



Navigator

Spring 2014

South Carolina.....Sign Up.....Save Money

NAUIAP 2014 to Experience a Taste of Southern Living:
There's Still Time to Register

Come explore the sights, sounds and flavors only found in one place: Charleston, South Carolina! There is still time to register! South Carolina will host the 2014 NAUIAP conference in one of its cities best known for rich history and culture: Charleston. The conference is set for June 22-26, 2014. Early bird registration is \$425.00 until May 15, 2014, and will increase to \$475.00 after this date.

Spring is here and flowers are in full bloom. With a rich history and culture, Charleston has more to offer than just the conference: it has great food, good fellowship and a mix of old and new in its downtown area. With centuries-old cobblestone streets and upscale, fine dining just around the corner, this conference is definitely one not to miss.

The city of Charleston has so much to offer with its well-preserved architecture, a celebrated restaurant community and mannerly people; the Charleston area has been named both Top U.S. City and Top Destination in the World by Condé Nast Traveler 2013 Readers' Choice Awards. This is the third consecutive year the historic coastal destination has received the No. 1 U.S. City ranking.

The conference hotel is the Historic Francis Marion Hotel, Charleston's landmark hotel since 1924. According to its website, the Historic Francis Marion Hotel has a completely restored and elegantly appointed marble lobby, crown moldings and intricate wrought iron. Call now to reserve your room. Hotel reservations must be made before May 23, 2014.



In addition to the Historic Francis Hotel, Charleston has to offer historic inns, family-friendly resorts and everything in between. All perfectly situated to help visitors explore the wonderful sights and attractions on their must-see list. Pack accordingly and prepare for some pleasant dreams.

After your day filled with educational enlightenment, cobblestone, sand and water provide endless opportunities of what to see and do while in Charleston. Famous golf courses, top-rated tennis courts, pristine beaches, monumental battleships and beautifully preserved architecture barely scratch the surface of attractions in Charleston. There is so much to do, but best of all, the city's mild climate means the sights can be enjoyed all year.

Some would say Charleston tastes as good as it looks. Many come to Charleston with one thing on their mind: food. The best grits you'll ever have, prepared in ways you never imagined. Festive dockside oyster roasts, high-end restaurants, outdoor cafés, and fresh-from-the-dock seafood. Every meal is prepared with perfection and served with a warm smile.

Whatever activities you choose to pursue during the conference, we guarantee there is something for everyone. The 2014 conference in Charleston, SC is one you will not want to miss. You will definitely get a taste of what Southern hospitality and charm are all about. Prepare for an informative conference, lots of exciting entertainment and delicious food.

Visit www.nauiap.org, for updates and registration information. Again, we look forward to seeing you in historic Charleston.



President's Column



"You're Off to Great Places"

By Alice Mitchell, President, Georgia

— Dr. Seuss

It is finally here! We are weeks away from our education and training conference in beautiful Charleston, South Carolina.

A gentle reminder: If you tend to be a procrastinator and are not yet registered, there is no time like the present to do so. Early-bird registration continues through May 15, 2014 at the \$425.00 conference rate. After May 15th it is \$475.00. Hotel reservations may be made at the Francis Marion Hotel which is our meeting site.

It is difficult to believe this is my last President's Column before I turn it over to the very capable hands of Karl Jahnke of Oklahoma.... but not before Charleston!

Agenda Chairs Erika Randmere (NH) and Mike Milwee (DC) have worked tirelessly to prepare an educational and informative agenda for attendees.

The Charleston agenda offers presentations and workshops on a variety of UI appeals topics and is approved in many states for multiple hours of Continuing Legal Education (CLE). An average of 19-24 hours of CLE is approved each year. I encourage you to take advantage of this opportunity to earn CLE and enjoy the conference. Board of Governor's Secretary Brad Collins (AR) will be available to assist you with this during the conference.

For those of you joining us for the first time, and especially those enrolling in the Certified UI Appeals Professionals (CAP) certificate program...welcome! Presented by Allan Toubman (ME) and Tim McCardle (CA) of the Administrative Justice Institute (AJI), the CAP program is a great opportunity for newer appeals professionals to receive excellent training in UI administrative law and procedure. It is also a great refresher course for the more seasoned appeals professionals among us.

We also have an outstanding opportunity to meet one of the national office representatives during the conference. Mr. James Garner, Deputy Administrator Office of Unemployment Insurance, U.S. Department of Labor Employment and Training Administration will join us on Monday morning to provide an update from the national office.

