



1300 NORTH 17th STREET, 11th FLOOR
ARLINGTON, VIRGINIA 22209

OFFICE: (703) 812-0400
FAX: (703) 812-0486
www.fhhlaw.com
www.commlawblog.com

Report of Review of
2018 Daytime Television Emmy Awards
presented by the
National Academy of Television
Arts & Sciences

by

Kevin M. Goldberg

&

Robert M. Winteringham

October 29, 2018

(703) 812-0400

Table of Contents

<u>Topic</u>	<u>Page Number</u>
Pertinent Facts Giving Rise to This Engagement	1
Summary of Findings	5
Rule Enforcement	6
Inconsistent Rule Enforcement	6
Potential Appearance of Favoritism	8
Recommendations	9
Submissions and Certification of Submissions	10
Recommendations	12
Competition Judging	13
Recommendations	15
Vote Tabulation	15
Recommendations	16
Investigation and Resolution	16
Recommendations	18
Trust in Competition Process	19
Recommendations	20



1300 NORTH 17th STREET, 11th FLOOR
ARLINGTON, VIRGINIA 22209

OFFICE: (703) 812-0400
FAX: (703) 812-0486
www.fhhlaw.com
www.commlawblog.com

The National Academy of Television Arts and Sciences (“NATAS”) engaged Fletcher, Heald & Hildreth, PLC (“FHH”) to conduct a review of its administration of the 2018 Daytime Emmy Award competition, the results of which were announced on April 27 and 29, 2018. Kevin Goldberg and Robert Winteringham, of FHH, visited the NATAS offices on September 19 and 20, 2018 to conduct interviews with NATAS staff members for this review. Mr. Goldberg and Mr. Winteringham also reviewed emails and other documentation provided by NATAS staff and conducted interviews with relevant third parties during the review process.¹

Pertinent Facts Giving Rise to This Engagement:

On May 29, 2018, NATAS Interim President Adam Sharp and Senior Vice President David Michaels issued a memorandum to Chuck Dages, NATAS Board Chair, and Linda Giannecchini, Chair of the National Awards Committee (the “Awards Committee”) presenting the results of an internal investigation into the events discussed herein. Our review found no evidence to dispute any of the findings in the May 29, 2018 memorandum and we therefore incorporate its findings of fact herein.² However, it is also worth reviewing certain facts pertinent to the conclusions reached during the review and discussed below.

NATAS issued its rules for the 2018 Daytime Emmy Award competition in October 2017. Included in this competition were categories to recognize “Outstanding Supporting Actor in a

¹ In total, our interviews included: Anthony Anderson, Eva Basler, Sonia Blangiardo, Michael Caruso, Crystal Chappell, Patrika Darbo, Harlan Boll, Shari Ferrara, Linda Giannecchini, Steve Kent, David Michaels, David Parks, Paul Pillitteri, Patrick Scaglione, Don Shaefitz, Adam Sharp, Luke Smith, and Brent Stanton. We also attempted to interview Jennifer Bassey, but were not successful in scheduling an interview with her. Ms. Bassey’s representative informed us in an email that Ms. Bassey’s attorney would instead be sending a letter on her behalf regarding the review. As of the date of this Report, we have not received the aforementioned letter.

² We note our belief that, in discussing the timeline of events, the May 29, 2018 NATAS memorandum mistakenly refers to an email from Michael Caruso as dated May 18, 2018. We believe the email referred to in the memorandum was actually dated May 14, 2018.

Digital Daytime Drama Series” (“Category 39”) and “Outstanding Guest Performer in a Digital Daytime Drama Series” (“Category 40”).

The rules for Category 39 stated:

Performers must submit a reel up to 20 minutes in total running time. It may consist of any clips from up to FOUR episodes (as aired – no montages) from the 2017 calendar year. No internal editing or enhancement is permitted. No more than 25% of submission may be from material prior to 2017 (ie. Flashbacks).³

The initially-issued rules for Category 40 stated, in part:

If a Performer has previously entered this category before 2017, or has appeared as this character before 2017, they are not eligible here, and must enter a Supporting category.

And:

Performers must submit a reel up to 20 minutes in total running time. It may consist of all appearances from *FOUR episodes* (as aired – no montages) from the 2017 calendar year. No internal editing or enhancement is permitted. No more than 25% of submission may be from material prior to 2017 (ie. Flashbacks). [Emphasis added].

NATAS staff discovered an error in the rules for Category 40, and issued amended rules in November 2017 regarding the number of episodes that may be included in a submission. The amended rules read:

If a Performer has previously entered this category before 2017, or has appeared as this character before 2017, they are not eligible here, and must enter a Supporting category.⁴

And:

Performers must submit a reel up to 20 minutes in total running time. It may consist of all appearances from *ONE Episode* (as aired – no montages) from the 2017 calendar year. No internal editing or enhancement is permitted. No more than 25% of submission may be from material prior to 2017 (ie. Flashbacks). [Emphasis added].

During the time potential nominees could submit their materials for the competition, NATAS staff notified at least some of the potential nominees that their materials contained technical flaws (*e.g.*, video errors) or did not comply with the rules for the competition.

³ This rule, and its counterpart in Category 40, are referred to herein as the “Episode Rule.”

⁴ This portion of the rule is referred to herein as the “Prior Appearance Rule.”

