Administrative Law News

Published by the Virginia State Bar Section on Administrative Law for Distribution to its Members

Volume IX, No. 4 Winter 1991-1992/Spring 1992

Message From The Editor — "HELP!"

When I accepted the job of Editor of this newsletter, I had the best of intentions and almost no idea of how difficult it would be to adhere to a quarterly schedule for publishing it. My maiden effort was not without difficulties, as some unexpected professional responsibilities delayed publication of a Winter edition to the point that the best course was to publish this combination Winter/Spring version. My experience has produced a heightened awareness of the accomplishments of my predecessors.

Table of Contents

In retrospect, while I am not unhappy with the overall result of this edition, it reflects almost no progress toward the second of two primary goals I established at the outset:

- To publish articles on practice topics that will be both thought-provoking and of practical value to Virginia lawyers practicing in the field of administrative law.
- To broaden the base of contributors to include lawyers from around the state with an interest in state and federal administrative practice.

I am aware that my lack of progress has been due largely to demands on my time and to deficiencies in my planning horizon, both of which are relatively within my control. However, this newsletter cannot be what it should be without the assistance of the members of the Section as active contributors of both news and quality articles.

Therefore, this message constitutes a call of "Help!" urging each reader to make an effort to be mindful of the newsletter's constant need for material. Please be alert for any cases, practices and other developments in Virginia and other states and at the federal level that would be of interest to other Section members and be willing to send the information to me for inclusion in the newsletter. To the extent this does not happen, all of us will lose the opportunity to benefit from our collective knowledge and experience, which is one of the basic purposes of the Section.

Thanks in advance for your response.

— Stephen H. Watts II

Award Of Attorney's Fees For Unreasonable Action By State Agencies

Editor's Note: This Article was written by Catherine C. Hammond, an associate in the Richmond office of McGuire, Woods, Battle & Boothe, who participated in the litigation described in this article as counsel for Associated General Contractors of Virginia, Inc.

Business people often feel persecuted by their government and object to having to pay legal fees to get out from under some government order or requirement affecting their business. The following article shows not only that you can win against a government agency, but that you can recover attorney's fees if the government acted unreasonably.

In 1987, two Lynchburg businessmen purchased a tract of land adjoining a rail spur and planned construction of warehouses accessible by road and rail. They divided the property into several parcels, one of which was a 1-acre site elevated above the railroad track. May Bros., Inc., a local contractor, was hired to grade the site. When May Bros. began the grading work, it used fill dirt removed from another construction site for a Lynchburg hospital. Nobody was paid for the fill dirt used at the hospital site.

Before the grading had gotten very far, the Lynchburg office of the Virginia Department of Mines, Minerals and Energy (the "Department") advised May Bros. that a mining permit was required for removing the fill dirt and grading. The Department closed the site on December 23, 1987, when May Bros. refused to purchase the mining permit.

In order to require May Bros. to get a mining permit, the Department first had to decide whether dirt is a "mineral" under Va. Code § 45.1-180(1). That section defines mineral as "ore, rock, and any other solid homogenous crystalline chemical element or compound that results from the inorganic processes of nature other than coal."

The Department also had to decide whether, even if fill dirt is a "mineral", the excavation of fill dirt constitutes "mining" under Va. Code § 45.1-180(a). Mining is "breaking or disturbing of the surface soil . . . in order to facilitate or accomplish the extraction of minerals . . . ." However, that statute also provides that mining "shall not include excavation or grading when conducted solely in aid of on-site farming or construction." Based only on the evidence of construction site excavation, the Department answered both questions in the affirmative. May Bros. appealed the Department decision to the Board of Surface Mining Review (the "Board").

After a hearing, the Board agreed with the Department that fill dirt is a mineral, and that the excavation by May Bros. did not fall within the "on-site construction"

Administrative Law News is your newsletter — if you have any comments or suggestions for improving *Administrative Law News*, or to submit an article for publication, please write:

Stephen H. Watts II, Editor
Administrative Law News
McGuire, Woods, Battle & Boothe
One James Center
901 East Cary Street
Richmond, Virginia 23219-4030

James A. Schmidt, Managing Editor
Administrative Law News
Hunton & Williams
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219-4074

exclusion essentially because May Bros. did not yet have a completed building permit for the site being graded.

