

My assignment was to consider whether the Handbook should be updated to reflect changes to Sec. 2.2-4027.

To refresh your recollection, to Sec. 2.2-4027 is entitled “Issues on Review” and, and establishes the standard for court review of agency actions.

The statute formerly provided, in relevant part, as follows: “When the decision on review is to be made on the agency record, the duty of the court with respect to issues of fact shall be limited to ascertaining whether there was substantial evidence in the agency record upon which the agency as the trier of the facts could reasonably find them to be as it did.”

After amendment by SB944 (2013), that portion of the statute now reads: “When the decision on review is to be made on the agency record, the duty of the court with respect to issues of fact shall be to determine whether there was substantial evidence in the agency record to support the agency decision. The duty of the court with respect to the issues of law shall be to review the agency decision de novo. The court shall enter judgment in accordance with § 2.2-4029.”

The current edition of the Handbook does not address Sec. 2.2-4027, or any of the other provision of the APA relating to appeal of agency actions. The Handbook, which generally reviews the administrative process chronologically, concludes with Section VI “Post-Hearing Issues” (which only addresses the duration of the Hearing Officer’s authority) and Section VII “The Decision/Recommendation.” Unless I missed it, there is no discussion at all of appeals.

So, unless we want to add a new Section to the Handbook to address appeals, we do not need to address changes to Sec. 2.2-4027 in the new edition.

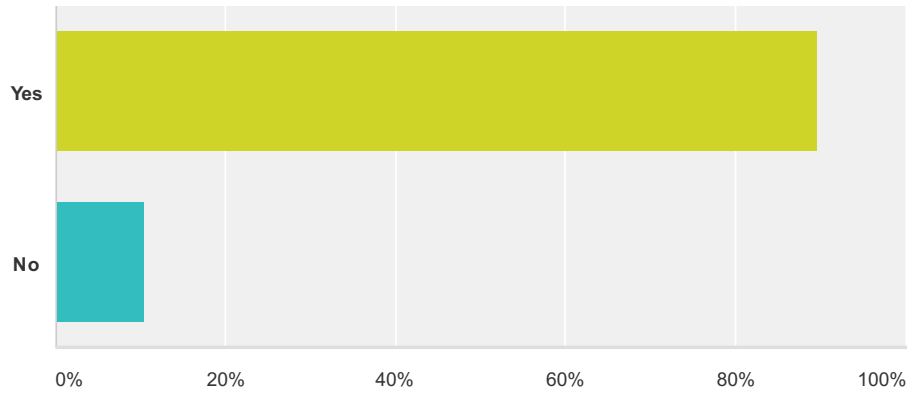
Q1 City/County of primary practice:

Answered: 19 Skipped: 0

#	Responses	Date
1	alexandria	8/7/2013 5:21 PM
2	Richmond, VA	8/7/2013 4:38 PM
3	Henrico	8/7/2013 2:14 PM
4	Williamsburg	8/7/2013 9:35 AM
5	Fairfax	8/7/2013 9:24 AM
6	Williamsburg-James City County	8/5/2013 8:49 AM
7	Richmond	8/1/2013 10:03 PM
8	CITY OF NORFOLK	8/1/2013 10:04 AM
9	City of Richmond	7/31/2013 2:44 PM
10	Chesterfield	7/31/2013 2:20 PM
11	Statewide	7/25/2013 12:45 PM
12	Charlottesville	7/22/2013 12:01 PM
13	Richmond	7/20/2013 8:30 AM
14	Arlington, Alexandria and Fairfax counties	7/18/2013 2:33 PM
15	Richmond, Virginia	7/18/2013 2:27 PM
16	Prince George	7/18/2013 8:30 AM
17	Henrico County	7/17/2013 12:52 PM
18	richmond	7/17/2013 12:07 PM
19	Henrico	7/17/2013 11:33 AM

Q2 Are you a hearing examiner appointed pursuant to § 2.2-4024 of the Code of Virginia?

