

September 5, 2008

Hon. Diane M. Strickland, Chair  
Boyd-Graves Conference

Re: 2008 Boyd-Graves Revised Uniform Arbitration Act Study

Dear Judge Strickland:

This will constitute the report of the Committee you appointed and asked me to Chair to study the question whether there is a need for the adoption of the Revised Uniform Arbitration Act (RUAA).

The present Virginia Acts, Arbitration and Award is found at Virginia Code Section 8.01-577-8.01-581.016 and is consistent with the Uniform Arbitration Act.

The original Uniform Arbitration Act was promulgated by the Uniform Law Commissioners in 1955 and it has been adopted by 49 states. The Federal Arbitration Act contained many similar provisions so that the Uniform Act became the fundamental substance of the law governing agreements to arbitrate in the law of the United States.

The National Conference of Commissioners on Uniform State Laws promulgated the last revision of the Uniform Arbitration Act in 2000. It was originally intended to augment the procedural side of arbitration "to meet modern needs." While 49 states adopted the original Uniform Arbitration Act, only 13 states have adopted the RUAA.

Without intending to be a comprehensive summary of the RUAA, some of its more prominent features include:

(a) Section 6 grants the arbitrator the power to determine arbitrability once the Court determines only whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate.

(b) Section 10 permits court ordered consolidation of separate arbitration proceedings under certain conditions and so long as the agreement itself does not prohibit consolidation.

(c) Section 15(b) permits the arbitrator to render summary judgment.

(d) Section 21 permits under certain circumstances punitive damage awards.

(e) Section 25 provides that on application of a prevailing party to a contested judicial proceeding, the Court may award attorney's fees and other reasonable expenses of litigation incurred in judicial proceeding occurring after the arbitration is made.

The Virginia Alternative Dispute Resolution Joint Committee of the Virginia Bar Association and the Virginia State Bar studied the RUAA in 2002 and 2003.

While the Committee thoroughly studied the RUAA, it did not produce a written report nor did it recommend adoption of the RUAA.

However, the adoption of the RUAA was introduced during the 2002 General Assembly session (SB307, Patron: Sen. John Edwards, Roanoke). It was carried over to the 2003 General Assembly session in the Senate Committee for Courts of Justice where it received little attention. Our Committee was advised anecdotally that there was no identifiable movement for the adoption of the RUAA and what activity there was recommended against adoption.

In the fall of 2004, the Virginia Alternative Dispute Resolution Joint Committee convened an *ad hoc* committee to revisit the issues of adoption of the RUAA in Virginia. Thereafter, the chair of the Virginia Alternative Dispute Resolution Joint Committee reported to the VBA Standing Committee on Legislation that it recommended that the RUAA not be introduced in Virginia noting *inter alia* that the committee members were not aware of significant problems with the existing Virginia Uniform Arbitration Act.

With that history, our Committee reviewed the Virginia Arbitration Act, the Revised Uniform Arbitration Act, an analysis of the RUAA, by Jean Baker, a vice president of the American Arbitration Association (expressing her personal view), the summary of the RUAA published by the Uniform Law Commissioners, the RUAA policy statement issued by the chair of the RUAA drafting Committee in 2000, the analysis of the RUAA created and studied by the Virginia Alternative Dispute Resolution Joint Committee including a comparison chart of the Virginia Arbitration Act with the RUAA and a review of Virginia SB307. Finally, the Committee was presented with the tracking history of SB307 along with the comments of Senator John S. Edwards, its patron.

Most of our Committee members were experienced in arbitration and for two of our members, arbitration constitutes a significant part of their practice.

No member of the Committee is aware of any significant impetus for adoption of the RUAA. Further, the Committee was not able to identify any particular controversy surrounding the enforcement of the present Virginia Arbitration Act.

This is not to say that the Committee is uniformly pleased with the present state of arbitration, generally, nor does this report suggest that the Committee believes that the Uniform Arbitration Act is effectively meeting the ideal of more expeditious resolution of disputes and significant reduction in costs.

The charge of the Committee, however, was to address the issue of whether Boyd-Graves should propose adoption of the RUAA. The Committee reports that it does not at this time recommend adoption of the Revised Uniform Arbitration Act by the Commonwealth of Virginia.

The Committee requests however that members of the Conference be polled as to what problems they have encountered with arbitration under Virginia law to see whether the Committee should revisit the RUAA.

Respectfully submitted,

Wiley F. Mitchell, Jr.  
Kenneth Montero  
Roger W. Mullins  
M. Bryan Slaughter  
Richard C. Sullivan, Jr.  
Bruce E. Titus  
H. Duncan Garnett, Jr., Chair

Editor's Note:

The Committee's recommendation was that the Revised Uniform Arbitration Act not be adopted in Virginia. The Committee was reconstituted and instructed to continue to study this issue.