May Bros. took an appeal to the Circuit Court for the City of Lynchburg. May Bros.' appeal was supported by the Associated General Contractors of Virginia, Inc., who participated as *amicus curiae*. On April 25, 1989 the Lynchburg Circuit Court overruled the Board's decision, holding that (1) dirt is not a mineral; (2) May Bros.' activities did not constitute "mining"; and (3) in any event, the activities of May Bros. fell under the "construction exemption." Up to that point the Circuit Court's ruling was confined to a legal interpretation of the statute and its common sense reasoning during oral argument that "you can't build anything in Lynchburg without either taking dirt away or putting dirt in."

However, the Circuit Court went further, finding, *sua spoute*, that the Department's action was "arbitrary and capricious." Based on this unrequested finding, the Court found that the Department had acted unreasonably within the meaning of Va. Code § 9-6.14:21 and ordered the agency to pay May Bros. its attorney's fees and costs, then in the neighborhood of $6,000.

The Attorney General asked the Circuit Court to reconsider the award of attorney's fees, arguing that an award of fees against an agency could not be supported simply by arbitrariness. The Attorney General argued that legal fees could not be awarded without a showing that the "responsible, supervisory personnel of the agency knew or should have known that the agency's action was arbitrary and capricious or was in bad faith and took no corrective action."[1] The Circuit Court denied the motion for reconsideration.

The Department appealed to the Court of Appeals, where the Attorney General again raised the question whether the trial court committed error in awarding attorney's fees to May Bros. In *Commonwealth of Virginia Department of Mines, Minerals & Energy v. May Bros., Inc.*, 11 Va. App. 115, 396 S.E.2d 695 (1990), the Court of Appeals found no error and affirmed all rulings of the Circuit Court.

Under § 9-6.14:21, a party in a case contesting agency action can recover reasonable costs and fees when three conditions are present: (1) the party substantially prevails on the merits of the case; (2) the agency is found to have acted unreasonably; and (3) there are not special circumstances which would make an award unjust. The Court of Appeals ruled that May Bros. satisfied all those conditions, and thus the government owed May Bros. its $6,000, nearly three years after the site had been shut down by the Department. Of course, by this time May Bros. had incurred additional fees in defending the agency's appeal, and had asked the appeals court for an additional award of $11,000 against the agency. That request was settled out of court between the agency and May Bros.

---

[1] *Williams v. Commonwealth*, 190 Va. 280, 56 S.E.2d 537 (1949).

Virginia Committee For Fair Utility Rates v. Virginia Electric And Power Co.:

Implications For Virginia Law Administrative Practice

Editor's Note: This article was written by Stephen H. Watts, II, a partner in the Richmond office of McGuire, Woods, Battle & Boothe.

On February 28, 1992, the Virginia Supreme Court issued an opinion in an appeal from the State Corporation Commission ("the Commission") that will have significant implications for practice before the Commission and perhaps also for practice before other administrative agencies in the Commonwealth.

The issue in *Virginia Committee for Fair Utility Rates v. Virginia Electric and Power Co.*, 243 Va. 320, ___ S. E. 2d ___ (1992) ("*Virginia Committee*") was whether the Commission had erred by permitting Virginia Electric and Power Company ("Virginia Power") to proceed with an application for expedited rate relief that included an accounting adjustment that appeared to conflict with the Commission's rules. The Court reversed and remanded the case to the Commission with instructions to award appropriate refunds to Virginia Power's customers.