Additionally, Cheryl M. Stanton, Executive Director of the South Carolina Department of Employment and Workforce will address us on Monday morning. Ms. Stanton served in the White House under President George W. Bush as principal legal liaison to the United States Department of Labor, National Labor Relations Board and Equal Employment Opportunity Commission.

As to events surrounding the conference agenda, we should be very impressed by and grateful for the excellent work being done by Tim Dangerfield (SC) and his team in South Carolina.

Tim has lined up an array of legal experts from South Carolina for our plenary sessions and workshops including: Cathy L. Hazelwood, General Counsel and Deputy Director of the South Carolina State Ethics Commission, Debra Sherman Tedeschi, Deputy General Counsel, South Carolina Department of Employment & Workforce, Professor Kevin R. Eberle of the Charleston School of Law, E.B. McLeod III, Assistant General Counsel South Carolina Department of Employment & Workforce and Special Assistant Attorney General for South Carolina's Attorney General's Office, Carolyn C. Matthews, Administrative Law Judge for the South Carolina Administrative Law Court and attorneys Jay Bender of Baker, Ravenel & Bender and Nekki Shutt of Callison, Tighe & Robinson.

After attending the training sessions, there will be numerous opportunities to relax and enjoy your stay in Charleston. This year's conference includes a Sunday night reception, a carriage ride around Charleston on Monday night, and dining and dancing on Tuesday night. This is one conference not to be missed!

It has been an honor to serve as your President for the past year and to work with the members of the Board of Governors on behalf of NAUIAP. Their enthusiasm and dedication ensures that our organization is in good hands for the future!

See you in Charleston!

National Judicial College Scholarship Opportunity for NAUIAP Members!!!!

Are you a NAUIAP member who is looking for additional training opportunities? If so, NAUIAP is now accepting applications or nominations for scholarships donated by The National Judicial College (NJC) in Reno, Nevada. Two scholarships will be awarded during the NAUIAP Training Conference in Charleston, South Carolina. The scholarships cover half the cost of tuition to one of NJC's many outstanding onsite and online courses. See www.judges.org for complete course information, dates, tuition, fees and accommodations.

The NAUIAP Board of Governors will award the scholarships based on the following criteria:

- Duration of work in unemployment insurance appeals
- Duration of NAUIAP membership
- Relevance of preferred course to NAUIAP objectives
- Quality of the required statement
- Commitment to attend course
- Preference for first-time NJC attendees

If you are interested in applying or nominating someone for a scholarship, email craig.gustafson@state.mn.us for application materials.

Echos Of Maine Reach The Heartland

By Michael Milwee, (Retired) DC

Many of us have heard of the controversy involving Maine's Governor and his alleged attempts to make the Maine unemployment insurance system more employer friendly. A new controversy has now arisen in Iowa, where a dismissed former Chief of Unemployment Insurance Appeals Judge, Joseph Walsh, is suing Iowa Workforce Director Teresa Wahlert. Walsh asserts he was improperly fired in a political purge thinly disguised as a budget cutting layoff. He alleges his firing was due to his refusal to go along with Wahlert's alleged attempts to influence the outcome of unemployment insurance appeals to favor employers. The case also raises issues of the Social Security Act's Fair Hearing and Merit Staffing requirements as well as Iowa's own Whistleblower statute.

Matters arose earlier, but "made the papers" on March 19, 2014. On that date, Walsh supporter, State Senator Bill Dotzler, issues a news release and sent a letter to the United States Department of Labor (USDOL) asking for a DOL investigation. Senator Dotzler also called for Wahlert to resign. The senator cited, inter alia, the USDOL's final letter to Maine on February 27, 2014, emphasizing that "hearings should be fair and impartial in fact and in appearance". (There is a link to the text of the Department of Labor letter to Maine on the NAUIAP website).