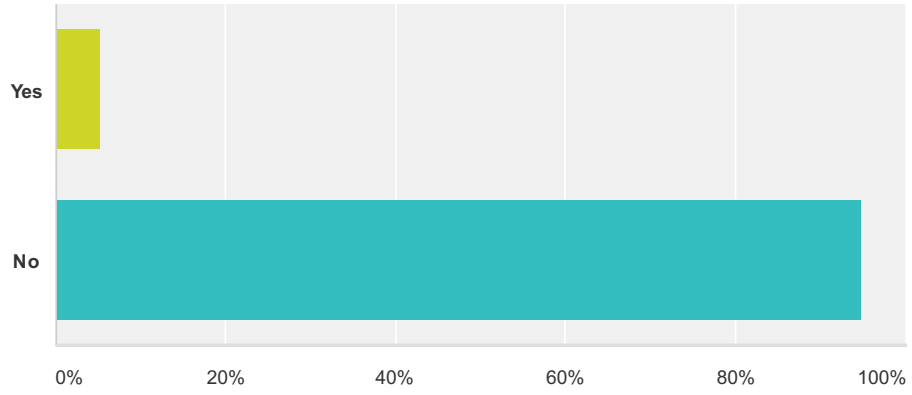
Answered: 19 Skipped: 0



Answer Choices	Responses
Yes	89.47% 17
No	10.53% 2
Total	19

Q3 Are you employed by a state agency?

Answered: 19 Skipped: 0



Answer Choices	Responses	
Yes	5.26%	1
No	94.74%	18
Total		19

Q4 Identify the agency by which you are employed (if applicable):

Answered: 4 Skipped: 15

#	Responses	Date
1	N/A	8/7/2013 2:14 PM
2	DARS	8/7/2013 9:24 AM
3	none	7/18/2013 2:33 PM
4	N/A	7/18/2013 2:27 PM

Q5 Years employed by agency (if applicable):

Answered: 4 Skipped: 15

#	Responses	Date
1	N/A	8/7/2013 2:14 PM
2	1	8/7/2013 9:24 AM
3	n/a	7/18/2013 2:33 PM
4	N/A	7/18/2013 2:27 PM

Q6 Years practicing as a hearing officer:

Answered: 19 Skipped: 0

#	Responses	Date
1	20 plus years	8/7/2013 5:21 PM
2	twenty-five	8/7/2013 4:38 PM
3	Over 13 years	8/7/2013 2:14 PM
4	10+	8/7/2013 9:35 AM
5	15	8/7/2013 9:24 AM
6	10+	8/5/2013 8:49 AM
7	12	8/1/2013 10:03 PM
8	22	8/1/2013 10:04 AM
9	30	7/31/2013 2:44 PM
10	30	7/31/2013 2:20 PM
11	25+	7/25/2013 12:45 PM
12	13	7/22/2013 12:01 PM
13	1	7/20/2013 8:30 AM
14	29	7/18/2013 2:33 PM
15	25	7/18/2013 2:27 PM
16	13	7/18/2013 8:30 AM
17	23	7/17/2013 12:52 PM
18	0	7/17/2013 12:07 PM
19	20+	7/17/2013 11:33 AM

Q7 Years on Supreme Court list for rotational assignment (if applicable):

Answered: 17 Skipped: 2

#	Responses	Date
1	20 plus yearfs	8/7/2013 5:21 PM
2	twenty-five	8/7/2013 4:38 PM
3	Over 13 years	8/7/2013 2:14 PM
4	10+	8/7/2013 9:35 AM
5	15	8/7/2013 9:24 AM
6	12	8/1/2013 10:03 PM
7	22	8/1/2013 10:04 AM
8	30	7/31/2013 2:44 PM
9	20+	7/31/2013 2:20 PM
10	25+	7/25/2013 12:45 PM
11	13	7/22/2013 12:01 PM
12	1	7/20/2013 8:30 AM
13	29	7/18/2013 2:33 PM
14	25	7/18/2013 2:27 PM
15	13	7/18/2013 8:30 AM
16	23	7/17/2013 12:52 PM
17	20+	7/17/2013 11:33 AM

