Approved 6/15/2005

VIRGINIA CODE COMMISSION

General Assembly Building, 6th Floor
Speaker's Conference Room
Richmond, Virginia 23219

Monday, May 23, 2005 - 10:00 a.m.

MEMBERS PRESENT: William C. Mims, Chairman; R. Steven Landes, Vice Chairman; John S. Edwards; Diane Strickland, S. Bernard Goodwyn; Thomas M. Moncure, Jr.; E.M. Miller, Jr.

MEMBERS ABSENT: Robert Hurt, Robert L. Calhoun; Frank S. Ferguson

STAFF PRESENT: Patricia Davis, Ken Patterson, Jane Chaffin

OTHERS PRESENT: Doug McCartney, LexisNexis; Gail Zwirner, University of Richmond; Alan Goolsby; Hunton and Williams; Bill Wilson, Division of Legislative Automated Systems; Susan Williams, Department of Motor Vehicles; Meredith Farrar-Owens, Virginia Criminal Sentencing Commission

CALL TO ORDER AND APPROVAL OF MINUTES

Chairman William C. Mims called the meeting to order at 10:20 a.m. Judge Strickland asked that the minutes be corrected to reflect her dissent regarding the two-dash numbering system with embedded article that was approved at the April meeting. At the last meeting, Judge Strickland and Mr. Miller had voiced a preference of a two-dash system without embedding the article. Staff will make the appropriate change to the April minutes.

There was a brief discussion about the wording of the motion to confirm the Code Commission's policy to codify provisions from the acts into the Code only when the provisions have general or permanent application. Mr. Moncure stated that the policy as adopted is inconsistent with the Code. To conform to the Code, the policy should state "general and permanent application." A revised motion was not offered at this time.

Judge Goodwyn made a motion to approve the minutes of the April 20, 2005, meeting, as amended. Delegate Landes seconded the motion and the motion was approved.

Senator Mims asked Judge Strickland to brief the Commission on the reaction to the 2007 Code Project that she observed at the Judges Conference. Judge Strickland reported that there is not much enthusiasm for the Code renumbering and reorganization. A major concern noted is the potential financial impact on the court system and other state agencies. The cost of changing thousands of forms and modifying computer programs could be significant. Judge Strickland suggested that there is a need to study the impact of the 2007 Code Project on state government as a whole.

Mr. Miller stated that the work group discussed the forms issue at its last meeting, as well as the need for computer programs to be modified to accommodate new numbers. In general, a six-month supply of forms is

maintained. Mr. Miller commented that the forms issue can be addressed over a two-year period if state agencies are aware that the change is forthcoming. Also, a savings clause will be added to the legislation to address these types of issues. A comment was made that, although the project will take place over a two-year period, there will only be about six months from the time the entire code is presented to the time it actually takes effect.

Suggestions were made to possibly alleviate judges' concerns. The suggestions included making a presentation at the Voluntary Conference this fall, writing informative letters to circuit court judges, and garnering support from the Chief Justice and Judicial Council.

Mr. Moncure stated that similar reluctance was prevalent at the Commonwealths' Attorneys meeting. In his presentation, Mr. Moncure stressed that the 2007 Code Project was a renumbering and reorganization--not a recodification. There was concern about indictments going forward, but Mr. Moncure stated that inclusion of appropriate transitional language in the legislation should alleviate this concern.

The consensus was that putting a framework in place and giving individuals an idea of how the new code will look would be helpful. Mr. Patterson advised that plans are in place to make the framework available on the website.

LOCAL GOVERNMENT LAWS VOLUME

Jane Chaffin stated that Senator Calhoun had asked to see samples of local government laws volumes prepared for other states. Senator Calhoun's request stemmed from discussion at the last meeting concerning the amount of law that is not set out in the code and concern that the public does not have easy access to such law. Doug McCartney, LexisNexis, showed local government laws volumes prepared for Georgia and Idaho. He explained that Georgia's volume includes an index of all codified and uncodified law that pertains to local governments. Georgia spent two years compiling the volume. Delegate Landes asked if the two local government lobbyist organizations should be approached to see if there is an interest in Virginia producing a similar volume. Mr. Miller stated that he would contact the lobbyists about the issue. He commented that the Division of Legislative Services is generating an inhouse index of uncodified Acts of Assembly.