Under the applicable provisions of the Code of Virginia, a proposed utility rate increase filed with the Commission can go into effect on an interim basis, subject to investigation by the Commission and public hearing, after which the Commission can order the utility to refund any part of the increase found not to be just and reasonable.[2]

The Code allows a proposed increase to become effective on an interim basis 30 days after filing, but also allows the Commission to suspend the increase for a maximum period of 150 days after filing.[3]

Over the years, the Commission has used various sets of rules governing the contents and filing of utility rate increase applications, called the Rate Case Rules. The current version of the Rate Case Rules was adopted in 1984[4] and amended in 1985[5]. In a general rate case, a utility is free to propose new accounting adjustments and ratemaking methodologies, but the Commission usually suspends proposed general rate increases for the maximum 150 day statutory period. Under Rule II of the current Rate Case Rules, a utility "which has not experienced a substantial change in circumstances [since the utility's last rate case] may file for an expedited increase in rates," meaning that, if its application conforms to certain requirements, the proposed new rates will take effect on an interim basis 30 days after filing. One of the requirements for expedited rate case applications is that the

---

[2] Va. Code §§ 56-238 and 56-240.

[3] Va. Code §§ 56-237 and 56-238.

[4] *Ex Parte: In the matter of adopting revised rules governing Financial Operating Reviews and utility rate case filings*, 1984 S.C.C. Ann. Rep. 375.

[5] *Ex Parte: In the matter of adopting certain amendments to the Rules Governing Utility Rate Increase Applications*, 1985 S.C.C. Ann. Rep. 478.

utility is limited to the ratemaking methodology and accounting adjustments approved by the Commission in the utility's last general rate case.

Virginia Power filed an expedited rate increase application that, *inter alia*, included an accounting adjustment to recognize projected future construction work in progress ("CWIP") that had not been approved in Virginia Power's last general rate case. The Virginia Committee for Fair Utility Rates (a group of large industrial consumers of electricity) (the "Committee"), the Division of Consumer Counsel of the Office of the Attorney General (the "Attorney General") and a private citizen ratepayer, Jean Ann Fox ("Fox"), moved to dismiss the application for violating the Rate Case Rules.

The Commission allowed Virginia Power to proceed with the application on an expedited basis, citing language in Rule II that authorizes the Commission to "take appropriate action" where it finds that the utility has experienced a "substantial change in circumstances." The Commission noted that, when it had discontinued use of the CWIP adjustment by Virginia Power in 1986 because the utility had completed a significant construction effort, the Commission had indicated that it might restore the adjustment in the future if Virginia Power were to embark on a new major construction program. Finding that Virginia Power's renewal of major construction activity constituted a "substantial change in circumstances," the Commission ruled that it would be "appropriate action" to allow the expedited application to include the CWIP adjustment. Accordingly, the proposed rates went into effect on an interim basis 30 days after the application was filed.

In its Final Order, the Commission rejected the Virginia Power CWIP adjustment in favor of an accounting adjustment proposed by the Commission's Staff (and supported by Virginia Power) to reflect in the new rates Virginia Power's known construction additions updated to the time of the public hearing.

On appeal, the Court ruled that the Commission had committed reversible error by allowing the application to proceed on an expedited basis:

> Contrary to arguments advanced by Virginia Power and the Commission, the Commission is not empowered to ignore or waive its rules which emanate from a grant of power conferred upon the Commission by Art. IX, § 3 of the Constitution of Virginia and Code §§ 12.1-25 and -28. Rather, the Rate Case Rules, which have been duly adopted by the Commission, must be followed by the Commission unless or until changed in a manner permitted by the Virginia Constitution and by these statutes.
>
> The language contained in the Rate Case Rules clearly prohibits a utility from filing an application for an expedited increase in rates if the application includes adjustments that were not approved by the Commission in the utility's last general rate case. *See* Rate Case Rules, Schedule 13. Adherence to these rules is mandatory. It is clear, and both the Commission and Virginia Power acknowledge, that a CWIP adjustment was not approved in Virginia Power's last general rate case.

243 Va. at 320, ___ S.E. 2d at___. The case was remanded to the Commission with directions to order Virginia Power to make "appropriate refunds" to ratepayers and to dismiss Virginia Power's application. 243 Va. at 329, ___ S.E. 2d at ____. A hearing before the Commission on the proper amount of such refunds is scheduled for May 18, 1992.

