

D.C. Association of Administrative Law Judiciary



Incoming President's Message

Since DCAALJ established itself as a separate affiliate of the National Association of Administrative Law Judiciary in 2009, we have come a long way. Past presidents Joan Davenport and Paul Handy have organized the chapter, increased its membership, presented an inspiring series of educational programs, and promoted close liaison with the National Association, including sponsorship of DCAALJ members to attend the annual NAALJ conference.

In the coming year, we can build on the foundation my predecessors have constructed and keep developing DCAALJ as an organization that gives support and direction to the careers of its members.

Following are a few of my thoughts about what DCAALJ might do in the year to come:

- **Expand our membership.** Washington D.C. has no shortage of administrative law judges, including not only those who are employed by the District itself, but also some hundreds of ALJs in various federal agencies. We all confront many of the same challenges in our daily work and we can learn from one another. The more members we have, the more we can offer. Helping DCAALJ to grow is one of my highest priorities.
- **Continue our educational programming.** In the past two years, we have been fortunate

Fall 2011

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to get some excellent speakers to discuss topics such as judicial ethics handling self-represented litigants, and courtroom security. We must continue to offer our members frequent opportunities to learn more about their profession and to hone the skills they need to do their jobs fairly and efficiently.

- **Networking.** There is a danger to becoming too insular. If we are not exposed to new subject areas and new ways of doing things, we are likely to get stuck in a rut. In the coming year DCAALJ will try to offer its members a variety of social events in which we can get to know one another and learn from each other. Let's have lunch.
- **Advocacy.** We are not a labor union or lobbyists. But DCAALJ is the only organization that represents the interests of administrative law judges in the District of Columbia. When appropriate, we should not hesitate to make our voice heard and our views known.

No matter how lofty our goals, DCAALJ will not achieve anything without support from its members. Here are a few things you can do to help make DCAALJ a success:

- **Let us have your ideas.** Our members have a rich body of experience, expertise and vision. You can contribute to DCAALJ simply by letting us know what you want from DCAALJ and how you think DCAALJ can carry out its mission better. Brilliant ideas are useless without communication. Tell us what you think we are doing right, what you think we are doing wrong, and how we can change. Send me an email at Nicholas.cobbs@dc.gov. All comments welcome.
- **Encourage your colleagues to join DCAALJ.** The more members we have, the more resources we have, the more value we can give to our members.
- **Make a presentation.** Would you like to talk to us about special education in the District of Columbia or how you use project

management software to keep on top of your hearing schedule, your son's little league, and your daughter's ballet lessons? Come talk to us. It might turn into a trial run for your speaking tour.

- **Show up.** Come to our meetings, come to our programs, come to our networking events, and bring your colleagues.

DCAALJ has a lot to offer its members. But membership in DCAALJ is a two-way proposition. Our members must give us their support if we are to give them the value they deserve. In the year to come, I hope you will all join the Board in helping to make DCAALJ a stunning success.

New DCAALJ Officers Installed

On September 20, 2011, DCAALJ elected the following officers for the 2011-2012 year:

Judge Nicholas Cobbs, President, has been a member of DCAALJ (formerly Maryland and DC AALJ) for six years. For the 2010-2001 year, he served as president-elect. He began service as an Administrative Law Judge in the Office of Administrative Hearings in August, 2005. Previously, he was in private practice, in Washington, D.C., and New York.

Judge Melissa Lin Jones, President Elect, is the former vice president of DCAALJ. Judge Jones is an administrative appeals judge for the Washington, D.C. Department of Employment Services, Compensation Review Board, a position she has held since January 2010. Previously, she served as an administrative law judge adjudicating workers' compensation cases for the Department's Office of Hearings and Adjudication, Administrative Hearings Division. In the 12 years before she ascended to the bench, Judge Jones practiced law in New York, Maryland, Virginia and the District of Columbia, primarily in the area of workers' compensation. Judge Jones is the author of "Success in the Practice of Administrative Adjudication", published by Washington Lawyer and a contributor to Black's Law Dictionary, Dictionary of Legal Usage, Modern American

Usage and an upcoming book about statutory construction by co-authors Bryan A. Garner and Justice Antonin Scalia. She is a member of the faculty of the National Judicial College.

Judge Claudia Barber, Vice- President, joined the DC and Maryland Chapters of NAALJ in 2005, when she began her career as a D.C. Administrative Law Judge for the D.C. OAH . For the past six years, she has served as an ALJ adjudicating cases for a great variety of D.C. agencies. She serves as adjunct faculty at the Johns Hopkins University, where she teaches business law to MBA candidates and she also teaches business law to undergraduates as adjunct faculty for the University of Maryland University College.

