When Arbitrator Disclosure Meets Social Media: New Obligations in the Internet Age

December 10, 2014 – 2:00 p.m. to 3:30 p.m. ET

PROGRAM SUMMARY

Speakers: Ruth Glick and Laura Stipanowich

Arbitrator disclosure rules and statutes were written before the proliferation of electronic professional and social media. Consequently there is little guidance for both arbitrator and advocate as to how arbitrator disclosure obligations apply to online activities, communications and relationships. Must an arbitrator or litigator disclose the connections they have online that have some relationship to the parties or attorneys in a prospective case?

AGENDA

2:00 p.m. Welcome and Introduction of Speakers (5 minutes)

2:05 p.m. Disclosure Issues (75 minutes)
- Existing arbitrator disclosure standards
- Case law
- Judicial guidelines
- The challenges presented by the Internet Age
- Arbitrator communications on the Internet
- Disclosing affiliations
- Managing your online profile
- Endorsements
- Considerations for advocates

3:20 p.m. Conclusion and Questions (10 minutes)

3:30 p.m. Evaluation (5 minutes)

3:35 p.m. Adjourn
Ruth Glick is a full-time arbitrator and mediator whose skill and knowledge of ADR stems from her background as a lawyer, businesswoman, and educator. She has over 25 years of experience as a dispute resolver in both her legal and business careers and has resolved well over 1000 disputes. She is a neutral for domestic business, labor and employment, commercial, securities, financial, real estate, technology, IP, healthcare and a variety of international trade and contract disputes. She serves on the following domestic panels and organizations:

- American Bar Association (ABA) Immediate Past Chair, Dispute Resolution Section (2013-2014)
- American Arbitration Association (AAA): Large Complex Case (LCC) panel, the National arbitration and mediation panels for Commercial, Labor and Employment
- Office of the Independent Administrator (Kaiser Healthcare)
- Federal and state court, permanent government, labor and international ADR panels
- College of Commercial Arbitrators (CCA), Fellow
- California State Bar, Litigation Section, Executive Committee
- California Super Lawyer
- California Academy of Distinguished Neutrals, Diplomat Member

She also serves on the following international panels:

- Chartered Institute of Arbitrators, Fellow (FI Arb)
- International Centre for Dispute Resolution (ICDR)
- International Institute for Conflict Prevention & Resolution (CPR)
- International Chamber of Commerce (ICC)
- Singapore International Mediation Centre (SIMC)
- Distinguished Fellow, International Academy of Mediators (IAM)
- International Mediation Institute (IMI) Certified Mediator

A former financial instruments trader and business journalist, Ms. Glick received her Bachelor of Arts degree from Northwestern University, her law degree from University of California, Hastings College of the Law and mediation training at Harvard Law School. She was Adjunct Professor of Arbitration and ADR Law of the University of California, Hastings College of the Law for ten years. The Mediation Society of San Francisco honored her for Outstanding Achievement in the Field of Mediation in 2008. Ms. Glick is the immediate past Chair of the Dispute Resolution Section of the American Bar Association where she implemented new initiatives such as Women in Dispute Resolution (WIDR) and strategic planning for the Section. The 18,000-member Dispute Resolution Section is the world’s largest association of dispute resolution professionals providing leadership and promoting excellence in the dispute resolution field.
Laura Stipanowich, Esq.

Laura Stipanowich is a general litigation and construction attorney licensed to practice in both Georgia and Florida, who recently relocated to the Greater Los Angeles area. Prior to relocating to California, Laura spent eight years working with a prominent Atlanta law firm, where she focused her practice in Construction Law and Dispute Resolution. While she prepares to take the California Bar Exam, Laura works as an attorney with R. Rex Parris Law Firm where her practice areas includes large scale Employment Class Actions, Construction and Environmental litigation. Laura has written multiple articles on alternative dispute resolution and its relationship to the construction industry, as well as co-authoring the recent article “Arbitrator Disclosure in the Internet Age” with Ruth V. Glick for the AAA’s Dispute Resolution Journal.
Internet connectivity, social and professional media Web sites, and group e-mail management systems allow arbitrators to communicate online, participate in activities, and develop social and professional relationships online. How do arbitrator disclosure obligations apply to these online activities, communications, and relationships? There is no case law that specifically answers this question. Arbitrators must resort to arbitrator ethics codes, arbitration rules, and case law on arbitrator disclosure, as well as state ethics opinions on online activity of judges, which could be applied to arbitrators. This article examines these sources of guidance on this developing issue.

Ruth V. Glick is a full-time mediator and arbitrator in the San Francisco Bay area. She has broad experience in resolving financial, business contract and tort, labor and employment, technology, real estate, and healthcare disputes. She is on the national commercial, Large, Complex Case, labor, and employment panels of the AAA. For further information see her Web site at www.ruthvglick.com.

Laura J. Stipanowich is a litigation associate with the Atlanta office of Sutherland Asbill & Brennan LLP, where she focuses her practice on construction litigation.

Trust in a fair arbitration process requires the engagement of impartial and independent arbitrators who can determine the issues submitted to arbitration free of bias. Federal and state disclosure standards, as well as rules prescribed by arbitration providers and codes of ethics for arbitrators, place an affirmative duty on arbitrators to disclose any connection or relationship they may have to the dispute and its participants, and any advantage they may gain by resolving it. In certain circumstances, nondisclosure of actual or potential conflicts of interest can have
serious consequences—the filing of a petition to vacate the award. Determining whether an award should be vacated because of an arbitrator’s non-disclosure has resulted in numerous cases arising out of different fact patterns. Courts that have decided these cases apply different analyses and standards. This can make it difficult for arbitrators to determine their disclosure obligations. Now that task is even more challenging because of the ever-evolving connectivity of the Internet and the proliferation of social media, blogs, and e-mail list managers, which allow for discussions via e-mail. Arbitrator disclosure standards and ethical codes have not yet taken into account the myriad of potential conflicts that can arise in the electronic age. Without clear guidance on electronic disclosure obligations, the promise of post-award investigation into an arbitrator’s online activity seems inevitable. This article will examine existing disclosure standards, judicial guidelines, applicable case law, and issues and challenges of arbitrator disclosure in an age of expanding online interconnectivity.

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**Existing Arbitrator Disclosure Standards**

The standards for arbitrator disclosure are found in statutes, arbitration rules, case law, and ethical codes. The Federal Arbitration Act, which applies to arbitration provisions in contracts that affect commerce, does not directly address the issue of arbitrator disclosure. However, Section 10(2) permits a court to vacate an award where there was “evident partiality or corruption in the arbitrators, or either of them.” This provision can be used to vacate an award based on the notion that the arbitrator demonstrated “evident partiality” by failing to disclose an actual or potential conflict of interest.

