

VIRGINIA CODE COMMISSION

Lansdowne Resort and Conference Center
44050 Woodridge Parkway
Leesburg, Virginia 20176

Tuesday, December 9, 2003 - 2:00 p.m.

MEMBERS PRESENT:

William C. Mims, Chairman
John S. Edwards
Diane Strickland
Frank S. Ferguson
Thomas M. Moncure, Jr.
Robert L. Calhoun
E.M. Miller, Jr.

STAFF PRESENT:

Ginny Edwards
Jane Chaffin
Amy Marschean

MEMBERS ABSENT:

R. Steven Landes, Vice Chairman
William J. Howell
Randall G. Johnson

OTHERS PRESENT:

Leigh Trippe, Lexis Nexis
Nikki Daugherty, Lexis Nexis

CALL TO ORDER

Chairman William C. Mims called the meeting to order at 2:20 p.m.

REVIEW AND APPROVAL OF MINUTES

Judge Strickland made a motion, seconded by Mr. Ferguson, to approve the minutes of the November 19, 2003, meeting as written. The motion was approved.

CODE OF VIRGINIA REPLACEMENT VOLUMES

Leigh Trippe introduced Nikki Daughtery as Mrs. Trippe's backup representative for Virginia.

Mrs. Trippe presented a list of 10 potential Code of Virginia volumes as candidates for replacement in 2004. Mr. Miller suggested deferring a decision on replacing Volume 4 based on the passage of several Crime Commission bills that propose to overhaul much of Title 18.2. After discussion, Judge Strickland made a motion, seconded by Mr. Miller, to replace Volumes 4A, 5A and 10 and to decide on a fourth replacement volume (Volume 3, 4, 8A) in March. The motion was approved.

Mrs. Trippe distributed proposed prices for the 2004 Code of Virginia supplements and replacement volumes. She stated that the pricing proposal reflects a 2-1/2% increase overall if four volumes are replaced and added that this increase is the first price increase in two years. The producer price index for

1 book publishing increased 4% over last year. Mrs. Trippe noted, however, that
2 there is no increase from the 2003 prices if five volumes are replaced.

	2004 Proposal with Four Replacement Volumes	
	State	Private
Cumulative Supplements	\$124.00	\$156.00
Index	\$ 64.00	\$ 69.00
Replacement Volumes (each)	\$ 32.00	\$ 39.50
Volume 11	\$ 24.50	\$ 31.00
Volume 11 Supplement	\$ 6.50	\$ 6.50
Advanced Code Service		\$ 47.50
TOTAL	\$347.00	\$468.00

	2004 Proposal with Five Replacement Volumes	
	State	Private
Cumulative Supplements	\$120.00	\$150.00
Index	\$ 64.00	\$ 69.00
Replacement Volumes (each)	\$ 31.00	\$ 38.50
Volume 11	\$ 24.50	\$ 30.00
Volume 11 Supplement	\$ 6.00	\$ 6.00
Advanced Code Service		\$ 47.50
TOTAL	\$369.50	\$495.00

3 Mr. Miller made a motion, seconded by Mr. Ferguson, to adopt the 2004 prices
4 as presented with the understanding that there would be no increase if a fifth
5 volume is approved. The motion carried.

6 Mrs. Trippe informed the members that Lexis had prepared personalized editions
7 of the Code of Virginia for Code Commission members that are embossed with
8 the member's name. Code Commission members will continue to receive
9 personalized replacement volumes as long as they are members of the
10 Commission.

11 **REVISION OF TITLE 1**

12 Ginny Edwards began by revisiting the definition of "person." She explained that
13 she has encountered a new issue since she was asked to construct a
14 comprehensive definition for this word at the previous meeting. Some of the
15 definitions of "person" that currently exist in the Code of Virginia are defined with
16 "person means" and others with "person includes." Mrs. Edwards asked for
17 clarification as to whether she should use "means," which is most restrictive, or
18 "includes," which is less restrictive. Mr. Ferguson made a motion, seconded by
19 Judge Strickland, to define "person" as follows: "Person includes an individual,
20 corporation, trust, estate, partnership, limited liability company, association, joint
21 venture, government, political subdivision, or any other legal or commercial
22 entity, and any successor, representative, agent, agency, or instrumentality
23 thereof." The motion was approved.