The Court's February 28 opinion in *Virginia Committee* has had immediate impact. On February 27, 1992, the Commission issued a final order in *Application of Virginia-American Water Company for an expedited increase in rates,* Case No. PUE910028, approving an increase in water rates for Virginia-American Water Company ("Virginia-American"). Virginia-American had filed an application for expedited rate relief and had obtained a formal waiver from the Commission allowing Virginia-American to include in the application certain accounting adjustments that arguably were different from those approved in the utility's last rate case.[6] These adjustments were accepted by the Commission and the other parties to the case, including the Attorney General, and were reflected in the new rates approved in the February 27 final order. On March 10, the Attorney General filed a petition for reconsideration, arguing that the Commission's earlier waiver was erroneous under the holding in *Virginia Committee.*[7] The Commission granted reconsideration on March 16.

Virginia Committee also was decided in time to have a potential impact on another Commission rate case appeal, *Anheuser-Busch Companies, Inc. v. Virginia Natural Gas, Inc.*, Record No. 911879 ("*Anheuser-Busch*"), which was argued during the Court's April, 1992 Term. The *Anheuser-Busch* appellants seek to overturn the rate design used by the Commission to establish rates for interruptible transportation service in an expedited rate case filed by a natural gas distribution utility, Virginia Natural Gas, Inc., on the grounds that the Commission's rate design produces transportation rates in excess of the cost of providing the transportation service. Specifically, the appellants argue that, under the holding in *Virginia Committee*, the Commission is required to apply strictly its finding in a previous rulemaking that natural gas "transportation rates should be based on the fully distributed costs" of providing that service.[8]

In the author's opinion, the Court's holding in *Virginia Committee* has significant implications for administrative practice in Virginia, not just before the Commission, but for other administrative agencies as well.

It certainly is not a new concept that an agency cannot lawfully violate its own rules, particularly where the interests of a party are affected.[9] However, strict application of this principle to the Rate Case Rules creates the potential for unfair results.

---

[6] The SCC's 1984 order establishing the current Rate Case Rules provided that a utility applicant could seek a waiver of a specific requirement in the Rules by filing a request therefor at least 60 days before the filing of an application. *See* 1984 S.C.C. Ann. Rep. 380. Virginia-American's motion for waiver in Case No. PUE910028 was filed at the same time as the application for expedited rate relief.

[7] Under Rule 8:9 of the Commission's Rules of Practice and Procedure, Commission orders are subject to modification or vacation for a period of 21 days after issuance, and any party may petition the SCC for rehearing or reconsideration of an order within that 21 day period.

[8] *See Ex Parte: In the matter of adopting Commission policy regarding natural gas industrial rates and transportation policies,* Case No. PUE860024, 1986 S.C.C. Ann. Rep. 319, at 324.

[9] *See* 243 Va. 328 for cases cited by the Court in *Virginia Committee* for this principle.

The Rate Case Rules currently require a rate case applicant to prepare and file 36 schedules of complex financial and accounting data and information in compliance with instructions for each schedule that often require interpretation in specific situations, particularly with regard to the scores of accounting adjustments typically involved. Smaller utilities often do not have the staff resources and expertise necessary to understand how these instructions apply to a given set of facts. Even a sophisticated applicant in an expedited rate case may have to rely in good faith on its reasonable interpretation of the Rate Case Rules in preparing an accounting adjustment or even on an interpretation obtained informally from the Commission's Staff. Despite the fact that the application for expedited rate relief reflecting that adjustment has been accepted by the Commission as complying with the Rate Case Rules, and even if the adjustment is ultimately rejected by the Commission, the potential now exists for the Court to decide subsequently that the interpretation was wrong, the Rules had not been complied with and the application was fatally defective. Such a result could be devastating for a utility depending on that application for its future financial viability. Many would argue that the public interest does not require such a harsh result, particularly where the ratepayers are protected by the refund process.