In Category 39, submissions concerning Eric Nelsen and Brandon Beemer were eventually found to contain materials from more than four (4) installments of the program *The Bay*. As discussed below, these submissions may or may not have violated Episode Rule in Category 39 stating the submissions could not contain material from more than four (4) episodes of a program. At times, the producers of *The Bay* have described the release of installments of *The Bay* as “chapters” instead of “episodes.” Such a characterization gives rise to the argument there are alternate interpretations of the Episode Rule with regard to its application in determining whether Mr. Nelsen’s and Mr. Beemer’s submissions did or did not violate the Episode Rule’s cap of four (4) episodes of a program that may be included in a submission, an argument NATAS has deemed to be reasonable.⁵

In Category 40, NATAS received submissions on behalf of Patrika Darbo and Thomas Calabro, also from *The Bay*. These submissions were not eligible for the competition because both Ms. Darbo and Mr. Calabro had appeared in a prior season of *The Bay*. The rules for Category 40 state a performer is ineligible to compete in Category 40 if the performer “...has appeared as this character before 2017....”

In addition, the submissions regarding Ms. Darbo, Mr. Calabro, and a third submission from *The Bay* for Chad Duell, contained materials from multiple installments from the production. NATAS further received a submission on behalf of Jennifer Bassey, from *Anacostia*, which contained materials from two (2) installments from the production.⁶ The amended rules for Category 40 state submitted materials may contain an appearance from one (1) episode.

On April 25, 2018, Michael Caruso, a producer of *Ladies of the Lake*, informed NATAS, through an email to Brent Stanton and David Michaels, that “[s]omething was brought to my attention today and I wanted to reach out to you to clarify something for me.” The subject of the email was potential rule violations in Category 40 and Mr. Caruso specifically noted the November 2017 change in the Category 40 rules reducing the total number of episodes that could be included in a submission from four (4) to one (1). In the email, Mr. Caruso alleged certain submissions in Category 40 included performances from multiple episodes in violation of the Category 40 rules limiting a submission to clips from one (1) episode. The May 29, 2018 internal NATAS memorandum then notes: “[i]n a subsequent phone call with David [Michaels], Mr. Caruso indicated that his concerns did not require immediate action and could wait to be addressed after the April 27th and 29th telecasts.” Mr. Caruso confirmed this characterization.

⁵ We note there are sound countervailing arguments opposing such a characterization which were raised in several interviews and documents we reviewed. Such materials and interviews cited industry practice and union agreements that universally refer to installments of a program as episodes and *The Bay* also promoting its program as being released in episodes, not chapters. It is unclear to what extent such arguments were considered in preparing the May 29, 2018 NATAS memorandum.

⁶ As previously noted, *The Bay* has referred to its installments as chapters. *Anacostia* has consistently referred to its installments as episodes that, to our knowledge, has never been questioned.

During the awards ceremony, Mr. Nelsen was announced as the winner in Category 39 and Ms. Darbo was announced as the winner in Category 40.

On May 14, 2018, Mr. Caruso sent another email to NATAS staff detailing his allegations regarding Category 39 and 40 violations, specifically alleging violations arising from the number of episodes included in various submissions from *The Bay*. NATAS commenced an internal investigation of the potential rule violations in response to Mr. Caruso's allegations.

The NATAS internal review resulted in staff confirming the submissions for Mr. Nelsen and Mr. Beemer in Category 39 and Ms. Darbo, Mr. Calabro, and Mr. Duell in Category 40 exceeded the number of episodes allowed in a submission under the Episode Rule in their respective categories. The internal investigation also discovered Ms. Darbo and Mr. Calabro had appeared before 2017 in *The Bay* and were therefore ineligible to compete in Category 40 due to the Prior Appearance Rule.

On May 22, 2018, the Awards Committee met and determined it would rescind the Emmy Award to Ms. Darbo in Category 40 but allow Mr. Nelsen to keep his award in Category 39. The reasoning for the decision is fully detailed in the May 29, 2018 NATAS memorandum.

Based on statements made during multiple interviews with NATAS staff, we believe the following then occurred:

1. The Awards Committee determined it would award the Emmy Award to the nominee in Category 40 who finished second in the competition's voting, if such person was eligible.
2. The Awards Committee then instructed NATAS staff to determine who finished second in Category 40 and confirm that nominee's eligibility to win the Emmy Award.
3. NATAS staff contacted the competition's accountants who reported Ms. Bassey finished second in Category 40 voting, which NATAS staff then reported back to the Awards Committee.
4. NATAS staff conducted research and confirmed to the Awards Committee that all of the nominees except Ms. Darbo and Mr. Caruso were eligible to compete in Category 40.
5. One or more NATAS staff members⁷ conveyed to Ms. Bassey's representatives in a phone call that she would be awarded the Category 40 Emmy Award before any award determination was publicly announced.

On May 24, 2018, Mr. Caruso again emailed NATAS staff to allege Ms. Bassey's submission contained scenes from two (2) episodes of *Anacostia*, in violation of Category 40's rule stating a submission could only contain material from one (1) episode. Concurrently, Eva Basler of *The*

⁷ During our interviews, we heard contradictory reports from interviewees concerning the number of NATAS staff that were included on the initial call to Ms. Bassey's representatives to inform her that she would be awarded an Emmy Award. Internal NATAS interviewees reported the call included one (1) NATAS staff member. A third party reported two (2) NATAS staff members were on this call.

Bold and The Beautiful emailed NATAS staff regarding Ms. Bassey’s submission containing material from two (2) episodes of *Anacostia* and stating Ms. Bassey’s submission was not eligible to compete in Category 40.

