The Ethics of eDiscovery in Arbitration

December 8, 2015 – 1:00 p.m. – 2:30 p.m. ET

PROGRAM SUMMARY

Speakers: James Reiman and Stanley Sklar

This 90-minute webinar will increase your awareness of these ethical issues that swirl around the use of eDiscovery in arbitration so that, whether you are an advocate or an arbitrator, you will more effectively manage your role in the process.

AGENDA

1:00 p.m. Welcome and Introduction of Speakers (5 minutes)

1:05 p.m. eDiscovery - Ethical Issues in Arbitration (75 minutes)
• the ethical duty of arbitrator competence in the digital age;
• the risk of spoliation of evidence in eDiscovery;
• ethical considerations in dealing with eDiscovery and Clawback agreements;
• the duty of confidentiality in eDiscovery;
• ethical issues pertaining to document collection, inadvertent disclosure, information preservation, gathering and retrieving documents, search criteria, attorney/client privileged information, metadata;
• the impact of the Federal Rules of Discovery on eDiscovery in arbitration;
• professional misconduct re mining of Metadata;
• application of eDiscovery in small cases;

2:20 p.m. Conclusion and Questions (10 minutes)

2:30 p.m. Evaluation (5 minutes)

2:35 p.m. Adjourn
JAMES A. REIMAN, Esq., FCIArb, Q.Arb
522 Church St., # 7D
Evanston, IL   60201-4575

SUMMARY

ADR Professional with 18 years experience in US law firms followed by 15+ years as a CEO and public and private company board director. Lead or billing attorney negotiating and documenting complex business transactions, real estate development and construction projects, trade and intellectual property disputes (both domestic and international), private equity financings, strategic partnerships, corporate restructurings, and mergers/acquisitions, as well as exit strategies, generational transfers, and partnership dissolutions of smaller businesses. Experienced arbitrator and mediator. Solid understanding of the law and issues related to e-discovery disputes.

Direct management and public company board experience (including 4 years as chairman) in companies engaged in international business, multi-unit retail, eCommerce, direct marketing, technology development, and manufacturing, as well as IPO's and public and private financings. Operational experience (as CEO) in China, Canada, and the US. Board experience with US, PRC, and UK companies. Board roles focus on strategic vision, empowering and properly compensating management, discerning underlying business issues, and developing solutions to an array of financial, transactional, operational and marketing challenges. National Association of Corporate Directors Board Leadership Fellow; Financial Times' Agenda’s International 100: Top Board Candidates with Global Skills (2011). Executive compensation and compensation committee experience and expertise.

ADR PANELS

- American Arbitration Association, Commercial Roster (Arbitration)
- Financial Industry Regulatory Authority (FINRA), Public Arbitrator
- Court Mediation: Circuit Court Of The Twelfth Judicial Circuit, Will County, Illinois; Circuit Court Of The Nineteenth Judicial Circuit, Lake County, Illinois

SPECIAL RECOGNITION / CERTIFICATION

Fellow: Chartered Institute of Arbitrators 2014 – Present
Qualified Instructor (Tutor) – International Arbitration: Chartered Institute of Arbitrators 2015 – Present
Qualified Arbitrator (Q.Arb): ADR Institute of Canada 2015 – Present
Fellow: American College of e-Neutrals 2015 – Present
Board Leadership Fellow: National Association of Corporate Directors 2011 – Present
International 100: Top Board Candidates with Global Skills: Financial Times’ Agenda 2011

PROFESSIONAL HISTORY

PRINCIPAL – REIMAN ADR 2014 to Present
Alternative dispute resolution professional providing domestic and international arbitration, mediation, facilitation and other alternative dispute resolution services (including e-discovery mediation) to corporations and individuals.
NEGOTIATOR / INSTRUCTOR – TCA LIMITED 2015 to Present

Member of international negotiating and education teams of TCA Limited, a UK based specialist international advisory firm that provides Western companies with real-time guidance to help them achieve better outcomes for their business negotiations in China and other East Asian countries.

CONTROLLING MEMBER & MANAGER / CEO – AEROEFFICIENT LLC 2001 to 2015

Conceived a line of products for the long-haul heavy duty tractor trailer truck market, formed a professional team and business venture to commercialize, manufacture and sell the product, and patented the inventions. Final products won multiple industry awards and generated millions of dollars in sales.

- Co-inventor of 15 US, EU and other nation patents for aerodynamic devices that in combination generate 10+% fuel savings (based on independent 3rd party testing).
- Sourced North American production and distribution resources. Negotiated and documented favorable manufacturing and assembly agreements with US (Detroit) based Tier 1 automotive suppliers.
- Developed lease/financing products to support the sale of Aerofficient’s products; assembled a core group of industry leading commercial leasing experts to create and fund a leasing company to facilitate such financing offerings.

CEO / CHAIRMAN / DIRECTOR – EBT DIGITAL COMMUNICATIONS RETAIL GROUP 2002 to 2011

Retained by a US and European investor group to turn-around a money-losing Chinese wireless retailer operating in Shanghai and other East China cities. Conceived and implemented a new business model, installed a new management team, and executed a successful growth strategy. Subsequently bought out the US and EU investors, and then the Chinese government joint venture partner.

