


Commonwealth of Virginia		
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Administrative Law Advisory Committee		

## Meeting Summary

### Judicial Work Group 5th Floor West Conference Room, General Assembly Building October 3, 2011, 12:00 P.M.

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

Staff present: Elizabeth Palen and Beth Jamerson

#### I. Welcome and Call to Order

- **Eric Page, Chair**
  - The meeting was called to order at 12:05 p.m.

#### II. Model State Administrative Procedure Act

- **Discussion of Article 4**
  - **Section 413—Orders: Recommended, Initial, or Final**
    - *The group discussed recommending to the full committee that 2A:2(c) of the Rules of the Supreme Court of Virginia be included in the Virginia APA, which addresses the timeline for filing a notice of appeal.*
  - **Section 414—Agency Review of Initial Order**
    - **Alex Skirpan** explained that this provision is akin to a hearing examiner's report, where the hearing officer makes a recommendation and the agency may then review that recommendation.
    - **Roger Chaffe** mentioned that § 414 is not consistent with the way decisions are made in Virginia, because not every agency decision is made solely by the agency head; some agencies have boards that make decisions, for example. This provision would inject a new level of administrative review into the existing process.
    - *The group discussed advising the full committee that no recommendation would be made with regard to § 414.*
  - **Section 415—Agency Review of Recommended Order**

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Tom Lisk  
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Eric M. Page  
Alexander F. Skirpan Jr.  
Elizabeth Andrews

- **Alex Skirpan** explained that this section merely codifies existing agency practice.
  - **Eric Page** remarked that if this codifies existing practice, then it makes sense to include § 415 in the Virginia APA.
  - **Elizabeth Andrews** expressed concern that there is already so much litigation over agency decisions, and adding § 415 to the Virginia APA could potentially create more opportunities for procedural challenges and further paralyze the system.
  - *The group could not agree whether or not to recommend including any provisions of § 415.*
- **Section 416—Reconsideration**
  - *The group agreed to discuss recommending that a reconsideration provision could be beneficial to include in the Virginia APA. However, such a provision should be more tailored to Virginia. Roger Chaffe volunteered to draft such a provision to present to the full committee.*
- **Section 417—Stay**
  - *The group discussed advising the full committee that § 2.2-4028 of the APA adequately addresses the provisions of § 417.*
- **Section 418—Availability of Orders; Index**
  - **Katya Herndon** pointed out that the Model Act and the Virginia APA are essentially the same, except that the Model Act requires agencies to create an index of all final orders. Some agencies do, however, provide recent case decisions online.
  - *The group discussed recommending inclusion of a requirement in § 2.2-4023 of the APA that agencies create and maintain an index of final orders.*
- **Section 419—Licenses**
  - **Cindy Berndt** acknowledged that although § 419 provisions are not codified in the Virginia APA, agencies do follow the guidelines it sets forth.
  - **Elizabeth Andrews** pointed out that § 419 requirements are codified in the Code of Federal Regulations.
  - *The group discussed advising the full committee that no recommendation is necessary with regard to § 419.*
- **Discussion of Article 5**
  - **Section 501—Right to Judicial Review; Final Agency Action Reviewable**
    - **Elizabeth Andrews** expressed concern that the broad language of the Model Act imposes no restrictions on the right to judicial review and raises questions as to what stage in the regulatory process is a person entitled to judicial review, among other issues.
    - **Roger Chaffe** agreed, and added that this provision could delay the administrative process even further.
    - *The group discussed advising the full committee that no recommendation is necessary with regard to § 501.*

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- **Section 502—Relation to Other Judicial Review Law and Rules**
  - *The group discussed advising the full committee that § 2.2-4026 of the APA adequately addresses the provisions of § 502.*
- **Section 503—Time to Seek Judicial Review of Agency Action; Limitations**
  - **Katya Herndon** suggested including language from § 503(d) in the reconsideration statute Roger Chaffe will draft.
  - *The group discussed recommending that §2.2-402 and part 2A of the Rules of the Supreme Court of Virginia adequately addresses timelines for judicial review, and inclusion of § 503 in the Virginia APA is unnecessary.*
- **Section 504—Stays Pending Appeal**
  - *The group discussed advising the full committee that § 2.2-4028 of the APA, which addresses intermediate relief, is sufficient and no recommendation is necessary with regard to § 504.*
- **Section 505—Standing**
  - *There was a possible consensus among the group that § 2.2-4027 of the APA adequately addresses the issue of standing, and no recommendation is necessary with regard to § 505.*
- **Section 506—Exhaustion of Administrative Remedies**
  - **Eric Page** explained that provisions of § 506 are currently found in Virginia’s body of case law.
  - **Roger Chaffe** expressed concern that § 506(c) expands standing requirements, and the rest of the group agreed.
  - **Elizabeth Andrews** worried that § 506 could potentially require agencies to hold formal hearings, which would unduly burden agencies. She suggested including language that clarifies the statute would not force agencies to hold formal hearings.
- **Section 507—Agency Record on Judicial Review; Exceptions**
  - *The group agreed that § 2.2-4027 of the APA more than sufficiently addresses provisions contemplated by § 507.*
- **Section 508—Scope of Review**
  - *The group discussed advising the full committee that § 2.2-4027 adequately addresses the scope of review and that no recommendation with regard to § 508 is necessary.*

### III. Public Comment

- There was no public comment.

### IV. Adjourn

- The meeting was adjourned at 12:57 p.m.

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