State arbitration statutes are another source of disclosure standards, but there, too, the standards are not clearly defined. The original Uniform Arbitration Act, which many states enacted, has no express disclosure provisions. The extensively Revised Uniform Arbitration Act 2000 (RUAA), so far enacted by 15 states, addressed the omission of disclosure standards in the earlier UAA. It imposes an affirmative duty on arbitrators to disclose at the time of appointment any facts that a reasonable person would consider likely to affect their impartiality. In addition, it imposes a continuing duty on arbitrators to disclose any financial or personal interest in the outcome of the arbitration, and any existing or past relationship with the parties, attorneys, witnesses, or other arbitrators, which, if not disclosed, could result in the award being vacated.

For those arbitrators seeking more information on their responsibilities, the Code of Ethics for Arbitrators in Commercial Disputes provides ethical guidance to arbitrators with regard to a host of issues, including disclosure. Originally prepared in 1977 by the American Arbitration Association (AAA) and the American Bar Association, the Code was revised in 2004. The disclosure provisions in the revised Code are in Canon II, which states, “An arbitrator should disclose any interest or relationship likely to affect impartiality or which might create an appearance of partiality.” Subparagraphs A(1)-(4) elaborate on this principle. Subparagraph A(1) calls for disclosure of “any known direct or indirect or personal interest in the outcome” and subparagraph A(2) calls for disclosure of “any known existing or past financial, business, professional or personal relationship which might reasonably affect impartiality or lack of independence in the eyes of any of the parties.” For example, prospective arbitrators should disclose any such relationships that they personally have with any party, or its lawyer, with any co-arbitrator, or with any individual whom they have been told will be a witness. They should also disclose any such relationships involving their families or household members or their current employers, partners, or professional or business associates that can be ascertained by reasonable efforts.

The AAA’s arbitration rules contain similar disclosure obligations. For example, Rule 16 of the AAA Commercial Arbitration Rules requires arbitrators to disclose at the time of appointment “any circumstance likely to give rise to justifiable doubt as to the arbitrator’s impartiality or independence, including any bias, financial, or personal interest in the result of the arbitration or any past or present relationship with the parties or their representatives.” The rule also imposes a continuing disclosure obligation on appointed arbitrators.

California has been a leader in arbitrator ethics, as it has expanded the disclosure obligations of arbitrators and arbitration providers with the Ethics Standards for Neutral Arbitrators in Con-
tractual Arbitrations, which are referenced in the California Arbitration Act. In addition to specifying exactly what must be disclosed, the Ethics Standards, as well as the California Arbitration Act, require the disclosure of all matters that could cause a person aware of the facts to reasonably entertain a doubt that the proposed neutral arbitrator can be impartial.

The landmark U.S. Supreme Court case on arbitrator disclosure, _Commonwealth Coatings v. Continental Casualty Co._, is the source of the “impression of possible bias” test for determining whether an arbitrator’s nondisclosure has resulted in “evident partiality” under the FAA. A plurality decision of the Court held in this case that the arbitrator should disclose to the parties any dealings that might create “an impression of possible bias.” The plurality was created by Justice White’s separate and concurring opinion in which he wrote that the arbitrator must have “a substantial interest” in these dealings. However, federal case law after _Commonwealth Coatings_ alternates between a more narrow “evident partiality test” and, at other times, a broader “impression of possible bias test.” Often the determination has been dependent on facts surrounding the nondisclosure, which is why a case-specific disclosure analysis is the norm.

It makes sense to ask what standards a court would use to determine whether setting aside an award would be warranted based on an arbitrator’s nondisclosure of participation in professional and social media sites, discussion blogs, sites that share document information, or use of other means of Internet connectivity. Recently, a group of prominent national and international arbitrators discussed this issue via a group-managed e-mail exchange. The general consensus was that this is an evolving area that requires attention, and that it would be wise to separate association with professional online sites with online sites geared to personal and family connections. Arbitrators should make disclosure of both professional and personal online activity that has any substantial connection to the arbitration or its participants. It was also suggested that potential arbitrators include with their arbitrator disclosures a brief statement about their online activity, if they believe it could give rise to concerns about their impartiality.

**Guidance in State Judicial Ethics Opinions**

No courts have tackled the issue of how social media affects an arbitrator’s disclosure obligations. However, there are state judicial ethics opinions that address the use of social networking sites and other media by judges that could be instructive for arbitrators and courts. For example, an ethics opinion by the Florida Supreme Court Judicial Advisory Committee criticized the practice of judges “friendling” lawyers, concluding that doing so violated the Code of Judicial Conduct. An Oklahoma ethics opinion reached the same conclusion. Some of these ethics opinions contain guidance for judges on the issue of social networking activity by judges. These opinions, however, do not all agree on the degree to which a judge may use social media. For example, some states do not recommend that judges “friend” attorneys, while others advise that “friendling” is permissible, with limitations. As with arbitrators, it is the degree of a judge’s relationships that determines the scope of the disclosure.

The ethics opinion by the Florida Supreme Court’s Judicial Advisory Committee received a lot of media attention. The committee decided to re-review the issue of social networking by judges. On reconsideration, it determined that judges could join social networks, post comments and other materials (provided they do not reveal information about pending cases), but it continued to be concerned about “friendling” a lawyer on Facebook or a similar Web site. The concern is that people could infer that the “friended” attorney is in a position to influence the judge. Following inquiries from judges about whether putting a disclaimer on the social media Web site might mitigate the perception of impropriety, the committee reiterated its original opinion that even a carefully worded disclaimer is insufficient.

In New York, the State Judicial Advisory Committee on Judicial Ethics concluded that judges are not prohibited from joining a social network, but it cautioned them to use their good judgment to determine what they do on these networks. The opinion recognized that “[t]here are multiple reasons why a judge might wish to be a part of a social network: reconnecting with law school, college, or even high school classmates; increased interaction with distant family members; staying in touch with former colleagues; or even monitoring the usage of that same social network by minor children in the judge’s immediate family.” The opinion stated that a judge’s participation in such sites, including maintaining connections with attorneys, was not necessarily an ethics violation. However, it went on to say that a judge should use his/her good judgment about the propriety of the connections that might, _inter alia_, create the impression of an attorney’s “special influence.” It further cautioned that judges be aware of the public nature of any comments they might make online, and the possibility that individuals might feel entitled to seek legal advice via...
a judge’s social network. Noting the evolving world of social media, the opinion concluded with this disclaimer and advice to judges:

[The Committee is also aware that the functions and resources available on, and technology behind, social networks rapidly change. Neither this opinion, nor any future opinion the Committee could offer, can accurately predict how these technologies will change and, accordingly, affect judges’ responsibilities under the Rules. Thus, judges who use social networks consistent with the guidance in this opinion should stay abreast of new features of, and changes to, any social networks they use and, to the extent those features present further ethics issues not addressed above, consult the Committee for further guidance.