Q8 Identify the agencies whose hearings you handle (if applicable):

Answered: 14 Skipped: 5

#	Responses	Date
1	DMV, DOE	8/7/2013 5:21 PM
2	Handle Supreme Court appointments	8/7/2013 4:38 PM
3	Varies.	8/7/2013 2:14 PM
4	DOE & DOT & DARS & DBHI	8/7/2013 9:24 AM
5	DMAS VDH DACS CJS DSS	8/1/2013 10:03 PM
6	VDOT, BOARD OF MEDICINE, RACING COMMISSION, DMV, DEPT. OF FORESTRY, DEPT. OF ENVIR. QUALITY, DEPT. OF CORRECTIONS, OLD DOMINION UNIVERSITY	8/1/2013 10:04 AM
7	DHRM (Employment Dispute Resolution); VDOE; DMAS; other miscellaneous hearing officer assignments for licensing and other matters under the APA	7/31/2013 2:44 PM
8	DMAS & EDR	7/31/2013 2:20 PM
9	Local Housing Authorities Local Cities and Counties	7/25/2013 12:45 PM
10	Education, DMV, DEQ, Forestry, DSS, etc	7/22/2013 12:01 PM
11	DMAS	7/20/2013 8:30 AM
12	Vdoe, Dmv, Health, and others	7/18/2013 2:33 PM
13	Currently - Department of Medical Assistance Services, Department of Education (with counties and cities) for Special Ed and localities for other hearings	7/17/2013 12:52 PM
14	DMAS VDOE Other	7/17/2013 11:33 AM

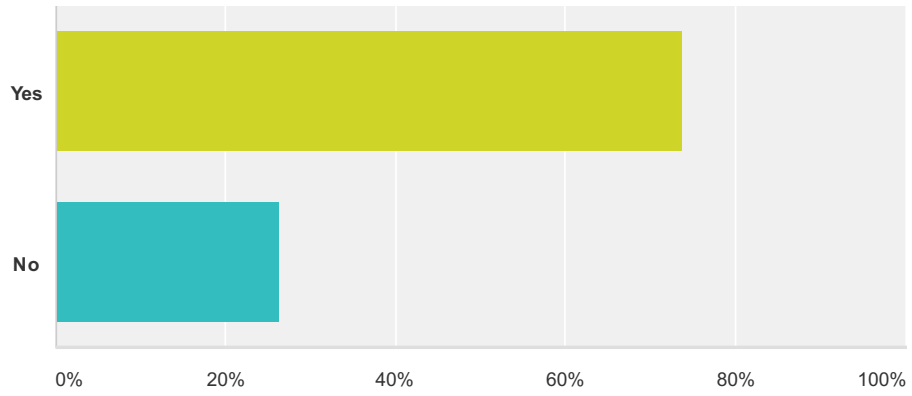
Q9 Number of formal hearings handled in past 12 months:

Answered: 19 Skipped: 0

#	Responses	Date
1	4	8/7/2013 5:21 PM
2	None	8/7/2013 4:38 PM
3	One	8/7/2013 2:14 PM
4	1	8/7/2013 9:35 AM
5	6	8/7/2013 9:24 AM
6	1	8/5/2013 8:49 AM
7	4	8/1/2013 10:03 PM
8	2	8/1/2013 10:04 AM
9	25	7/31/2013 2:44 PM
10	20	7/31/2013 2:20 PM
11	2	7/25/2013 12:45 PM
12	2	7/22/2013 12:01 PM
13	6	7/20/2013 8:30 AM
14	0 all were settled before hearing commenced	7/18/2013 2:33 PM
15	None	7/18/2013 2:27 PM
16	0	7/18/2013 8:30 AM
17	9 or more (mostly DMAS)	7/17/2013 12:52 PM
18	0	7/17/2013 12:07 PM
19	7	7/17/2013 11:33 AM

Q10 Did you participate in this survey during the 2009 Hearing Officer Deskbook revision?

