


Commonwealth of Virginia		
Thomas A. Lisk, Chair <hr/> 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		

SUMMARY
Administrative Law Advisory Committee
September 2, 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 stated that the work group will circulate a copy of the ex parte communications language at the next meeting. He asked the committee for input on the two other prospective sections, reconsideration and intervention.

Mr. Page asked the committee for a general opinion on whether or not a petition for reconsideration should toll the period for appeal. Kristina Stoney asked why there was a need for a reconsideration section and stated that the timeline for VAPA cases at the Office of the Attorney General was already very long. Mr. Lisk referenced an Attorney General’s opinion from 1999 that disallowed the Board of Real Estate from reconsidering a decision without an error in law or new evidence.

Mr. Lisk clarified the question, asking the committee members if they thought a tolling provision would encourage an inordinate number of requests for reconsideration. Roger Chaffe expressed concern that the provision would do exactly that. Edward Mullen stated that he saw a utility to creating a meaningful and timely process, and a tolling provision would be part of that. He also stated that he could not envision rampant, widespread abuse. Mike Quinan suggested that the filing of a petition should neither toll the appeal deadline nor constitute an exhaustion of

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remedies. He suggested that certain individuals may file petitions for reconsideration on nearly anything.

The group discussed various definitions of standing, including those in the VAPA and the MSAPA. Mr. Lisk stated that reconsideration could be limited to situations where licenses or permits are involved or reconsideration granted only to a party that could've had standing in court.

The group conducted an informal poll on a tolling provision. Several members of the group were not in favor of a tolling provision and supported language stating that a petition for reconsideration did not affect the finality of the decision. Ms. Stoney asked if agencies could be allowed to adopt their own reconsideration provisions.

Mr. Page asked the group for direction on the intervention language. Several members of the committee stated that an intervention section would add undue complications to the process, including Ms. Stoney, Mr. Mullen, and Ms. Perrine. Ms. Andrews agreed, stating that there are always issues that someone, somewhere will challenge if given the opportunity. Mr. Mullen stated that the issue would be better addressed on an agency by agency basis, if necessary.

Review of Code Commission Regulations: Karen Perrine presented the updates to the Code Commission's regulations, which were last updated in 1990. She pointed out several notable changes, including the repeal of a provision which allows for filing of regulations by description and a provision to disallow prospective incorporation by reference. She asked ALAC to consider if and where these regulations should be included in the Virginia Administrative Code. Ms. Andrews asked why the regulations are not in the VAC to begin with. Originally, the regulations were excluded from the VAC, because they were thought to be too specialized to apply to the public. Mr. Chaffe stated that he did not see a down side to including them. Ms. Perrine stated that the Code Commission would take the issue up again in November.

Public Comment and Adjournment: Mr. Lisk opened the floor for public comment. Hearing none, he adjourned the meeting at 1:15 p.m.

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