Among the items raised by State Senator Dotzler:

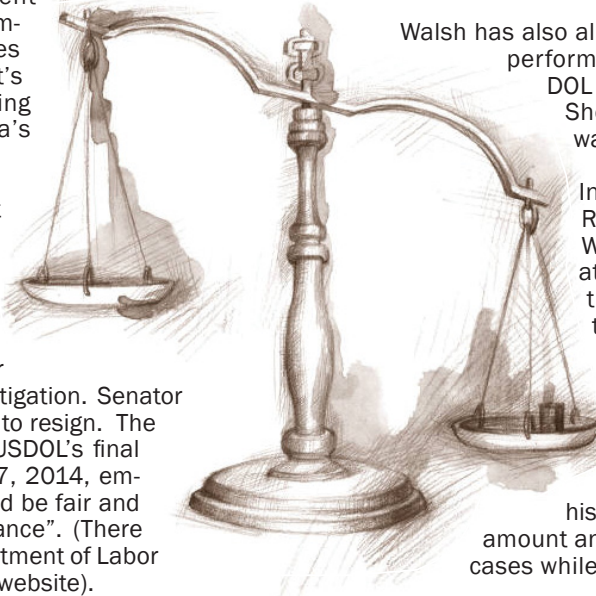
- Wahlert created a hostile work environment for those ALJs who did not follow her pro employer line.
- Wahlert increased her pressure on the ALJs by becoming their direct supervisor after Walsh's dismissal on July 2013.

- Wahlert purportedly asked ALJs to develop "tip sheets" for employers to help them with cases.
- Wahlert directed some ALJs to be involved with "out reach to the community and business leaders."
- Wahlert required ALJ team leaders to send regular emails to her listing the identify of ALJs, the number of cases heard and decisions filed each including how often ALJs ruled for employers and for employees.

Walsh has also alleged that Wahlert stripped him of his merit performance protection causing him to appeal to DOL which ordered the status to be reinstated. Shortly after that reinstatement, Walsh's job was eliminated.

In a subsequent article in the Des Moines Register (April 3, 2014) Wahlert rebutted Walsh's claims as "a frivolous attempt" to draw attention away from poor performance and the elimination of the Chief ALJ position due to federal budget cuts. Wahlert also pointed to poor performance by Walsh noting that Iowa had been placed on a corrective action plan by DOL in 2012 which caused the loss of federal funds and that Iowa Workforce had since risen from 47th to a 12th ranking by USDOL. [Walsh asserts that his department was underfunded by a significant amount and had risen from 36th to 18th in processing cases while he was there.]

As matters stand, the Fair Hearing Merit Staffing issues have had an exchange of letters between DOL and Iowa and DOL may be taking some preliminary steps towards an investigation. The lawsuit is newly filed and no substantive actions have been taken as of this writing. In addition, due to the importance of these developments on the national unemployment insurance system there will be a comprehensive discussion of the topic at the annual Spring NAUIAP training conference in Charleston. A speaker from Maine will lead a discussion of the issue.



NAUIAP *is Tickled Pink to be going to Charleston... don't miss it!*

Join us for the 2014 Conference in Charleston, South Carolina June 22nd - 26th



"Last Year We were Flattered, This Year We're On Top of The World"...Charleston has been named both Top U.S. City and Top Destination in the World by Condé Nast Traveler 2012 Readers' Choice Awards

Find out more!

www.charlestononly.com/blog/we-are-tickled-pink/v

Training and Traveling to Mississippi and Beyond

Allan Toubman
Administrative Justice Institute

Tim McArdle and I first put on the Certified Appeals Professionals program in Newport RI annual conference in 2005.

Why do I remember that so well? It was the luncheon on the patio of the conference hotel overlooking the famous Newport yacht scene that comes back to remind me. Lynn Fitch, then Chairman of the Board of Review for the State of Mississippi invited Tim and me to lunch. She had been a participant in the last National Judicial College course Administrative Law: Unemployment Compensation in Reno NV. We talked about how to professionalize the appeals personnel around the country. Lynn's goal was to professionalize the Mississippi hearing officers. She invited us to Jackson to present a similar program as the NJC program.

I wondered how a Maine boy used to the cold Atlantic would manage in the Mississippi August. But Lynn was persuasive and we arrived at the end of August. We were treated with tremendous respect and awarded unlimited hospitality. We enjoyed the southern cuisine, visits to homes of the staff and generally had a unique chance to make a small contribution to our Mississippian colleagues. We became familiar with John Garrett, General Counsel (who is now also Chair of the Board and recently completed his term as President of NAUIAP).

A week after our visit, Katrina hit the Mississippi Gulf Coast. Up to 90% of the structures along the coast were destroyed. Boats and casino barges rammed buildings, pushing cars and houses inland. Katrina turned a rather pedestrian unemployment insurance program into a lifeline for hundreds of thousands of people who were swept up in the storm.