Potentially more significant is the holding of *Virginia Committee* that the Commission could not waive any requirement of the Rate Case Rules. This holding appears to raise the question whether any Virginia agency now may use its discretion to waive a requirement of its procedural or substantive rules where strict enforcement would be unfair or otherwise not in the public interest. *See, e.g., Onslow Co., N.C. v. U.S. Dep't of Labor*, 774 F. 2d 607, 611 (4th Cir. 1985) ("Agencies are free to relax procedural rules . . . when the ends of justice require it.").[10] The broad discretion historically afforded to the Commission to accept or reject accounting adjustments in ratemaking matters[11] was not sufficient to support such a waiver in *Virginia Committee*. The ruling in that case may prompt other Virginia regulatory agencies, and practitioners regularly appearing before them, to review their rules and practices for possible compliance and waiver issues.

This process had already begun at the Commission before the Court had issued its opinion in the *Virginia Committee* case. Even before that case was argued, the Commission issued an order proposing a new set of Rate Case Rules and establishing a rulemaking proceeding for the purpose of receiving public comment on the proposed rules and requests for a public hearing. *Ex Parte: In re: Revision of Commission Rules governing public utility rate increase applications*, Case No. PUE910076, Order Directing Notice and Inviting Comment issued December 13, 1991. The period for comment ended on April 6, 1992. Extensive comments were filed by a wide range of interested parties, including at least one request for hearing. The participants are awaiting an order from the Commission regarding further activities in the case. Although this rulemaking covers many other issues associated with the preparation and filing of utility rate cases, implications of the Court's opinion in *Virginia Committee* are among the most significant matters that will be under consideration.

---

[10] For an excellent discussion of restrictions on an administrative agency's authority to waive its own rules, see 1 C. KOCH, ADMINISTRATIVE LAW AND PRACTICE, §§ 3.73, 3.74 and 3.75 (1985 & Supp. 1990)

[11] *See Roanoke Gas Co. v. State Corp. Comm'n.*, 225 Va. 186, 300 S.E. 2d 785 (1983).

1992 General Assembly Highlights

The following are highlights of legislative activity during the 1992 Session of the General Assembly of particular interest to lawyers practicing in the field of administrative law:

JLARC Interim Report on Review of Virginia's Administrative Process Act, House Document No. 32: House Joint Resolution No. 397, adopted during the 1991 Session, directed the Joint Legislative Audit and Review Commission ("JLARC") to study the efficiency and effectiveness of the Administrative Process Act ("APA") and to issue an interim report to the 1992 Session and a final report and recommendations to the 1993 Session. The 1992 interim report, issued January 8, 1992 as House Document No. 32, provides an overview of the Virginia APA and its historical development, summarizes comments received throughout the year and at a public hearing held September 19, 1991, and identifies nine study issues for further analysis.

HB 919 (Jackson, of Hillsville (D)) — 1992 Acts, Ch. 829: This bill amends Va. Code § 9-6.14:9 to add a new subsection A stating that the purpose of regulatory procedures is "to provide a regulatory plan which is predictable, based on measurable and anticipated outcomes, and is inclined toward conflict resolution."

SB 62 (Gartlan, of Mason Neck (D)) — 1992 Acts, Ch. 216: This bill amends Va. Code §§ 9-6.14:22, 9-6.17, 9-77.7, 9-77.8, 9-77.10, 9-77.11, 9-77.11:01, and 9-77.12 to place upon the Code Commission "the responsibility of publishing and maintaining an administrative code when the Code Commission determines that such publication is in the best interest of the citizens of Virginia and will not result in an expenditure of general fund revenues unless provided in the general appropriations act."

HB 1178 (Reynolds, of Martinsville (D)): This bill, which was carried over to the 1993 Session, would amend Va. Code §§ 9-6.14:7.1 and 9-6.14:9 to require an agency, before promulgating or publishing any regulation and in addition to the other requirements of these sections, to make "a written comparison of the merits of the proposed legislation in protecting the public health, safety and general welfare versus the regulation's general impact on the use and value of private property and the approximate costs to the regulated persons."

1992 National Regulatory Conference

The VSB Administrative Law Section, the State Corporation Commission ("the Commission") and the College of William and Mary's Marshall-Wythe School of Law, jointly presented the twelfth annual National Regulatory Conference in Williamsburg on May 14, 1992.

