONS

NAHO ANNUAL PROFESSIONAL DEVELOPMENT CONFERENCE | SEPTEMBER 26 - 29, 2010
DOUBLETREE HOTEL, NASHVILLE, TN

SPEAKER HIGHLIGHTS



KEYNOTE SPEAKER

JULIAN MANN III, Chief ALJ and director of the North Carolina Office of Administrative Hearings, will be our general session keynote speaker on Sunday, September 26, 2010. The topic of Judge Mann's address is "How Does a Detached Judge Protect a Citizen's Right to Due Process of Law In An Administrative Hearing?" and will provide an insightful perspective on due process of law and address the lessons learned when judicial independence is compromised in administrative decision-making.



KEYNOTE SPEAKER

CORNELIA CLARK, Chief Justice of the Tennessee Supreme Court, will be our keynote speaker on Monday, September 27, 2010. The topic of Chief Justice Clark's address will be "Judicial Review of Administrative Decisions: Ten Fine Tunes to Improve Your Record." Using a humorous Music City framework, Chief Justice Clark's keynote speech will provide tips on how to improve the administrative record and maximize the chances of affirmance on appeal.



LUNCHEON SPEAKER

ROBERT E. COOPER, JR., Attorney General for the state of Tennessee, will be our luncheon speaker on Monday, September 27, 2010. The topic of Mr. Cooper's address will be "Full Disclosure . . . Where Immunity Ends and Liability Begins," and will discuss how conduct that is outside the scope of employment as a hearing official, or willful and wanton, may result in a loss of governmental immunity and/or in personal liability, including punitive damages.

CONFERENCE COURSE DESCRIPTIONS

Please note that we will make every attempt to adhere to this list of short course descriptions and presenters. Should any last minute changes become necessary, your consideration will be appreciated. Designations after the workshop title refer to the classification of courses accepted by NAHO for certification of hearing officers and administrative law judges. For complete information on required and elective course credit for certification, see the certification application on the NAHO website, www.naho.org.

A CULTURE OF RESPECT

(MANDATORY)

Debra Moser, Outreach and Education Manager, Memphis District Office, Equal Employment Opportunity Commission

This workshop will address primary and secondary dimensions of diversity and how those impact the workplace. It will also address how our actions, guided by stereotypes and generalization, can lead to workplace behavior that is unlawful. An overview of the law and the steps we can take to prevent unlawful harassment and discrimination is also covered.

CONFLICT MANAGEMENT TECHNIQUES FOR HEARING OFFICERS

(ELECTIVE)

Larry Bridgesmith, Executive Director, Institute for Conflict Resolution, Lipscomb University

Hearing officers are specialists in dispute resolution serving as adjudicators and decision makers. The skills of conflict management are tools which hearing officers also can bring to their role. This session will explore how additional skills for managing conflict, exploring interests, consensus building and collaboration can enhance the hearing officer's function in adversarial settings.

DEALING EFFECTIVELY WITH THE PRO SE LITIGANT

(ELECTIVE)

Douglas A. Blaze, Dean, University of Tennessee College of Law

The program discussion will cover the unique challenges of effectively handling a pro se appellant (or appellee) in a hearing setting, focusing on the perspective of that pro se party. The issues will include reduction of anxiety, dealing with confusion and a lack of understanding, understanding the role of the hearing officer, and balancing the rights of the parties without sacrificing the process or giving up too much control.

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DEALING WITH HIGH VOLUME HEARINGS

(ELECTIVE)

Candice L. Reed, National Director of Candidate Recruitment and Placement, Counsel on Call, Nashville, TN

With the onset of electronic data and discovery in recent years, the volume of documents in any one case can be daunting. When combined with a large number of cases, it can be overwhelming. Today more than ever, it is vital to have comprehensive protocols in place to manage voluminous litigation. Where do you begin? What are your end goals and how do you plan to reach them? Will you be able to reach these goals with the staff you currently have in place or will the volume require you to supplement your existing workforce with contract personnel? What about technology? Faculty will discuss these questions and offer ways to manage and staff high-volume hearings, focusing on efficiency and cost-savings, while building a repeatable process that can be used again in future matters.

DISABILITY DETERMINATION - THE SEQUENTIAL PROCESS

(SUBSTANTIVE)

Laura Clark, TN Department of Human Services, Nashville, TN

A person is entitled to receive Social Security disability (SSD) benefits when they are no longer able to perform a substantial gainful activity as the result of a physical or mental impairment that is expected to last at least 12 months, or possibly result in death. While this is not as easy as "1, 2, and 3", understanding the definition of disability used by Social Security is essential for a hearing official. This how-to course will fully discuss the sequential process, including how a person's disability or impairment must meet or equal the level of severity described in the Social Security listing book.

EVIDENCE 101 - THE GOOD, THE BAD, AND THE OBJECTIONABLE

(MANDATORY)

Steve R. Dozier, Judge, Criminal Court Division I, Nashville, TN

At every administrative hearing, evidence by both parties is essential to the hearing to ensure due process. This course is designed to familiarize hearing officials with both the basic concepts of law, admission of evidence, different types of testimonies, and burdens of proof, as well as the more complicated issues recurring around expert testimony and the future of evidence law.