1 On page 2, lines 3 through 7, Mrs. Edwards explained that the addition of
2 § 1-13.19:1, effective October 1, 2003, expands other definitions of "person"
3 throughout code that are restricted to corporation and partnership to also mean
4 "business trust" and "limited liability company." Senator Mims suggested
5 deferring action on this provision and asked staff to identify all definitions where
6 corporation and partnership do not include the "business trust/limited liability
7 company" references and bring the issue back before the Commission. The
8 Commission can then see the number of times and in which titles such definition
9 appears, and better decide whether to insert the "business trust/limited liability
10 company" language in the applicable titles or whether to fix the definitions
11 titlewide during title revisions.

12 The Commission decided to collapse the separate definitions of "month" and
13 "year" into a single section (§§ 1-13.13 and 1-13.33). In the definition of "year,"
14 staff was further instructed to delete the language "; and the word 'year' alone
15 shall be equivalent to the expression 'year of our Lord.'"

16 In § 1-13.91, line 17, delete "any" before "part of the law" to be consistent with
17 the language on page 5, line 4.

18 Mrs. Edwards noted that she had moved the definition of "legislative summaries"
19 from Title 30 to Title 1. She indicated that she would return to this definition later.

20 Staff reviewed the definition of "United States" (§ 1-13.31). A motion was made
21 and seconded to define United States as follows: "'United States' includes the
22 several states, the District of Columbia, Puerto Rico, Guam, the Virgin Islands
23 and the Northern Mariana Islands." The motion was approved.

24 While reviewing the definition of "State" (§ 1-13.26), the need for that definition
25 was questioned. Staff was asked to research the term in the Code of Virginia to
26 see whether such definition is necessary. Based on staff's findings, the
27 Commission will discuss whether to delete the term at a later time.

28 Mrs. Edwards stated that she does not believe that the definition of "Process"
29 (§ 1-13.23:1) is all-inclusive as written. Senator Calhoun made a motion,
30 seconded by Judge Strickland, to strike the definition of "process." The motion
31 was approved.

32 Judge Strickland made a motion to amend the definition of "Seal" (§ 1-13.25) as
33 follows: "'Seal,' when required to be affixed by any court or public office to any
34 paper, includes an impression or print of such official seal made upon the paper.
35 When the seal of any natural person is required to be affixed to any paper, it shall
36 be sufficient for such person to place a mark intended as a seal." Senator
37 Edwards seconded the motion and the motion was approved.

38 Mrs. Edwards explained that she gave Saturday the same status as Sunday and
39 legal holidays in § 1-13.27 for the purpose of postponing court sessions and
40 other proceedings to the next regular business day. This amendment is based
41 on the 1986 enactment of § 1-13.3:1, which provides that when acts to be done
42 in the course of judicial proceedings fall on a Saturday, the act may be done on

1 the next business day. Judge Strickland stated that there are times when judges
2 hold court on Saturday and made a motion to strike Saturday everywhere it
3 appears in amended § 1-13.27. Senator Mims made a substitute motion to strike
4 every occurrence of Saturday in § 1-13.27 and to delete "of an officer" on line 8
5 of page 13. Mr. Ferguson seconded the motion. The motion was approved.

6 In addition, Mrs. Edwards was asked to contact the Supreme Court and inquire
7 as to whether § 1-13.3:1 is sufficient as written to cover acts to be done in the
8 course of judicial proceedings when courts are open partial days, for example,
9 due to reasons such as snow, power outages, etc.

10 **REPEAL OF OBSOLETE LAWS**

11 In the interest of time, the Chairman deferred agenda item #5, Follow up to
12 Repeal of Obsolete Laws Recommendations, until next year.

13 **OVERVIEW OF COMMUNITY SERVICES BOARD STRUCTURE**

14 The Community Services Board structure overview was deferred until the next
15 morning.

16 The Commission recessed until December 10, 2003, at 9:30 a.m.

17 ***Wednesday, December 10, 2003 - 2:30 p.m.***

18 Thomas Balch Library
19 208 West Market Street
20 Leesburg, Virginia 20176

MEMBERS PRESENT:

William C. Mims, Chairman
John S. Edwards
Diane Strickland
Frank S. Ferguson
Thomas M. Moncure, Jr.
Robert L. Calhoun
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OTHERS PRESENT:

Mary Ann Bergeron

21 **TITLE 37.1 RECODIFICATION**

22 **2004 Legislation**

23 Following up on instructions from the September meeting, Amy Marschean
24 presented draft legislation that moves the powers and duties that are currently
25 attributed to the Office of Inspector General to the powers and duties of the

1 Inspector General and clarifies that the Inspector General can access information
2 related to the delivery of services to consumers operated by the Department of
3 Mental Health, Mental Retardation and Substance Abuse Services or served by
4 providers outside of the state facility system, including the licensed mental health
5 treatment units in state correctional facilities. However, the Inspector General is
6 not given access to privileged peer review information of the providers, except
7 privileged information relating to consumers from state facilities and the mental
8 health treatment units in state correctional facilities.