- Led one of the first US-Chinese joint venture exits, successfully unwinding the JV partnership while preserving government relations thereby permitting a successful re-launch of the business.
- Executed a private placement within 1 year of acquiring the company, and within 2 years successfully listed the business on the London Stock Exchange’s AIM market, then the world’s leading stock market for small, high-growth companies.
- As Chairman of a publicly traded company, oversaw 2 successful supplemental stock offerings, each at a substantial premium to the listing price.
- As Chairman, implemented a pragmatic growth strategy that grew the business from 35 to 250+ stores over 5 years, with potential for substantial future growth (400+ stores as of January 1, 2013).
- As Chairman, led the execution of a successful partial buy-back / privatization transaction following the collapse of the AIM market in Q4, 2008; preserved both institutional and small independent shareholders’ goodwill.

EXECUTIVE VICE PRESIDENT – SPECTRUM GROUP INTERNATIONAL 1999 to 2002

Joined Greg Manning Auctions (now known as Spectrum Group International), then a publicly traded collectibles and auction company which underwent multi-year growth. Charged with transforming a fledgling online business into a diversified Internet-based direct marketing enterprise through acquisitions, joint ventures and offshore expansion.

- Structured and negotiated joint ventures and semi-exclusive deals with eBay, Amazon and other leading companies.
BOARD MEMBER / TRUSTEE – KENDALL COLLEGE / KENDALL FOUNDATION 1991 TO 2009

Influential member of the board in planning, decision-making and go-forward strategies related to executive leadership, program/curriculum development and transactional matters.

- Supported the continuing transition from a traditional liberal arts academic college into a professional and career-oriented institution, which favorably positioned the school as an acquisition target by a for-profit European education company.
- Served on multiple presidential search committees, identifying and selecting leadership with a strong mix of change management skills, entrepreneurship, fiscal discipline, business insights and market focus.

COMMERCIAL TRANSACTIONS ATTORNEY 1980 to 1998

Converged legal expertise with business insights and negotiation skills to provide clients with solutions to complex issues involving buy-sell transactions, business development and strategic partnership agreements, product manufacturing / vendor agreements, marketing and distribution activities, and financings.

- As lead or billing attorney, negotiated and documented complex business transactions, complex financings, real estate development and construction projects, trade and intellectual property disputes (both domestic and international), private equity financings, strategic partnerships, corporate restructurings, and mergers/acquisitions, as well as exit strategies, generational transfers, and partnership dissolutions of smaller businesses.
- As lead or billing attorney, oversaw the litigation of client disputes concerning manufacturing agreements (including disputes regarding delivery delays, quality issues, specification compliance, and warranty matters), real estate buy/sell and lease agreements, real estate use and easement agreements, real estate construction and development agreements, unfair competition and “passing off,” confidentiality agreements and trade-secrets, employer/employee non-competition agreements and restrictive covenants, commercial financing and loan agreements, and agreements for the purchase/sale of goods.
- Client companies included those involved in real estate development (acquisition, financing, and development of warehouse and distribution center projects, retail and mixed-use projects, and high-rise and single family home residential projects); direct marketing (catalog sales, “As Seen on TV” campaigns, mail order, telemarketing); next generation integrated voice, data and IT solutions, and; road building and other infrastructure construction

PUBLICATIONS / UNIVERSITY LECTURER / EXECUTIVE EDUCATOR

- Recent publications:
  “Conflict Resolution and Enterprise Risk,” in Know How, Editors Gail Menely and Dev Mukherjee, Shields Meneley Partners (2015)
  “Conflict Resolution Policies, Reputational Risk and Enterprise Risk Management; What Directors Need to Know and Should Be Asking Management,” in New York Stock Exchange’s Board Member Magazine (electronic edition), (September, 2014)

- Frequent business school speaker and guest lecturer: Teaches and lectures on China, strategy and strategic decision-making (Dartmouth College’s Tuck School of Business, 2011 – present; Northwestern University’s Kellogg School of Management, 2005 – present; University of Chicago’s Booth School of Business and other schools, 2005 - 2013)

- Executive education instructor / lecturer: Teaches advanced negotiation (including international negotiation) and mediation with TCA Limited, Inc. and members of the faculty of Oxford University’s Sa’id School of Business to senior executives and attorneys both in the US and in other countries.
INTERNATIONAL ARBITRATION INSTRUCTOR / OTHER

- Member of faculty (international arbitration), Chartered Institute of Arbitrators (2014 – present)
- Member of faculty of an arbitration training program in Ghana, West Africa co-sponsored by the American Arbitration Association and Fordham Law School (July, 2013)
- American Bar Association’s JCEB National Institute on Executive Compensation (2013, 2014)
- Co-inventor of multiple US and foreign issued patents on aerodynamic enhancing technologies and devices for the heavy duty truck industry

EDUCATION & AFFILIATIONS

Kellogg Advanced Executive Program – NORTHWESTERN UNIVERSITY 1998
Juris Doctor – NORTHWESTERN UNIVERSITY 1980
Bachelor of Arts – COLUMBIA UNIVERSITY 1977

Memberships: ADR Institute of Canada; ADR Institute of Alberta; American Bar Association; American College of e-Neutrals; Association of Attorney Mediators; Chartered Institute of Arbitrators (Board of Directors, North America Branch, 2015 – present); InterNational Academy of Dispute Resolution (Board of Directors, 2015 - present); Chicago Council on Global Affairs (President’s Circle, 2013 - present); National Association of Corporate Directors; Union Internationale des Avocats

Bar Admissions: US District Court for North District of Illinois, Illinois Courts
STANLEY P. SKLAR, ESQ.

