


Commonwealth of Virginia		
<div>Christopher Nolen, Chair</div> <hr/> <div>Andrew Kubincanek, Program Coordinator</div>		<div>General Assembly Building 910 Capitol Street, 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</div>
Administrative Law Advisory Committee		

MEETING SUMMARY
Administrative Law Advisory Committee
Regulation Adoption Date Work Group
Thursday, May 23, 2013
12:30 PM
Capitol Building
House Room 1

MEMBERS PRESENT: Elizabeth Andrews (Work Group Chair), Cindy Berndt, Roger L. Chaffe, Karen Perrine, Brooks Smith

MEMBERS ABSENT: N/A

STAFF PRESENT: Andrew Kubincanek

Call to order and Welcome: Elizabeth Andrews called the meeting to order at 12:30 PM. The purpose of the meeting was to discuss language in Rule 2A:2 of the Rules of the Supreme Court. This rule requires that appeals be filed within 30 days after adoption of a regulation. In several cases, appeals were denied because the 30-day time period after adoption had expired. Judges in these cases were not able to definitively determine when adoption took place.

Discussion of what constitutes “adoption” of a regulation for the purpose of appealing a regulation: The group began by discussing Roger Chaffe’s proposed changes to Rule 2A:2 of the Rules of the Supreme Court. The amendment would clarify adoption to mean “the date on which...the agency takes final action to adopt...” a regulation. The group would later discuss how amending the Rules of the Supreme Court would take too long.

The group went on to discuss how, in some instances, regulations are not becoming effective until years after the adoption date due to the extended executive review process. The group briefly discussed the limitations placed by the APA on the executive review process.

Cindy Berndt stated that, if a regulation is adopted by a board, the adoption takes place at a noticed public meeting, but agency heads are not bound by the same requirements. Ms. Berndt suggested that, if an agency head adopts a regulation, notice should be posted on Regulatory Town Hall. In the case of a non-exempt regulation, there is a requirement to disseminate a summary of all comments at least five days before a decision to adopt. The group discussed

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including the adoption date in this comment summary. The group also considered asking Regulatory Town Hall to add an email notification feature alerting users to planned adoption dates.

Ms. Andrews asked if this would create parallel systems for regulations adopted by a board and regulations adopted by an agency head. Ms. Berndt stated that the change would only require that agency heads provide notice that adoption had occurred. Karen Perrine suggested that the requirement for notice should be freestanding, not tied to the comment summary.

Brooks Smith stated that this change may unintentionally solve another problem on the case decision side. Ms. Berndt stated that she did not wish to expand this to the case decision side and suggested that the requirement be tied to a “public body, not an agency director. The group discussed the potential impact on agencies that frequently adopt regulations by agency head.

Mr. Smith asked for clarification on whether the group intended to amend the Administrative Process Act or the Rules of the Supreme Court. The group agreed to amend the APA and identified § 2.2-4012 E of the Code of Virginia as a good place to include new language. The group set a deadline for drafts of new language on Friday, June 7, 2013.

Public comment; adjournment: Ms. Andrews opened the floor for public comment. Hearing no public comment, Ms. Andrews adjourned the meeting at 1:00 PM.

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