Panel Dynamics: Staying On Course When Things Don’t Go As Planned

September 10, 2015 – 2:00 p.m to 3:30 p.m. ET

PROGRAM SUMMARY

Speakers: John K. Boyce, III, Esq. and Hon. Richard M. Markus

This 90-minute webinar initially explores the ideal practices for chairing as well as serving on an arbitration panel from the standpoint of intrapanel relations. Then, the program will address the problems that may arise when issues between the panel members result in departure from those best practices. These disruptive issues will be examined in the following contexts:

AGENDA

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

2:05 p.m. Panel Dynamics (80 minutes)
  • What it means to be chair/serve on a panel
  • Communications with parties
  • Issuing ruling/orders
  • Panel deliberations
  • Panel involvement in resolving challenges to the continued service of a panelist
  • How to handle a dominating panelist
  • Inappropriate conduct at a hearing
  • Unique ethical issues with Canon X arbitrators

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

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

3:35 p.m. Adjourn
Experience  35+ years in a commercial transaction and litigation practice in state and federal trial and appellate courts. Extensive experience in the formation, maintenance, merger, and acquisition of a variety of business entities: corporations, limited liability corporations, limited partnerships, hedge funds, and preparation of various agreements connected therewith: cross-purchase, buy-sell, redemption, sale and leaseback transactions; preparation of securities memoranda and related compliance work; extensive commercial litigation for both lenders and borrowers involving financial transactions, lending agreements, guaranties, mortgages, contracts, and real estate; creditors’ rights representing large publicly-held equipment lessors and financiers in collection matters; forensic accounting and professional malpractice; representing landowners, producers, and pipelines in oil and gas/energy royalty, lease, title, contract, regulatory, and transmission line easement disputes; AV rated by Martindale-Hubbell

Arbitration Experience arbitrator since the early nineties; participated in hearings lasting several days to several weeks; over the last ten years has handled domestic and international cases including:

chair of panel of dispute whether a change of control or ownership in upstream, international entities triggered accelerated royalties for specific technology under the transfer provisions of an asset purchase agreement;

chair of panel over breach of “earn-out” provisions of IP acquisition agreement which turned on issues of infringement and invalidity of underlying patents, fraudulent inducement and tortious interference;

panelist involving real estate developer in dispute with competing developer and lender over allegations of antitrust, tortious interference, and federal bank tying act violations

panelist in dispute between defrauded investors, in complex schemes, and professional liability carrier involving novel coverage issues in context of existing arbitration award

served as panel chairman in multimillion dollar dispute involving 80+ parties growing out of the sale of series of interrelated limited partnership interests in high tech ventures which turned on issues of federal and state securities laws, breach of fiduciary duty, and complex accounting claims;

panelist in case involving fiduciary negligence and fraud in connection with investment management firm’s (“feeder fund”) failure to perform due diligence over hedge fund investments;
member of three person panel involving claims between former owners and management team under a leveraged buy-out and redemption agreement concerning issues of breach of contract, breach of fiduciary duty, officer and director liability and accounting claims;

chair of panel involving claims of professional negligence against accounting firm for failure to identify related party and control relationships in Chinese subsidiary of US public company and failure to provide appropriate accounting advice to resolve issues stemming from whistleblower emails;

chair of panel involving competing claims of fraud, breach of contract, and complex accounting over twenty-five real estate projects each subject to a master development agreement and a Delaware series LLC operating agreement;

sole arbitrator in case involving claims of breach of contract and FDA regulations in the manufacturing of oncology drugs by pharmaceutical firm;

chair of panel involving breach of FDA regulations in manufacture of medical device by Korean affiliate of public company

panelist on three person panel to determine "fair value" of dissenting minority interest in bank holding company resulting from "squeeze out" and involving technical issues of appraisal methodology;

sole arbitrator in claims involving breach of contract, fiduciary duty, and accounting between physicians under limited partnership agreement;

chair of panel to determine breach of covenant not to compete between physician and radiology group;

panelist to determine claims of fraud, breach of contract, professional negligence and conspiracy in connection with “abusive” tax shelters

