


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

**SUMMARY**  
**Administrative Law Advisory Committee**  
**September 30, 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, Kristi Wright

**MEMBERS ABSENT:** N/A

**STAFF PRESENT:** Andrew Kubincanek

**Welcome and call to order:** Eric Page called the meeting to order at 11:00 a.m. and stated that the group would finalize ex parte communications and reconsideration, but suspend work on intervention at the request of the full committee.

**Ex Parte Communications:** Elizabeth Andrews suggested that subsection C should only apply to communications received by the hearing officer; Roger Chaffe agreed, stating that hearing officers should not be forced to write themselves up for infractions. Alex Skirpan stated that the language would be too vague. The intent of the section is to discourage ex parte communications, but also give hearing officers an opportunity to put an accidental communication in the record, thereby making it no longer grounds for disqualification. The group agreed to discuss this with the full committee. In subsection D, the word testimony was changed to evidence.

**Reconsideration:** The group reviewed previous changes to the language, including an adjustment to the definition of standing. Jeff Gore suggested changing “may provide for reconsideration” to “may reconsider” and asked if the intent was to allow agencies to reconsider their own decisions. Mr. Chaffe said that it was. Mark Courtney referenced a situation where an agency had wanted to reconsider a decision after it was revealed that a complainant had falsified documentation, but the agency was not able to do so. The group decided to clarify an agency’s ability to reconsider its own decisions within a specific time period by creating a new subsection B. Ms. Andrews asked if this ability should be tied to a change of law or change of facts. Mr.

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 Brooks Smith  
 Kristina Stoney  
 Kristi Wright

Page said he did not want to handcuff an agency that was trying to do the right thing by reconsidering an incorrect decision. Tom Lisk suggested allowing reconsidering as long as a petition for appeal had not yet been filed.

Krisi Wright expressed concern that unlimited reconsideration could create uncertainty; Ms. Andrews, Mr. Gore, and Mr. Skirpan agreed. Ms. Andrews clarified that this language should grant flexibility to an agency, so that when everyone is in agreement about reconsidering a decision, they can. Mr. Page suggested a time limit of 30 days for an agency to reconsider for good cause and no time limit on when an agency may reconsider a decision for a mistake of law or fact.

Ms. Wright suggested creating a new subsection to differentiate an agency's options when there is a petition for reconsideration as opposed to reconsideration on its own initiative.

The group discussed the significance of a reconsidered decision and agreed that any new information should become a part of the record for an appeal.

**Public Comment and Adjournment:** Mr. Page opened the floor for public comment. Hearing none, he adjourned the meeting at 12:08 p.m.

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