Judge Heather C. Leslie, Secretary, presently serves in an interim capacity as an Administrative Appeals Judge at the Compensation Review Board, District of Columbia Department of Employment Services. She became an Administrative Law Judge at the Department’s Office of Hearings and Adjudications in 2009, adjudicating workers’ compensation claims in the public and private sectors. Previously, she was a litigator with the Washington Metropolitan Area Transit Authority and in private practice representing injured claimants in workers’ compensation cases.

Judge William L. England, Jr. Treasurer, began serving as an Administrative Law Judge for the District of Columbia Office of Administrative Hearings on August 9, 2004. From March 1, 1995 to July 30, 2004, Judge England served as an Administrative Law Judge for the Maryland Office of Administrative Hearings from 1986 to 1995. Before that, he practiced in his own law firm in Washington, D.C. Judge England is a veteran of 20 years active duty in the US Army, including two tours of duty in Vietnam. He retired as a Lieutenant Colonel.

Judge Joan Knight (board member-at-large) currently serves as an administrative law judge for the District of Columbia Department of Employment Services. She was previously an administrative hearing adjudicator for the Maryland Department of Labor,

Licensing & Regulation (DLLR) in Baltimore, Maryland. Prior to joining DLLR, Judge Knight worked as a transactional attorney for an intellectual property and entertainment law firm in Bethesda, Maryland.

While obtaining her law degree from The Catholic University of America, Columbus School of Law, Judge Knight worked in the Washington, D.C. Bureau of CBS News, Inc. where she was an integral contributor to national news correspondents for CBS News with Dan Rather and the CBS Radio Network. She has a news and program production background and has served as news reporter and public affairs producer for WHUR-FM in Washington, D.C.

Judge Roberts Speaks at DCAALJ Meeting

Federal District Court Judge Richard Roberts delivered very moving remarks during the installation ceremony of DCAALJ officers on September 20, 2011. He reminded us of how great our judiciary system is, having recently participated in international rule of law initiatives abroad with nations seeking to improve their systems of justice delivery. This experience allowed him to experience first hand, in his words, “what it really means to have a judiciary threatened with an erosion of integrity, independence and faithfulness to the rule of law.”

The Challenge Grant Recipients Speak!

By Judge Claudia Barber

Santa Fe, New Mexico is beautiful in September. Temperatures are in the 80s with low humidity, and I enjoyed sunshine each day.

I came to the conference with great expectations that the seminars would be dynamic and enlightening experiences as they were when I last attended a full conference a few years ago. My expectations were met.

On Monday, September 19, 2011, Professor Penny White of the University of Tennessee School of Law provided an informative and engaging presentation on Evidence for Administrative Law Judges. This was not a lecture, but a thought-

provoking discussion about a case problem involving a corrections officer who was terminated for violating departmental policies, including consuming alcohol while carrying a firearm, unauthorized use of state property, using illegal drugs, and engaging in conduct unbecoming a corrections officer. The officer claimed the reasons given for termination were pretextual and the termination was actually the result of discrimination based on race and retaliation for undertaking activities related to organizing a corrections officer’s collective bargaining unit.

We were asked to evaluate the pre-admission considerations based on several objections raised by counsel. This was an engaging intellectual exercise because the judges in attendance, including myself, did not all agree on how to evaluate the evidence.

This method of interactive teaching instead of lecturing has inspired me to utilize it in my work as adjunct faculty at area universities.

The Monday afternoon session on September 19, 2011, was on Security for Administrative Law Judges. The presenter, Carl Caulk of the US Marshals Service was quite enlightening.

He reminded us as judges to be vigilant about our surroundings and take responsibility for our own security. Communicate even the most benign concerns to law enforcement officials. Pay special attention to packages sent to your home that you are not expecting. Mr. Caulk gave us vivid reminders of federal judges who were assassinated and one judge whose wife was poisoned when she opened a box of Godiva chocolates she believed were sent to her from her spouse.

There were many significant points made of measures we can take to remain alert of suspicious activity. For example, we could set up Google Alerts to monitor when someone is blogging or otherwise mentioning us over the internet. We can better police our personal information by removing all personal information from internet sites within our control. We can limit our exposure on social network sites and use unlisted and unpublished

phone numbers as well as post office boxes for mail deliveries. We were also referred to www.privacyrights.org as a useful website to learn about keeping your personal information private.