VIRGINIA ADMINISTRATIVE CODE PRICE INCREASE REQUEST

Jane Chaffin stated that she received a letter from West requesting a 10% increase in the price charged for the print version of the Virginia Administrative Code. The contract provides that West can request such an increase annually based on the Producer Price Index (PPI) for Book Publishing, which increased 10% from January 2004 to January 2005. A 7.03% increase was approved last year based on the PPI. There was some concern about approving an increase of 17% over a two-year period.

Senator Mims stated that he would like to see a historical chart showing past increases and would like West to quantify the increase in costs. Action was deferred until later in the summer. Staff will prepare a historical chart and ask West to address the Commission on this issue at a future meeting.

REORGANIZATION AND RENUMBERING OF THE CODE OF VIRGINIA

Outreach Initiatives

Mr. Miller presented a draft article about the Code project written for the June/July issue of the *Virginia Lawyer*. The article is co-authored by Cheryl Jackson and Mr. Miller. Senator Mims and Mr. Miller will include the article in their presentation at the Virginia State Bar annual meeting in Virginia Beach on June 16. A similar presentation will be given to the State Bar Council on June 16 and at the Virginia Bar Association meeting in July.

Work Group

Liz Whiting and Roger Wiley have joined the work group. The work group now consists of individuals representing the courts, the State Bar, the Bar Association, Commonwealth's attorneys, local government attorneys, the Supreme Court, the Department of Motor Vehicles, the State Police, and law librarians.

Report of the Numbering Subcommittee

Pat Davis presented recommendations for inserting new sections, chapters, and titles within the new two-dash numbering scheme approved at the Code Commission's April meeting. The recommended standard is to insert new provisions at the end of an article, chapter or title ("amend to the end") to avoid, whenever possible, the use of decimal points in section, chapter, or title numbers. However, if "amending to end" is not practical, a ".5 convention" is proposed to insert provisions between articles, chapters or titles. Under the .5 convention, the first insertion between existing sections would carry a .5 designation, the second either a .3 or .7, and so on. The intent of this numbering scheme is to allow for growth within the code without the numbering becoming convoluted.

A motion to accept the recommendation of the work group for inserting new provisions into the code was made by Senator Edwards and seconded by Mr. Ferguson. The motion was approved.

The Commission would like the work group to review the internal numbering scheme of individual sections and consider whether any changes should be made to the existing scheme.

Report of the Title Reorganization Subcommittee

Ken Patterson stated that most states do not organize their code titles in alphabetical order as is currently the practice in Virginia. The question to decide is how to order the titles if alphabetical order is not used. A comment was made

that the existing title structure may be too specific and broader subject areas may be worth considering.

The commission agreed, in concept, with Mr. Patterson's suggestion to group Code titles by subject area and to the possibility of consolidating certain titles. The question of retaining the current alphabetical order of Code titles was deferred pending more specific proposals from the work group. Staff will present proposed reordering of titles at the June 15 Code Commission meeting.

Transition

Bill Wilson advised the Commission that once the entire numbering scheme is decided, DLAS will write a computer program to use as a tool to show the new look of the reorganized and renumbered code. The data will display the section catchline and crosswalk tables; statutory text will not be included.

The consensus of the Commission is to make the framework for the new Code showing the new titles and chapter numbers available on the Internet by the fall of 2006. Complete drafts of chapters and titles will be made available on the Internet as they become available.

There was further discussion about overall cost to state government. Senator Mims suggested that the Commission send a letter to the new administration's Secretary of Finance, Secretary of Administration, and Director of the Department of Planning and Budget as soon as those appointments are made by the next Governor. The letter would explain the project and ask for input regarding costs to state government.

Preliminary Discussion on Code Dress

Mr. Miller suggested that the Commission begin thinking about the overall look of the new code. The Commission discussed whether a commemorative edition should be produced; use of the obverse side of the state seal, and possible use of the reverse side; whether to include the issuing year of the new code on the cover; and the importance of the appearance of the new code being easily distinguishable from the existing code. The Commission would like input on all the issues and is interested in looking at all options.

OTHER BUSINESS AND PUBLIC COMMENT

Mr. Miller referred to a copy of a mark up of the three-ship poster that LexisNexis has asked to use at the State Bar meeting. After discussion, the Commission decided to ask LexisNexis not to display the three-ship poster at the State Bar meeting and deferred its decision on future use of the three-ship logo.

No one came forward during the designated public comment period.

The next meeting of the Commission is scheduled for Wednesday, June 15, 2005, at 10 a.m.

The meeting adjourned at 12:25 p.m.