At the adjudication level, other states stepped in to take and pay claims under DUA. Appeals sat fallow as all hands were put on claims. By December, claims were coming under control but as is inevitable in this line of work, the appeals were growing in volume and age.

Tim and I hoped that our friends in South would not blame us for the coincidence of being there just before Katrina. We offered our assistance. Lynn suggested that Mississippi enlist the help of

hearing officers around the country to hear and decide telephone hearings. The USDOL put out the word for present and retired hearing officers. About 20 were selected to come to Jackson in January 2006 to receive a NJC training type course.

As part of the education of the temporary hearing officers, we all went on a road trip for a first-hand look at the reality of the impact. We observed the sore wounds throughout the southern part of the state.

The hearing officers returned to their states to conduct hearings for Mississippi. Shortly after I was asked to assist in the rebuilding and reorganizing the Mississippi appeals staff. It was a job that I could not refuse and I put in my Maine retirement papers. For the next two years I provided consulting services to MDES. Subsequently Lynn was elected to the Board and hosted the NAUIAP Annual Conference in 2009. Before departing the position at MDES, Lynn obtained legislative approval to make the hearing officers "Administrative Law Judges". They were sworn in at the old Mississippi Supreme Court. Lynn is now State Treasurer.

Since starting my second career in Mississippi as the principal for the Administrative Justice Institute, I have had the honor to provide training and consulting services to appeals staff in over 20 states. I am often asked what is the difference between States. The usual assumption is that some states are more claimant friendly and some are more employer friendly.

While I have observed different orientations from politicians, my response remains the same. As appeals professionals our obligation is to be ethical and meet the due process requirements of a fair hearing. We have no tolerance for bias in the appeals process. We need to focus on providing a fair hearing. If we focus on those goals, we are more likely to get it right and the public will perceive that they have received a fair hearing. It doesn't matter if I am in Maine, Mississippi, Minnesota, or Massachusetts. The obligations do not change.

That is what I learned from traveling and training.

aatoubman@msn.com

North Carolina Information Sharing Practices Draw Federal Interest

by Michael Milwee, (Retired) DC

Recent news articles out of North Carolina show that the North Carolina Department of Commerce which houses UI, had a long standing practice of allowing the public to purchase daily copies of UI appeal notices, which allows these nonparties to know when a benefit claim was rejected. Allegedly, this practice came to light when an attorney who received the notices, sent a solicitation letter to a perspective client which arrived prior to the appeal notice. Subsequently, a protest of the policy eventually came to USDOL's attention.

DOL raised confidentiality concerns and advised North Carolina to discontinue the practice. North Carolina agency chief Dale Folwell had originally proposed a more restrictive disclosure policy then indicated he would oppose release, citing the possibility of jeopardizing federal administrative funding for the North Carolina UI system.

Enter North Carolina attorney Monica Wilson, one of the attorneys who purchased the daily copies, sought to force the practice to continue by seeking an injunction under the North Carolina Public Records law. A state judge agreed with her, and issued a preliminary injunction against changes until the case is resolved, giving little or no weight to the federal position.

At present, several parties including DOL and state legislators are talking and there has been some discussion as to a legislative fix, with notices/UI records being reclassified as confidential tax records under the Public Records law. Interesting note: Florida faced a similar situation several years ago and prevailed under the language of the Florida Open Records Act. State of Fla. Agency for Workforce Innovation v. Richie, 951So.2d111 (Fla. App. 2007).

Outstanding in the Field with COWs, GOATs & PIGs

By Gregory B. Ives
UC Appeal Tribunal Chairman II, NHES

We all want to be good at what we do, to be outstanding in our field.

Unemployment appeals professionals are asked to deliver timely, effective, hearings that consistently provide due process for each appellant. The right tools help us to work at our best.

Many professionals work remotely, either due to the size of the state or to save resources or both. New Hampshire has some hearing officers that are stationed away from the Appeal Tribunal Unit office.

Managing independent, confident, and strong-willed unemployment appeal professionals in person is difficult enough. Trying to get them all moving in the same direction remotely has been compared to pushing a wheelbarrow of frogs. It may start well enough. Since processes devolve over time, some may choose to hop out after a random thought, moving away from the desired direction.



So how does a remote manager deliver the needed tools to these professionals? And even when the tools are delivered, how do we make the new tools more desirable than the current, seemingly more comfortable, tools?

Educational methodology suggests that breaking information down into manageable sizes is an effective teaching technique.

