


Commonwealth of Virginia		
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Administrative Law Advisory Committee		

SUMMARY
Administrative Law Advisory Committee
October 7, 2015
12:00 p.m.
House Room 2
The Capitol, Richmond

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

MEMBERS ABSENT: Jeff Gore, Brooks Smith

STAFF PRESENT: Andrew Kubincanek

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

MSAPA Judicial work group update: Eric Page presented the ex parte communications language, but noted that there were still several issues that needed to be addressed by the full committee.

Mr. Page asked the group if the language should prohibit communication both to and from the hearing officer. Roger Chaffe stated that he did not think hearing officers should be required to self-report an offense that would be grounds for disqualification. Alex Skirpan argued that the language does the opposite and gives hearing officers recourse other than disqualification. Kristina Stoney added that it would be helpful for hearing officers to have an opportunity to put an inadvertent ex parte communication in the record. Elizabeth Andrews asked how an accidental ex parte communication by a hearing officer would be handled today. Mr. Page stated that, under the current system, this would still be grounds for disqualification.

The group moved on to a discussion of the language in subsection C. Kristi Wright suggested a grammatical change for clarity. Mr. Chaffe presented alternate language that removed the word record and only applied to communications received by the hearing officer. Karen Perrine suggested the use of the word “prohibited” instead of “in violation of”. The group used Mr. Chaffe’s language with Ms. Wright and Ms. Perrine’s changes, as well as an adjustment to

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include communications both made and received by the hearing officer. The group voted to submit the revised language to the Code Commission. Ms. Wright abstained.

Mr. Page presented the language on reconsideration to the group, stating that the intention was to put something definitive in the code to limit ambiguity. He added that the work group decided that a petition for reconsideration should not toll a petition for appeal.

Ms. Stoney stated that the Office of the Attorney General is reading the opinion referenced at the previous meeting very narrowly, and she did not believe a legislative fix was necessary. She also stated that the opinion implies that an agency may have the same authority as a court to reconsider a decision, but it is not explicitly stated. Mr. Chaffe replied that the authority should be clear and that ambiguity invites a problem. Mr. Page agreed with Mr. Chaffe that a clear statutory authority would be helpful. Mr. Skirpan stated that, in general, agencies want to make the correct decision and that a reconsideration statute grants the agencies another opportunity to get it right and better serve the regulated public.

Mr. Mullen asked for an example of reconsideration not resulting from a mistake of law or fact. Mr. Page stated that a hearing officer could misinterpret evidence, which would not be an error of fact per se. Mark Courtney stated that the Department of Professional and Occupational Regulations heard a case where evidence had been doctored. Mr. Chaffe stated that the language would cover fraud and serious mistakes, but doesn't encourage abuse.

Ms. Stoney asked if a board would need to call an emergency meeting to address reconsideration. Mr. Lisk stated that subsection B addresses this contingency. Ms. Stoney suggested adding "notwithstanding any other provision of law."

Mr. Lisk stated that the language gives flexibility to agencies that may not already have a reconsideration provision in their basic law. The agencies that do have a reconsideration provision only use it rarely. He stated that the group does not want to create a situation where the finality of the decision is questioned or where a licensee could be left in peril by the threat of unlimited reconsideration. The group refined the language for submission to the Code Commission.

Public Comment and Adjournment: Mr. Lisk opened the floor for public comment. Hearing none, he adjourned the meeting at 1:17 p.m.

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