California follows an approach similar to New York. Judges may be a member of an online social networking community in California, but may not interact with attorneys who have cases pending before them. Judges choosing to use social networks are cautioned to: (1) exercise an appropriate discretion in how they use such a network, (2) be familiar with the site’s privacy settings and how to modify them, and (3) continue to monitor the features of the network’s services as new developments may have an impact on their duties.

Logic tells us that arbitrators should be held to a similar standard as judges when it comes to the use of social media on the Internet. It seems obvious that arbitrators should not use social media, electronic mailing lists, or blogs to have ex parte communications with parties or attorneys in pending cases; nor should they comment on pending cases on these sites. They are obligated to refrain from making remarks that could cast doubt on their ability to act impartially. In addition, arbitrators should separate their personal and familial social networking through sites, such as Facebook, from their professional networking on sites, such as LinkedIn. Arbitrators operating in different states should also be mindful of each state’s approach to judicial participation in social media, as these opinions are likely to indicate how each state will interpret an arbitrator’s legal disclosure obligations.

If a party to a pending case (or its counsel) were linked to an arbitrator via a professional networking site (e.g., LinkedIn, or industry e-mail mailing lists, or blogs), and the arbitrator was aware of the connection, disclosure would be required if a person aware of the facts could reasonably conclude that the party (or its counsel) was in a position to influence the arbitrator. Cannon (4) of the Code of Ethics for Arbitrators in Commercial Disputes states that “any doubts as to whether disclosure is to be made should be resolved in favor of disclosure.” If a party or counsel had any ex parte communication with the arbitrator, or in any way discussed online any aspects of the case or issues surrounding it, disclosure should be promptly made.

Case Law on Disclosure

At this time there are no cases dealing with the use of social media by arbitrators. Issues concerning other social interactions between arbitrator and parties or attorneys, however, have been recorded in some recent cases. A review of these cases indicates that there is no bright line rule as to what types of relationships require disclosure. A case-by-case analysis is still inevitable.

Until there is case law regarding arbitrator nondisclosure of online relationships, connections or discussion, arbitrators will have to rely on cases such as Karlseng v. Cooke and Luce, Forward, Hamilton & Scripps, LLP v. Koch. Karlseng involved a social relationship between an arbitrator and counsel that was close enough to make the need for disclosure seem obvious. In this case, a panel of the Texas Court of Appeals vacated an arbitration award where the arbitrator failed to disclose his social relationship with one of the attorneys representing a party to the arbitration. The arbitrator initially disclosed only that “within the preceding five years,” he had served as a neutral arbitrator in another arbitration involving the appellee’s lawyer. He denied all other questions on the disclosure form. Following these initial disclosures, a new attorney appeared in the arbitration on behalf of the appellee, but the arbitrator did not supplement his initial disclosures. Eventually, the arbitrator
found in favor of the appellee and awarded the appellee $22 million, including over $6 million in attorney fees. Subsequent discovery into the relationship between the arbitrator and the appellee’s new counsel revealed a long social relationship. The arbitrator met this attorney during the latter’s clerkship with a judge in the same court where the arbitrator had been a magistrate judge. Later, the two had become friends, often taking trips together with their families. Testimony revealed numerous social outings at sporting events and private dinners, as well as gifts exchanged over the years. The court noted that when the arbitrator was given an opportunity to explain what efforts he had made to inform himself or refresh his memory as to the relationship he had with the new attorney, he responded that he had done “absolutely nothing.”

Although the appellee contended that “disclosure is required only if the relationship contains a substantial business or pecuniary aspect, and that social relationships standing alone are insufficient,” the court rejected this argument, citing holdings in other jurisdictions that found the standard “too narrow.” It also concluded that the extent of the relationship between the arbitrator and the lawyer was too substantial to ignore.

An arbitrator’s disclosure obligations are not always as clear as those in the Karlseng case. For example, in Luce, Forward, Hamilton & Scripps, LLP v. Koch,22 a retired judge acting as an arbitrator discovered, as an evidentiary hearing was to begin, that he had served on a board with a witness and on two boards with one of the attorneys appearing from the law firm that represented the prevailing party. The arbitrator refused to disqualify himself when asked to do so. A panel of the California Court of Appeal opined that there was no indication that the arbitrator had any close personal, or any business, relations with either the witness or the attorney for the other party. The contact was limited to serving with each other on boards of two professional organizations and, standing alone, that was insufficient to vacate the award.23

**Cases Involving Post-Award Internet Research**

Disclosure cases involving the arbitrator’s use of social media may be looming in the future, but we have already seen cases challenging arbitration awards based on post-award Internet research about the arbitrator. For example, a panel of the California Court of Appeal recently overturned an award in favor of the attorney in a fee dispute where the arbitrator had not disclosed the substance of his legal practice.24 The losing party in the arbitration, the client, found on the Web site of the chief arbitrator’s law firm a statement saying that his practice focused on legal malpractice defense. After discovering this, the client moved to vacate the award. The court agreed, saying that the arbitrator had a duty to disclose the nature of his practice, based on his dependence on business from law firms, and the failure to do so questioned his impartiality.

Similarly, a recent decision by a panel of the Texas Court of Appeals overturned an award after an Internet search by the losing party revealed potential conflicts of interest sufficient to establish evident partiality.25 The arbitrator had switched law firms during pre-arbitration proceedings and failed to make disclosure of the connections between his new firm and the appellants.

Not all courts have vacated awards based on post-award Internet investigations. Some of them have rejected attempts to overturn awards based on information identified after the award has been made because the information could have been discovered prior to the arbitration. These decisions place the onus on parties to conduct their Internet searches about potential arbitrators before they make their appointments.

**Rebmann v. Rhode** is one such case.26 After an Internet investigation that “went on for weeks,” Rhode found that the arbitrator did not disclose information about his German-Jewish heritage and his affiliation with a club dedicated to avoiding a repeat of the Holocaust. Rhode, whose father served in the German army, and whose father-in-law served in the SS during World War II, claimed he would never have selected this arbitrator had he known of these affiliations due to concern about arbitrator bias. The court ruled that the argument was without merit, noting that the dispute had nothing to do with either World War II or the Holocaust, there was no evidence that the arbitrator knew about the father and father-in-law’s connection to the war, and that no evidence presented indicated that the arbitrator displayed partiality.