On Tuesday, September 20, 2011, we began our morning session with a movie presentation, “The Response.” Chief Administrative Law Judge Julian Mann of the North Carolina Office of Administrative Hearings, and Professor Christopher Behan of Southern Illinois University School of Law were our panelists, and the writer, producer and actor of the movie appeared by satellite television.

The movie is an award winning courtroom drama based upon actual transcripts of the Guantanamo military tribunals. It details the administrative tribunal process of combatant status review tribunals and the difficulties they face in ensuring due process to detainees at Guantanamo. It remains a serious balancing act between national security and the rule of law.

During the mid-day session on Tuesday, I thoroughly enjoyed retired Judge A. Joseph Alarid of the New Mexico Court of Appeals, who provided very useful advice on making a clear record with coherent findings of fact and conclusions of law. As trial judges, we must make certain objections and their rulings are on the record. Even if we admit a disk drive, the admission of this evidence should be clearly stated on the record.

Finally, during the Tuesday afternoon sessions, special education hearing officers gave us much insight into the types of “equitable” remedies within the authority of a hearing officer when deciding special education cases. They include rendering decisions making declaratory relief because they can decide whether a placement of a child or evaluation is appropriate. They can also order injunctive relief such as order tuition reimbursement, order an evaluation, order a particular placement, award compensatory education, order student records to be revised, order training of district personnel, order a student to be permitted to graduate, order a district to hire a

consultant and other appropriate injunctive relief. Many of the cases expounding on this equitable relief are from the DC Circuit. Since federal law is involved, the cases are often appealed to the U.S. District Court and subsequently to the U.S. Court of Appeals for the D.C. Circuit.

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Reminiscences of Santa Fe from a Challenge Grant Recipient

By: Robert Sharkey, Principal Administrative Law Judge, D.C. Office of Administrative Hearings

At the end of September, ALJs from over 20 states and Canada gathered in Santa Fe, New Mexico for the 37th NAALJ Annual Meeting and a program entitled: “Evidence, Ethics, and Experts in the Land of Enchantment.” This was the first time NAALJ held an annual meeting without sponsorship by a local NAALJ affiliate or a law school. The success of the meeting is due to the hard work of NAALJ officers, the cooperation of New Mexico ALJs, judges and other locals, and especially to the efforts of Bob Cohen (ALJ/FL), Conference Chair, and Steve Wise (ALJ/IA), Program Chair.

“Land of Enchantment” is the motto of New Mexico, which is closely associated with the Zia Pueblo Indians’ sun symbol, the distinctive feature on the New Mexico state flag: a sun with linear rays extending in four directions. It represents the four directions of the Earth, the four seasons of the year, the four times of day, and the four divisions of life. The symbol is on a field of red and gold, representing the colors of Spain. The area had been populated by native peoples since prehistoric times, and was “discovered” by Spaniards in the 1540s, before the landing of the Pilgrims on Plymouth Rock. Santa Fe (City of Holy Faith), is the oldest state capital in the U.S., and the meeting was held in Santa Fe’s oldest hotel (La Fonda), located in the vicinity of the historic Plaza. The venue of the meeting afforded attendees the opportunity to learn, share views and experiences with colleagues, and experience diverse peoples and cultures, in a truly beautiful historical setting in a relaxed atmosphere removed from one’s ordinary routine. This

contributed immeasurably to the enjoyment of the meeting and the learning experiences afforded.

A unique introduction to the conference’s venue was given by Bruce Held, a former CIA agent and author of “A Spy’s Guide to Santa Fe and Albuquerque,” for a pre-conference walking tour of historical spy sites within central Santa Fe. Who would have thought that New Mexico was a center of spy vs. spy intrigue! The KGB’s greatest intelligence coups and the planning of the assassination of Trotsky, all took place within the shadow of Saint Francis Cathedral, on the Plaza. Later in the evening, a reception was held on the terrace of the La Fonda, overlooking St. Francis Cathedral, which was highlighted by the setting sun.

The meeting formally opened with a welcome from Felicia Orth, Hearing Officer, New Mexico Environment Department, in a presentation entitled: “Enchanted, I’m sure: Journeys of an Environmental ALJ around New Mexico.” Ms. Orth shared her knowledge of New Mexico, its people, history and culture (For example, “Air Balloons” is the state’s official aircraft and “Red or Green?” is the state’s official question, referring to a preference for red or green chile). She reprised her journeys as a “Traveling ALJ” for the Arizona Department of the Environment, and shared lessons learned along the way.

