



Staff Memorandum

EXECUTIVE COMMITTEE Agenda Item #8

Attached are comments received from the Committee on Civil Practice Law and Rules with respect to the Dispute Resolution Section's legislative proposal to adopt a new CPLR 7502A.

New York State Bar Association

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COMMITTEE ON CIVIL PRACTICE LAW AND RULES

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Re: Affirmative Legislative Proposal from the Dispute Resolution Section, To Enact a New CPLR 7502A concerning Employment Arbitration

Dear Ms. Baxter:

The Committee on Civil Practice Law and Rules has reviewed the report of the Dispute Resolution Section, proposing a new CPLR 7502A in response to Assembly Bill A-7002A/Senate Bill S5798, amending CPLR 7511. The CPLR Committee shares DRS's concerns about Assembly Bill A-7002A/Senate Bill S5798. The CPLR Committee is also concerned that both the proposed amendment to CPLR 7511, and the proposed CPLR 7502A, would be largely preempted by the Federal Arbitration Act (the "FAA"), would be ineffectual and would create litigation and controversy.

The Committee recognizes that there has been a recent trend towards expanding arbitration of disputes where an employee is seeking redress under employment protection laws. Because these cases invariably affect interstate commerce, they are governed by the FAA rather than CPLR Article 75.

The proposed CPLR 7502A raises additional problems. We believe that the proposed legislation is vague in numerous places and needs further refinement and study. Among other things, we note that the term "employment disputes" is left completely undefined, that various other terms set forth in CPLR 7502A(a)(i) are vague and indefinite, and that the procedure for challenging arbitrators under the proposed CPLR 7502(A)(b) is unclear and confusing.

We respectfully urge that action on this measure be deferred at this time.

Sincerely,

Robert P. Knapp III
Chair of the Committee