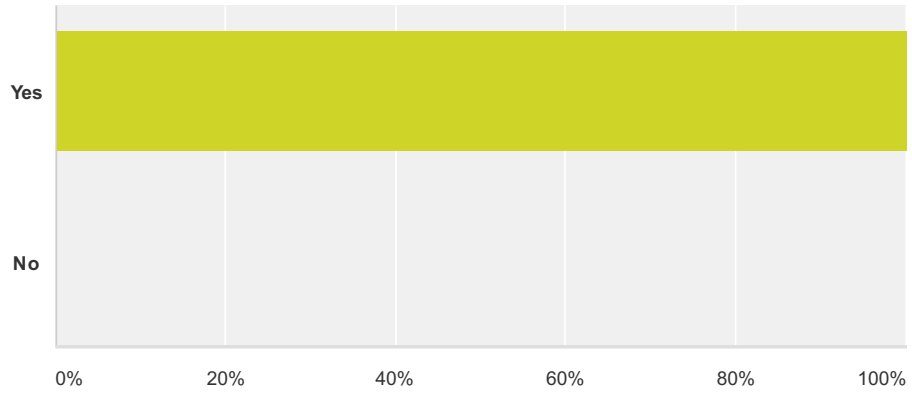
Answered: 19 Skipped: 0



Answer Choices	Responses	
Yes	73.68%	14
No	26.32%	5
Total		19

Q11 Do you have a copy of the current Hearing Officer Deskbook (2009 edition)?

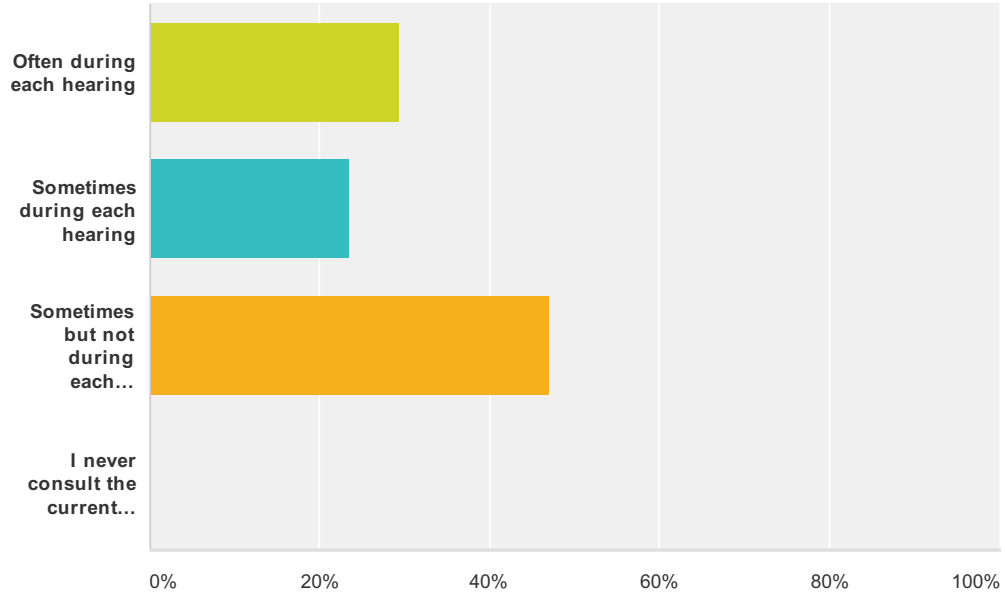
Answered: 17 Skipped: 2



Answer Choices	Responses	
Yes	100%	17
No	0%	0
Total		17

Q12 How often do you use the Deskbook?

