

LAW OFFICES
CRENSHAW, WARE & MARTIN, P.L.C.
150 WEST MAIN STREET, SUITE 1500
NORFOLK, VIRGINIA 23510

TELEPHONE (757) 623-3000
FACSIMILE (757) 623-5735

ANN K. SULLIVAN
EMAIL: asullivan@cwm-law.com

September 18, 2012

VIA ELECTRONIC AND REGULAR MAIL

John R. Walk, Esquire
HIRSCHLER FLEISCHER
Post Office Box 500
Richmond, VA 23218-0500

Re: 2012 Boyd Graves Conference

Dear John:

Our committee was tasked with reviewing the following issue:

Should Virginia Code § 8.01-428(c) and/or Rule 5:9 be amended to provide relief where a final, appealable order is entered, but for some reason is not properly filed in the Clerk's Office (either by inadvertent mistake or by someone's sinister efforts, though the former situation is vastly more likely). Under current law, if that order stays missing for more than 60 days before surfacing, there is no available statutory remedy; it is final and no court has jurisdiction to modify or review it. All appellate deadlines are calculated from the date of entry of the order, not the date it gets placed in the proper file, so it's too late for a notice of appeal (30 days under Rule 5:9) and too late for the trial court to suspend the order for good cause (60 days under Code §8.01-428(C)).

We noted that the committee, which included a state court judge, had no anecdotal evidence that this issue has presented an ongoing problem for practitioners. We also noted that there were two potential components of the problem:

1. Entry of an order endorsed by counsel or parties.

If the order was endorsed, reasonable follow-up would determine if it had been entered.

2. Entry of an order not endorsed by counsel or parties.

We noted that such an order would not be entered absent a waiver of endorsement, which would be communicated at the time the ruling was made. In the event of a fraud being perpetrated upon the court in connection with the

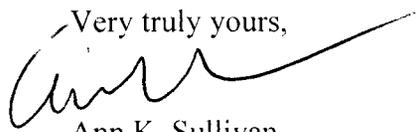


presentation of an order, there are other remedies available to protect the litigants.

We also considered that the statute at issue was amended in recent history to address such issues and expand the period for "good cause" relief to 60 days. The Committee believes that the 60 day period is adequate to address the remote circumstance where information concerning the entry of an order was not accessible to the litigants.

The committee also believes that achieving finality of an order for purposes on perfecting an appeal is crucial to the administration of justice and the prompt resolution of disputes.

Accordingly, the Committee respectfully concludes that no action is necessary on the part of Boyd Graves.

Very truly yours,

Ann K. Sullivan

AKS/mls

cc: Jonathan T. Blank, Esquire
P. Brent Brown, Esquire
W. Hamilton Bryson
Judge Rodham T. Delk, Jr.
W. David Harless, Esquire
Elizabeth G. Perrow, Esquire
Sandy T. Tucker, Esquire