Using a booklet Summary of New Hampshire Supreme Court Cases created by the NHES Legal Section as our starting point, the Appeal Tribunal Unit administrator and I developed an idea to help encourage and develop consistency.

Each week, I would provide weekly information about a different case. I like cleverness to help anchor ideas, so each weekly email was called a COW, or Case of the Week. A COW had a short description and summary of a case. Each was designed to be reviewed relatively quickly, 10-20 minutes at most.



After a while, as the cases became more obscure and less helpful, the COW morphed into the Criterion of the Week. Handbook 382 quality review criteria would be re-stated in different words.

When these were all covered, the COW morphed into Concern of the Week, which fleshed out problems that had



came up recently. This was actually the most useful, because many times this served as a starting point for dialog among the hearing officers. We would discuss the finer points of a particular situation. These discussions develop and address the random thoughts. We sometimes find a new and improved direction as a result. Even if there is no change of direction, everyone is back on board, at least for a while.

Over time, even a COW may be overlooked. While the COW still



has its place in the barn, we also needed GOATs and even PIGs!

A quick-hitting factoid, I use a GOAT to Give Out Additional Training to help keep staff off the horns of a dilemma. I like to kick off a discussion by asking if my GOAT was gotten!

If issues still persist after a COW and a refresher COW, we share a PIG! The use of Pretty Important Guidance is relatively new. It brings together best practices and all of those things that we need to consider: the parties, legislatures, courts, agency administration, federal requirements, and our own knowledge of law, rules, case law, and hearing procedures.



In a famous example of balancing effectiveness with cost savings, John D. Rockefeller found that 39 drops of solder were adequate to seal kerosene cans instead of the 40 drops commonly used. While this seems insignificant, it is a 2.5% savings of material, time and labor. Find two of these, and you are at 5%!

To find the 39 drops that work for you, talk with staff often, about achievements as well as problems. Regular communication with staff helps you find the right seal for your work. Staff members that are only spoken to when they need a "talking to" will be wary of providing helpful solutions, even when called on to do so.

Teaching can be fun and learning an exploration. People are more likely to remember, retain, and use information that was enjoyable to obtain. COWs, GOATs, and PIGs are fun tools that staff have found enjoyable and useful. To be outstanding in the field, do not get stalled in the "but we always did it this way" barn. Use COWs, GOAT, and PIGs!

for past issues of the Navigator

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State Spotlight

Submitted by Christopher Tyler,
Oklahoma

ALASKA

The Alaska Employment Security Division has a lower and higher authority appeals process. The lower authority consists of four hearing officers, two in the Anchorage office with two office assistants, and two in the Juneau office with the chief of appeals. The chief of appeals supervises the staff and is in charge of presenting the Commissioner with higher authority proposed decisions for her review and signature.

Each hearing officer is scheduled 20 hearings per week and they are all on an alternate workweek schedule, having every other Friday off. The annual workload was just under 3,000 cases in 2013. All cases are scheduled to be heard telephonically, and it is only if both parties reside or work in Juneau or Anchorage that an in-person hearing may be granted. Alaska was one of the first states to switch to telephonic hearings, and some of the earlier hearing officers are still around to tell tales of flying to remote villages in single engine aircraft.....

FLORIDA

The state of Florida has a higher and lower authority. The lower authority, The Office of Reemployment Assistance Appeals, consists of a program manager, six office administrators and approximately 110 referees. The annual workload of that office is 100,000 + cases and each Appeals Referee hears approximately 35 hearings a week. The Office of Appeals has offices in Tallahassee, Jacksonville, and Fort Lauderdale.

The higher authority, the Reemployment Assistance Appeals Commission, consists of a chairman and two part time commissioners appointed by the Governor and confirmed by the Senate for four year terms. The Commission has a full time staff of 42. Twenty five attorneys are involved in the preparation of case recommendations presented to the Commission and the defense of Commission orders in the Florida appellate court system.

D.C.

DC unemployment compensation appeals are adjudicated by the Unemployment Compensation division of the DC Office of Administrative Appeals, a Central Panel that is not part of the DC Department of Employment Services. The Office receives 2200 (2012) 2400(2013) appeals per year. There are 12-13 Administrative Law Judges working on the U.I. caseload according to Principal Judge Steven Wellner. However, only 1 or 2 work unemployment close to full time and the rest hear appeals in other types of cases within the Central Panel's jurisdiction.

