


Commonwealth of Virginia		
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Administrative Law Advisory Committee		

Meeting Summary
House Room 2, Capitol Building
July 26, 2011, 12:00 P.M.

Members present: Chris Nolen, Angela Bowser, Cindy Berndt, Roger Chaffe, Mike Quinan, Katya Herndon, Tom Lisk, Karen Perrine, Phyllis Errico, Eric Page, and Alexander Skirpan

Staff present: Elizabeth Palen and Beth Jamerson

I. Welcome and Call to Order

- Chris Nolen, *Chair*
 - The meeting was called to order at 12:09 p.m.
 - Mike Quinan has updated the *Volkswagen* memoranda to reflect that no developments in the law have occurred since the decision was issued by the Virginia Supreme Court. The committee will begin to coordinate with Elizabeth Andrews and the Office of the Attorney General to discuss dissemination of the memoranda to state agencies.

II. Administrative Process Act

- The purpose of the meeting is to evaluate the Uniform Law Commission's Revised Model State Administrative Procedure Act (MSAPA) in relation to Virginia's current version of the Administrative Process Act (APA). The committee will determine whether it should recommend to the Code Commission any changes to Virginia's APA.

III. Model State Administrative Procedure Act

- **Discussion of Article 6**
 - **Summary of Article 6**
 - Article 6 contains provisions governing central panel hearing agencies, referred to as the Office of Administrative Hearings. Under this article, contested case hearings are heard before administrative law judges from the central panel agency, rather than before administrative law judges from the agency whose case is being heard. This allows for separation of the hearing and decision making authority, which, in theory, provides for greater fairness in hearings.

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Elizabeth Andrews

- Article 6 details the creation of the Office of Administrative Hearings, appointment, qualifications, and discipline for administrative law judges, powers, duties, and authority of administrative law judges, and the panel's interaction with agencies.
- **Roger Chaffe** pointed out that a central panel hearing agency had been considered before by the General Assembly in the 1980s. One of the arguments against it was that the General Assembly had just created the Court of Appeals. That action was criticized as expansion of government, and the addition of an agency to handle administrative appeals was argued to be more of the same. Opposition by state agencies and boards as well as their constituents was probably the most important reason the bill went nowhere. He noted that there are still legislators who oppose any expansion of government and he would expect the same reactions today from agencies and certain constituent groups. He suggested that first the committee should determine whether there is a problem with Virginia's process that needs to be rectified. There are also financial considerations to take into account when determining whether or not to create a new agency.
- **Alex Skirpan** explained that in Virginia, there are essentially two hearing systems for agencies. There are agencies that have hearing officers within the agency, and there is a panel through the Virginia State Bar. Giving a central panel the sole authority to hear contested cases strips some power away from agencies, particularly agency heads and commissioners; this is likely to be the biggest argument against establishing a central panel. The SCC hearing officers operate fairly independently of staff, and are not the investigating officers.
- **Roger Chaffe** explained that heads of agencies want the power to make decisions and interpret their own agency's regulations. Hearing officers within agencies that oversee a professional field have expertise that administrative law judges lack.
- **Tom Lisk** suggested that perhaps for certain agencies a specialized hearing panel is necessary, keeping in mind that oftentimes the perception is that if the hearing officers are employed within the agency it is more difficult for them to be fair.
- **Katya Herndon** mentioned that in 2009 there were 185 requests to have hearing officers appointed to a central panel outside the state bar, and in 2010 there were 211 requests.
- **Eric Page** disagreed that the committee should first determine whether there is a problem with Virginia's process. He suggested the focus should be on whether making changes to Virginia's APA would allow for a more efficient state government.
- **Chris Nolen** acknowledged that discussion of the MSAPA prompts a review of Virginia's system and improvements that could be made to the APA. The committee previously agreed to update the hearing officers' handbooks periodically, and that necessarily includes discussing with hearing officers what would be helpful to include to allow for a more efficient system.

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- **Mike Quinan** emphasized that although the MSAPA is a model act rather than a uniform act, it is still designed so that all the articles work together as a whole.
- **Chris Nolen** agreed and noted that the work groups will meet individually over the next few weeks to discuss each article individually and at the next full committee meeting the act in its entirety will be discussed.
- The committee divided into work groups and each met to schedule future work group meetings.

IV. Public Comment

- There was no public comment.

V. Adjourn

- The meeting was adjourned at 12:36 p.m.

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