In a more recent case, Hawkins v. Superior Court, the California Supreme Court looked at a former judge’s nondisclosure of his public censure for making sexually suggestive remarks to female staffers 10 years prior to serving as arbitrator in a woman’s medical malpractice claim against a plastic surgeon.27 The trial court had found some evidence of gender bias in this statement in the award: “one thing probably everyone can agree upon, after five facial surgeries, she could have done without the sixth one....” The California Supreme Court determined, however, that since the parties had the authority to jointly select the neutral arbitrator, they had the opportunity to seek out publicly available information.
about the arbitrator prior to his final appointment and, therefore, overturned the trial court. Applying the standard of how an objective, reasonable person would view the former judge’s ability to be impartial, the court concluded that the broad “appearance of partiality” rule should not be used because it would subject arbitration awards to after-the-fact attacks by losing parties searching for potentially disqualifying information only after an adverse decision has been made. This result, the court said, would undermine the finality of arbitrations without contributing to the fairness of the proceedings.28

California’s Supreme Court is not the only court to have tackled this issue, nor is it the only judiciary reluctant to vacate awards based on post-award discovery of publicly available information. In Lagstein v. Certain Underwriters at Lloyd’s London, the 9th Circuit recently declined to overturn an arbitration award based on information discovered during a post-award investigation into the backgrounds of the arbitrators.29 The court was not persuaded that evident partiality could be demonstrated by an arbitrator’s failure to disclose his role in an ethics controversy that took place over a decade prior to the arbitration. The court noted that, if the party moving to have the award vacated had desired additional information following the arbitrators’ initial disclosures, “it was free to seek that information by its own efforts.” The 9th Circuit declined “to create a rule that encourages losing parties to challenge arbitration awards on the basis of pre-existing, publicly available background information that has nothing to do with the parties to the arbitration.”

The lesson from these cases is that parties should seek out all publicly available information about the potential arbitrators they are considering before making their choice. Although this is a burden some parties might resent, it behooves them to do their due diligence, as courts are seemingly unsympathetic to those who do not do so. A dissatisfied party will be more likely to succeed in vacating an award based on evident partiality if it can demonstrate to the court that it conducted an exhaustive investigation into publicly available information, including information on the Internet, about the arbitrator prior to agreeing to his or her appointment.

Disclosures and Non-Lawyer Arbitrators

The conclusions discussed above apply as well to non-lawyer arbitrators who use social media, e-mail list managers, and on-line forums to keep in contact with individuals and entities in their field, some of which could have connections to parties or other participants in a case these arbitrators are hearing.

Non-lawyer arbitrators are usually chosen to serve due to their expertise or experience in a particular field. Their involvement in a specialized area or industry suggests an increased likelihood that potential or actual conflicts of interest could exist because of the arbitrator’s potential relationships in the business or area in question. Courts that have analyzed disclosure by lawyers serving as arbitrators have noted that there is a trade-off between impartiality and expertise. As one court stated, “[e]xpertise in an industry is accompanied by exposure, in ways large and small, to those engaged in it…”30

Yet, courts also recognize the right of parties to choose people who have expertise in arbitration. A court recently held that an arbitrator’s decision to serve as the umpire in a concurrent, unrelated reinsurance arbitration was not evidence of partiality, even if the position was obtained by the action of a party-appointed arbitrator, or involved an arbitration proceeding in which one of the parties was an affiliate of a party to the current arbitration.31 Courts have also held that membership in a professional organization in and of itself is not a basis to challenge an award based on evident partiality or bias. As one North Carolina court recognized:

The most sought-after arbitrators are those who are prominent and experienced members of the specific business community in which the dispute to be arbitrated arose. Since they are chosen precisely because of their involvement in that community, some degree of overlapping representation and interest inevitably results.32

However, non-lawyer arbitrators may not have as easy access to case law and other forms of information about disclosure obligations as lawyers do.33 But this does not lessen their disclosure obligations. They must be just as diligent as attorney arbitrators about disclosing conflicts of interest to the parties. Accordingly, they must take steps to keep up with changing arbitrator disclosure standards, and assess their online relationships and participation in online discussion groups to determine if they might be connected to cases in which they serve and give rise to disclosure obligations.

Conclusion

The Internet is a powerful game changer in regard to arbitrator disclosure. Arbitrators should monitor information that is available about them on the Internet, and control the information they post online, especially on social media sites. They must now think about whether their Internet
activities might require disclosure. Thus, arbitrators should not electronically communicate or blog with those who have been, or are, involved in cases pending before them. Furthermore, they must be mindful that losing parties may actively search the Internet post-arbitration in order to find a possible conflict of interest to create a ground to vacate the award.

As the Internet plays an increasingly important role in our lives, it is likely that cases will come up involving arbitrator Internet activity and the issue of arbitrator disclosure. It will be interesting to see how courts will handle arbitrator disclosure obligations in an era of Internet connectivity, and whether there will be any judicial tolerance for attempts to vacate awards based on post-award Internet searches for information about arbitrators that were available pre-appointment. Perhaps arbitration institutions will provide guidance to arbitrators and parties about the electronic disclosure obligations of arbitrators. But one thing is certain—arbitrators will continue to have the primary duty to disclose to the parties, in accordance with the applicable law, arbitration rules and ethical standards, any connections, interests and relationships they have to any co-arbitrator, party, attorney, or other participant in the arbitration, whether in person or on the Internet, that would affect their ability to be impartial and independent.

---END NOTES---

1 Social media sites such as Facebook, Google+, YouTube, and Twitter, use Web-based and mobile technology to allow the exchange of user-generated content, including blogs, videos, picture sharing, comments, and instant messaging. Depending on the platform and their preferences, users have the opportunity to share data either with the public or selected friends or groups.

2 Blogging has become enormously popular. A blog is a self-published online journal or diary. The entries or posts usually display the most recent post first. Today there are blogs on every theme, often with commentary on particular subjects.

3 E-mail list managers are applications that allow a person to send one e-mail to a multitude of e-mail addresses within a group. Recipients often comment on the content in a reply that is sent to the individuals who received the original e-mail. A well-known application is called “Listserv.”

4 USC § 1 et seq.


7 See RUAA § 12 (a)-(c). The RUAA is available at www.nccusl.org.


9 The AAA rules are available on the AAA Web site at www.adr.org.

10 The Ethics Rules can be downloaded from www.courts.ca.gov/documents/ethics_standards_neutral_arbitrators.pdf.


13 393 U.S. 145 (1968).


20 Id.


22 Id.

23 In a very recent case, Scandinavian Reins. Co. Ltd. v. St. Paul Fire & Marine Ins. Co., Docket No. 10-0910-cv (2d Cir. Feb. 2, 2012), two arbitrators failed to disclose their concurrent service as arbitrators in another arguably similar arbitration. The 2nd Circuit found that the nondisclosure did not in and of itself constitute evident partiality; it stated that the proper analysis is whether the facts that were not disclosed suggest a material conflict of interest. It further stated, “Evident partiality may be found only ... 'where a reasonable person could have to conclude that an arbitrator was partial to one party to the arbitration' ...” (quoting Applied Indus. Materials Corp. v. Ocular Makine Ticaret Ve Sanayi, A.S., 492 F.3d 132, 137 (2d Cir. 2007) quoting another case).


27 50 Cal.4th 372 (2010).