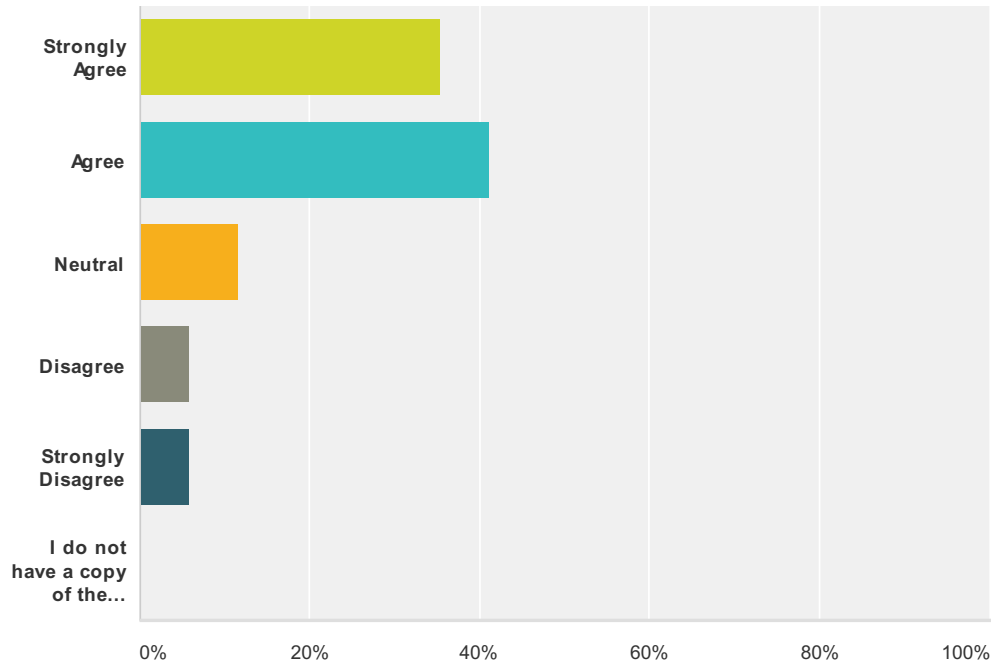
Answered: 17 Skipped: 2



Answer Choices	Responses
Often during each hearing	29.41% 5
Sometimes during each hearing	23.53% 4
Sometimes but not during each hearing	47.06% 8
I never consult the current Deskbook	0% 0
Total	17

Q13 I find the current Hearing Officer Deskbook helpful in my work as a hearing officer.

