


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

SUMMARY
Administrative Law Advisory Committee
May 26, 2016
12:30 p.m.
House Room 2
The Capitol, Richmond

MEMBERS PRESENT: Tom Lisk (chair), Elizabeth Andrews, Jeff Gore, Eric Page, Karen Perrine, Mike Quinan, Kristina Stoney

MEMBERS ABSENT: Roger Chaffe, Edward Mullen, Alex Skirpan, Brooks Smith, Kristi Wright

STAFF PRESENT: Andrew Kubincanek

Welcome and call to order: Tom Lisk called the meeting to order at 12:30 p.m. and asked the members of the committee to review the updated contact list.

2016 Session Update: During the 2015 Session of the General Assembly, the two bills proposed by the Administrative Law Advisory Committee (ALAC) both passed with amendments. SB 206 on ex parte communications was amended to not contravene the express provisions of § 32.1-325.1 of the Code of Virginia. SB 207 on reconsideration was amended to allow agencies to promulgate emergency regulations specifying the scope of evidence that may be considered in support of a petition for reconsideration. SB 207 was also amended to require that the Department of Human Resource Management submit an annual report on the number of employee grievance hearings held pursuant to the Administrative Process Act (APA) and the number of hearings rendered in favor of employees.

Two APA bills that were not recommended by ALAC passed: HB 462 related to the contents of notices for case proceedings and HB 644 related judicial review of regulations. HB 898 related to economic impact statements on proposed or final regulations was left in the Committee on House General Laws.

Mr. Lisk proposed that ALAC take a more active role in alerting state agencies to proposed legislation so that the committee could address concerns more efficiently. Elizabeth Andrews

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suggested working with the Registrar's Office to contact both regulatory coordinators and agency heads. Karen Perrine added that ALAC could invite members of agencies to join work groups.

2016 Work Plan: Hearing Officer Desk Book - Eric Page will continue to chair the Hearing Officer Desk Book work group to update the book and account for recent statutory changes.

Guidance Document Filing Requirements; Definition of Agency - Ms. Perrine explained that, based on the definition of agency in the Virginia Register Act, an agency that does not have rulemaking authority is not required to file a list of guidance documents. Such an agency could have guidance documents that interpret other regulations or statutes, and she provided the Office of Children's Services as an example. Mr. Lisk stated that this issue was worth studying in the name of transparency, but expressed concern that published guidance documents could become quasi-regulations. He suggested contacting agencies that would be affected directly. Jeff Gore agreed that transparency is a sufficient reason to study the issue and stated that the Office of Children's Services is a great example of an organization that could have significant guidance documents in a variety of areas. Ms. Perrine agreed to lead a work group on this issue.

Model State Administrative Procedure Act: Mr. Page stated that he would like to revisit sections that have been rejected by either ALAC or the Code Commission, including the section on intervention. Mr. Lisk suggested that the work group attempt to identify a problem that new sections would solve.

Executive Review Process: Ms. Perrine stated that the Governor's task force has made great strides in increasing the efficiency of the review process for regulations. Mr. Lisk stated that examining this issue could be beneficial for both future administrations and the regulated public. Kristina Alexander volunteered to chair a work group on this issue. Mark Courtney of the Department of Professional and Occupational Regulation (DPOR) emphasized the importance of continuing to study this issue.

Other Business: In 2015, ALAC proposed allowing agencies to utilize commercial delivery services to delivery notices related to administrative hearings. The bill passed in the Senate, but was forwarded to the Boyd-Graves Conference by the House of Delegates. The Boyd-Graves subcommittee recommending taking no further action on the bill as it did not see a clear problem to be addressed. Mr. Courtney stated that deliveries to foreign countries are difficult and certified mail can be inconsistent and unreliable even within the United States. Mr. Lisk suggested that ALAC revisit this issue later in the year.

Public Comment and Adjournment: Mr. Lisk opened the floor for public comment. Ms. Alexander recognized Mark Courtney for his service to the Department of Professional and Occupational Regulation and his contributions to ALAC on the occasion of his retirement from DPOR. Mr. Lisk Adjourned the meeting at 1:00 p.m.

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