On May 29, 2018, NATAS staff issued its memorandum to the NATAS Board Chair and the Chair of the Awards Committee recommending the Awards Committee rescind the nominations of Ms. Darbo and Mr. Calabro on the grounds they were not eligible to compete in Category 40 because they had appeared in *The Bay* in a prior season, thus violating the Prior Appearance Rule. NATAS staff further recommended no award be given in Category 40. However, NATAS staff recommended no action be taken regarding any of the submissions that violated the Episode Rule in either Category 39 or Category 40, thus preserving all remaining nominations and the award result in Category 39.

On May 30, 2018, Linda Giannecchini emailed NATAS staff stating all members of the Awards Committee (with two exceptions for committee members who had not yet responded) approved of the NATAS staff’s recommendations to not award any Emmy Award in Category 40 but maintain the results in Category 39, thus allowing Eric Nelsen to keep his award.

NATAS received several communications alleging improprieties in the resolution of the competition for Categories 39 and 40 after the Awards Committee decision was made public. Some of these communications alleged further improprieties in the way NATAS administers the Daytime Emmy Award competition more generally. As such, NATAS engaged FHH to analyze these allegations and make recommendations on how NATAS could improve the process for conducting the Daytime Emmy Awards competition.

Summary of Findings:

Based on our review, we did not find any indication NATAS or NATAS staff intentionally attempted to influence or alter the initial outcome of the award competition. However, we observed many instances in which circumstances and NATAS staff decisions gave rise to, at minimum, the appearance of impropriety and favoritism,⁸ which have caused observers to believe the awards competition and the resolution of the awarding of Emmy Awards in Categories 39 and 40 was not conducted in an impartial manner. As one interviewee aptly described the circumstances described herein, this was “sloppy.”

In general, and as more fully discussed below, to ensure the integrity of the Daytime Emmy

⁸ Based on our interviews and review of documents, we did not find any evidence to support a claim that NATAS or any of its staff members intentionally discriminated against any nominee or winner on the basis of race, gender, or age.

Awards going forward, NATAS should adopt the following recommendations:

- To minimize individual discretion and inconsistency in rule application, NATAS should adopt measures to ensure the entire process for conducting the Daytime Emmy Awards competition, including the procedures for challenging nominations and results as well as appeals, is memorialized in writing and distributed publicly in a transparent manner.
- NATAS should adopt measures to ensure NATAS staff consistently and strictly enforce the rules and do not show favoritism (intentional or unintentional) to any entries.
- NATAS should not rely on “self-policing” of entrants to ensure submissions comply with competition rules. As NATAS administers the competition, NATAS should adopt written internal measures to ensure entrants are in compliance with competition rules.
- NATAS should also adopt a mechanism whereby entrants themselves certify they are eligible for entry into the awards competition generally and specifically in the category they are competing.
- NATAS should ensure it allocates its staff resources so that: responsibilities for conducting the awards competition and producing the awards ceremony are adequately separated; and resources are sufficiently allocated to ensure all NATAS awards competitions can be properly administered.

This Report of Review is structured to present an in depth discussion of allegations of impropriety made against NATAS in conducting the 2018 Daytime Emmy Awards competition and provide a review of NATAS actions relevant to those allegations. Each section culminates in recommendations for NATAS to improve its practices. For convenience, the issues are grouped below by theme.

Rule Enforcement:

We found ample evidence demonstrating NATAS inconsistently applied the rules for its 2018 Daytime Emmy Awards competition. Within Categories 39 and 40, there are two (2) rule violations relevant to the events discussed herein: the Prior Appearance Rule and the Episode Rule.

Inconsistent Rule Enforcement:

As previously discussed, Category 40 contains the Prior Appearance Rule. It states: “[i]f a Performer has previously entered this category before 2017, or has appeared as this character before 2017, they are not eligible here....” The submissions for Ms. Darbo and Mr. Calabro violated this rule, which resulted in both of their nominations being rescinded and, ultimately, Ms. Darbo’s award being forfeited.

Additionally, Categories 39 and 40 each contain a version of the Episode Rule, which limits the number of episodes a submission for nomination may contain (four (4) in Category 39 and one

(1) in Category 40).⁹ The submissions for Mr. Nelsen and Mr. Beemer violated the Episode Rule in Category 39; the submissions for Ms. Darbo, Mr. Calabro, and Mr. Duell from *The Bay*¹⁰ and Ms. Bassegy from *Anacostia* violated the Episode Rule in Category 40. None of the violations of the Episode Rule caused a nomination or award to be rescinded.

NATAS staff offered numerous rationales during interviews for the various forms of inconsistent enforcement of the Daytime Emmy Awards competition rules.

The explanation for strict enforcement of the Prior Appearance Rule, but inconsistent enforcement of the Episode Rule, was due to the timing of when the rule violations were discovered and entrants' ability to fix the Episode Rule violations. NATAS staff explained the submissions could have been amended to avoid violating the Episode Rule if discovered prior to judging, but there was no way to change the ineligibility of Ms. Darbo's and Mr. Calabro's submissions under the Prior Appearance Rule.

