

## **Memorandum**

**TO:** ADR Section, Executive Council  
and RUAA Sub-committee

**DATE:** December 11, 2006

**FROM:** Jan Frankman, Past Chair and  
RUAA Sub-committee Chair

**RE MSBA Legislative Committee Meeting Summary; Revised Uniform  
Arbitration Act**

As Past Chair of the Section, I am representative to the MSBA Assembly and serve as a member of the Legislative Committee. The Assembly meets quarterly beginning in September each year. Its next meeting is on Friday, December 15. The Legislative Committee met on November 27 and 28, to consider all proposals and requests for support of legislation and other initiatives which require Legislative Committee consideration and direction to the Assembly for approval. The following is a brief summary of the Legislative Committee Meeting and additional information with regard to the status of the Section's position and status with regard to RUAA.

In addition to our Section, Legislative Proposals were submitted by the Probate & Trust, Real Property, Construction Law, and Administrative Law Sections and the Human Rights Committee. The Committee took presentations, asked questions and finally debated its position to be presented to the Assembly. It also considered twenty MSBA Legislative Positions current as of December 9, 2005. The Agenda for Friday's MSBA Assembly Meeting, which may be viewed at the MSBA website at <http://www2.mnbar.org/governance/assembly/06Dec/Agenda.htm>, details the Legislative Committee's report and recommendations including its recommendation to maintain the position it has held since December 6, 2002, with regard to RUAA as follows:

Resolved that the MSBA recommends that the Legislature defer action of the Uniform Arbitration Act to provide an opportunity for further study.

Note at page 2, paragraph D. 1. of the Assembly Agenda that "(t)he Legislative Committee agreed to help facilitate further study of the UAA among interested parties;"

Legislative Proposals were due to the Committee on November 6, 2006. They were distributed for comment due by November 24, 2006. The only comment received relative to our Proposal was from one member of the Legislative Committee who could not attend the November 27 and 28, meeting. Leo Brisbois, writing on his own behalf, provided detailed comment with regard to several Committee Meeting Agenda items including our Section's proposal:

I oppose the recommendation by the ADR section regarding the revised Uniform Arbitration Act. The section position paper states that

there has been no specifically articulated objections to the provisions of the RUAA, however, it can also be said that the materials submitted to the Legislative Committee do not specifically articulate any significant, substantial problems with existing Minnesota statutes and case law. The efforts to have Minnesota adopt the RUAA appears to be primarily academic in nature rather than an attempt to address and correct any actual, describable crisis in ADR practice as currently pursued under existing Minnesota law; therefore, I do not believe that the case has been made for such a wholesale change as would be effected by adoption of the RUAA. Were I able to attend the upcoming legislative Committee meeting(s), I would vote that this item not be passed along out of committee.

The RUAA Sub-committee has received one other express statement in opposition to the legislation. On November 15, 2006, Arlo Vande Vegte sent me an email providing the current position of the Minnesota Trial Lawyer's Association which I read to the Legislative Committee members on November 27, as a part of my presentation in support of our Proposal. Mr. Vande Vegte wrote as follows:

After much deliberation and discussion MTLA's position on the RUAA remains unchanged. Problems with contracts of adhesion, expanded discovery, lack of appeal rights are issues that we feel are insurmountable.

During the Legislative Committee discussion of our Proposal, one Committee member, also a member of MTLA advised the Committee that MTLA viewed RUAA to be "a solution looking for a problem" adding his opinion that MTLA had always made it clear to our RUAA sub-committee that it opposed RUAA. Another member expressed his opinion that the MSBA should support our Proposal and not wait for express objections and positions from sections and organizations who did not respond to our requests for specificity. A Motion for the Association to take "no position" in the legislature was not passed. There was concern that it would not be a helpful position anticipating express opposition in the legislature by the Trial Lawyers.

We have received express support from the Construction Law Section and have not received any statement in opposition to our Proposal from any Section or committee of the MSBA. We met most recently on October 4, 2006, with representatives of MTLA, the Minnesota Defense Lawyers Association, the Insurance Federation and the Civil Litigation Section. At the invitation of its Chair, I met on December 8, with the Executive Council of the Civil Litigation Section. The Civil Litigation Section has taken the matter under advisement and has taken a "no position" position to date. We were advised at the referenced October 4, meeting that the MDLA and the Insurance Federation opposed proposed RUAA provisions which permit an award of attorneys fees and costs and punitive damages. We were promised alternative language to address their issues and, to date, have not received anything from either organization. The MSBA By-laws

recognize MTLA and MDLA as affiliated organizations with representation in the Assembly.

Articles 10 and 14 of the MSBA By-laws specifically apply to the establishment and work of sections of the Association. Section 14.1 addresses reports and actions of sections:

#### **§14.1 Action of a section or committee**

Reports, recommendations, amicus briefs, or other action of any section or committee of the MSBA may be published as the action of such section or committee only after the section or committee certifies to the President of the MSBA the vote totals on the matter and that the report, recommendation, amicus brief, or other action:

- (a) is germane to the business of the section or committee;
- (b) has been approved in accordance with the section's bylaws, or in the case of a committee, by the majority of the quorum;
- (c) is not contrary to any current position of the MSBA;
- (d) does not address an issue pending consideration by the MSBA on the agenda of the Council or Assembly; and
- (e) indicates (in a format previously established by the President) that it is the action of the section, section council, or committee, and does not represent the view or action of the MSBA.

No report or recommendation relating to legislation may be presented to the Minnesota legislature or a committee thereof until a copy of the report or recommendation has been provided to the MSBA legislative representative. When there is a difference of opinion among those authorized to determine the position of the section or committee, the position of the minority may also be presented by the minority at any time and place at which the majority position is presented.

I do not believe we would be successful seeking MSBA approval to take an independent position in the Legislature as a Section. The Association has an express position. We are entitled to take positions and actions as individuals. We may also plan, as a Section, further strategy to move RUAA forward in the future including a specific request for facilitation support from the Legislative Committee and dedication of Section funds to support a lobbyist where necessary. The Charge of the Legislative Committee of the Assembly provides for such facilitation and addresses the hiring of a lobbyist by a section as follows:

The Legislative Committee will facilitate communication among sections and committees regarding legislative positions. Whenever there is a conflict between positions of sections or committees, the Legislative Committee is responsible for addressing the conflict. Conflicting positions should not go forward to the Legislature; rather the Legislative Committee should work to resolve the conflict. The Legislative Committee may

prevent conflicting positions from going to the Legislature by placing the matter on the agenda of the Assembly or Council.  
. . . . . Any section or committee seeking to hire its own lobbyist must obtain the approval of the Legislative Committee of the Assembly. In most situations, the Legislative Committee will require that the section or committee hire the same lobbyist as is retained by MSBA, and the section or committee would be required to transfer funds to the MSBA to cover additional payments due to the lobbyist for additional services rendered on behalf of the section or committee.

The Committee's Charge with regard to lobbyist support is provided for your information only, not because I believe lobbyist support for RUAA should come from the Section.

I welcome your questions and suggestions. I look forward to an opportunity to raise and discuss these matters and issues with the Section.

JKF