


<b>Commonwealth of Virginia</b>		
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 <a href="http://codecommission.dls.virginia.gov/alac/alac.shtml">http://codecommission.dls.virginia.gov/alac/alac.shtml</a>
<b>Administrative Law Advisory Committee</b>		

**SUMMARY**  
**Administrative Law Advisory Committee**  
**April 20, 2017**  
**12:00 PM**  
**House Room 2**  
**Capitol Building**

**MEMBERS PRESENT:** Tom Lisk (chair), Eric Page, Jeff Gore, Karen Perrine, Kristi Wright, Roger Chaffe, Paul Kugelman

**MEMBERS ABSENT:** Edward Mullen, Mike Quinan, Alex Skirpan

**STAFF PRESENT:** Andrew Kubincanek

**Welcome and call to order:** Tom Lisk called the meeting to order at 12:00 p.m.

**New Members:** The committee welcomed Paul Kugelman from the Office of the Attorney General, who will replaced Kristina Perry Alexander, pending appointment by the Code Commission at its May meeting.

**2017 Session Update:** Andrew Kubincanek presented the summaries of bills from the 2017 Session of the General Assembly related to the Administrative Process Act. Mr. Lisk noted that while the ALAC bill related to guidance documents had passed, ALAC's proposed legislation on protective orders was not approved by the Code Commission. He suggested that the Committee might consider revisiting the issue and adding it to the 2017 Work Plan.

**2017 Work Plan:** In 2016, the Executive Review Process work group failed to achieve consensus. ALAC was directed by the Code Commission to continue its study and will survey other states on the prevalence of an executive veto for regulations. The Committee also agreed that it would be fruitful to include a question about legislative vetoes for regulations. ALAC will address this issue with all available members rather than form a work group.

Thomas A. Lisk, Chair  
 Roger L. Chaffe  
 Jeffrey S. Gore

Edward A. Mullen  
 Eric M. Page  
 Karen Perrine

Mike Quinan  
 Alexander F. Skirpan, Jr.  
 Brooks Smith  
 Kristi Wright

Mr. Lisk stated that ALAC would continue to monitor issues related to guidance documents. Karen Perrine suggested that some agencies may have outdated documents in their list. Brooks Smith suggested that he would rather be sure that an agency has a complete, easily accessible set of its guidance documents than a list. The guidance document work group will reconvene to continue monitoring the process.

The Committee reviewed an article from a 2015 issue of Virginia Lawyer magazine related to the use of guidelines and determined that the issues required additional study. Mr. Smith pointed out that there is no effective way to challenge guidelines. Mr. Lisk added that they also do not allow for public comment. Ms. Perrine pointed out that the article may not be up-to-date as regards the status of the Department of Taxation's regulatory actions and noted that the Department does file a list of guidance documents with the Registrar's Office. The Committee agreed to contact the Department for clarity on the article.

The Committee reviewed a suggestion from a hearing office that agencies should use a standard set of rules and procedures to conduct hearings. Eric Page stated that he believed this would be a significant undertaking that agencies and the Office of the Executive Secretary may not support. Kristi Wright stated that many agencies have very complex and unique rules and that a one-size-fits-all set of standards may not be possible. She also suggested that it may raise a separation of powers issue if the court is setting rules for executive agencies. Mr. Lisk agreed, but stated that he could see some merit to standardization for agencies with no rules or guidance on administrative cases. Roger Chaffe reiterated that some agencies have very detailed rules and procedures and others have none, which can make things difficult for hearing officers and the public. Mr. Smith asked if it would be possible to determine which agencies have rules and which do not. Mr. Lisk suggested that the General Assembly could require that agencies draft rules of some kind, or that ALAC could provide model rules for agencies that do not have them (either based on the Model State Administrative Procedure Act or existing rules from Virginia agencies). ALAC will form a work group to study the issue further.

ALAC will ask the Code Commission for guidance related to the bill on protective orders and may form a work group or address this issue in the full committee.

**Public Comment and Adjournment:** Mr. Lisk opened the floor for public comment. There being none, the meeting was adjourned at 12:48 p.m.

Thomas A. Lisk, Chair  
Roger L. Chaffe  
Jeffrey S. Gore

Edward A. Mullen  
Eric M. Page  
Karen Perrine

Mike Quinan  
Alexander F. Skirpan, Jr.  
Brooks Smith  
Kristi Wright