28 A proposal has been made to add to the California Ethics Standards a new requirement for an arbitrator to disclose any public discipline by a professional licensing or disciplinary agency.

29 607 F 3d 634 (9th Cir. 2010).


33 Some non-lawyer arbitrators may not be on the panel of an established arbitration-administering organization, which has its own stringent disclosure rules, and trains the arbitrators on its panel to comply with its rules. Thus, when contemplating the appointment of one of these non-lawyer arbitrators, the parties should not assume that the potential arbitrator is knowledgeable about the scope of his or her disclosure obligations.
The Code of Ethics for Arbitrators in Commercial Disputes  
Effective March 1, 2004

The Code of Ethics for Arbitrators in Commercial Disputes was originally prepared in 1977 by a joint committee consisting of a special committee of the American Arbitration Association and a special committee of the American Bar Association. The Code was revised in 2003 by an ABA Task Force and special committee of the AAA.

Preamble

The use of arbitration to resolve a wide variety of disputes has grown extensively and forms a significant part of the system of justice on which our society relies for a fair determination of legal rights. Persons who act as arbitrators therefore undertake serious responsibilities to the public, as well as to the parties. Those responsibilities include important ethical obligations.

Few cases of unethical behavior by commercial arbitrators have arisen. Nevertheless, this Code sets forth generally accepted standards of ethical conduct for the guidance of arbitrators and parties in commercial disputes, in the hope of contributing to the maintenance of high standards and continued confidence in the process of arbitration.

This Code provides ethical guidelines for many types of arbitration but does not apply to labor arbitration, which is generally conducted under the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes.

There are many different types of commercial arbitration. Some proceedings are conducted under arbitration rules established by various organizations and trade associations, while others are conducted without such rules. Although most proceedings are arbitrated pursuant to voluntary agreement of the parties, certain types of disputes are submitted to arbitration by reason of particular laws. This Code is intended to apply to all such proceedings in which disputes or claims are submitted for decision to one or more arbitrators appointed in a manner provided by an agreement of the parties, by applicable arbitration rules, or by law. In all such cases, the persons who have the power to decide should observe fundamental standards of ethical conduct. In this Code, all such persons are called "arbitrators," although in some types of proceeding they might be called "umpires," "referees," "neutrals," or have some other title.

Arbitrators, like judges, have the power to decide cases. However, unlike full-time judges, arbitrators are usually engaged in other occupations before, during, and after the time that they serve as arbitrators. Often, arbitrators are purposely chosen from the same trade or industry as the parties in order to bring special knowledge to the task of deciding. This Code recognizes these fundamental differences between arbitrators and judges.

In those instances where this Code has been approved and recommended by organizations that provide, coordinate, or administer services of arbitrators, it provides ethical standards for the members of their respective panels of arbitrators. However, this Code does not form a part of the arbitration rules of any such organization unless its rules so provide.

Note on Neutrality

In some types of commercial arbitration, the parties or the administering institution provide for three or more arbitrators. In some such proceedings, it is the practice for each party, acting alone,
to appoint one arbitrator (a "party-appointed arbitrator") and for one additional arbitrator to be designated by the party-appointed arbitrators, or by the parties, or by an independent institution or individual. The sponsors of this Code believe that it is preferable for all arbitrators including any party-appointed arbitrators to be neutral, that is, independent and impartial, and to comply with the same ethical standards. This expectation generally is essential in arbitrations where the parties, the nature of the dispute, or the enforcement of any resulting award may have international aspects. However, parties in certain domestic arbitrations in the United States may prefer that party-appointed arbitrators be non-neutral and governed by special ethical considerations. These special ethical considerations appear in Canon X of this Code.

This Code establishes a presumption of neutrality for all arbitrators, including party-appointed arbitrators, which applies unless the parties' agreement, the arbitration rules agreed to by the parties or applicable laws provide otherwise. This Code requires all party-appointed arbitrators, whether neutral or not, to make pre-appointment disclosures of any facts which might affect their neutrality, independence, or impartiality. This Code also requires all party-appointed arbitrators to ascertain and disclose as soon as practicable whether the parties intended for them to serve as neutral or not. If any doubt or uncertainty exists, the party-appointed arbitrators should serve as neutrals unless and until such doubt or uncertainty is resolved in accordance with Canon IX. This Code expects all arbitrators, including those serving under Canon X, to preserve the integrity and fairness of the process.

Note on Construction

Various aspects of the conduct of arbitrators, including some matters covered by this Code, may also be governed by agreements of the parties, arbitration rules to which the parties have agreed, applicable law, or other applicable ethics rules, all of which should be consulted by the arbitrators. This Code does not take the place of or supersede such laws, agreements, or arbitration rules to which the parties have agreed and should be read in conjunction with other rules of ethics. It does not establish new or additional grounds for judicial review of arbitration awards.

All provisions of this Code should therefore be read as subject to contrary provisions of applicable law and arbitration rules. They should also be read as subject to contrary agreements of the parties. Nevertheless, this Code imposes no obligation on any arbitrator to act in a manner inconsistent with the arbitrator's fundamental duty to preserve the integrity and fairness of the arbitral process.

Canons I through VIII of this Code apply to all arbitrators. Canon IX applies to all party-appointed arbitrators, except that certain party-appointed arbitrators are exempted by Canon X from compliance with certain provisions of Canons I-IX related to impartiality and independence, as specified in Canon X.

CANON I: AN ARBITRATOR SHOULD UPHOLD THE INTEGRITY AND FAIRNESS OF THE ARBITRATION PROCESS.

A. An arbitrator has a responsibility not only to the parties but also to the process of arbitration itself, and must observe high standards of conduct so that the integrity and fairness of the process will be preserved. Accordingly, an arbitrator should recognize a responsibility to the public, to the parties whose rights will be decided, and to all other participants in the proceeding. This responsibility may include pro bono service as an arbitrator where appropriate.

B. One should accept appointment as an arbitrator only if fully satisfied:

(1) that he or she can serve impartially;
(2) that he or she can serve independently from the parties, potential witnesses, and the other arbitrators;

(3) that he or she is competent to serve; and

(4) that he or she can be available to commence the arbitration in accordance with the requirements of the proceeding and thereafter to devote the time and attention to its completion that the parties are reasonably entitled to expect.

C. After accepting appointment and while serving as an arbitrator, a person should avoid entering into any business, professional, or personal relationship, or acquiring any financial or personal interest, which is likely to affect impartiality or which might reasonably create the appearance of partiality. For a reasonable period of time after the decision of a case, persons who have served as arbitrators should avoid entering into any such relationship, or acquiring any such interest, in circumstances which might reasonably create the appearance that they had been influenced in the arbitration by the anticipation or expectation of the relationship or interest. Existence of any of the matters or circumstances described in this paragraph C does not render it unethical for one to serve as an arbitrator where the parties have consented to the arbitrator's appointment or continued services following full disclosure of the relevant facts in accordance with Canon II.

