


Commonwealth of Virginia		
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Andrew Kubincanek, Program Coordinator		
Administrative Law Advisory Committee		

**SUMMARY**  
**Administrative Law Advisory Committee**  
**MSAPA/Hearing Officer Deskbook Work Groups**  
**August 26, 2016**  
**11:00 a.m.**  
**House Room 2**  
**The Capitol, Richmond**

**MEMBERS PRESENT:** Eric Page (work group chair), Alex Skirpan, Kristi Wright

**MEMBERS ABSENT:** Kristina Alexander, Roger Chaffe, Brooks Smith

**STAFF PRESENT:** Jane Chaffin

**Welcome and call to order:** Eric Page called the meeting to order at 11:00 a.m.

**MSAPA Judicial Amendments:** Mr. Page suggested that the work group consider adding a provision to the Virginia Administrative Process Act (VAPA) that would provide for withholding confidential information used in a hearing by allowing the hearing officer to issue a protective order. He noted that § 404, paragraph (6) of the Model Administrative Procedures Act contains a provision for handling confidential information submitted as evidence and suggested this language could be used as a base for drafting an amendment to the VAPA. Issues brought up during the discussion included the question of whether agencies have developed their own rules or procedures for handling confidential information and if so, whether an amendment to the statute is necessary. The work group agreed that it would not want to propose an amendment that contradicts an agency's basic law or rule.

The work group discussed reaching out to the Virginia Association of Administrative Law Judges and Hearing Officers and soliciting input as to whether this is an issue as well as surveying state agencies to find out how they address the issue and ensuring that an amendment would not contradict practice.

Mr. Page stated that he will draft a proposal to amend the VAPA to allow for protective orders for review by the work group with a goal of presenting the draft at the next full ALAC

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committee meeting. Once a draft is approved by ALAC, the draft will be sent to appropriate stakeholders, agencies, organizations, and hearing officers for feedback.

**Hearing Officer Deskbook Update:** Mr. Page provided background on the Hearing Officer Deskbook. He stated that ALAC produced the deskbook for publication by the Office of the Executive Secretary of the Supreme Court of Virginia in 2001. Revisions were issued by ALAC in 2009 and 2013. The deskbook contains guidelines to assist hearing officers in the conduct of formal hearings for administrative agencies.

Mr. Page identified several items that need to be reviewed and updated to conform to statutes enacted since the 2013 revision. Examples are ex parte communications, failure to attend a hearing, and recusal and disqualification. In addition, Mr. Page mentioned that he would like to see if there are any other articles out there that give guidance to hearing officers.

Mr. Page stated he will draft amendments to the deskbook for the next work group meeting. Mr. Skirpan and Ms. Wright agreed to search for additional articles. Ms. Wright also offered to have someone go through and update hyperlinks to the Code of Virginia sections referenced in the deskbook.

After work group approval, the draft will be circulated to the ALAC members for comment, then presented for ALAC approval at its next meeting. After ALAC approval, feedback will be solicited from hearing officers and other interested parties.

**Public Comment and Adjournment:** Mr. Page opened the floor for public comment. Hearing none, the meeting adjourned at 11:30 a.m.

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