The first substantive program was by Penny White, Professor, University of Tennessee School of Law, entitled: “Evidence for Administrative Law Judges.” In a full morning session, Professor White presented a case study and, utilizing fundamental principles of fairness, efficiency, reliability and authenticity, a variety of evidentiary issues were analyzed. These included objections to evidence without stated reasons or bases, hearsay objections to testimony and documentary evidence, including scientific reports and tests. Later in the meeting, Michael Saks, Professor, Arizona State University of Law, presented another program on evidence, entitled “Reliability Standards for Experts & Scientific Evidence.”

The substantive program on Ethics was led by Ann Marshall Young, Administrative Judge, Nuclear Regulatory Commission, who spoke on "Judicial Ethics and Independence." Judge Young covered the Model Code of Judicial Conduct generally, and in particular Canons 1, 2 and 3 relating to judicial independence, and an ALJ's duty to adhere to the Code to assure judicial independence: namely, judging free of external influences and internal influence; treating parties fairly, without bias and without ex parte communications; compliance with the law; and striving for competency in all things. Regarding internal influences, Judge Young referred to the Myers-Briggs exercise/test on personality type to illustrate that some internal influences can undermine objective judicial decision making.

DCAAJ President Elect Melissa Jones, Administrative Appeals Judge, D.C. Department of Employment Services, Compensation Review Board, presented her program, "Don't Be a Potted Plant: Steps To Ensure a Fair Hearing Even Before You Take the Bench," which she previewed at a meeting of DCAALJ earlier in the year. Judge Jones offered practical suggestions on how a judge can better fulfill her responsibilities and assure a fair, impartial, and expeditious proceeding by being proactive in all facets of the case as it progresses. Judge Jones also rewarded a few with a "Potted Plant" for their active participation in the discussion.

There were also multiple break-out sessions on a wide range of topics which accommodated the diverse interests and responsibilities of the ALJs attending. These included: Communication skills for ALJs; IDEA; Remedies in Special Education Cases; Labor Arbitration; and High Volume Dockets. These sessions were facilitated by experienced ALJs, Hearing Officers, and court personnel. In addition, Jeffrey Rachlinski, Professor, Cornell University Law School, and Chris Guthrie, Dean and Professor, Vanderbilt University School of Law, presented a thought provoking program on decision making by ALJs, as compared to ordinary judges, concluding that "several features of the unique role ALJs play in the

legal system might lead them to rely more heavily than ordinary judges on deliberation," rather than intuition.

Carl W. Caulk, Acting Assistant Director for Judicial Security, United States Marshals Service, presented a timely program on Security for Administrative Law Judges, and A. Joseph Alarid, Judge (Ret.) New Mexico Court of Appeals, shared his views and comments on decision making with "A View Toward the Appeal." The formal programs ended with a discussion by, Bidtah Becker, Attorney, Navajo Nation Department of Justice, on issues pertaining to water and legal jurisdiction from the perspective of Native Americans.

One of the highlights of the meeting was a showing of the docu-drama "Response," a 2010 Academy Award nominated movie, and the recipient of the ABA Silver Gavel Award winner in Drama & Literature. The short movie depicts a suspected combatant's hearing based on the actual transcripts of the Guantanamo Bay military tribunals. A lively discussion on the handling of enemy combatants, and those suspected of being such, the military tribunals established to determine status of those in custody, and the requirements of due process and the rules of evidence followed. Sig Libowitz, Esquire, the Baltimore, MD lawyer who wrote, produced and acted in the movie, participated by video-conference, and was joined by Julian Mann, Chief Administrative Law Judge, North Carolina, and Christopher Behan, Professor, Southern Illinois University School of Law.

I have attempted to give you some appreciation of the excellent programs/agenda of the meeting and the experienced professionals who were responsible for the preparation and presentation of the programs. At the same time, there was ample opportunity to experience the unique experience of Santa Fe, and its environs. For example, there was an organized trip one evening for a walking tour of the 400 year old Pueblo de San Ildefonso, outside Santa Fe, where the work of famous Indian potters were on view, and the tribal courtroom was open for inspection. But history is

everywhere in Santa Fe, so a short walk from La Fonda for lunch at La Casa Sena in Sena Plaza, a complex over 200 years old, takes one by the Palace of the Governors and the History Museum of New Mexico (oldest continually occupied government building in the U.S.). Walking in the opposite direction to the Pink Adobe restaurant for dinner (located in a 300 year old building, across from San Miguel Mission, the oldest church in the U.S.) one passes Our Lady of Light (Loretto) Chapel, with its "Miraculous Staircase." The experience was priceless!

