

2007 BOYD-GRAVES CONFERENCE

SUBCOMMITTEE REPORT

Whether There Should be a Better Mechanism, or a Specific Time Limit, for a Judicial Decision of a Matter Taken Under Advisement by a Circuit Court Judge Following Briefing and Argument

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September 5, 2007

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RE: Boyd-Graves Study of Specific Mechanism for Judicial Decision of Matters
Taken Under Advisement

Dear Tom:

Our Committee was charged to study whether there should be a better mechanism, or a specific time limit, for a judicial decision of a matter taken under advisement by a Circuit Judge following briefing and argument. My committee members, The Honorable Bernard Goodwyn, The Honorable Michael P. McWeeny, Elaine C. Bredehoft, Esquire, Robert S. Ballou, Esquire and W. Coleman, Allen, Jr., all actively participated in the study.

The members of the Committee agreed that a specific time limit in Va. Code § 17.1-107 would make it more effective. Currently, the statute provides for an "unreasonable length of time". In addition to better defining the statute, the Committee felt it would be significant to create an expectation of a maximum time period to render a decision.

The Committee examined statutes in other jurisdictions and found that time limits varied anywhere from thirty days up to one hundred and twenty days. The Committee reached a consensus of a specific time limit at ninety days. We agreed to use language that required the judge to report the status of the expected time of a decision in any cause taken under advisement more than ninety days. It was felt that on most occasions the judge would render a decision within ninety days rather than report under the statute. Although the statute allows a party or counsel to report to the Chief Justice any matter taken under advisement more than ninety days, it was felt that this would be unlikely if the judge had advised in writing that the decision was coming in a short period of time.

The Committee agreed to add the language "or take other appropriate action" at the end of paragraph A in order to give the Chief Justice more flexibility to assist the judge.

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The current statute reads:

§ 17.1-107. Designation of judge to assist regular judge holding case under advisement for unreasonable length of time

A. Whenever the Chief Justice of the Supreme Court, or any justice designated by him, has reasonable cause to believe that any judge of a court of record may be holding one or more civil cases under advisement for an unreasonable length of time, he shall inquire into the cause of such delay, and if he finds it necessary, in order to expedite the administration of justice, he shall designate a judge or retired judge of a court of record to assist the regular judge in the performance of his duties.

B. Complaints made hereunder shall be absolutely privileged and the name of the complainant shall not be disclosed without his consent.

We recommend the statute be amended as follows:

Amended § 17.1-107. Designation of judge to assist regular judge holding case under advisement

A. A judge of a court of record in a civil case shall report in writing to the parties or their counsel on any cause under advisement for more than ninety days after final submission stating an expected time of a decision. In any case in which a judge holds any cause under advisement for more than ninety days after final submission, fails to report under this statute, or fails to render a decision within the expected time stated in the report, any party or their counsel may notify the Chief Justice of the Supreme Court. The Chief Justice of the Supreme Court, or any justice designated by him, shall inquire into the cause of the delay, and if he finds it necessary in order to expedite the administration of justice, he shall designate a judge or retired judge of a court of record or take other appropriate action to assist the regular judge in the performance of his duties.

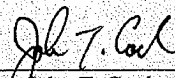
B. Complaints made hereunder shall be absolutely privileged and the name of the complainant shall not be disclosed without his consent.

This Amendment was unanimously agreed upon by the Committee and we recommend its adoption by Boyd-Graves.

Very truly yours,

CASKIE & FROST

By: _____


John T. Cook

JTC/sjh

Editor's Note:

The Committee's recommended revision to Virginia Code § 17.1-107 was adopted by consensus. The General Assembly passed this revision in modified form. See 2008 Acts of Assembly, Ch. 813.