There is no Higher Authority in D.C. and cases must be appealed to the D.C. Court of Appeals. In addition, D.C. has retained a belief in holding in-person hearings whenever possible. Thus, in non-interstate cases, a party may request a telephone hearing, but requests may be and are often denied.

A Good Read

Cynthia Thornton, California



***The Art of Racing in the Rain* by Garth Stein**

I also avoided reading this book even though it got great reviews because it has a picture of a Golden Retriever on the cover. I love dogs AND Golden Retrievers, but it just seemed too cute by half. Well, I read it and it's a really good book. The story is told from the point of view of the dog and doesn't come across as too clever. If anything, it's eerily realistic. The dog's owner is a semi-pro race car driver, so like *The Art of Fielding*, the book intersperses excerpts from racing theory and philosophy with the story. The story runs through what happens in the dog owner's career and personal life and has some interesting tips on racing that do seem to apply to life in general. It's a quick and easy read.

Clean Gut: The Breakthrough Plan for Eliminating the Root Cause of Disease and Revolutionizing Your Health

by Alejandro Junger, M.D.

A doctor living in Los Angeles wrote this book. The theory is that the bacteria in your gut can keep you healthy or make you sick. The book includes a thirty day "gut cleansing" diet to change gut bacteria that is so Draconian that I have not worked up the energy to try it yet. (You can bet that when I do try it, my husband will be suffering right along with me!) The book is recommended by a number of prominent doctors for the treatment of various types of cancers, Lupus, etc. The book is centered around people with various illnesses, but one of the author's friends who was perfectly healthy tried the diet and his reaction after doing the diet was, 'Even breathing is pleasurable.' I was interested in the book for weight loss purposes because I read this study (not mentioned in the book, but it should have been) where bacteria from the guts of slender people was transplanted into the guts of obese people. Without changes diet or exercise, every one of the obese people lost significantly more weight than the control group. (This greatly appeals to me because I've always firmly believed that there was some magic no-side-effect weight loss secret!). Anyway, the diet itself looks like a pain in the gut to follow, but it's only for thirty days, so as soon as I can talk my husband into it, I'm trying it!

A Visit from the Goon Squad by Jennifer Egan

This novel follows a kleptomaniac who initially works as a young legal secretary for a man in the music business. Each chapter advances the story by inhabiting a different character and giving that character's viewpoint. The story itself is fairly good, but being able to tell the story from the different character's viewpoints is exceptional. This is a fairly easy and quick read (don't other people abbreviate this to "good Summer read"?).

Plainsong by Kent Haruf

This is another book that got great reviews. It takes place in rural America (Colorado-ish) sometime in the last fifty years. My book-club had a big debate about which decade includes the story. There were advocates for the fifties all the way up to the present. (My personal position was that it took place in the late seventies or early eighties). The story follows some unique characters through difficult life events. The theme of the book is about how character will always win out. There are some very sad situations where family members are simply not present to offer support in difficult times. The book has a reasonably happy ending.

NOTICE:

ELECTION OF BOARD OF GOVERNORS SET FOR Charleston, SC

The NAUIAP Board of Governors held its Spring meeting in Savannah, GA in February 2014. After this meeting, the Board discussed new officers and members and on April 21st approved the new slate. The Board now proposes the following slate of officers for the 2014-2015 term. The slate will be considered and voted upon by the NAUIAP membership at the general membership meeting at the Charleston, South Carolina Training Conference to be held from June 22nd to June 26th, 2014. Karl Jahnke (OK) was elected to serve as President for 2014-2015 term at the 2013 meeting held in Los Angeles, CA. Alice Mitchell (GA) will remain on the board for one year as the Past President.

Officers:

Kathryn A Todd (OH) President Elect
Erika Randemere (NH) 1st Vice-President
Dorothy Johnson (FL) 2nd Vice President
Daniel Doherty (MD) Treasurer
Brad Collins(AR) Secretary

At-Large Members:

Sabrina Rahn (IN)
Tim Dangerfield (SC)
Chris Tyler (OK)
Cheri Ruch (ID)
Jayson Myers (NY)

PROXY VOTING

The Constitution and Bylaws of NAUIAP are available on the website at www.nauiap.org. If you are unable to attend the annual meeting in Charleston, SC you may cast your vote on the proposed slate by proxy. To be eligible to vote, you must be an active member of NAUIAP and current in payment of all annual dues as of June 21, 2014. Please submit your vote via the NAUIAP website to the website administrator under the "Contact" heading.

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