

Commonwealth of Virginia		
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Administrative Law Advisory Committee		

SUMMARY
Administrative Law Advisory Committee
April 29, 2015
12:00 p.m.
House Room 2
The Capitol, Richmond

MEMBERS PRESENT: Tom Lisk (chair), Elizabeth Andrews, Roger Chaffe, Eric Page, Karen Perrine, Mike Quinan, Alex Skirpan, Kristina Stoney, Kristi Wright

MEMBERS ABSENT: Jeff Gore, Edward Mullen, Brooks Smith

STAFF PRESENT: Andrew Kubincanek

Welcome and call to order: Tom Lisk called the meeting to order at 12:03 p.m.

2015 Session Update: The committee reviewed legislation related to the Virginia Administrative Process Act (VAPA) from the 2015 Session of the General Assembly. Elizabeth Andrews asked for clarification on the status of the bill authorizing the use of third-party commercial carriers for administrative notices. Mr. Lisk stated that the House Committee on General Laws referred the bill back to the Boyd-Graves Conference for further evaluation. He suggested that ALAC wait for the results of this study or for any additional guidance from the Code Commission before reaffirming the recommended legislation or offering new language. Karen Perrine added that the Code Commission would be discussing at the May meeting its authority to make changes to the VAPA. She added that a member of the Code Commission had raised concerns that when bills are labeled as recommendations of the Code Commission, some legislators may assume the bill contains only technical changes. Eric Page asked if ALAC had ever taken a bill directly to the General Assembly. The committee has not done so; as an advisory committee to the Code Commission, ALAC does not have the authority to send bills directly to the General Assembly.

2015 Work Plan: Mr. Lisk opened discussion by offering to contact the Virginia Bar Association and the Virginia State Bar for any suggestions or input on the work plan. Eric Page agreed to continue leading the Model State Administrative Procedure Act (MSAPA) judicial work group and complete work on the ex parte communications language.

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Ms. Perrine agreed to continue leading the executive order/executive review process work group. Ms. Andrews asked if the results of this work group would be sent to the Code Commission or directly to the Governor's Office. Mr. Lisk stated that any legislative changes would be sent through the Code Commission as usual. Kristina Stoney informed the committee that the executive order work group's previous contact, Tracy Retchin, had left the Governor's Office.

Ms. Perrine updated the committee on the issue regarding agencies' perceived loss of the 90-day exemption in § 2.2-4006 of the Code of Virginia. Mr. Chaffe asked if there had been a formal opinion on this issue. The group was not aware of any formal opinions on the matter. Mr. Lisk asked if a work group is necessary or if one person could draft an amendment for the full committee to consider. Ms. Stoney agreed to draft a clarifying amendment or request an opinion from the Attorney General if necessary.

Mr. Lisk moved on to the issue of guidance document availability and suggested that ALAC recommend a way to standardize the system. Ms. Perrine stated that the Registrar is required to compile a list of all guidance documents, while Town Hall requires that the actual documents be posted as PDFs. Many agencies have only posted PDFs with links to or locations of guidance documents. Mr. Chaffe asked what the committee hoped to learn through presentations. Mr. Lisk replied that ALAC hoped to learn best practices and how they could be standardized or expanded. Ms. Andrews suggested that the best way to start might be to talk to Town Hall and the Registrar and work on a consistent format for guidance document submissions.

Mr. Lisk suggested adding to the work plan that ALAC will continue to study the delivery of administrative notices if deemed necessary or requested by the Code Commission.

The group approved the work plan.

Work Group Assignments: Karen Perrine will continue to lead the executive order/executive review process work group, which includes Ms. Andrews, Mr. Smith, Mr. Mullen, and Ms. Stoney. Eric Page will continue to lead the MSAPA judicial work group, which includes Mr. Chaffe, Ms. Andrews, Mr. Skirpan, and Mr. Gore.

New Business: Ms. Stoney asked the group if there had ever been an attempt to create a centralized administrative hearing agency in Virginia. Mr. Chaffe responded that agencies had previously opposed such attempts and the General Assembly had shown resistance to creating a new agency. Mr. Skirpan added that agency heads, in particular, have been reluctant to cede power to a centralized hearing officer agency. Mr. Lisk stated that there are merits to the idea of such an agency, but that existing agencies have a valid claim regarding the specialized competence of their internal hearing officers. Ms. Andrews pointed out that, in the current system, many agencies lack a collection of prior case decisions. Ms. Stoney offered to consider how ALAC might approach the issue.

Public Comment and Adjournment: Mr. Lisk opened the floor for public comment. Mark Courtney from the Department of Professional and Occupational Regulation stressed the importance of clarifying the exemption in § 2.2-4006 of the Code of Virginia. Mr. Lisk adjourned the meeting at 12:48 p.m.

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