D. Arbitrators should conduct themselves in a way that is fair to all parties and should not be swayed by outside pressure, public clamor, and fear of criticism or self-interest. They should avoid conduct and statements that give the appearance of partiality toward or against any party.

E. When an arbitrator's authority is derived from the agreement of the parties, an arbitrator should neither exceed that authority nor do less than is required to exercise that authority completely. Where the agreement of the parties sets forth procedures to be followed in conducting the arbitration or refers to rules to be followed, it is the obligation of the arbitrator to comply with such procedures or rules. An arbitrator has no ethical obligation to comply with any agreement, procedures or rules that are unlawful or that, in the arbitrator's judgment, would be inconsistent with this Code.

F. An arbitrator should conduct the arbitration process so as to advance the fair and efficient resolution of the matters submitted for decision. An arbitrator should make all reasonable efforts to prevent delaying tactics, harassment of parties or other participants, or other abuse or disruption of the arbitration process.

G. The ethical obligations of an arbitrator begin upon acceptance of the appointment and continue throughout all stages of the proceeding. In addition, as set forth in this Code, certain ethical obligations begin as soon as a person is requested to serve as an arbitrator and certain ethical obligations continue after the decision in the proceeding has been given to the parties.

H. Once an arbitrator has accepted an appointment, the arbitrator should not withdraw or abandon the appointment unless compelled to do so by unanticipated circumstances that would render it impossible or impracticable to continue. When an arbitrator is to be compensated for his or her services, the arbitrator may withdraw if the parties fail or refuse to provide for payment of the compensation as agreed.
I. An arbitrator who withdraws prior to the completion of the arbitration, whether upon the arbitrator's initiative or upon the request of one or more of the parties, should take reasonable steps to protect the interests of the parties in the arbitration, including return of evidentiary materials and protection of confidentiality.

Comment to Canon I

A prospective arbitrator is not necessarily partial or prejudiced by having acquired knowledge of the parties, the applicable law or the customs and practices of the business involved. Arbitrators may also have special experience or expertise in the areas of business, commerce, or technology which are involved in the arbitration. Arbitrators do not contravene this Canon if, by virtue of such experience or expertise, they have views on certain general issues likely to arise in the arbitration, but an arbitrator may not have prejudged any of the specific factual or legal determinations to be addressed during the arbitration.

During an arbitration, the arbitrator may engage in discourse with the parties or their counsel, draw out arguments or contentions, comment on the law or evidence, make interim rulings, and otherwise control or direct the arbitration. These activities are integral parts of an arbitration. Paragraph D of Canon I is not intended to preclude or limit either full discussion of the issues during the course of the arbitration or the arbitrator's management of the proceeding.

CANON II: AN ARBITRATOR SHOULD DISCLOSE ANY INTEREST OR RELATIONSHIP LIKELY TO AFFECT IMPARTIALITY OR WHICH MIGHT CREATE AN APPEARANCE OF PARTIALITY.

A. Persons who are requested to serve as arbitrators should, before accepting, disclose:

(1) any known direct or indirect financial or personal interest in the outcome of the arbitration;

(2) any known existing or past financial, business, professional or personal relationships which might reasonably affect impartiality or lack of independence in the eyes of any of the parties. For example, prospective arbitrators should disclose any such relationships which they personally have with any party or its lawyer, with any co-arbitrator, or with any individual whom they have been told will be a witness. They should also disclose any such relationships involving their families or household members or their current employers, partners, or professional or business associates that can be ascertained by reasonable efforts;

(3) the nature and extent of any prior knowledge they may have of the dispute; and

(4) any other matters, relationships, or interests which they are obligated to disclose by the agreement of the parties, the rules or practices of an institution, or applicable law regulating arbitrator disclosure.

B. Persons who are requested to accept appointment as arbitrators should make a reasonable effort to inform themselves of any interests or relationships described in paragraph A.

C. The obligation to disclose interests or relationships described in paragraph A is a continuing duty which requires a person who accepts appointment as an arbitrator to disclose, as soon as practicable, at any stage of the arbitration, any such interests or relationships which may arise, or which are recalled or discovered.

D. Any doubt as to whether or not disclosure is to be made should be resolved in favor of disclosure.
E. Disclosure should be made to all parties unless other procedures for disclosure are provided in the agreement of the parties, applicable rules or practices of an institution, or by law. Where more than one arbitrator has been appointed, each should inform the others of all matters disclosed.

F. When parties, with knowledge of a person's interests and relationships, nevertheless desire that person to serve as an arbitrator, that person may properly serve.

G. If an arbitrator is requested by all parties to withdraw, the arbitrator must do so. If an arbitrator is requested to withdraw by less than all of the parties because of alleged partiality, the arbitrator should withdraw unless either of the following circumstances exists:

1. An agreement of the parties, or arbitration rules agreed to by the parties, or applicable law establishes procedures for determining challenges to arbitrators, in which case those procedures should be followed; or

2. In the absence of applicable procedures, if the arbitrator, after carefully considering the matter, determines that the reason for the challenge is not substantial, and that he or she can nevertheless act and decide the case impartially and fairly.

H. If compliance by a prospective arbitrator with any provision of this Code would require disclosure of confidential or privileged information, the prospective arbitrator should either:

1. Secure the consent to the disclosure from the person who furnished the information or the holder of the privilege; or

2. Withdraw.

CANON III: AN ARBITRATOR SHOULD AVOID IMPROPRIETY OR THE APPEARANCE OF IMPROPRIETY IN COMMUNICATING WITH PARTIES.

A. If an agreement of the parties or applicable arbitration rules establishes the manner or content of communications between the arbitrator and the parties, the arbitrator should follow those procedures notwithstanding any contrary provision of paragraphs B and C.

B. An arbitrator or prospective arbitrator should not discuss a proceeding with any party in the absence of any other party, except in any of the following circumstances:

1. When the appointment of a prospective arbitrator is being considered, the prospective arbitrator:

   a. may ask about the identities of the parties, counsel, or witnesses and the general nature of the case; and

   b. may respond to inquiries from a party or its counsel designed to determine his or her suitability and availability for the appointment. In any such dialogue, the prospective arbitrator may receive information from a party or its counsel disclosing the general nature of the dispute but should not permit them to discuss the merits of the case.

