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## MEMORANDUM

TO: Boyd-Graves Steering Committee

FROM: John R. Walk

DATE: August 31, 2011

RE: Editor's Notes on 2009 Boyd-Graves Committee Reports

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I have set forth below "Editor's Notes" to be appended to the Committee Reports posted on the VBA web site for the 2009 Boyd-Graves Conference based upon the approved minutes and Hamilton Bryson's Legislative Report dated September 30, 2010 (Tabs 2 and 3 to 2010 Conference booklet).

4. Guide to Evidence

The Committee provided a detailed report and presentation on the revisions to the Guide to Evidence. No action was recommended by the Committee.

5. Attorney's Fees When Verdict is less than \$15,000

The Committee's proposed statute, which would, with the Judge's discretion, award attorney's fees in cases where the basic award is less than \$15,000, failed to achieve a consensus of the Conference.

6. Amendment of Pleadings

The Committee's recommendation to amend Rule 1:8 was revised following considerable discussion to apply only to written motions; the change to the Rule was drafted and then approved by consensus of the Conference. Amendments to Rule 1:8 and 3:16 responsive to the Conference's recommendation were adopted on March 1, 2011, effective on May 2, 2011.

7. Virginia Uniform Arbitration Act

The Committee's recommendation that the Virginia Uniform Arbitration Act be amended to delete language that prevents the appeal of an award directing arbitration was approved by the Conference and then endorsed to the General Assembly. This proposal was introduced as Senate Bill 156 but was continued to the 2011 General Assembly session.

8. Fifth Amendment Privilege in Divorce Actions

The Committee's recommendation to amend Virginia Code § 8.01-223.1 to allow judges to make adverse inferences from Fifth Amendment assertions in divorce proceedings was revised following discussion and then approved by the Conference. The proposal passed the House of Delegates as H.B. 14, but was defeated in the Senate Courts of Justice Committee.

9. Timing of Filing Bill of Costs

Proposed amendments to Virginia Code § 17.1-630 in relation to the timing of filing failed to achieve a consensus of the Conference.

10. Comparative Negligence

The Committee was unable to reach a consensus on any recommended change to Virginia law and decided to terminate the study; thus, no action was taken by the Conference.

11. Dollar Based Provisions in the Virginia Code

There were several votes taken in regards to suggested changes to the Code of Virginia. In the first vote, the Conference approved the recommendations on page 2 of the Committee report. A second vote regarding the recommendations on page 3, excluding Virginia Code § 8.01-676.1, were approved by the Conference. A third vote regarding the changes on page 4 were approved by the Conference. In the fourth vote, the Conference approved the first three recommendations on page 5. The Committee's recommendation to abolish Virginia Code § 17.1-624 was modified to retain the first sentence and change the name of the code section, and then approved by the Conference. The remaining matters on page 5 and following were carried over to the next Chair and the Steering Committee. These recommendations were introduced as Senate Bill 154, approved by the General Assembly, and enacted as 2010 Acts of Assembly, Ch. 343.

12. Sovereign Immunity

The Committee presented two reports to the Conference—one in favor and one in opposition to the extension of the Virginia Tort Claims Act to counties and cities; the Conference approved the report favoring expansion of the Act. In response to the Conference's recommendations, Senate Joint Resolution 30 was proposed but defeated in the Committee on Rules.

13. Supersedeas Bonds

Proposed amendments to Virginia Code § 8.01-676.1 as presented in the Committee report were revised following discussion and then approved by the Conference. These proposals were introduced as House Bill 105, approved by the General Assembly, and enacted as 2010 Acts of Assembly, Ch. 494. The Advisory Committee on Rules has since approved an amendment to Rules of Court 5A, Form 6 to conform to this amendment.

14. Equivalent of Federal Rule of Evidence 502

The Committee's recommended rule was approved by the Conference. This proposed rule was introduced as Senate Bill 384, approved by the General Assembly, and enacted as 2010 Acts of Assembly, Ch. 350. It may be found at Virginia Code § 8.01-420.7.

15. Evidentiary Foundation for Electronic Evidence

The Committee recommended no changes to the current law; thus, no action was taken by the Conference.

16. Medical Liens

The Committee's recommendation that Virginia Code § 8.01 be amended to comply with the holding of *Ahlborn* was modified and then approved by the Conference. This proposal was introduced as Senate Bill 155 but was continued to the 2011 General Assembly session.

17. Vocational Experts and Rule 4:10

The Committee could not reach a consensus on any recommended change to Virginia law. This matter was carried over to the next Boyd Graves Conference to allow discussion with other Family Law Bar groups.

18. Medicare Set Aside

No formal recommendation was made by the Committee; however, the Committee noted that the Medicare set-aside program may result in significant delays in settling personal injury cases in the future.

19. Jury Venire

The Committee's recommendation to change the time period from 48 hours to two full business days in regard to when a copy of the jury panel shall be made available to all counsel of record in the case. This proposal was introduced as Senate Bill 382; after modifying the time period to three full business days, the bill was approved by the General Assembly and enacted as 2010 Acts of Assembly, Ch. 799.

20. Jurisdiction of the Court of Appeals

No formal recommendation was made by the Committee. It was suggested that the Committee be reconstituted in two years.

21. Pretrial Scheduling Order

Proposed amendments to Rule 1:18 and the Uniform Pretrial Scheduling Order to allow counsel to change the designation of experts by agreement as provided in the Committee report failed to achieve a consensus of the Conference.

22. Claims against Counties

The Committee's recommendations to amend Virginia Code § 15.2-1246 to specify bond amount and time period for county action were revised following discussion and then approved by the Conference. This proposal was introduced as Senate Bill 383; after modification, it was approved by the General Assembly and enacted as 2010 Acts of Assembly, Ch. 668.

23. Nonsuit of Counterclaims

No action was recommended by the Committee.

24. Lien for Advanced Attorney's Fees

No action was recommended by the Committee.