A banquet and a silent auction of items contributed by attending ALJs concluded the conference. The conviviality of the gathering was due to the friendships formed, and renewed, over the several days of the meeting. And plans and preparations were being made to meet again in February in New Orleans for the NAALJ mid-year meeting.

See you in New Orleans.

Outgoing President Nominated for Cafritz Award and Expecting Twins

Congratulations to ***Judge Paul Handy***, outgoing president of DCAALJ. He was nominated earlier this year for the 2011 Cafritz Award. He was honored for his play "FULL TRUTH" written on the life of the late U.S. Supreme Court Justice Thurgood Marshall. The play has been presented throughout the Baltimore and Washington, DC metropolitan areas. The play features a cast of judges, including ***DCAALJ President Judge Nicholas Cobbs***, who plays the role of Attorney John Davis, who argued Brown v. Board of Education before the US Supreme Court in 1954 as opposing counsel against Marshall. The play was also recently recognized nationally by the Classy Awards.

Judge Handy and his wife are expecting twins (a boy and girl) in February 2012.

Outgoing President's Remarks

By Judge Paul Handy

Reflecting back on 2010-11, our second year as an independent organization, we built on the successes gained during the first year under the leadership of President Joan Davenport.

Most significantly, we presented many educational programs for our membership: Professor Faith Mullen's remarks on the Bellow Foundation Project; OAH Deputy Chief Judge Mark Poindexter's program on self-represented litigants; the panel discussion on litigants who have mental illnesses; Judge Ann Marshall Young's program on ethics and judicial independence; Deputy U.S. Marshal Benny Williams's presentation on judicial security both at home and at the office; and finally, Judge Richard Roberts's comments about the problems of low pay and corruption he encountered in a foreign judicial system, and the need for vigilance to support due process.

During this past year, both Judge Claudia Barber and I received awards related to our collaboration to present the play, "Full Truth," about Thurgood Marshall's struggle against segregation, as a scholarship fundraiser. Judge Barber's organization, the Elder Theodore Barber Scholarship Foundation, was a finalist for the Classy Award, and I was a finalist for the Cafritz Award for Distinguished DC Government Employees.

Many of our members have won other awards and accolades for their public service. We appreciate all of your work to promote the rule of law and the due process rights of the citizens of the District.

The biggest challenge going forward is to increase our membership, which underwent a small decline in the past year, and to reach out to agencies in the District that are underrepresented in our organization. Last year, even with our membership in the mid-40s, we were the third largest affiliate of the National Association of Administrative Law Judiciary. But we can do much better!

Judge Nicholas Cobbs, who has already accomplished so much for our organization, is more than ready to be an excellent president of DCAALJ. We again have an excellent board and active

membership. We look forward to another year of progress. Thank you so much for your participation last year, and please continue to work to make our association stronger.

Membership

**Help us double our membership this year.
Recruit a Friend!**

Don't miss out on next year's events. Renew your membership today.

An Application is Included in this Newsletter!

District of Columbia Association of Administrative Law Judiciary, Inc.

AN AFFILIATE OF THE NATIONAL
ASSOCIATION OF ADMINISTRATIVE LAW JUDICIARY



2011 - 2012 MEMBERSHIP APPLICATION AND DUES INVOICE

Dues for **DCAALJ /NAALJ** membership year 2011 – 2012 are now payable for the period from October 1, 2011 - September 30, 2012. Please remit your payment as soon as possible. The annual payment of \$50.00 includes membership dues for both the **DCAALJ and NAALJ**. (\$100.00 for sustaining member.)

NAME: _____

Last Name

First Name

Middle Name

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CITY, STATE, ZIP CODE: _____

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AGENCY NAME: _____

BUSINESS ADDRESS: _____

PLEASE SEND MAIL TO: ↑ HOME ↑ WORK

EMAIL ADDRESS(ES): _____

ARE YOU AN ATTORNEY?: ↑ YES ↑ No

REFERRED BY: _____

ARE YOU INTERESTED IN SERVING ON AN **DCAALJ** OR **NAALJ** COMMITTEE SUCH AS MEMBERSHIP, PROGRAM DEVELOPMENT, LOGISTICS, CONTINUING EDUCATION, COMMUNICATIONS OR CHARTER REVIEW?

↑ YES I AM INTERESTED IN: _____

↑ No

SIGNATURE: _____ DATE: _____

THANKS FOR YOUR INTEREST!

Send Payment to:

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