sole arbitrator involving breach of indemnity provisions of asset purchase agreement between two hospitals and management company re: claims of misallocation of Long Term Acute Facility (LTAC) and Private Hospital UPL Medicare Program funds and certification issues of LTAC facility;

sole arbitrator involving breach of recruiting contract and employment contract between hospital and physician re: alleged violations of Stark II regulations and Anti-Kickback statute

sole arbitrator involving Breach of Network Participation Agreement between physician and HMO re: payor/provider reimbursement

extensive additional experience involving negotiable instruments, investment securities, including initial public offerings, lending agreements, guaranties, foreclosures, real estate, oil and gas operations and other contract and partnership disputes, accounting fraud, and customer and investment manager disputes as well as construction and products liability claims

Presentations and Publications (most recent only)


co-author, “Arbitration Texas Style” (2015) for the Texas Legislature

speaker and author, “Use of Arbitration Use in Fiduciary Disputes”, State Bar of Texas, Fiduciary Litigation
Conference (2014)

faculty, AAA Panel Dynamics: Effective Techniques for Panelists (2014)


director and speaker, “Conducting Your First (or Next) Arbitration”, State Bar of Texas, conference (Austin, 2013)


speaker, “Arbitration Primer”, Bell County Bench-Bar Conference (2012)

speaker and facilitator, “Regaining Speed and Economy in Dispute Arbitration, American Arbitration Association (San Antonio, 2011)


speaker, “Crossing the Borderline: When Neutrals Consider Changing Roles”, Texas Association of Mediators Annual Conference (2011)


speaker and author, “Arbitration Roundtable”, ADR Section, State Bar of Texas (Houston) (2010)


course director and moderator, “Advanced Mediation: Skills & Techniques”, Alternative Resolution Section, State Bar of Texas (2009)


speaker, “Arbitration Roundtable”, ADR Section, State Bar of Texas (Fort Worth) (2007)

author and speaker, "Awards and Appeals-So You Thought You Were Done", Arbitration Institute, Texas Institute of Continuing Legal Education (2006)


speaker, "ADR Update and More", Texas Institute for CLE telephone conference (2005)


author and speaker, "The Role of the CPA in Arbitration," San Antonio CPA Chapter; February 2005

author and speaker, “Use of Arbitration in Real Estate Disputes," San Antonio Bar, Real Estate Section; (2005)


Professional Licenses Admitted to Texas Bar, 1978; U.S. District Court: Western, Southern, and Northern Districts of Texas; U.S. Court of Appeals: Fifth Circuit; former Registered Investment Advisor, Texas Securities Board (Series 65 license)(currently inactive)

Professional Associations
Past Chair, Alternative Dispute Resolution Section, State Bar of Texas
Fellow, College of Commercial Arbitrators
Member, Association of Attorney Mediators (AIM)
Chartered Institute of Arbitrators (MCIArb)  
Chair, Texas Arbitration Council  
College of the State Bar  
Life Fellow, Texas Bar Foundation  
San Antonio Bar Association.

Other Professional Associations

arbitration panelist:

Commercial Panel (Large Complex Case and Securities subpanels), American Arbitration Association  
Distinguished Neutral (Banking, Accounting, and Financial Services Panel, Hedge Funds Panel, San Antonio ADR Panel)  
International Center for Dispute Resolution (ICDR)  
International Institute for Conflict Prevention and Resolution (CPR Institute)  
American Health Lawyers Association (AHLA)  
Financial Industry Regulatory Panel (FINRA)  
adjunct professor, Strauss School of Dispute Resolution, Pepperdine University School of Law

Education  University of Texas at Austin (BA, Economics, with high honors, Phi Beta Kappa, 1975 and Juris Doctor, 1978)

Other Associations: Christ Episcopal Church; President, Christ Episcopal Church Endowment

(revised 7/14)
Hon. Richard M. Markus  
Private Judicial Services, Inc.

**Current Employer-Title**  
President, Private Judicial Services, Inc. (Arbitrator, Mediator, Private Judge).  
Serving by assignment of Ohio Chief Justice as "Visiting Judge" in 40 counties.