NATAS staff provided differing rationales for inconsistently applying the Episode Rule in Categories 39 and 40. First, as more thoroughly discussed in the May 29, 2018 NATAS memorandum, *The Bay* is distributed in what its producers have referred to as "chapters," with multiple "chapters" released simultaneously. In Category 39, Mr. Nelsen and Mr. Beemer appeared in more than four (4) chapters in their submissions. However, NATAS staff also explained, it could be argued that chapters released simultaneously could be considered one episode. As such, NATAS staff stated they believed there is a good faith reasonable argument that Mr. Nelsen and Mr. Beemer may not have, in fact, violated the Episode Rule. In contrast, Ms. Bassegy's program, *Anacostia*, was released in episodes, and she appeared in two (2) episodes in her submission (in excess of the one (1) episode limit under the Episode Rule in Category 40). As such, NATAS staff stated Ms. Bassegy unquestionably violated the Category 40 Episode Rule. NATAS staff stated it was therefore logical to: (1) not award Ms. Bassegy an Emmy Award because her submission irrefutably violated the Episode Rule in Category 40; but (2) allow Mr. Nelsen to keep his Emmy Award because of the reasonable argument his submission did not violate the Episode Rule in Category 39.

NATAS staff also stated their belief that a different standard should apply for *rescinding* an Emmy Award, as opposed to *not awarding* the Emmy Award in the first place. In the case at hand, Mr. Nelsen had *already won* his Emmy Award but Ms. Bassegy had *not yet been awarded* hers when the Episode Rule violations were discovered. NATAS staff stated, because there was a good faith argument the Episode Rule was ambiguous, they determined it was fair to neither penalize nor reward anyone due to an Episode Rule violation. The result of this non-enforcement of the Episode Rule was Mr. Nelsen was not penalized but Ms. Bassegy was not

⁹ The term "episode" is not defined in the competition's written general or category specific rules but is used as a term of art throughout.

¹⁰ As previously noted, *The Bay* refers to installments of the program as chapters.

rewarded, despite both of their submissions violating the Episode Rule in their respective categories.

Finally, NATAS staff stated NATAS has already decided the Episode Rule will be eliminated and replaced by a total runtime or similar objective rule that is clear-cut in its application beginning with the 2019 Daytime Emmy Awards. In crafting the new rules, NATAS should remain cognizant of the issues raised by the ambiguity of the Episode Rule. All rules should be clearly written to avoid ambiguity to the extent possible.

Potential Appearance of Favoritism:

Based on our interviews and a review of written correspondence from NATAS staff, it appears NATAS staff also inconsistently informed potential nominees about the amendment of the Episode Rule in Category 40. Until November 2017, the initial Rules for Category 40 contained a mistake concerning the Episode Rule, stating a submission could contain up to four (4) episodes. The rules were amended to read one (1) episode. NATAS staff contacted some potential entrants regarding this correction, but we could not verify whether all potential entrants were specifically contacted and informed about the error and subsequent correction. In the future, NATAS should ensure rules are released publicly and potential entrants are given adequate notice of the competition's rules, and any changes made to the rules. To avoid the appearance of favoritism, such notice should be communicated to all potential entrants in a consistent manner.

Further, NATAS staff stated they reviewed submissions to ensure the submissions were of high quality and also explained entrants were given an opportunity to amend the submission if NATAS staff found a rule violation. We do not doubt NATAS staff were acting in good faith in these efforts. NATAS staff confirmed during our interviews that NATAS staff would inform entrants if they discovered a rule violation in any category. We reviewed correspondence which indicated NATAS staff noticed technical errors (*e.g.*, black spots) in the submissions for Ms. Darbo and Mr. Calabro. However, NATAS staff admitted that, due to time constraints, they could not guarantee submissions in other categories did not contain similar technical issues.

In addition, NATAS staff also acknowledged that, due to time constraints, they could not afford all entrants the same opportunities to fix submissions if an error was found. Early entrants were afforded a better opportunity to amend their submissions when compared to submissions received immediately prior to the submission deadline. Such a system could give rise to allegations of favoritism. To avoid this result, NATAS staff should not afford opportunities for amendment of a submission to some entrants but not others.

Our interviews and review of documentation also revealed members of NATAS staff believed the initial result of the competition in Category 39 was correct but appeared to be more

ambivalent about the initial result in Category 40. Multiple interviewees stated the same NATAS staff member told other staff members Mr. Nelsen “clearly” should have won in Category 39. Similarly, multiple interviewees said that same NATAS staff member stated they would “fight” for Mr. Nelsen to keep his Emmy Award in Category 39; a similar statement was not made regarding any of the nominees or winners in Category 40. The perception created by such a statement was one of a double standard being applied when NATAS staff agreed with the results.

Finally, our review of correspondence revealed discussions between NATAS staff members about whether all rules are written down or “just understood.” Based on this correspondence, it appears NATAS has not memorialized all of its competition rules in writing. For example, it appears the rule prohibiting a program from entering the Daytime Emmy Awards competition if it has been submitted for consideration in the Primetime Emmy Awards competition is not memorialized in writing.¹¹ To ensure a fairness in the competition, NATAS should ensure all competition rules are memorialized in writing and contained in a single place so all potential entrants are afforded equal notice of the competition’s rules.

For any competition to be perceived as legitimate, its rules must be clearly announced and strictly and consistently enforced. The 2018 Daytime Emmy Awards competition did not meet such a standard. While we found no evidence that NATAS staff intentionally rigged the competition results, NATAS staff did not afford equitable treatment to all submissions. Similarly, once rule violations were discovered, NATAS staff did not act objectively to correct competition errors in a consistent manner. This situation was compounded by a lack of complete written rules and procedures for rectifying an already difficult and complex situation, as discussed below.