Following on the success of the energy theme used for the 1991 Conference, the subject of the 1992 Conference was "A Delicate Balance: Utility Planning for Future Energy Resource Needs." Thanks to the leadership of Section Chairman Kenworth E. Lion and Program Committee Chairman James C. Dimitri, attendance was a virtual sellout, and the 1992 Conference was an unqualified success.

On the evening of May 13, a pleasant reception and dinner was presented by the Conference hosts for the panelists and their spouses.

The Conference began on May 14 with warm welcomes from Preston C. Shannon, Chairman of the Commission, Section Chairman Lion and Marshall-Wythe Dean Timothy J. Sullivan, and an introduction by Commissioner Theodore J. Morrison of the Commission. Cheryl A. LaFleur, General Counsel of New England Power Service Company, presented keynote remarks on current challenges in energy demand-side management and resource planning.

The topic of the first panel discussion was "Conservation and Load Management - The Promise of Tomorrow," and was led by Moderator Deborah V. Ellenberg, Deputy General Counsel of the Commission. The panelists, who presented their perspectives on the importance of effective conservation and load management ("CLM") measures designed to reduce the need for development of new electric and gas facilities, were Virginia Secretary of Natural Resources Elizabeth H. Haskell, Mary C. Doswell, Director, Demand Side Analysis of Virginia Power, J. Edward Smith, Director, Market Planning and Analysis of Washington Gas Light Company, Edward R. Pruitt, Senior Purchasing Agent of Allied-Signal Inc. and S. Lynn Sutcliff, President and CEO of Sycom Enterprises.

The second panel was on the topic of integrated resource planning ("IRP") and was led by Moderator Stephen H. Watts, II, a partner of McGuire, Woods, Battle & Boothe. Part I of this panel was presented before lunch as Jennifer L. Miller, General Counsel of Boston Gas Company, William C. Miller, Supervising Planner, Energy Efficiency Services of Pacific Gas and Electric Company, and Alexander "Hap" Ellis, III, Vice President of Marketing of Kenetech/U.S. Windpower, offered remarks on their approaches to preparing for and participating in the IRP process. After an alfresco lunch at the Williamsburg Lodge, Part II of this panel was presented, with the panelists from Part I returning for a free-form discussion of selected IRP issues ably led by two dynamic "inquisitors," Commissioner Gary L. Nakarado of the Colorado Public Utilities Commission and John A. Anderson, Executive Director of the Electricity Consumers Resource Council ("ELCON").

The last panel was led by Moderator Guy T. Tripp, III, a partner of Hunton & Williams, and focused on energy facility siting issues, as the panelists shared their experiences associated with the development and permitting of major electric and natural gas facilities. The panelists were Nathan H. Miller, partner of Miller & Hern, Jerry L. Causey, Vice President of Virginia Natural Gas, Inc., Barbara A. Byron, of the Fairfax County Office of Comprehensive Planning, June

A.Whelan, Special Assistant for Wetlands to the U.S. Secretary of the Interior, and Honorable W. Tayloe Murphy, Jr., Member of the Virginia House of Delegates and Chairman of the Virginia Commission on Population Growth and Development.

As always, the Conference would have been impossible without the perseverance, patience, good humor and charm of Mary McIlhatten of the Commission's Staff, who served again as Conference Coordinator.

Section Workshop On Medicare Fraud And Abuse Scheduled For June 19 At 1992 VSB Annual Meeting

The VSB Administrative Law Section will present a workshop entitled "Medicare Fraud and Abuse: What the Non-Health Care Lawyer Needs to Know" during the 1992 VSB Annual Meeting in Virginia Beach on Friday, June 19 from 9:30 a.m. to 11:00 p.m. in Coral Rooms D & E at the Cavalier Oceanfront Hotel. The Workshop has been approved for 1.5 hours of CLE.