2. In an arbitration in which the two party-appointed arbitrators are expected to appoint the third arbitrator, each party-appointed arbitrator may consult with the party who appointed the arbitrator concerning the choice of the third arbitrator;

3. In an arbitration involving party-appointed arbitrators, each party-appointed arbitrator may consult with the party who appointed the arbitrator concerning arrangements for any compensation to be paid to the party-appointed arbitrator. Submission of routine written requests
for payment of compensation and expenses in accordance with such arrangements and written communications pertaining solely to such requests need not be sent to the other party;

(4) In an arbitration involving party-appointed arbitrators, each party-appointed arbitrator may consult with the party who appointed the arbitrator concerning the status of the arbitrator (i.e., neutral or non-neutral), as contemplated by paragraph C of Canon IX;

(5) Discussions may be had with a party concerning such logistical matters as setting the time and place of hearings or making other arrangements for the conduct of the proceedings. However, the arbitrator should promptly inform each other party of the discussion and should not make any final determination concerning the matter discussed before giving each absent party an opportunity to express the party's views; or

(6) If a party fails to be present at a hearing after having been given due notice, or if all parties expressly consent, the arbitrator may discuss the case with any party who is present.

C. Unless otherwise provided in this Canon, in applicable arbitration rules or in an agreement of the parties, whenever an arbitrator communicates in writing with one party, the arbitrator should at the same time send a copy of the communication to every other party, and whenever the arbitrator receives any written communication concerning the case from one party which has not already been sent to every other party, the arbitrator should send or cause it to be sent to the other parties.

CANON IV: AN ARBITRATOR SHOULD CONDUCT THE PROCEEDINGS FAIRLY AND DILIGENTLY.

A. An arbitrator should conduct the proceedings in an even-handed manner. The arbitrator should be patient and courteous to the parties, their representatives, and the witnesses and should encourage similar conduct by all participants.

B. The arbitrator should afford to all parties the right to be heard and due notice of the time and place of any hearing. The arbitrator should allow each party a fair opportunity to present its evidence and arguments.

C. The arbitrator should not deny any party the opportunity to be represented by counsel or by any other person chosen by the party.

D. If a party fails to appear after due notice, the arbitrator should proceed with the arbitration when authorized to do so, but only after receiving assurance that appropriate notice has been given to the absent party.

E. When the arbitrator determines that more information than has been presented by the parties is required to decide the case, it is not improper for the arbitrator to ask questions, call witnesses, and request documents or other evidence, including expert testimony.

F. Although it is not improper for an arbitrator to suggest to the parties that they discuss the possibility of settlement or the use of mediation, or other dispute resolution processes, an arbitrator should not exert pressure on any party to settle or to utilize other dispute resolution processes. An arbitrator should not be present or otherwise participate in settlement discussions or act as a mediator unless requested to do so by all parties.

G. Co-arbitrators should afford each other full opportunity to participate in all aspects of the proceedings.

Comment to paragraph G
Paragraph G of Canon IV is not intended to preclude one arbitrator from acting in limited circumstances (e.g., ruling on discovery issues) where authorized by the agreement of the parties, applicable rules or law, nor does it preclude a majority of the arbitrators from proceeding with any aspect of the arbitration if an arbitrator is unable or unwilling to participate and such action is authorized by the agreement of the parties or applicable rules or law. It also does not preclude ex parte requests for interim relief.

CANON V: AN ARBITRATOR SHOULD MAKE DECISIONS IN A JUST, INDEPENDENT AND DELIBERATE MANNER.

A. The arbitrator should, after careful deliberation, decide all issues submitted for determination. An arbitrator should decide no other issues.

B. An arbitrator should decide all matters justly, exercising independent judgment, and should not permit outside pressure to affect the decision.

C. An arbitrator should not delegate the duty to decide to any other person.

D. In the event that all parties agree upon a settlement of issues in dispute and request the arbitrator to embody that agreement in an award, the arbitrator may do so, but is not required to do so unless satisfied with the propriety of the terms of settlement. Whenever an arbitrator embodies a settlement by the parties in an award, the arbitrator should state in the award that it is based on an agreement of the parties.

CANON VI: AN ARBITRATOR SHOULD BE FAITHFUL TO THE RELATIONSHIP OF TRUST AND CONFIDENTIALITY INHERENT IN THAT OFFICE.

A. An arbitrator is in a relationship of trust to the parties and should not, at any time, use confidential information acquired during the arbitration proceeding to gain personal advantage or advantage for others, or to affect adversely the interest of another.

B. The arbitrator should keep confidential all matters relating to the arbitration proceedings and decision. An arbitrator may obtain help from an associate, a research assistant or other persons in connection with reaching his or her decision if the arbitrator informs the parties of the use of such assistance and such persons agree to be bound by the provisions of this Canon.

C. It is not proper at any time for an arbitrator to inform anyone of any decision in advance of the time it is given to all parties. In a proceeding in which there is more than one arbitrator, it is not proper at any time for an arbitrator to inform anyone about the substance of the deliberations of the arbitrators. After an arbitration award has been made, it is not proper for an arbitrator to assist in proceedings to enforce or challenge the award.

D. Unless the parties so request, an arbitrator should not appoint himself or herself to a separate office related to the subject matter of the dispute, such as receiver or trustee, nor should a panel of arbitrators appoint one of their number to such an office.

CANON VII: AN ARBITRATOR SHOULD ADHERE TO STANDARDS OF INTEGRITY AND FAIRNESS WHEN MAKING ARRANGEMENTS FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES.

A. Arbitrators who are to be compensated for their services or reimbursed for their expenses shall adhere to standards of integrity and fairness in making arrangements for such payments.

B. Certain practices relating to payments are generally recognized as tending to preserve the integrity and fairness of the arbitration process. These practices include:
(1) Before the arbitrator finally accepts appointment, the basis of payment, including any
cancellation fee, compensation in the event of withdrawal and compensation for study and
preparation time, and all other charges, should be established. Except for arrangements for the
compensation of party-appointed arbitrators, all parties should be informed in writing of the terms
established;

(2) In proceedings conducted under the rules or administration of an institution that is available
to assist in making arrangements for payments, communication related to compensation should be
made through the institution. In proceedings where no institution has been engaged by the parties
to administer the arbitration, any communication with arbitrators (other than party appointed
arbitrators) concerning payments should be in the presence of all parties; and

(3) Arbitrators should not, absent extraordinary circumstances, request increases in the basis of
their compensation during the course of a proceeding.

CANON VIII: AN ARBITRATOR MAY ENGAGE IN ADVERTISING OR PROMOTION OF
ARBITRAL SERVICES WHICH IS TRUTHFUL AND ACCURATE.

A. Advertising or promotion of an individual's willingness or availability to serve as an
arbitrator must be accurate and unlikely to mislead. Any statements about the quality of the
arbitrator's work or the success of the arbitrator's practice must be truthful.

B. Advertising and promotion must not imply any willingness to accept an appointment
otherwise than in accordance with this Code.

Comment to Canon VIII

This Canon does not preclude an arbitrator from printing, publishing, or disseminating
advertisements conforming to these standards in any electronic or print medium, from making
personal presentations to prospective users of arbitral services conforming to such standards or
from responding to inquiries concerning the arbitrator's availability, qualifications, experience, or
fee arrangements.