EXAMINING JUDICIAL DEMEANOR AND TEMPERAMENT - YOUR OWN!

(ELECTIVE)

Laurence H. Geller and Peter Hemenway, Retired Administrative Law Judges, California Department of Social Services

This class explores how we communicate, what we communicate to others, and how that affects the hearing process. Are we in control of the hearing and in control of our emotions, our conduct and our persona?

FAIR HEARINGS AND VALID FACTUAL DISPUTES: PROVIDING DUE PROCESS WITHOUT A HEARING

(SUBSTANTIVE)

Carol Fletcher, Managing Attorney, Conciliation Attorney Unit, Division of Appeals and Hearings, TN Department of Human Services

This presentation will introduce the concept of "valid factual disputes" as used in the context of Medicaid fair hearings in Tennessee. Approved by the United States Court of Appeals for the Sixth Circuit in the 2005 decision in *Rosen v. Goetz*, a valid factual dispute is a required allegation for an appellant to receive a fair hearing in Medicaid eligibility appeals. Does this comply with due process? How does an agency explain this requirement to appellants? This presentation will discuss the ideas behind the "valid factual dispute" and the process by which appeals are reviewed for meeting this standard.

FULL DISCLOSURE . . . WHERE IMMUNITY ENDS AND LIABILITY BEGINS

(ELECTIVE)

Robert E. Cooper, Jr., Tennessee Attorney General, Nashville, TN

Conflict of interest? Perception of power? Ethical dilemmas? Among other immunities, hearing officials do have "qualified immunity" from individual liability when making discretionary decisions unless their conduct violates clearly established statutory or constitutional rights of which a reasonable person would have known. This course will discuss how conduct that is outside the scope of employment as a hearing official, or willful and wanton, may result in a loss of governmental immunity and/or in personal liability, including punitive damages.

HEARINGS VIA ELECTRONIC MEDIA: LEVERAGING VOICE, VIDEO, AND INTEGRATED SYSTEMS TO IMPROVE THE HEARING PROCESS

(ELECTIVE)

Tim Bakke, Avtex

As technology rapidly progresses, the "consumerization of IT" is changing how government organizations deal with their constituents in all aspects of public service. Join us as we look at some of the emerging technologies that are impacting the hearing process and how some forward-thinking organizations are leveraging these tools to better serve the public.

HELPFUL INTERNET RESEARCH TOOLS

(MANDATORY)

Pamela Boyd, Director of CD Attorney Unit and Counsel for Commissioner's Designee for Appeals and Hearings, Tennessee Department of Human Services, and Susan Reale, Attorney, Westlaw Government Account Manager, Louisville, KY

The presentation will include an open discussion of how hearing officials from various states conduct legal research and what is considered to be the appropriate role of the hearing official in researching the law (including case law), rules, and regulations after a hearing has been held in order to reach an administrative decision. Useful free legal resources found on the Internet will be explored. Susan Reale will also show you how WestlawNext gives you an easier way to search, yet delivers all of what you're looking for. Now you won't have to choose where the answer is before you start your search. And you can apply intelligent tools to help you work smarter and faster with total confidence you have the information you need. All of which makes life easier.

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HERETOFORE NO MORE: CLEAR AND CONCISE LEGAL WRITING

(MANDATORY)

Susan McDonald, Attorney, Nashville, TN

This interactive program will provide hearing officials with tools to make their writing more effective. The topics include the writing process, plain English, grammar and punctuation, writing style, as well as proofreading and editing. Expect lively discussions and helpful grammar writing tips.

HOW DOES A DETACHED JUDGE PROTECT A CITIZEN'S RIGHT TO DUE PROCESS OF LAW IN AN ADMINISTRATIVE HEARING?

(MANDATORY)

Julian Mann III, Chief Administrative Law Judge and Director, North Carolina Office of Administrative Hearings, Raleigh, NC

In this opening keynote address, Judge Mann will give an insightful perspective on due process of law and address the lessons learned as to what can happen when judicial independence is compromised in administrative decision-making. Judge Mann's article, *Due Process; A Detached Judge; and Enemy Combatants*, published in the *Journal of the National Association of Administrative Law Judiciary* (Vol. 28, No. 1, Spring 2008), gives a historical perspective of due process as it has been applied in the judicial court process and as it has similarly come to be required in the administrative hearing process. Using that framework, Judge Mann examines due process of law issues in the cases which arose as the result of administrative hearing procedures granted to enemy combatants detained at Guantanamo Bay. He will explore the challenges that all administrative hearing officials face when there is a loss of or an appearance of a loss of neutrality in an administrative hearing.