The new Medicare Fraud and Abuse Rules present challenges for any lawyer that does not specialize in health care law but who is called upon to provide general legal advice to participants in the health care industry. The Workshop, which was organized by Section Board member Mary Lynn Bailey, of Mezzullo & McCandlish, will include panelists Robert T. Adams, of McGuire, Woods, Battle & Boothe, Patrick C. Devine, Jr., of Hofheimer, Nusbaum, McPhaul & Samuels, Steven D. Gravely, of Mezzullo & McCandlish, and Heman A. Marshall, III, of Woods, Rodgers & Hazlegrove and will provide valuable guidance on this complex subject to non-health care law specialists.

June 19 Annual Meeting Of Section To Include Election Of New Officers And By-Law Revisions

The 1992 annual meeting of the VSB Administrative Law Section will take place during the VSB Annual Meeting on Friday, June 19 at 9:00 a.m. in Coral Rooms D & E at the Cavalier Oceanfront Hotel, immediately preceding the Medicare Fraud and Abuse Workshop.

Action to be taken at the annual meeting will include election of new officers and adoption of certain revisions to the Section's by-laws.

The following slate of new officers has been nominated:

Chairman	James C. Dimitri
Vice Chairman	Guy T. Tripp III
Secretary	Deborah V. Ellenberg

In addition, nominations will be accepted from the floor.

At its March 24, 1992 meeting, the Section's Board of Governors voted unanimously to adopt the following resolution proposing that certain revisions to the Section's by-laws be presented for approval at the Section's June 19 annual meeting:

Resolution Of The Board Of Governors Of The Administrative Law Section Of The Virginia State Bar

WHEREAS, the Bylaws of the Administrative Law Section (the Section) of the Virginia State Bar provide for the election of 10 members of the Board of Governors of the Section, with the terms of office of such members of the Board of Governors being staggered over a four-year period; and

WHEREAS, the foregoing provision results in the election of two members of the Board of Governors during each of the first three years of such four-year period and in four members of the Board of Governors being elected in the fourth year of such four-year period; and

WHEREAS, in order to provide for the orderly and gradual succession of the members of the Board of Governors and to make the turnover of the members of the Board of Governors more nearly equal from year-to-year, the Board of Governors wishes to recommend to the members of the Section for approval at the 1992 annual meeting an amendment to the Bylaws of the Section in order to accomplish the same and certain other amendments to the Bylaws;

NOW THEREFORE, BE IT RESOLVED by the Board of Governors of the Administrative Law Section of the Virginia State Bar as follows:

1. That the Board of Governors does hereby approve and recommends the members of the Section approve the following amendments to the Bylaws of the Section:

A. Article I, Section 2 of the Bylaws is amended to read in its entirety as follows:

> Section 2. The purposes of this Section are to sponsor programs and seminars on administrative law, to provide a forum where Section members can share research, source materials and experiences, and to concern itself with any and all questions and issues involving administrative law.

B. The following shall be inserted at the end of the existing text of Article III, Section 4 of the Bylaws:

> At the annual meeting of this Section to be held in 1995, one member shall be elected to serve for a term of two years, beginning July 1, 1995, and ending on June 30, 1997, and three members shall be elected for terms of four years, beginning July 1, 1995, and ending on June 30, 1999. Thereafter, upon expiration of the term of each member of the Board of Governors, members of the Board of Governors shall be elected at each annual meeting of the Section for terms of four years, beginning July 1 following the annual meeting in which they have been elected and ending June 30 four years later.

C. Article IV, Section 1, shall be amended to read in its entirety as follows:

> Section 1. Nomination. Not less than 60 days before the annual meeting, the chairman shall appoint a nominating committee of at least three members, not less than two of whom shall be members of the Board of Governors. At the annual meeting, the nominating committee shall make, or cause to be made, a report to the Section of its nominations for any offices or board seats held by members whose terms expire on the 30th day of June following such annual meeting, or for offices or board seats which are then vacant. Two members of the nominating committee shall constitute a quorum, and if less than a quorum is present, the chair of the Section shall appoint new members sufficient to constitute a quorum.

Other nominations may be made from the floor of the Section meeting.