CANON IX: ARBITRATORS APPOINTED BY ONE PARTY HAVE A DUTY TO
DETERMINE AND DISCLOSE THEIR STATUS AND TO COMPLY WITH
THIS CODE, EXCEPT AS EXEMPTED BY CANON X.

A. In some types of arbitration in which there are three arbitrators, it is customary for each
party, acting alone, to appoint one arbitrator. The third arbitrator is then appointed by
agreement either of the parties or of the two arbitrators, or failing such agreement, by an
independent institution or individual. In tripartite arbitrations to which this Code applies, all
three arbitrators are presumed to be neutral and are expected to observe the same standards as
the third arbitrator.

B. Notwithstanding this presumption, there are certain types of tripartite arbitration in
which it is expected by all parties that the two arbitrators appointed by the parties may be
predisposed toward the party appointing them. Those arbitrators, referred to in this Code as
"Canon X arbitrators," are not to be held to the standards of neutrality and independence
applicable to other arbitrators. Canon X describes the special ethical obligations of party-
appointed arbitrators who are not expected to meet the standard of neutrality.

C. A party-appointed arbitrator has an obligation to ascertain, as early as possible but not
later than the first meeting of the arbitrators and parties, whether the parties have agreed that
the party-appointed arbitrators will serve as neutrals or whether they shall be subject to Canon
X, and to provide a timely report of their conclusions to the parties and other arbitrators:
(1) Party-appointed arbitrators should review the agreement of the parties, the applicable rules and any applicable law bearing upon arbitrator neutrality. In reviewing the agreement of the parties, party-appointed arbitrators should consult any relevant express terms of the written or oral arbitration agreement. It may also be appropriate for them to inquire into agreements that have not been expressly set forth, but which may be implied from an established course of dealings of the parties or well-recognized custom and usage in their trade or profession;

(2) Where party-appointed arbitrators conclude that the parties intended for the party-appointed arbitrators not to serve as neutrals, they should so inform the parties and the other arbitrators. The arbitrators may then act as provided in Canon X unless or until a different determination of their status is made by the parties, any administering institution or the arbitral panel; and

(3) Until party-appointed arbitrators conclude that the party-appointed arbitrators were not intended by the parties to serve as neutrals, or if the party-appointed arbitrators are unable to form a reasonable belief of their status from the foregoing sources and no decision in this regard has yet been made by the parties, any administering institution, or the arbitral panel, they should observe all of the obligations of neutral arbitrators set forth in this Code.

D. Party-appointed arbitrators not governed by Canon X shall observe all of the obligations of Canons I through VIII unless otherwise required by agreement of the parties, any applicable rules, or applicable law.

CANON X: EXEMPTIONS FOR ARBITRATORS APPOINTED BY ONE PARTY WHO ARE NOT SUBJECT TO RULES OF NEUTRALITY.

Canon X arbitrators are expected to observe all of the ethical obligations prescribed by this Code except those from which they are specifically excused by Canon X.

A. Obligations under Canon I

Canon X arbitrators should observe all of the obligations of Canon I subject only to the following provisions:

(1) Canon X arbitrators may be predisposed toward the party who appointed them but in all other respects are obligated to act in good faith and with integrity and fairness. For example, Canon X arbitrators should not engage in delaying tactics or harassment of any party or witness and should not knowingly make untrue or misleading statements to the other arbitrators; and

(2) The provisions of subparagraphs B(1), B(2), and paragraphs C and D of Canon I, insofar as they relate to partiality, relationships, and interests are not applicable to Canon X arbitrators.

B. Obligations under Canon II

(1) Canon X arbitrators should disclose to all parties, and to the other arbitrators, all interests and relationships which Canon II requires be disclosed. Disclosure as required by Canon II is for the benefit not only of the party who appointed the arbitrator, but also for the benefit of the other parties and arbitrators so that they may know of any partiality which may exist or appear to exist; and

(2) Canon X arbitrators are not obliged to withdraw under paragraph G of Canon II if requested to do so only by the party who did not appoint them.

C. Obligations under Canon III

Canon X arbitrators should observe all of the obligations of Canon III subject only to the following provisions:
Like neutral party-appointed arbitrators, Canon X arbitrators may consult with the party who appointed them to the extent permitted in paragraph B of Canon III;

Canon X arbitrators shall, at the earliest practicable time, disclose to the other arbitrators and to the parties whether or not they intend to communicate with their appointing parties. If they have disclosed the intention to engage in such communications, they may thereafter communicate with their appointing parties concerning any other aspect of the case, except as provided in paragraph (3);

If such communication occurred prior to the time they were appointed as arbitrators, or prior to the first hearing or other meeting of the parties with the arbitrators, the Canon X arbitrator should, at or before the first hearing or meeting of the arbitrators with the parties, disclose the fact that such communication has taken place. In complying with the provisions of this subparagraph, it is sufficient that there be disclosure of the fact that such communication has occurred without disclosing the content of the communication. A single timely disclosure of the Canon X arbitrator's intention to participate in such communications in the future is sufficient;

Canon X arbitrators may not at any time during the arbitration:

(a) disclose any deliberations by the arbitrators on any matter or issue submitted to them for decision;

(b) communicate with the parties that appointed them concerning any matter or issue taken under consideration by the panel after the record is closed or such matter or issue has been submitted for decision; or

(c) disclose any final decision or interim decision in advance of the time that it is disclosed to all parties.

Unless otherwise agreed by the arbitrators and the parties, a Canon X arbitrator may not communicate orally with the neutral arbitrator concerning any matter or issue arising or expected to arise in the arbitration in the absence of the other Canon X arbitrator. If a Canon X arbitrator communicates in writing with the neutral arbitrator, he or she shall simultaneously provide a copy of the written communication to the other Canon X arbitrator;

When Canon X arbitrators communicate orally with the parties that appointed them concerning any matter on which communication is permitted under this Code, they are not obligated to disclose the contents of such oral communications to any other party or arbitrator; and

When Canon X arbitrators communicate in writing with the party who appointed them concerning any matter on which communication is permitted under this Code, they are not required to send copies of any such written communication to any other party or arbitrator.

D. Obligations under Canon IV

Canon X arbitrators should observe all of the obligations of Canon IV.

E. Obligations under Canon V

Canon X arbitrators should observe all of the obligations of Canon V, except that they may be predisposed toward deciding in favor of the party who appointed them.

F. Obligations under Canon VI

Canon X arbitrators should observe all of the obligations of Canon VI.
G. *Obligations Under Canon VII*

Canon X arbitrators should observe all of the obligations of Canon VII.

H. *Obligations Under Canon VIII*

Canon X arbitrators should observe all of the obligations of Canon VIII.

I. *Obligations Under Canon IX*

The provisions of paragraph D of Canon IX are inapplicable to Canon X arbitrators, except insofar as the obligations are also set forth in this Canon.
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