


Commonwealth of Virginia		
Christopher Nolen, Chair <hr/> Andrew Kubincanek, Program Coordinator		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
Administrative Law Advisory Committee		

MEETING SUMMARY
Administrative Law Advisory Committee
Regulation Adoption Date Work Group
Thursday, July 11, 2013
12:00 PM
Speaker's Conference Room
6th Floor, General Assembly Building

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 12:00 PM. After the work group's previous meeting, the members of the group drafted amendments to the Administrative Process Act (APA) or the Rules of the Virginia Supreme Court. These amendments were later compiled into a chart of three options. In addition, an article in *Administrative Law News*, a publication by the Administrative Law Section of the Virginia State Bar, addressed this issue and provided a different solution.

Discussion of Proposed Changes: The group began by discussing the *Administrative Law News* article, noting that the article addressed the complexity of the issue and raised many interesting points. The members of the group did not agree the author's suggestion of an "affected by" test and moved on to the discussion of the other proposed amendments. Option one focused on public notice of the adoption date, option two changed the adoption date to the publication date, and option three changed the adoption date to the effective date.

Ms. Andrews pointed out that the second option on the chart is a new proposal that sets the adoption date as the publication date or after the 30-day final adoption period. Option two avoids the issue discussed at the previous meeting of how to ensure that regulations adopted by directors are noticed in the same way as those adopted by boards. Option two also ensures that there are no unnecessary appeals filed while the regulation is still in the executive review period, during which changes can be requested.

Christopher R. Nolen, Chair
 Elizabeth Andrews
 Cindy Berndt
 Roger L. Chaffe

Jeffrey S. Gore
 Katya Herndon
 Thomas A. Lisk
 Eric M. Page

Karen Perrine
 Michael Quinan
 Alexander F. Skirpan, Jr.
 Brooks Smith

The group agreed that option three (effective date) was problematic. In this scenario, if an affected party had not invested in compliance with the regulation, that party would be out of compliance immediately and adversely affected if the appeal is unsuccessful.

Roger Chaffe expressed support for amending the APA over the Rules of the Virginia Supreme Court. Previous amendments to the Rules of the Virginia Supreme Court took three to four years. Ms. Andrews agreed and stated that, while each option had pros and cons, she supported option two because it seemed to solve the problem with the fewest unintended consequences.

Brooks Smith asked how option two would address exemptions for suspended and emergency regulations. The group consulted the Code of Virginia and discussed how exemptions would be affected by the amendments. Karen Perrine clarified that emergency regulations can become effective upon filing, meaning an emergency regulation would be effective before it could be appealed. Mr. Smith suggested using the public notice requirements in option one to address emergency regulations by requiring public notice of filing. The group considered methods to facilitate this notice.

Cindy Berndt stated that, given other delays in the system, agencies would prefer the appeals process to be initiated as soon as possible. Mr. Chaffe agreed and brought up the two-year time period for appeals in the Model State Administrative Procedure Act. The group concluded that such a large window for appeals would be detrimental to both agencies and the regulated public.

Ms. Andrews suggested sending out all proposed language to the group for final review before presenting amendments to the full committee.

Public comment; adjournment: Ms. Andrews opened the floor for public comment. Hearing no public comment, Ms. Andrews adjourned the meeting at 12:35 PM.

Christopher R. Nolen, Chair
Elizabeth Andrews
Cindy Berndt
Roger L. Chaffe

Jeffrey S. Gore
Katya Herndon
Thomas A. Lisk
Eric M. Page

Karen Perrine
Michael Quinan
Alexander F. Skirpan, Jr.
Brooks Smith