D. Article VII, Section 7, shall be amended to read in its entirety as follows:

> Section 7. Members of the Board of Governors, when personally present at a meeting of the Board shall vote in person, but when absent may communicate their vote, in writing or

by telegram, upon any proposition to the Secretary and have it counted, with the same effect as if cast personally at such meeting. Members of the Board of Governors or any committee designated thereby may participate in any meeting of the Board or such committee using a conference telephone or similar communications equipment by means of which all persons participating in the meeting can simultaneously hear each other, and participation by such meeting shall constitute presence in person at such meeting.

2. That, if the members of the Section approve the foregoing amendments, the officers of the Section are authorized and directed to submit the proposed amendments to the Executive Committee of the Virginia State Bar for recommendation to the Council of the Virginia State Bar for approval and that the foregoing amendments shall not become effective until so approved by the Council of the Virginia State Bar.

Editor's Note:

Administrative Law News is pleased to publish, upon request, all Letters to the Editor in our FORUM section. All letters, however, must be signed. Please send your letters to:

Stephen H. Watts II, Editor
Administrative Law News
McGuire, Woods, Battle & Boothe
One James Center
901 East Cary Street
Richmond, Virginia 23219-4030

James A. Schmidt, Managing Editor
Administrative Law News
Hunton & Williams
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219-4074

1991-1992 Board of Governors

Kenworth E. Lion Jr., '93
Chair
Miller & Hern
4201 Dominion Blvd.
Suite 200
Glen Allen, VA 23060
804/270-0070

James C. Dimitri, 1994
Vice Chair
Christian, Barton, Epps, Brent & Chappell
1200 Mutual Building
Richmond, VA 23219-3095
804/697-4126

Guy T. Tripp, III, 1994
Secretary
Hunton & Williams
Riverfront Plaza, E. Tower
951 East Byrd Street
Richmond, VA 23219-4074
804/788-8328

Briggs W. Andrews, 1992
Carilion Health System
P.O. Box 13727
Roanoke, VA 24036-3727
703/981-8053

Mary Lynn Bailey, 1995
Mezzullo & McCandlish
700 East Main Street
Eighth Floor
Richmond, VA 23219
804/782-9250

George J. A. Clemo, 1993
Woods, Rogers & Hazlegrove
P.O. Box 720
Roanoke, VA 24004-0720
703/982-4200

Deborah V. Ellenberg, '95
State Corporation Comm.
P.O. Box 1197
Richmond, VA 23209
804/786-86571

Charles H. Koch, Jr., '92
Marshall Wythe-School of Law
College of William & Mary
Williamsburg, VA 23185
804/221-3835

Donald G. Owens, 1995
Mays & Valentine
P.O. Box 1122
Richmond, VA 23208
804/697-1200

Stephen H. Watts, II, 1995
McGuire, Woods, Battle & Boothe
One James Center
Richmond, VA 23219
804/775-4353

Robert T. Adams
Ex Officio
McGuire, Woods, Battle & Boothe
One James Center
Richmond, VA 23219
804/775-4365

STATEMENTS OR EXPRESSIONS OF OPINION OR COMMENTS APPEARING HEREIN ARE THOSE OF THE EDITORS OR CONTRIBUTORS AND NOT NECESSARILY THOSE OF THE STATE BAR OR SECTION.

NEW MEMBERS WANTED

The Administrative Law Section presently has 254 members, and constantly strives to increase its membership. Please assist the Section in its membership drive by forwarding this application to your colleagues.

APPLICATION FOR MEMBERSHIP
ADMINISTRATIVE LAW SECTION
VIRGINIA STATE BAR
1992

Name _____

Virginia State Bar I.D. No.
(From Your Bar Card) _____

Address _____

_____

Firm _____

_____

$15 Annual Membership Dues Enclosed
(Check payable to "Virginia State Bar")

Mail To: VIRGINIA STATE BAR
Eighth & Main Building
707 E. Main Street, Suite 1500
Richmond, Virginia 23219-2803

Virginia State Bar
Eighth & Main Building
707 East Main Street
Suite 1500
Richmond, VA 23219-2803

Bulk Rate
U.S. Postage
PAID
Richmond, Virginia
Permit No. 709