

<b>Commonwealth of Virginia</b>		
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<b>Administrative Law Advisory Committee</b>		

**SUMMARY**  
**Administrative Law Advisory Committee**  
**July 29, 2015**  
**11:00 a.m.**  
**House Room 2**  
**The Capitol, Richmond**

**MEMBERS PRESENT:** Eric Page (work group chair), Tom Lisk (ALAC chair), Elizabeth Andrews, Roger Chaffe, Jeff Gore, Alex Skirpan

**MEMBERS ABSENT:** Kristi Wright

**STAFF PRESENT:** Andrew Kubincanek

**Welcome and call to order:** Eric Page called the meeting to order at 11:00 a.m. He suggested the group begin with reconsideration, as ex parte communications had been discussed in depth at the previous meeting.

**Reconsideration:** Roger Chaffe suggested revisions to standardize the definition of party with the Rules of the Supreme Court. Elizabeth Andrews stated that several terms are undefined and that the new section differs from the rights, forms, and venues section in the VAPA. Eric Page suggested using a good cause standard similar to the State Corporation Commission.

Alex Skirpan asked why reconsideration is tied to the notice of the order, not the order itself; he suggested using language similar to Rule 2A-2 of the Rules of the Supreme Court. Ms. Andrews stated that other interested parties may be at the mercy of a party sharing, because the decision is only served to the affected party. Mr. Skirpan asked what would happen if a party was profoundly affected by the decision, but had not received notice; he stated that the reason for reconsideration may be that a party did not have a chance to participate, and that a broader definition could be helpful. Mr. Page replied that the burden should not be on the agency, but on the party to keep abreast of relevant decisions. Ms. Andrews asked how such different definitions of the term party came to exist in the VAPA and the Rules of the Supreme Court. Mr. Page asked the group if the two definitions should be reconciled; Ms. Andrews replied that there was likely case law on the issue.

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 Elizabeth Andrews  
 Roger L. Chaffe  
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 Eric M. Page  
 Karen Perrine  
 Mike Quinan

Alexander F. Skirpan, Jr.  
 Brooks Smith  
 Kristina Stoney  
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Mark Courtney from the Department of Professional and Occupational Regulation (DPOR) stated that section D could be restrictive for boards that only meet quarterly. Ms. Andrews asked if a board could delegate this responsibility; Mr. Courtney stated that DPOR, in particular, would not be comfortable with that. Tom Lisk asked if this could delay the appeals process; Mr. Courtney replied that appeals are usually sent to the Circuit Court if the board will not meet again in the time frame. Jeff Gore suggested that agencies should establish a reasonable time frame. Mr. Page suggested 30 days or the next regularly scheduled meeting. Mr. Lisk stated that would put a burden on agencies by allowing someone to stall the appeals process and recommended against a tolling provision.

**Intervention:** The group agreed to discuss this at the next meeting due to time constraints.

**Ex Parte Communications:** Ms. Andrews suggested changing formal case to formal hearing. Mr. Gore suggested the word communicate instead of make or receive communication. Ms. Andrews asked if ex parte matters had been defined. Mr. Courtney stated that the disqualification statute applies to both hearing officers and presiding officers, but the new ex parte communications language only applies to hearing officers.

**Public Comment and Adjournment:** Mr. Page opened the floor for public comment. Hearing none, he adjourned the meeting at 12:05 p.m.

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