9 Ms. Marschean explained that the Commission had asked that this amendment
10 be handled separately from the remainder of the recodification since there is a
11 substantive issue involved that exempts access to peer review records.

12 Mr. Ferguson asked that the summary reflect that the Code Commission
13 identified a possible need to take action in this area before continuing with the
14 recodification. Staff will add language to the summary providing that, while the
15 Commission recognizes the need for clarifying amendments to be made, the
16 Code Commission takes no position on the substantive changes made. Senator
17 Edwards agreed to carry the legislation.

18 Task Force Replacement

19 On another matter, Ms. Marschean asked the Commission to approve Jim Thur
20 as a replacement for Bill Claiborn on the task force. Senator Calhoun made a
21 motion, seconded by Senator Edwards, to appoint Jim Thur in place of Bill
22 Claiborn as one of the Virginia Association of Community Services Boards
23 representatives on the task force. The motion was approved.

24 Overview of Community Services Boards System

25 Ms. Marschean stated that she thought it would be helpful to brief the
26 Commission members on the community services board system. Paul Gilding
27 with the Department of Mental Health, Mental Retardation and Substance Abuse
28 Services provided historical data and an overview of the current system.

29 Chapter 5, Community Services Boards

30 Mr. Ferguson noted his concern with the amended language on page 15, lines 6
31 and 7, which specifies that the powers and duties of the community services
32 board may be done "with the support and assistance of staff employed by or
33 accountable to it." Mr. Ferguson stated that such authority already exists and,
34 therefore, the language is redundant and unnecessary. Mr. Ferguson made a
35 motion, seconded by Senator Mims, to delete "with the support and assistance of
36 staff employed by or accountable to it, and" on lines 6 and 7. The motion was
37 approved.

38 Section 37.1-197.2 (page 26) provides for background checks. Senator Calhoun
39 commented that it would be helpful if a reviser's note was added here to reflect
40 that provisions for FBI criminal background checks for volunteers is found in Title
41 19.2.

1 The task force rewrote § 37.1-199 to reflect current and historical funding
2 allocation practices. Senator Calhoun noted that language found on page 38,
3 lines 4 and 5, is legally meaningless and made a motion to strike "since this
4 could affect the amount of state-controlled funds provided by the Department."
5 Mr. Miller seconded the motion and the motion was approved.

6 Chapter 6, Behavioral Health Authorities

7 Staff explained that behavioral health authorities function like operating
8 community services boards, but have a few additional powers not given to CSBs.

9 On page 45 (§ 37.1-244), Ms. Marschean noted that she had referred to
10 applicable localities by population bracket and by name. She asked for
11 clarification from the Commission as to its position on this issue. Staff was
12 instructed to remove population brackets and insert the names of the localities.

13 Several technical amendments were suggested that will be incorporated into the
14 next draft.

15 Chapter 7, State Facilities

16 A few additional technical changes were made to Chapter 7 during the
17 Commission's review.

18 Staff advised the Commission of a proposed increase in the fee assessed to
19 persons liable for the support of the consumer when the person does not
20 complete a statement form required by the Commissioner (§ 37.1-118). The
21 current fee is \$5.00 and the proposed fee is \$20.00. The consensus of the
22 Commission was to handle the fee increase separately and the Commission
23 directed staff to remove the increased assessment from the recodification.

24 **PUBLIC COMMENT**

25 The Chairman asked if anyone wished to speak during the public comment
26 period. Mary Ann Bergeron, Executive Director of the Virginia Association of
27 Community Services Boards, thanked Ms. Marschean for the inclusive process
28 she is using with the task force. Ms. Bergeron recognized the complexity of the
29 recodification and conveyed her appreciation for Ms. Marschean's work and for
30 all the briefings and discussions that have gone into the development of the
31 drafts.

32 **ADJOURNMENT**

33 There being no further business to come before the Commission, the meeting
34 adjourned at 12:45 p.m.