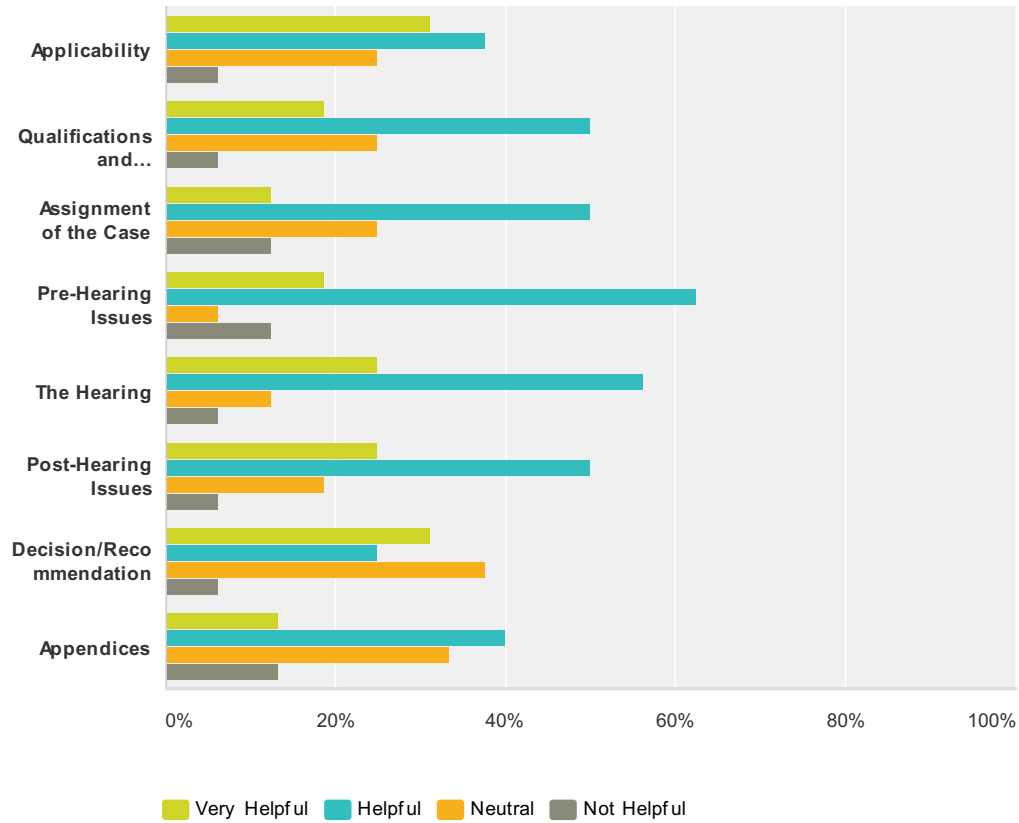
Answered: 17 Skipped: 2



Answer Choices	Responses
Strongly Agree	35.29% 6
Agree	41.18% 7
Neutral	11.76% 2
Disagree	5.88% 1
Strongly Disagree	5.88% 1
I do not have a copy of the current Deskbook	0% 0
Total	17

Q14 Please comment on the quality of each substantive section of the current Hearing Officer Deskbook.

Answered: 16 Skipped: 3



	Very Helpful	Helpful	Neutral	Not Helpful	Total
Applicability	31.25% 5	37.50% 6	25% 4	6.25% 1	16
Qualifications and Responsibilities	18.75% 3	50% 8	25% 4	6.25% 1	16
Assignment of the Case	12.50% 2	50% 8	25% 4	12.50% 2	16
Pre-Hearing Issues	18.75% 3	62.50% 10	6.25% 1	12.50% 2	16
The Hearing	25% 4	56.25% 9	12.50% 2	6.25% 1	16
Post-Hearing Issues	25% 4	50% 8	18.75% 3	6.25% 1	16
Decision/Recommendation	31.25% 5	25% 4	37.50% 6	6.25% 1	16
Appendices	13.33% 2	40% 6	33.33% 5	13.33% 2	15

Q15 Applicability

Answered: 3 Skipped: 16

#	Responses	Date
1	No suggestions	8/7/2013 4:44 PM
2	N/A	8/1/2013 10:16 AM
3	Too general. There is no legal authority for many/most statements in the Deskbook. Va. adm. law hearing procedure itself also needs to be revised. There should be uniform rules of procedure across all agencies. Hearing officers need more specific authority and procedural rules. Which rules of evidence may apply is also not clear. Some things stated in the Deskbook are also incorrect.	7/17/2013 12:04 PM

Q16 Qualifications and Responsibilities

Answered: 3 Skipped: 16

#	Responses	Date
1	No suggestions	8/7/2013 4:44 PM
2	NEED FURTHER DETAIL AS TO AUTHORITY	8/1/2013 10:16 AM
3	Too general.	7/17/2013 12:04 PM