Recommendations:

- NATAS should ensure there are written policies and procedures in place that govern all aspects of its award competitions.
- NATAS should consistently enforce all of its rules without exception.
- NATAS should ensure all of its rules are: included in its written competition rules; and contained in a single document (or package of documents).

¹¹ In contrast, it appears the Primetime Emmy Awards competition maintains a written rule stating no program previously entered into any other Emmy Awards competition is eligible for the Primetime Emmy Awards competition.

- NATAS should adopt procedures prescribing how staff reviews competition submissions for compliance with competition rules. Such procedures should include redundant and independent review of compliance decisions to ensure consistent application. If a submission violates competition rules, it should not be allowed in the competition.
- NATAS should prohibit staff from having the discretion to selectively or inconsistently allow entrants to amend their submissions as part of the above described written procedures for staff review of competition submissions.
- To the extent possible, NATAS should ensure its rules are written in a manner to avoid ambiguity and the potential for multiple interpretations. If the rules contain terms of art, such as “episode,” the term should be clearly defined. NATAS should also ensure written procedures are in place regarding the application of terms of art to individual submissions (*e.g.*, for adjudicating what constitutes an episode when a production uses a nonstandard term such as chapter in describing a program installment).
- NATAS should ensure written procedures are in place, as part of its overall competition rules, for reporting alleged violations of competition rules. Such procedures should include NATAS staff actions in response to, and for the resolution of, such allegations.
- NATAS should ensure it has written procedures to resolve instances when a nominee or competition winner is found to have violated the competition rules. Such procedures should describe how NATAS determines if a new winner is named when the initial winner is deemed ineligible or instances when NATAS will not award an Emmy Award in a category.
- NATAS should ensure its rule enforcement mechanisms are written in such a way to be mandatory and not subject to NATAS staff discretion.
- NATAS should ensure the written enforcement procedures include provisions specifically assigning responsibility for compliance and document retention provisions to evidence compliance.

Submissions and Certification of Submissions:

Interviews with NATAS staff and review of correspondence confirmed NATAS relies largely on self-policing during the competition’s entry submission process.

NATAS publishes the competition’s rules (*i.e.*, general and category-specific rules) annually in the autumn. Potential entrants are then responsible for ensuring they are eligible to enter the

competition and preparing a submission that meets all of the competition's rules. In many instances, someone on a show's production team prepares the entry. While the entrant may be aware the submission is being prepared, the entrant is not directly involved in the editorial decision making that occurs during the creation and subsequent submission of the entry on their behalf.

In this instance, the entries for *The Bay* were prepared by a production staff member who was not familiar with the rules for Categories 39 and 40. Nor, to our knowledge, was Ms. Bassey involved in the preparation of her submission in Category 40 for *Anacostia*. According to the May 29, 2018 NATAS memorandum, none of the performers affected by the rule violations was even aware of the contents of their submissions.

NATAS staff described the process by which submissions are vetted for entry into the competition after receipt. In total, two (2) NATAS staff members plus a temporary employee are used to review the various submissions across all categories to verify their eligibility. A single person (*i.e.*, one (1) of the NATAS staff members or the temporary employee) reviews all submissions in each category. As noted previously, if flaws are found, entrants have been allowed to revise their submission. However, NATAS does not maintain written guidelines or procedures governing how this review occurs.

A number of factors contributed to problems in the 2018 competition process:

- Entries for the 2018 competition were due December 20, 2017. The NATAS President left the organization shortly before, and had not been replaced before the period when NATAS staff were reviewing competition submissions.
- While submissions were being reviewed in early 2018, NATAS lacked a full-time or interim President.
- NATAS staff admitted, that during the period when they were reviewing submissions, staffing resources were stretched very thin. Numerous interviewees characterized the review process this year as very burdensome due to a large number of entries and scant staff resources.
- The NATAS Board named an Interim President as of May 1, 2018, but the Interim President possessed neither institutional knowledge of competition rules and practices nor full authority regarding staffing allocation.
- Due to the scheduling of the Technology Emmy Awards in April 2018, NATAS staff was responsible for producing four (4) awards competition ceremonies in six (6) weeks.
- The NATAS staff member responsible for Categories 39 and 40 did not have any assistance in reviewing submissions. Further, the NATAS staff member was also effectively producing the competition's awards ceremony despite this staff member's job

description stating the staff member's responsibilities did not include producing the awards ceremony.

- Multiple interviewees characterized the role of producing the awards ceremony as extremely time consuming. We believe this had several effects:
 - NATAS staff admitted the staff member who reviewed submissions for Category 40 “missed” the fact that Ms. Darbo and Mr. Calabro were ineligible to compete in Category 40 due to the Prior Appearance Rule.
 - The staff member additionally did not notice that any of the six (6) defective submissions discussed here in Categories 39 and 40 violated the Episode Rule in their respective categories.
 - It wasn't until NATAS staff undertook a review of the various submissions after Mr. Caruso alerted NATAS staff about the Episode Rule violations that the Prior Appearance Rule violations were discovered.
 - NATAS staff also missed the Episode Rule violation involving Ms. Bassey's entry even upon further review.
- Ultimately, because the NATAS staff member did not recognize the Category 39 and 40 rule violations, all of the submissions in question were erroneously cleared to enter the competition.