**Profession**  
Arbitrator, Mediator, Visiting Judge

**Work History**

**ATTORNEY:** Senior Litigation Partner, Porter, Wright, Morris & Arthur  
(Cleveland, Columbus, Dayton, Cincinnati, OH, Washington, D.C., Naples, FL);  
Partner, Spangenberg, Shibley, Traci, Lancione & Markus (Cleveland, OH);  
Partner, Sindell, Sindell, Bourne, Markus, Stern & Spero (Cleveland, OH);  
Appellate Attorney, Civil Division, U.S. Department of Justice (Washington, D.C.).

**JUDICIAL:** Presently Visiting Judge (40 Ohio counties).  Formerly, Judge and  
Chief Justice, Ohio Court of Appeals (Eighth Appellate District) Visiting Judge,  
Ohio Supreme court, Ohio Courts of Appeal for Sixth, Seventh, Ninth and Tenth  
Appellate Districts;

**TEACHING:** Visiting Professor, Harvard University Law School, School,  
Cleveland State University Law School. Adjunct Professor, Case Western Reserve  
University Law School, Cleveland State University Law School, Akron University  
Law School. Instructor in Charge of Communications Curriculum and Director of  
Forensics, M.I.T. Faculty, National Judicial College, Ohio Judicial College,  
National Institute for Trial Advocacy; Ohio Ohio Continuing Legal Education  
Institute, Institute for Judicial Administration (N.Y.U.).

**Experience**

Judge at all levels of Ohio courts for more than 300 judicial trials and more than  
3,000 judicial appeals. Professionally recognized and judicially cited authority on  
Ohio evidence and procedure for more than 40 years. Counsel at every level of  
state and federal courts in Ohio and nine other states in more than 300 trials or  
appeals, including matters involving admiralty, antitrust, aviation, civil rights, class  
actions, contracts, construction, corporations, creditors, defamation, discrimination,  
environmental damage, Employee Retirement Income Security Act, franchise,  
fraud, insurance, intellectual property, international trade, labor, leases,  
partnerships, personal injury, product liability, professional liability, real property,  
and securities claims.

Member of First Annual Honor Recruitment Program of the U.S. Department of  
Justice. Member of Lawyer-Pilot Bar Association (1968-76) and Instrument Rated  
Private Pilot. Member of Ohio Supreme Court Evidence Rules Committee (1975-  
76); Ohio Supreme Court Rules Advisory Committee (1982-86); Ohio Supreme  
Court Judicial Qualifications Workgroup (2003); National Commissions on  
Medical Malpractice for U.S. Department of Health, Education and Welfare (1971-  
73), American Bar Association (1974-76) and Ford Foundation (1972). Has

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The AAA provides arbitrators to parties on cases administered by the AAA under its various Rules, which delegate authority to the AAA on various issues, including arbitrator appointment and challenges, general oversight, and billing. Arbitrations that proceed without AAA administration are not considered "AAA arbitrations," even if the parties were to select an arbitrator who is on the AAA’s Roster.
AWARDS AND HONORS: Who's Who in America (1979-present); Who's Who in American Law (1977-present); Who's Who in the Midwest (1975-present); The Best Lawyers in America (before retirement from practice). Multiple awards from Ohio Supreme Court for Outstanding Judicial Service; Outstanding Jurist Award from Ohio Academy of Trial Lawyers; Ranked first among 34 Cuyahoga County Common Pleas Judges by Cleveland Press series, "Judging the Judges" (1978); Republican Nominee, Justice of the Ohio Supreme Court (1978); Highest Favorable Vote in Lawyer Polls for any judicial candidate for any court (1976, 1978, 1980, 1982, 1988); Distinguished Service Award, National Judicial College (1998); Recipient of Ohio Bar Medal, Association's highest award (1983); Recipient of Special Proclamation for Service, Ohio State Bar (1998); Cleveland Federation for Community Planning, Most Treasured Volunteer Award (1986); Community Reentry (ex-offender rehabilitation program), ARight Relationship Award (1989); Delta Sigma Rho and Tau Kappa Alpha (National Forensics Honoraries), Distinguished Alumni Award (1985); Franklin N. Flaschner Judicial Institute Award (1981); Lutheran Metropolitan Ministry, "A Peacemaker", highest award (1999); Northwestern University, Distinguished Alumni Award (1989); Phi Beta Kappa (National Academic Honorary; Trustee, Cleveland Chapter, 1993-00); Pi Mu Epsilon (National Mathematics Honorary); Ohio Association of Civil Trial Attorneys, Award of Honor (1990); Ohio State Bar Foundation, Distinguished Governmental Leadership Award (1985).