Q17 Assignment of the Case

Answered: 3 Skipped: 16

#	Responses	Date
1	No suggestions	8/7/2013 4:44 PM
2	N/A	8/1/2013 10:16 AM
3	Too general.	7/17/2013 12:04 PM

Q18 Pre-Hearing Issues

Answered: 5 Skipped: 14

#	Responses	Date
1	No suggestions	8/7/2013 4:44 PM
2	HEARING OFFICERS SHOULD ISSUE SUBPOENAS; AGENCY CAN SET CASE WITH CONSENT OF HEARING OFFICER	8/1/2013 10:16 AM
3	issuance of subpoenas and enforcement of them	7/20/2013 8:32 AM
4	Checklist of troublesome issues and suggestive solutions.	7/17/2013 12:58 PM
5	States the obvious and too general. Va. adm. law hearing procedure itself also needs to be revised. There should be uniform rules of procedure across all agencies. Hearing of ficers need more specific authority and procedural rules. Which rules of evidence may apply is also not clear.	7/17/2013 12:04 PM

Q19 The Hearing

Answered: 5 Skipped: 14

#	Responses	Date
1	No suggestions	8/7/2013 4:44 PM
2	NEED SETTLEMENT OF CASE ISSUES	8/1/2013 10:16 AM
3	Some examples of "improper" evidence and, especially, hearsay evidence would be a nice addition. The parties typically throw everything and insist it cannot be rejected because hearsay is allowed. There is little guidance on what is deemed "proper" or "improper" hearsay and evidence.	7/31/2013 3:38 PM
4	Advice on troublesome attorneys and/or pro se parties and suggestions for dealing with these.	7/17/2013 12:58 PM
5	States the obvious and too general. Va. adm. law hearing procedure itself also needs to be revised. There should be uniform rules of procedure across all agencies. Hearing officers need more specific authority and procedural rules. Which rules of evidence may apply is also not clear.	7/17/2013 12:04 PM

Q20 Post-Hearing Issues

Answered: 3 Skipped: 16

#	Responses	Date
1	No suggestions	8/7/2013 4:44 PM
2	N/A	8/1/2013 10:16 AM
3	States the obvious and too general. Va. adm. law hearing procedure itself also needs to be revised. There should be uniform rules of procedure across all agencies. Hearing of ficers need more specific authority and procedural rules. Which rules of evidence may apply is also not clear.	7/17/2013 12:04 PM

Q21 Decision/Recommendation

Answered: 4 Skipped: 15

#	Responses	Date
1	No suggestions	8/7/2013 4:44 PM
2	Examples of "best" decision formats and contents from different agencies	8/1/2013 10:10 PM
3	REQUEST FOR RECONSIDERATION NEEDED	8/1/2013 10:16 AM
4	States the obvious and too general. Va. adm. law hearing procedure itself also needs to be revised. There should be uniform rules of procedure across all agencies. Hearing of ficers need more specific authority and procedural rules. Which rules of evidence may apply is also not clear.	7/17/2013 12:04 PM

Q22 Appendices

Answered: 6 Skipped: 13

#	Responses	Date
1	No suggestions	8/7/2013 4:44 PM
2	too lengthy and dense	8/7/2013 9:38 AM
3	Applicable circuit, appeals, and supreme court case decisions with regard to formal hearing procedures, applications of law, decisions	8/1/2013 10:10 PM
4	N/A	8/1/2013 10:16 AM
5	The Supreme Court's appendix with recommended hearing officer fees is woefully out of date and there seems little willingness to update it. It was last adjusted in 2005, apparently, but I'm not sure. The fees even in 2005 were very low; now in 2013 they are below the cost of doing business.	7/31/2013 3:38 PM
6	Good to have the rules but the HO Rules of Adm. should be revised, particularly as regards abuse of complaint procedures by parties and fee disputes. Also hearing officer compensation has not been adjusted for inflation in many many years.	7/17/2013 12:04 PM

Q23 Please provide suggested topics that should be added to the Hearing Officer Deskbook.