INCREASING PROFESSIONAL SUCCESS AND MANAGING WORKPLACE STRESS

(ELECTIVE)

Candice L. Reed, National Director of Candidate Recruitment and Placement, Counsel on Call, Nashville, TN

During this session, attendees will learn about positive psychology, the scientific study of the strengths and virtues that enable individuals and communities to thrive, and how it can be used to increase professional success and work satisfaction. For the first half of the session, faculty will provide an introduction to the field of positive psychology and its focus on the legal profession. Attendees will learn why well-being matters and scientists' hypotheses for why lawyers and other legal professionals appear to be so unhappy with their jobs – and what studies suggest can be done to improve their work satisfaction (thereby benefiting their clients and contributing to increased professional success). During the second half of the session, faculty will address the question, "Can simply incorporating your personal strengths at work increase your engagement and satisfaction with your job (and life)?" Research in the field of positive psychology suggests "yes." Studies indicate that individuals who use their strengths in their jobs are six times more likely to be engaged with their work and are more than three times as likely to report having an excellent (or better) quality of life. This session will show attendees ways to connect (or reconnect) with their own core strengths and utilize them more in their daily work in an effort to gain greater satisfaction and professionalism. In addition to lecture, attendees will be guided through various on-site activities designed to develop and nurture specific skills to increase their success and work satisfaction, while decreasing burn-out and apathy.

IS THIS A CIRCUS OR AN ADMINISTRATIVE HEARING? HOW TO ENSURE CONTROL AND CONDUCT AN IMPARTIAL ADMINISTRATIVE HEARING WHEN THE MEDIA IS PRESENT

(MANDATORY)

Michelle Mowery Johnson, Communications Director, TN Department of Human Services

Lights . . . Camera . . . Action! This interactive course will focus on how to prepare for and conduct an administrative hearing in light of media presence and interest. Participants will have the opportunity to participate in a mock practicum designed to hone their skills in responding to media inquiries and controlling the hearing process.

JUDICIAL REVIEW OF ADMINISTRATIVE DECISIONS: TEN FINE TUNES TO IMPROVE YOUR RECORD

(ELECTIVE)

Cornelia A. Clark, Chief Justice, Tennessee Supreme Court, Nashville, TN

Using a humorous Music City framework, Chief Justice Clark's keynote speech will provide tips on how to improve the administrative record and maximize the chances of affirmance on appeal.

LEVERAGING UNIFIED SOCIAL COLLABORATION TO TRANSFORM GOVERNMENT COMMUNICATIONS

(ELECTIVE)

Kent Cunningham, Microsoft Corporation, Mt. Juliet, TN

This session will discuss business models and case studies for leveraging unified social collaboration to transform government communications. Microsoft Unified Communications solutions can help governments deliver excellent services, reduce their carbon footprint, and achieve the efficiencies required to drive down costs. Microsoft Unified Communications give government workers the flexibility to reach their colleagues, connect campuses and access the information they need, whether they are in the office, in the field, or working from home. Using integrated communications and simplified conferencing capabilities, workers can quickly and easily connect with the right person via the software applications and business processes they use every day.

MENTORING HEARING OFFICIALS

(ELECTIVE)

Dave Shearon, Executive Director, Tennessee Commission on Continuing Legal Education and Specialization

Turnover, training expenses, and thriving dockets – all these factors point to the difficulties involved in hiring and retaining quality hearing officials. This narrated presentation and interactive discussion will focus upon the new efforts to utilize existing hearing officials to mentor those new to the administrative process. Whether a manager of hearing officials or a hearing official, each of us can play a part in bringing knowledge and skills to use in mentoring those new to your organization.

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THE BEGINNING OF THE END: THE PREHEARING PROCESS

(ELECTIVE)

James Gerl, Special Ed Law Consultant, Scotti & Gerl, Lewisburg, WV

In this session, participants will explore techniques for managing cases before the hearing begins. Good prehearing management can keep a case from getting off track before you even get to the hearing.

YOU BETCHA VS. THANKS, BUT NO THANKS: RULING ON OBJECTIONS

(ELECTIVE)

James Gerl, Special Ed Law Consultant, Scotti & Gerl, Lewisburg, WV

This session will include a review of the evidentiary rules for administrative hearings and a series of hypothetical objections for the participants to practice ruling on objections.

WHAT IS DUE PROCESS - DO BIASES INTRUDE INTO THE HEARING PROCESS?

(MANDATORY)

Laurence H. Geller and Peter Hemenway, Retired Administrative Law Judges, California Department of Social Services

Have you ever really thought about your own biases? If not, maybe it's time you do. Let's figure out how "impartial" we are as HO's, and what kind of "justice" we render, both from our own perspective and from the perspective of the parties who appear before us.

WORKERS COMPENSATION CIRCUS WORLD

(SUBSTANTIVE)

Nancy Krider Corley, Instructor, Nashville School of Law, Nashville, TN

An overview of the law of workers' compensation featuring legislative juggling and balancing acts, legal acrobatics and tightrope walking, medical elephants and ferocious jungle cats, employee roller coasters and other scary rides, employer pin ball and other games of chance, workers' compensation insurer vendors and barkers, and even special interest clowns.