Each of these factors contributed to an overall process that appears to assign very little accountability for screening compliance with the rules at the submission stage of the competition. Those who are entering the competition may not be familiar with their submissions and are not asked to confirm their eligibility to enter the competition. Also, those reviewing the submissions are not guided by written procedures or standards. Further, in practice, the NATAS staff members reviewing the entries and administering the competition have accepted competing burdensome responsibilities for producing the competition's awards ceremony. Such competing responsibilities, coupled with broad staff discretion during the review process and lack of adequate staffing support, contributed to submissions erroneously being deemed eligible to compete in Categories 39 and 40.

Recommendations:

- NATAS should amend the rules of its competition to require entrants, regardless of who prepares their submission, to certify their eligibility for entry and compliance with competition rules.
- NATAS should adopt written procedures for how its staff will review competition entries for compliance with its rules. These procedures should describe the factors used during staff review and the process by which entries are cleared for or disqualified from the competition.

- NATAS should ensure adequate staff resources are devoted to the submission review process with, as noted above, redundant and independent review of competition decisions.
- NATAS should consider spacing its multiple awards competitions more evenly throughout the year to help ensure adequate staffing resources can be devoted to each competition.
- NATAS should ensure responsibility for review of submissions is specifically assigned in a written job description or internal policy document.
- Due to the time required to administer the award competition and also produce the awards ceremony, NATAS should ensure separate staff members are assigned to complete each of these tasks. As part of this separation of duties, NATAS should adopt a mechanism to ensure its staff members are not able to circumvent the separation of duties by taking on responsibilities that are not part of their job description without prior management approval.

Competition Judging:

NATAS staff repeatedly emphasized they strive to administer an impartial competition. However, a competition with nearly one hundred (100) categories is inherently a complex and massive undertaking. As described by staff, once submissions are cleared for entry into the competition, NATAS assembles a voting panel to evaluate the submissions in each category. In certain instances when there are large numbers of submissions, NATAS staff may assemble multiple panels to judge submissions in a given category. Some categories are judged on a comparative basis, with panel members ranking the submissions in preferential order. Submissions in other categories are scored on a point scale based their own merit and not in comparison to other entrants in that category.

NATAS staff explained the judging panels are assembled by NATAS staff and are vetted to ensure panelists are qualified to judge in a given category. The 2017-2018 Daytime Emmy Award General Rules state:

In order to qualify to judge, you must be an active member of NATAS or the Television Academy and have national credits in either Daytime or Primetime programming for at least two years and within the last five years. You may also participate as a judge if you have a significant body of work from an earlier time. A resume, bio or link will be required for all judge participants, both working and non-working professionals, and may be submitted when registering online to be a judge.

NOTE: Registering to judge for the Daytime Emmy® Awards is a separate step and is required in addition to renewing membership. (Membership information maintained by either NATAS or Television Academy is not accessible to the Daytime Emmy® Awards Administration).

Eligibility is determined on a case-by-case basis. Approval and panel assignment is made based upon information provided on the Judge's Application or from past participation. In applicable categories, qualified peer judges from other genres will be permitted to judge, if necessary, to satisfy minimum panel requirements. If judging cannot be fulfilled by qualified member judges, the National Academy reserves the right to enlist qualified non-members but only when and where necessary to facilitate the fulfillment of panels. Daytime Administrators will decide whether or not such persons are of comparable standing to other members of the panels.

NATAS staff also stated, if they do not get adequate voluntary response in a given category to assemble a representative panel, they will solicit additional people they believe are qualified to serve on a panel and judge a category. NATAS staff conducts research concerning all potential panel members (both voluntary and solicited) to ensure no conflicts of interest exist.¹² The panel members then view submissions and vote either: in writing and in person at a panel screening; or electronically via the Yangaroo website if they viewed the submissions online. NATAS staff pointed out the Yangaroo site is configured so it will not allow a judge to vote in certain categories unless a minimum amount of material is played.

While the review found no evidence of voter fraud or panel tampering, the complex system described above has led to confusion about the way in which voting panels are assembled. Several interviewees expressed concern about NATAS staff's assembly of panels based on their personal contacts, even if such contacts are vetted by staff and found to be qualified. To prevent such confusion, NATAS should establish and distribute objective written criteria for eligibility to serve as a panel judge. Further, NATAS should strictly adhere to these criteria.

Finally, for best overall broadcast drama show, because there are a limited number of potential entrants, NATAS staff described a system where it assembles an equal number of representatives from each production and then adds other qualified individuals to the judging panel. However, we could not find a written explanation of this alternative pool assembly in NATAS's written materials (either the general or category-specific rules).

¹² NATAS staff stated they review entries on IMDB.com and LinkedIn to ensure potential panelists have not been involved for at least two (2) years in one (1) of the productions competing in a category to minimize conflicts of interest. Staff acknowledged this practice is not memorialized in writing.

Recommendations:

- NATAS should ensure there are objective written minimum qualifications for judges in its rules (*e.g.*, a minimum standard of NATAS or Television Academy membership as contained in the current general rules but without the current discretionary exception allowing NATAS to add additional judges without meeting stated objective criteria).
- If there are category-specific variations in how judging panels are assembled by NATAS staff, such variations should be documented in writing and included in NATAS competition materials. NATAS should ensure such materials are distributed to all potential entrants.
- NATAS should ensure all criteria for empaneling judges are strictly followed.

