

# Commonwealth of Virginia

Thomas A. Lisk, Chair

Andrew Kubincanek,  
Program Coordinator



General Assembly Building  
201 North 9th St., Second Floor  
Richmond, Virginia 23219  
(Phone) 804-786-3591  
(Fax) 804-692-0625  
akubincanek@dls.virginia.gov

<http://codecommission.dls.virginia.gov/alac/alac.shtml>

## Administrative Law Advisory Committee

### MEETING SUMMARY

#### Administrative Law Advisory Committee

August 19, 2014

12:00 p.m.

Capitol Building

House Room 1

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

**MEMBERS ABSENT:** Edward Mullen, Mike Quinan, Jeff Gore

**STAFF PRESENT:** Andrew Kubincanek

**Welcome and call to order:** Tom Lisk called the meeting to order at 12:10 p.m.

**MSAPA Work Group Update:** Eric Page stated that the MSAPA Judicial Work Group formed a consensus on an amendment regarding default and that he would circulate a final draft to the full ALAC membership. He also noted that the work group had a productive discussion on disqualification but did not resolve the issue of whether or not to extend the scope of the language to include presiding officers in informal proceedings. The work group had yet to address the implications of the disqualification of an agency head during a formal proceeding. Mr. Page also reported that the work group did not discuss ex parte communications due to time constraints but would continue to review an ALAC study from the 1990s on the subject.

**Executive Order Work Group Update:** Karen Perrine noted that the default approval process for NOIRAs had been removed from EO-17: Development and Review of State Agency Regulations. She also noted that, while certain sections were clarified, the new executive order did not institute any time frames for executive review.

Ms. Perrine reviewed the work group's recommendations regarding internal policies on review time frames. Brooks Smith asked if the Model State Administrative Procedure Act provided any statutory time frames for executive review and expressed concern that there are no enforcement mechanisms for internal policies. Mr. Lisk stated that time frames would be a good idea in a statute created from scratch but that he is hesitant to modify the Virginia Administrative Process Act (VAPA) in a way that restricts executive privilege.

Ms. Perrine stated that a 2009 study by the Joint Legislative Audit and Review Commission (JLARC) noted that elements of previous executive orders were inconsistent with the VAPA. She added that the current administration has expressed an interest in making the review process

Thomas A. Lisk, Chair  
Elizabeth Andrews  
Roger L. Chaffe  
Jeffrey S. Gore

Katya Herndon  
Edward A. Mullen  
Eric M. Page  
Karen Perrine

Michael Quinan  
Alexander F. Skirpan, Jr.  
Brooks Smith  
Kristina Stoney

more efficient. Mr. Smith suggested reviewing the JLARC study and comparing the VAPA with EO-17. Mr. Lisk agreed that a side-by-side review could be helpful. Ms. Perrine stated that executive orders have created their own class of review not provided for in the VAPA.

**VAPA Notice Provisions Update:** Mark Courtney from the Department of Professional and Occupational Regulation (DPOR) addressed the subject of commercial delivery options for notice provisions in the VAPA and asked ALAC to also look at sections in Title 54.1. Mr. Courtney stated that DPOR uses proof of delivery options from commercial delivery services to prevent bad actors from denying receipt of notices. He added that DPOR sends many deliveries to Canada, where U.S. certified mail is not an option. He provided specific Code sections for further review.

**Other Business:** As discussed at a previous meeting, Brooks Smith stated that he will follow up with the FOIA Council study and report to the committee at the next meeting.

**Public Comment and Adjournment:** Mr. Lisk opened the floor for public comment. Jane Chaffin announced that the Virginia Register now has a twitter account (@varegs). Mr. Lisk adjourned the meeting at 12:38 p.m.