

EX PARTE COMMUNICATIONS

§ 2.2-4024.2. Ex Parte Communications

A. Except as otherwise provided in this section, while a formal hearing conducted in accordance with § 2.2-4020 is pending, the hearing officer may not communicate with any person concerning the case without notice and opportunity for all parties to participate in the communication.

B. A hearing officer may communicate about a pending formal hearing conducted in accordance with § 2.2-4020 with any person if the communication is authorized by law or concerns an uncontested procedural issue. A hearing officer may communicate on ministerial matters about a pending formal case conducted in accordance with § 2.2-4020 with any person, if the communication does not augment, diminish, or modify the evidence in the record.

C. If a hearing officer makes or receives a communication in violation of this section:

(1) if the communication is in a record, the hearing officer shall make the record of the communication and the response thereto, and the identity of the person who made the communication, a part of the hearing record; or

(2) if the communication is oral, the hearing officer shall prepare a memorandum that contains the substance of the communication and the response thereto, and the identity of the person who made the communication, and that memorandum shall be made a part of the hearing record.

D. If a communication prohibited by this section is made, the hearing officer shall notify all parties of the prohibited communication and permit parties to respond not later than 15 days after the notice is given. For good cause, the hearing officer may permit additional evidence in response to the prohibited communication.

E. If necessary to eliminate any prejudicial effect of a communication received in violation of this section, a hearing officer may (i) be disqualified under § 2.2-4024.1; (ii) seal the parts of the record pertaining to the communication by protective order; or (iii) grant other appropriate relief, including an adverse ruling on the merits of the case.

Reconsideration

Virginia Code § 2.2-4023.1 Reconsideration

A. A party may file a petition for reconsideration of an agency's final decision made pursuant to § 2.2-4020. The petition shall be filed with the agency not later than fifteen (15) days after service of the final decision and shall state the specific grounds on which relief is requested. The petition shall contain a full and clear statement of the facts pertaining to the reasons for reconsideration, the grounds in support thereof, and a statement of the relief desired. A timely filed petition for reconsideration shall not suspend the execution of the agency decision nor toll the time for filing a notice of appeal under Rule 2A:2 of the Rules of the Supreme Court of Virginia, unless the agency provides for suspension of its decision when it grants a petition for reconsideration. The failure to file a petition for reconsideration shall not constitute a failure to exhaust all administrative remedies.

B. The agency shall render a written decision of a party's timely petition for reconsideration within thirty (30) days from receipt of a petition for reconsideration. Such decision shall either (i) deny the petition, (ii) modify the case decision, or (iii) vacate the case decision and set a new hearing for further proceedings. The agency shall state the reasons for its action. If reconsideration is sought for the decision of a board, the board may: (i) consider the petition for reconsideration at its next regularly scheduled meeting; (ii) schedule a special meeting to consider and decide upon the petition within 30 days of receipt; or (iii) delegate authority to consider the petition to either the board chairman, a subcommittee of the board, or the director of the state agency that provides administrative support to the board, in which case a decision on the reconsideration must be rendered within thirty (30) days of receipt of the petition by the board.

C. Denial of a petition for reconsideration shall not constitute a separate case decision and shall not on its own merits be subject to judicial review. It may, however, be considered by a reviewing court as part of any judicial review of the case decision itself.

D. The agency may reconsider its final decision within thirty (30) days of the date of the final decision on its own initiative for good cause. An agency may develop procedures for reconsideration of its final decisions on its own initiative.

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