

Stradley Ronon Stevens & Young, LLP
2005 Market Street
Suite 2600
Philadelphia, PA 19103-7018
215.564.8000 Telephone
215.564.8120 Facsimile
www.stradley.com

With other offices in:
Washington, D.C.
New York
New Jersey
Illinois
Delaware



www.meritas.org

Our firm is a member of Meritas – a worldwide business alliance of more than 183 law offices in 92 countries, offering high-quality legal services through a closely integrated group of independent, full-service law firms.

Information contained in this publication should not be construed as legal advice or opinion or as a substitute for the advice of counsel. The enclosed materials may have been abridged from other sources. They are provided for educational and informational purposes for the use of clients and others who may be interested in the subject matter.

Copyright © 2019
Stradley Ronon Stevens & Young, LLP
All rights reserved.

The Pennsylvania Revised Uniform Arbitration Act

On June 28, 2018, Pennsylvania adopted the Revised Uniform Arbitration Act (RUAA), which became effective on July 1, 2019. The RUAA replaces the Pennsylvania version of the 1955 Uniform Arbitration Act. The RUAA applies to all arbitration agreements in Pennsylvania executed on or after July 1, 2019. The law also allows the parties to arbitration agreements entered into prior to that date to elect to be governed by the new law.

The law makes some significant changes to the prior law as well as to previous common law practice. The most noteworthy of these changes are as follows:

Discovery

Under the new law, an arbitrator may permit discovery, including a deposition, that “is appropriate in the circumstances, taking into consideration the needs of the parties ... and the desirability of making the proceedings fair, expeditious and cost effective.” For example, the arbitrator is now authorized to allow discovery depositions where justice requires. This is certainly different from past practice, which generally did not favor discovery depositions. The new statute separately authorizes the arbitrator to “permit a deposition of a witness to be taken for use as evidence at the hearing, including the witness that could not be subpoenaed for or is unable to attend the hearing.” So, in addition to discovery depositions, trial depositions are now allowed.

Summary Dispositions

The new statute expressly authorizes the arbitrator to act on the parties’ request for the summary dispositions of claims or issues. Summary disposition in an arbitration is akin to a motion to dismiss, motion for judgment on the pleadings and a motion for summary judgment in traditional litigation. A frequent criticism of arbitration is the inability to bring early closure to a matter that should be decided as a matter of law. The new statute provides clear guidance that summary disposition is expressly authorized and available in the appropriate circumstances. This should come as welcome news to users of ADR services inasmuch as it may streamline certain proceedings that can be adjudicated without the need for an expensive and time-consuming hearing.

Remedies

The new statute provides that an arbitrator may order whatever remedies are just and appropriate under the circumstances, including punitive damages and reasonable attorney fees and expenses if such an award would otherwise be authorized in a civil action or if authorized by agreement between the parties. A court may order provisional remedies prior to the appointment of an arbitrator to protect the effectiveness of the arbitration proceeding, which the arbitrator may then modify. A court may enforce a provisional order issued by an arbitrator.

Initiation

Notice of the initiation of the arbitration may be given in a manner agreed to by the parties or in the absence thereof must be given by certified or registered mail, return receipt

requested, or by service authorized for the commencement of a civil action.

Arbitrability

Unless terms of the arbitration agreement provide otherwise, a court decides whether an agreement to arbitrate exists in the first place and determines the scope of the agreement to arbitrate. On the other hand, the arbitrator decides whether the conditions precedent to arbitration have been fulfilled and whether a contract containing a valid arbitration agreement exists.

Disclosures and Impartiality

The new statute expressly requires that a prospective arbitrator make reasonable inquiry and disclose all known facts that a reasonable person would consider likely to affect impartiality before accepting an appointment. This duty continues even after appointment. The “reasonable inquiry” requirement is not defined but presumably requires the arbitrator to run an internal conflict search to ensure the appointment would not create a conflict. After the disclosures are made, parties may object to the seating of the arbitrator for “evident partiality.” The statute provides that an arbitrator appointed as a neutral is presumed to have acted with evident partiality if he or she fails to disclose a material interest in the outcome of the arbitration proceeding or a substantial relationship to any party. On the other hand, substantial compliance with any agreed-upon procedure for challenging the partiality of an arbitrator is condition precedent to a later motion to vacate the award. In other words, the litigants cannot wait until an unfavorable outcome is achieved and then, only at that point, challenge the neutrality of the arbitrator.

Immunity

The new statute clarifies that an arbitrator is immune from civil liability to the same extent as would be a judge acting in a judicial capacity. An arbitrator is not competent to testify and may not be required to produce records as to any conduct



For more information, please contact **Patrick R. Kingsley**, Chair, Construction & Alternative Dispute Resolution at 215.564.8029 or pkingsley@stradley.com.

occurring during an arbitration proceeding to the same extent a judge acting in a judicial capacity would be protected. However, if an arbitration award is challenged and there is prima facie evidence that supports any claim that the award was procured by corruption or fraud, or if there was evident partiality by an arbitrator, the statute provides that the arbitrator may be compelled to testify.

Consolidation

The new statute expressly provides that a court may consolidate separate arbitration proceedings if they involve the same persons, the same claims, the same transactions, or common issues of fact or law.

Waiver of the RUAA

The RUAA specifically itemizes those sections that may not be waived or modified by a party to an arbitration proceeding. Presumably, all other provisions are waivable. For example, a party’s right to request that a court vacate an arbitration award is not waivable. By contrast, the power of an arbitrator to issue a subpoena or allow depositions would presumably be waivable.

Conclusion

Collectively, these changes represent a significant modification to the practice of arbitration in Pennsylvania. For more information on this topic, please feel free to contact us.