Vote Tabulation:

During our interviews with third parties, we heard concerns that NATAS and its accountants did not maintain a professional arms-length relationship. We did not find any evidence to support this criticism. We also interviewed the accountants for NATAS as part of this review. We did not find any reason to believe they do not accurately and discreetly tabulate votes in accordance with professional accounting standards.

Procedurally, the accountants tabulate the votes in every category¹³ and then hold a “cut off” call with NATAS staff in which the accountants go over the results for each category in such a way as to “mask” the identity of the entrants. In the cut off call, it is presumed each category will have a clear top five (5) entrants, in terms of voting, that will become the nominees in that category. On the cut off call, the accountants point out in which categories there are ties in voting at the top (to determine a winner) and at the bottom of a five (5) entrant nominee pool, and NATAS staff then determines whether there will be more than five (5) nominees based on how voting is distributed. NATAS has established procedures regarding how to break ties in terms of voting so that five (5) nominees can be achieved in each category. While NATAS staff stated these tie breaking procedures are memorialized in writing, we did not find them to be publicly available. Instead, the 2017-2018 General Rules state:

In the case of scoring that would result in more than 5 nominees, or in the case of categories with 5 or fewer submissions, the National Awards Committee will determine the number of nominees using its discretion.

¹³ The accountants explained they internally verify tabulation by having two accountants independently tabulate the votes in each category to confirm the results.

In any event, the identities of the entrants being discussed are not revealed at any time to NATAS staff during the cut off call. Once the nominees are set in all of the categories, the accountants are then given a form to fill in that lists the nominees by name in each category. NATAS staff do not know the identities of any nominees until the accountants return the form to NATAS.

At this point, the accountants are also aware of who has received the most votes in each category (*i.e.*, who has won the award). However, the accountants stated they do not disclose the winner on the cut off call, or at any time, before the award ceremony. NATAS staff also repeatedly confirmed they do not know the winner of any category before the award ceremony.

NATAS has given the accountants the authority to disregard specific votes when they recognize voting irregularities (*e.g.*, consistently high rankings for one program with all other programs being ranked very low) as the accountants tabulate votes in each category. However, the standards and procedures for when the accountants should disregard a vote due to such irregularities are not memorialized in writing. NATAS staff and the accountants stated it is very easy for the accountants (who have several years of experience working for NATAS) to identify voting irregularities. The accountants also note on the cut off call when they have “thrown out” a vote due to irregularities so NATAS is aware of the circumstances.

While we did not find any evidence of any impropriety in the tabulation of votes, the lack of written documentation regarding when the accountants should disregard a vote could give rise to a perception of impropriety.

Recommendations:

- NATAS should establish, or ask its accountants to memorialize, in writing the competition’s tabulation procedures. Such procedures should include provisions for tie breaking procedures and how NATAS determines the number of nominees in each category when ties occur. NATAS should then make such procedures publicly available.
- NATAS should memorialize in writing the standards by which, and the procedures for, instances when the accountants may disregard a vote during their tabulation of the competition ballots.

Investigation and Resolution:

Once the rule violations in Categories 39 and 40 became known, NATAS undertook a process to discover what happened and determine if winners and nominees were eligible to keep their status. While we believe these efforts were well-intentioned and made in good faith, they appear to have been undertaken on an *ad hoc* basis. We have found no evidence NATAS has developed

written policies and procedures regarding investigating or resolving allegations of rule violations and erroneous competition results.

Similarly, an outside party (Mr. Caruso) was the first person to raise with NATAS the possibility the submissions from *The Bay* violated the Episode Rule in Category 40. These alleged violations were communicated in an email from Mr. Caruso to NATAS staff on April 25, 2018, four (4) days before the April 29, 2018 awards ceremony. The response from NATAS staff was to ask whether this matter could wait. Mr. Caruso responded affirmatively. When asked during his interview why he agreed to wait, Mr. Caruso stated he did not know how to make a formal challenge to the nominations and it was NATAS staff's job to run the competition, not his. NATAS was not well served in this instance by the lack of written procedures for alerting NATAS of potential violations. Had Mr. Caruso's allegations been investigated before the ceremony, an Emmy Award would not have been awarded to an ineligible competition entrant. However, NATAS did not maintain procedures for challenging nominations nor conducting an investigation when such allegations occur.

NATAS staff members informed the Awards Committee of the rules violations after the awards ceremony once they learned of the full nature of Mr. Caruso's Episode Rule violation allegations.¹⁴ Based on our interviews and a review of the documentation provided by NATAS, it appears the following occurred:

1. The Awards Committee met and determined that, because the winner in Category 40 (Ms. Darbo) was not eligible in Category 40 under the Prior Appearance Rule, NATAS staff should ensure the nominee with the second most votes (Ms. Bassey) was eligible to receive the award.
2. NATAS staff assured the Awards Committee Ms. Bassey was eligible.
3. Ms. Bassey's representatives were told of the Awards Committee's intentions. Several different parties indicated during interviews that Ms. Bassey's representatives were informed of the Awards Committee decision on a phone call that included one or more NATAS staff members.
4. Email correspondence included in this review also referred to Ms. Bassey being aware of her winning an Emmy Award before any public announcement was made that NATAS would make such an award.¹⁵

¹⁴ To our knowledge, Mr. Caruso first fully detailed his allegations regarding submissions from *The Bay* violating the Episode Rule in his May 14, 2018 email.

¹⁵ Ultimately, Ms. Bassey was never awarded the Emmy Award in Category 40 because her submission violated the Episode Rule.

