

Commonwealth of Virginia

Christopher Nolen, Chair



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Administrative Law Advisory Committee

Meeting Summary
October 30, 2009; 12:00 P.M.
House Room 2, The Capitol
Richmond, Virginia

Members Present: Chris Nolen (Chair), Roger Chaffe, Katya Herndon, Eric Page, Jane Chaffin, Angela Bowser, Alex Skirpan, Cindy Berndt

Staff Present: Elizabeth Palen and Diana Pharaoh

Guests: Bob Rotz, Jenny Breidenbaugh

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

- The meeting was called to order at 12:00 P.M.
- Update on Rule 2A
 - Overall, unanimous endorsement by Advisory Committee on Rules of Court, Judicial Council of Virginia.
 - Only objection pertained to a word change.
 - The 30 day period for notice of appeal should begin accruing from the date of the service rather than date of entry of decision.

II. Bob Rotz, Division Chief, Joint Legislative Audit and Review Commission (JLARC)

- Pursuant to § 2.2-4005, JLARC reviewed exemptions to the Virginia Administrative Process Act (VAPA) and assessed whether there were any exemptions that should be discontinued or modified.
- See handout.
- **Chris Nolen** posed a series of questions:
 - *How often does JLARC conduct this review?*
 - This is the first time JLARC has done a systematic review of the entire Act, but JLARC will probably be conducting reviews more frequently in the future.
 - *For those agencies that operate under an exemption, is there any language that requires public input?*
 - Yes, all have an opportunity for some sort of public input, but it is much more truncated.

- *Would it be safe to say that the majority agencies operating under an exemption are prevented from using the fast-track?*
 - An agency will determine if it can operate under an exemption before it considers pursuing the fast track. However, the fast track is reserved for only non-controversial regulations. Although an agency may be exempt, if it proposes a controversial regulation, it may not be permitted to pursue the fast-track.
- *Is the word “emergency” defined in VAPA?*
 - The definition was changed; now the governor has full discretion to determine whether an emergency exists.

III. Roger Chaffe, Office of the Attorney General

- Commends Bob Rotz on his review of VAPA exemptions.
 - Confirms ALAC’s findings, i.e. that Virginia has one of the longest regulatory processes in the country; hopes to speed up the process.

IV. Eric Page, LeClair Ryan

- Discussed updates and revisions made to Hearing Officer Deskbook (see handout).
 - Last revision of Deskbook was in 2000.
 - Sent a survey to current hearing officers in the state; responses to the survey were considered in modifying the Deskbook.
 - The experience of the surveyed hearing officers ranged from one to thirty years.
 - Interesting results from survey:
 - One-third reported they had never seen the handbook
 - 41 percent had never consulted the handbook.
 - 53 percent found the handbook helpful.
 - Most popular section: 63 percent reported the section on hearings was most helpful.
 - General recognition that the Deskbook is a good reference.
 - Based on these results, the following revisions were made:
 - Updated statutory references;
 - Edited organization;
 - Deleted table of agency procedures (table was outdated, and a current version is easily accessible to the hearing officer); and
 - Expanded section on Evidence and the Appendix.
- Mentioned other suggestions offered by the hearing officers but which were beyond the scope of the project:
 - Increase compensation for hearing officers;
 - Provide hearing officers with authority to enforce subpoenas and orders;
 - Grant hearing officers with authority to dismiss if appellant/complainant fails to appear; and
 - Address removal of agency pressure upon hearing officers.

- **Chris Nolen**-The hearing officers' comments and suggestions that were beyond the scope of the project should be placed in the public domain; can highlight that these were issues raised, and should be addressed by another body.

V. Final Recommendations

- The Deskbook should be reviewed and updated every 12 to 18 months.
- Motion to forward the revised and updated Hearing Officer Deskbook, subject to minor typographical and formatting modifications, to the Code Commission for its December 3 conference was accepted.
- Motion to endorse JLARC's findings and recommend to Code Commission that legislation be introduced to implement the modifications to APA exemptions (see slide 30 of handout), subject to Code Commission receiving input from the affected entities, was accepted.

VI. The meeting was adjourned at 1:20 P.M.