Answered: 7 Skipped: 12

#	Responses	Date
1	No suggestions	8/7/2013 4:44 PM
2	I have no concrete suggestions for the Deskbook. I found the 2009 edition quite helpful, and I occasionally consult it. That update was well done and long overdue. But now that we have it, I doubt there is much to be done to create a new current edition.	8/7/2013 2:31 PM
3	SETTLEMENT OF CASES	8/1/2013 10:16 AM
4	I think the real problem is that hearing officers generally don't need the handbook, but when they DO need guidance, it is on some new or unique issue that the Deskbook doesn't address.	7/22/2013 12:05 PM
5	unauthorized practice by those wishing to appeal without an attorney	7/20/2013 8:32 AM
6	See above 18 & 19.	7/17/2013 12:58 PM
7	The Deskbook should be keyed to hearing officer annual training, which should address evidence standards and burden of proof, as well as standards for review of abuse of discretion. Also training in meeting management and deliberative decision-making could be helpful particularly if hearing officers were used to chair or assist with regulatory board hearings and other hearings by committee.	7/17/2013 12:04 PM

Q24 Please provide suggestions as to additional information you would find helpful as you carry out your duties as a hearing officer.

Answered: 8 Skipped: 11

#	Responses	Date
1	book should provide contact information for personnel support	8/7/2013 4:44 PM
2	I understand that the Executive Secretary is considering changes to the Hearing Officer Rules of Administration and will be contacting us directly about possible changes. Rule Six on Compensation is long overdue for an update. The compensation schedule is ridiculously low.	8/7/2013 2:31 PM
3	samples	8/7/2013 9:38 AM
4	Relationship of APA legal standards for court reviews vis a vis formal hearings	8/1/2013 10:10 PM
5	N/A	8/1/2013 10:16 AM
6	The real thorny issues that come up just aren't covered... but it is hard to expect that you could anticipate the kinds of problems we have in practice. The Deskbook is not trying to be comprehensive... and I don't know that it is fair to ask it to be comprehensive.	7/22/2013 12:05 PM
7	Q & A section for common issues.	7/17/2013 12:58 PM
8	The Va. APA could use some changes regarding replacing recommended agency decisions with hearing decisions subject to appeal to agency heads instead. Agencies often disregard correct hearing decisions for biased reasons. Also, the Va. Supreme Ct. should issue standard administrative hearing rules binding on all state agencies and rules of evidence applicable to administrative hearings in Va. (not necessarily the same as applicable in court, but clear standards and procedures that should apply).	7/17/2013 12:04 PM

Hearing Officer Deskbook

Q25 Name, Address, Telephone, Email

Answered: 8 Skipped: 11

#	Responses	Date
1	Brian K. Miller, P.C. 2119 West Main Street Richmond, Virginia 23220 (804) 359-4902 millerlawlimited@aol.com	8/7/2013 4:45 PM
2	Dan Carrell Carrell Blanton Garrett & Van Horn, PLC 7275 Glen Forest Drive, Suite 310 Richmond, VA 23226 (804) 285-7900 (Ext. 102) dancarrell@carrellblanton.com	8/7/2013 2:32 PM
3	Lois N. Manes P.O. Box 1675 Williamsburg, VA 23187-1675 TEL.757-220-6224	8/7/2013 9:41 AM
4	ALLAN D. ZALESKI, P.O. BOX 3205, NORFOLK, VA 23514, 757-625-1775, no1bigz@yahoo.com	8/1/2013 10:17 AM
5	Cecil H. Creasey, Jr. 1508 Willow Lawn Dr., Suite 210 Richmond, Virginia 23230	7/31/2013 3:39 PM
6	Bill Davidson foldcats@aol.com	7/31/2013 2:22 PM
7	redlaw888@verizon.net	7/17/2013 1:00 PM
8	Robin S. Gnatowsky P.O. Box 4066 Glen Allen, VA 23058-4066 (804) 364-5071 LawOffice@TrustandEstateLaw.com	7/17/2013 12:06 PM