Alternative Dispute Resolution Experience

Arbitrator, mediator, and private judge in more than 250 disputes involving accounting, antitrust, automobile and aviation liability, consumer class actions, contract interpretation and enforcement, construction, corporation organization and operations, employment contracts and discrimination, environment, ERISA, financial services, franchise, insurance (liability, casualty, health care), intellectual property, partnership and shareholders, personal injury, private international law, product liability, professional liability (legal, medical, accounting), real property, and securities claims. Member of the American Arbitration Association's Large, Complex Commercial and Mediation Panels, and other ADR sponsor lists.

Sole Arbitrator and Panel Member (often Chairperson) for disputes ranging from five figures to eight figures. Arbitration philosophy: Arbitration is a contractual process which should accommodate the preferences of all counsel and their clients to provide an expeditious and economical response to their disagreement. The arbitrator resolves disputes without mandating procedures that no party favors.

Alternative Dispute Resolution Training


Professional Licenses
Admitted to the Bar: Ohio, D. C. (inactive); Florida (retired); U.S. Supreme Court: U.S. Dist. Ct. for N. D. Ohio and M. D.Fla.; U.S. Court of Appeals for Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, D. C. and Fed. Circuits; U.S. Court of Claims; U.S. Court of International Trade.

Professional Associations
Past President: American Trial Lawyers Association; Ohio State Bar Association; Ohio Academy of Trial Lawyers. Founding Trustee, American Board of Professional Liability Attorneys; Celebrezze Inn of Court; Roscoe Pound Foundation. Chairman or member of more than 75 committees for local, state and national bar associations.

Education
Northwestern University (BS, Honors; Special Honors in Mathematics and Forensics); Harvard University (JD, Honors, Law Review Editor).

Publications and Speaking Engagements
OHIO TRIAL PRACTICE (f.k.a. OHIO TRIAL HANDBOOK) and annual supplements for more than 40 years (leading text on Ohio evidence and procedure); Cleveland State Law School Visiting Scholar Lecture on Mediation Advocacy; OHIO EVIDENCE RULES AND COMMENTARY; OHIO EVIDENCE RULES AND OBJECTIONS; editor, OHIO LOCALIZER, PERSONAL INJURY, ACTIONS, DEFENSES, AND DAMAGES, 6 vol.; more than 1000 appellate opinions; 56 articles published in professional journals.

Lecturer at more than 550 legal seminars in 42 states, including 50 judicial seminars in seven states and 20 law schools; previous lecturer at Annual Conventions of the American Bar Association.

Awards and Honors
Biographical Listings Who's Who in America; Who's Who in American Law; Who's Who in the Midwest; The Best Lawyers in America (before retirement from practice)

Ranked first among 34 Cuyahoga County Common Pleas Judges by Cleveland Press series, "Judging the Judges"; Republican Nominee, Justice of the Ohio Supreme Court; highest favorable vote in lawyer polls for any judicial candidate for any court in every election in which he was candidate.

Awards: Multiple awards from Ohio Supreme Court for Outstanding Judicial Service; Outstanding Jurist Award from Ohio Academy of Trial Lawyers (plaintiffs bar); Award of Honor, Ohio Association of Civil Trial Attorneys (defendants bar); Distinguished Governmental Leadership Award, Ohio State Bar Foundation; Distinguished Service Award, National Judicial College; Ohio Bar Medal (highest award of state bar); Distinguished Alumni Award, Northwestern University.

Hon. Richard M. Markus
Neutral ID : 123721

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Citizenship: United States of America
Languages: English
Locale: Cleveland, Ohio, United States of America

Compensation:

- Hearing: $350.00/Hr
- Study: $350.00/Hr
- Travel: $175.00/Hr
- Cancellation: $350.00/Hr
- Cancellation Period: 14 Days
- Comment:

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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:

(1) 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;

(2) 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);

(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;

(4) 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.
(5) 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;

(6) 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

(7) 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.