

Administrative Law Advisory Committee

Summary

September 27, 2007, 11:30 am

Capitol, House Room 2

Present:

Christopher Nolen (Chair)-Williams Mullen

Jane Chaffin-Registrar of Regulations

Katya Herndon-Office of the Executive Secretary, Supreme Court of VA

Angela Bowser-State Corporation Commission

Phyllis Errico-Virginia Association of Counties

Eric Page-LeClair Ryan

Jim Guy-LeClair Ryan, Virginia Bar Section on Administrative Law

Staff:

Elizabeth Palen

Stephanie Kerns

Patrick Regan

I. Welcome and Call to Order, Chris Nolen (Chair)

1. Martin Kent will be the Attorney General's appointee to the Administrative Law Advisory Committee (ALAC).

II. Introductions

1. Please see enclosed biographies in ALAC binder.

III. Policy Implications

A. Nicole Riley, Attorney General's Office

1. The Attorney General's Regulatory Task Force looks at the process by which regulations are done in VA and tries to make them more efficient. It is a systematic review of the regulations and how they are promulgated. There are currently 3 work groups, Agriculture, Health Care and Small Business. The Agriculture group is looking into Environmental Regulations. The Health Care group is currently looking at DMAS regulations, and the Small Business group is looking into DPOR regulations.
2. These work groups are an ongoing process. There is no firm deadline for them.
3. **Jim Guy**-Regulatory task force is looking into immediate problems while ALAC is supposed to work with the overall process.

B. Elizabeth Palen

1. The Joint Commission on Administrative Rules (JCAR) was established in 2002. It is configured of legislatures, 5 senate members, 7 house members and Senator Frank Wagner is the chair. Its official purpose is to review regulations. It is primarily constituent driven and hears complaints about agency regulations. It acts as a mediator between an agency and the legislature. In November 2005, JCAR started receiving notifications of agency regulations that have a small business impact.

C. Chris Nolen

1. It is important for ALAC to show progress within the first year. The Committee is limited in the amount of work that can be done with only 12 members. However, JCAR and the Task Force have their separate purposes and ALAC should focus on a few key areas that do not overlap with the other two.
2. ALAC's work plan must be approved by the Code Commission. The goal for this meeting is to decide on three topics and then Elizabeth Palen will write up the proposed work plan and it will be circulated between ALAC members before being presented to the Code Commission at their next meeting.
3. The next meeting for ALAC will be a full meeting in late October or early November. In later meetings work groups will meet separately.
4. ALAC should identify policy implications and promote a streamlined APA.

IV. Proposed Work Plan

A. Jim Guy

1. The Virginia Bar's Section on Administrative Law felt no agency was evaluating administrative procedures and regulations in VA. ALAC had originally addressed several important issues but was disbanded before many could be completed. The Administrative law Council Section made a suggestion to the Code Commission to revive ALAC.

B. Context

1. APA Exemptions
 - a. An old ALAC study which lays out how a study of exemptions could be done can be found in the ALAC binders.
 - b. Angela Bowser and Jane Chaffin both explained that under the APA, JLARC was entrusted to look at exemptions, but JLARC was willing to let ALAC do so.
 - c. Exemptions can be found in the Code of Virginia and the APA, but some are being put in the Virginia Code and the enactment clauses in the Acts of Assembly and not in the APA. Some of these exemptions are difficult to find.
2. Incorporation by Reference
 - a. Jane Chaffin-Agencies frequently want to update regulations that they have by using incorporation by reference rather than setting out the full text. Perhaps ALAC could look at different types of incorporation by reference and determine if there should be a standard. Incorporation by reference is not addressed in the APA, but it is briefly mentioned in the Virginia Register Act. This could possibly be a two year project.
3. Appeals of Administrative Decisions/Interaction with the Supreme Court
 - a. Katya Herndon-This has not been discussed at the Supreme Court, but she will check to see if it is feasible to pursue.
 - b. Chris Nolen-ALAC would like to take this on. Roger Chaffe has already begun looking into this issue.
4. Other Proposals
 - a. Chris Nolen-There are studies that were completed by ALAC in the past, but they are now five or six years old.
 - b. The current studies address issues from the perspective of practitioners, the APA and the agencies. More studies can be added, but in order to show an end product, three is probably more feasible for ALAC to tackle.

C. Mechanisms

1. If there are no objections, these three items will be presented to the Code Commission at the next Code Commission meeting which will be held October 16-17 in Staunton.
2. ALAC will next meet closer to the end of October and beginning of November.
3. Please be cognizant that ALAC is subject to the Freedom of Information Act. Information is included in binders.
4. Please email Elizabeth Palen with preference for work groups. Rank them 1 through 3. Members are encouraged to join more than one work groups each.
5. The ALAC website will have the most up to date information for meetings and agendas. It can be found at <http://legis.state.va.us/codecomm/alac/alac.htm>.

V. Adjourn