In any event, it appears a lack of control of communications during NATAS's review process additionally hampered the organization's ability to resolve issues regarding awarding an Emmy Award to a qualified nominee in Category 40 in an efficient and orderly manner.

The process by which the Awards Committee reached its ultimate determination regarding enforcement of the Prior Appearance Rule and the Episode Rule in Category 40, but not Category 39, is not well documented. Minutes do not appear to have been kept for the meetings in which the Awards Committee deliberated about these matters. As such, while the NATAS staff prepared the May 29, 2018 memorandum containing recommended actions to assist the Awards Committee, which the Awards Committee ultimately adopted, there is no documentation regarding the actual decision or the process by which it was achieved. The complete lack of documentation lends itself to speculation and theories as to how and why the Awards Committee reached its determination to inconsistently apply the competition's rules.

One way in which the lack of documentation contributed to mistrust of the Awards Committee's ultimate decisions was manifested in the demand from third parties that NATAS release all of the submissions in Categories 39 and 40. To date, we understand NATAS has determined it will not comply with this request. We do not express an opinion as to whether this request is valid or the parties making the request are in a position to make demands of NATAS. Similarly, we do not express any opinion on whether NATAS should release the submissions from the 2018 competition, which is now over. However, we believe the above described lack of transparency provided during the investigation and resolution process contributed to the lack of trust described by outside parties regarding the Awards Committee determinations and their subsequent demand to see the all of the submissions for themselves.

Recommendations:

- NATAS should establish and make public procedures for challenging nominations and other potential rules violations.
- Similarly, NATAS should establish written policies and procedures under which allegations of competition rule violations are investigated and resolved both before awards are given and if it is discovered an award has been given in error. Such policies should include provisions assigning responsibility for such investigations and resolution.
- NATAS should prohibit staff members involved in alleged rule violations from being involved in any investigation of said allegations. An independent review should always occur.
- NATAS should ensure its policies are written in such a way as to minimize individual discretion in decision making in terms of the commencement of investigations and

application of rules. Such policies should also include whistleblower provisions and provisions for anonymity in reporting. NATAS should strive for transparency and consistency in its resolution processes. One way NATAS could achieve greater transparency is by making all submissions publicly available.

- NATAS should strengthen its written policies and procedures regarding confidentiality and non-disclosure of confidential information by NATAS employees and others who may possess such information.

Trust in Competition Process:

During our interviews with those outside NATAS, we repeatedly heard concerns about the awards ceremony and winners knowing results in advance. We found no evidence that results are known to anyone other than the accountants more than a few moments in advance of the announcement of a category winner.

The 2018 ceremony NATAS utilized five (5) mobile cameras in the audience during the ceremony. As a category was announced, the cameras were dispatched to film the nominees in that category (*i.e.*, a separate camera films each nominee). During the ceremony, one (1) of the accountants sat backstage with a NATAS staff member. As the nominations were read onstage in a given category, the accountant revealed the winner to the NATAS staff member, who was in electronic communication with the ceremony's producer, director, and assistant director.¹⁶ The NATAS staff member then relayed the winner for the category to those individuals so that the camera feed filming the winner could be broadcast as the announcement of the winner was made.

We believe the speculation about winners being known in advance stems from several causes:

1. Prior to 2018, in some years, NATAS used fewer than five (5) mobile cameras to minimize costs. Multiple interviewees cited mobile cameras moving toward nominees who eventually won as the basis for their belief winners were known in advance.
2. NATAS also uses "vector seating" so that nominees are assigned seats in a way that allows multiple nominees to be filmed simultaneously.
3. NATAS staff admitted they assign seat locations based on their personal belief as to which nominees are most likely to win. While we do not believe seat assignments are made using any actual knowledge of voting results, NATAS staff are professionals working in the same industry in which the awards are given and are aware of news and media speculation about the awards results.

¹⁶ During multiple interviews, we were assured the electronic communications system described above utilized several channels and only the NATAS staff member, producer, director, and assistant director for the ceremony had access to the channel used to relay information about winners as categories were announced.

While we do not believe any of the aforementioned practices are inappropriate, and our review has uncovered no evidence that category winners are known in advance of the ceremony or more than a few fleeting moments before a winner is announced during the ceremony due to production requirements, we nonetheless observe there is pervasive doubt in NATAS keeping the competition results secret before the awards ceremony. As such, going forward, NATAS must remain aware of this circumstance and act accordingly when making production decisions regarding the awards ceremony.

Recommendations:

- NATAS should not allow staff members overseeing the administration of an awards competition to produce or oversee production of that competition's awards ceremony.
- NATAS should establish a written policy with procedures under which NATAS staff members involved in the administration of its competitions are prohibited from directly contacting nominees once nominations are announced. Similarly, NATAS should prohibit staff contact with relevant outside parties during investigations of allegations of competition rule violations, except in furtherance of such investigations.
- NATAS should continue utilizing at least one (1) mobile camera *per nominee* during the announcement of winners at its awards ceremony.
- NATAS should remain mindful of the pervasive perception that winners are known in advance when making award ceremony production decisions.
- NATAS management should remind NATAS staff to be vigilant in not speaking publicly in a manner that would insinuate winners are known in advance of the awards ceremony.
- NATAS should strive to be transparent in its processes and memorialize all of its policies and procedures regarding the competition, and its administration thereof, in writing. Such documents also should be made publicly available.