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| Commonwealth of Virginia | | |
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| Elizabeth Palen, Executive Director | | |
| Administrative Law Advisory Committee | | |

Meeting Summary

Judicial Work Group 5th Floor West Conference Room, General Assembly Building August 18, 2011, 12:00 P.M.

Members present: Eric Page, Alex Skirpan, Elizabeth Andrews, Cindy Berndt, Roger Chaffe, and Katya Herndon

Staff present: Elizabeth Palen and Beth Jamerson

I. Welcome and Call to Order

- **Eric Page**, *Chair*

- The meeting was called to order at 12:00 p.m.
- Including this meeting, there will be two meetings to discuss the judicial aspects of the Model State Administrative Procedure Act (MSAPA), and whether ALAC should recommend that any of those provisions be incorporated into Virginia's Administrative Process Act (APA). Once ALAC has determined what, if any, modifications should be made to the APA, Chris Nolen will present the Code Commission with those recommendations.
- In order to evaluate the MSAPA and compare it to Virginia's APA, the best approach is not to ask whether there are flaws in the current system, but to ask whether the MSAPA provides for a more efficient process than the APA. Using the outline Mr. Page drafted, the group will proceed by discussing each section of Articles 4 and 5 one by one.

II. Model State Administrative Procedure Act

- **Discussion of Article 4**

- **Eric Page** asked the work group to assume, for the purposes of discussing the merits of Article 4, that ALAC is recommending the adoption of a central panel of hearing officers since Article 4 is premised on the panel's existence.
- **Roger Chaffe** implied that the phrase "contested case" corresponds to what is known in the APA as a "formal hearing;" subsequently, Article 4 of the MSAPA only applies to formal hearings.

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- **Eric Page** noted that the group will not tinker with informal hearings at the agency level.
- Discussion ensued about the difference between informal and formal hearings.
- **Eric Page** inquired what the group thought about recommending a central hearing panel.
- **Roger Chaffe** suggested that although a central panel makes sense from an intellectual point of view in that experience judges develop a jurisprudence that could be relied on, but practically speaking, too many changes to the current hearing system would need to be made and there are no significant problems with the current system.
- **Elizabeth Andrews** suggested that hearing officers under the current system would benefit from additional training opportunities.
- **Katya Herndon** noted that there are only 58 hearing officers currently, and over 200 state agencies.
- Discussion ensued regarding the merits of hearing officers and any disadvantages the current system imposes.
- **Alex Skirpan** mentioned that under the current system the hearing officer makes a recommendation, and the agency makes the final decision. Florida has a central hearing panel, and the agency heads can change some of the decisions made. Ultimately, as long as the agency has the final decision-making authority, there is an outside perception of bias.
- **Roger Chaffe** conceded that it is difficult to make a decision contrary to a hearing officer's recommendation, however, it has been done. Additionally, any bias can be raised on appeal.
- *In conclusion to this line of discussion, Eric Page surmised that there is enough question regarding the current system to warrant a recommendation that the General Assembly consider the idea of a central panel.*
- Discussion regarding the contested case procedures in Section 403 ensued.
- **Roger Chaffe** expressed his desire not to restate what is already considered due process under the APA.
- **Eric Page** suggested the group examine the section more closely to determine whether the basic elements of due process could be improved upon.
- **Katya Herndon** suggested they consider how to incorporate this provision with the current statutes.
- Discussion ensued regarding the relevant current statutes, and the written notice provision.
- The group discussed hearsay provisions found in the MSAPA.
- **Eric Page** realized the meeting had exceeded its time period, but there was a need for further discussion, and assigned each member of the work group either four or five sections of Article 4 or 5. Each member

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will read his assigned sections, compare them to the APA, and prepare a summary for the next meeting.

- **Discussion of Article 5**
 - The group decided to discuss Article 5 provisions at the next meeting.

III. Public Comment

- There was no public comment

IV. Adjourn

- The meeting was adjourned at 1:28 p.m.

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