WORK HISTORY: Executive Director for Arbitration Studies, DePaul University College of Law, Center for Dispute Resolution, 2009-; Partner, Bell, Boyd & Lloyd LLP, 1995-2008; Partner, Schain, Firsell & Burney, 1994-95; Partner, Pretzel & Stouffer, Ch.1., 1982-94; Partner, Mann, Cogan, Sklar & Lerman, 1970-82; Associate, Fein & Pesmen, 1964-70.


ALTERNATIVE DISPUTE RESOLUTION EXPERIENCE: Chaired panels concerning claims in excess of $10 million on several Large Complex case matters and sole arbitrator in several Large Complex Cases. Arbitrator and mediator in construction contract disputes, payment disputes, delay claims, and failure claims; design defects; change order disputes; insurance coverage disputes and surety claims; common area maintenance contributions under multiple shopping center leases; international shopping center disputes; underground tunneling project involving trenchless technology; concrete defects in high rise office building; concrete defects in parking deck and garage structures; alkali silica deterioration for commercial pavers in office complex, concrete failures, curtain wall water intrusion, structural steel failures; HUD financed retirement facilities; marine structures including breakwater construction for lake erosion protection; delay claims relating to processing plant; energy supply contract disputes involving coal mines and public utility; supply contracts for coal forced steam generating plant; energy savings performance contracts; circulating fluidized bed steam generators for power plant, floating casinos, hospital and health center retro-fitting and new construction, lease workletter disputes and workouts, demolition and disposal of nuclear waste; claims relating to auto dealership facility construction; multi-party mediations regarding insurance coverage for construction defects; and title insurance coverage disputes.

Member of the AAA Large Complex Case Panel for Commercial and Construction Disputes; AAA National Commercial/Construction Arbitrator Training Faculty; and instructor for ACE courses on Ethics, Chairing the Arbitration Panel. Arbitrator, Circuit Court of Cook County Mechanics Lien Section. Mediator, Circuit Court of Cook County Court Annexed Mediation. AAA Construction Arbitrator II: Advanced Case Management Issues, 2005; Arbitrator Ethics and Disclosure, 2004, 2005; Member, AAA National Construction Dispute Resolution Committee. Speaker AAA 2009 Annual Construction Conferences. Panel member, International Centre for Dispute Resolution. (CPR); Certified Mediator by International Mediation Institute.

ALTERNATIVE DISPUTE RESOLUTION TRAINING: ALI ABA Course on Special Masters in Federal Courts, 12/05; ACE004 - Practical Tips for Dealing with Delay Tactics of Parties and Advocates, Chicago, 4/05; AAA International Arbitration Symposium, San Francisco, 9/03; Attended AAA Neutrals Conference and satisfied 2003 ACE requirements, Providence, 8/03; faculty, AAA Neutrals Conference, Scottsdale, 1/03; AAA Arbitrator Update 2001; AAA Construction Train the Trainer Course, Phoenix, 12/00; attended AAA Mediator Conference Workshop, Chicago, 9/00; AAA Continuing Education, Concrete Deterioration, Chicago, 9/00; AAA Continuing Education, "Sticks and Stones and Managing the Process of Arbitration," Chicago, 7/00; AAA Continuing Education, "Scheduling Damages and Discovery Management in Arbitration," Chicago, 5/00; presenter, AAA National Mediator Conference, Denver, 3/00; Harvard Law School Advanced Mediation Workshop, 2000; faculty, AAA Commercial Arbitrator Training, Atlanta, 11/98; AAA Construction Law Seminar, Chicago, 11/98; faculty, AAA Construction Industry Arbitrator Training, Chicago, 6/97; faculty, AAA Construction Mediator Workshop, Chicago, 5/97; Constructive Resolutions, Inc., Mediation Training, 1991; faculty, Chicago Region Arbitrator Training Programs; various other ADR training.

PROFESSIONAL ASSOCIATIONS: College of Commercial Arbitrators, President (2010-11); American College of Real Estate Lawyers, Fellow; American College of Construction Lawyers, Past President; Society of Illinois Construction Attorneys (Past President); Member CPR Panel of Distinguished Neutrals. International Mediation Institute (IMI) Certified. Mediator; Association of Attorney Mediators, Member; Chicago Bar Association (Real Property Committee, Past Chair; Alternative Dispute Resolution Committee, Past Chair); Construction and Mechanic's Lien Subcommittee Past Chair; American Bar Association (Forum on Construction, Board of Governors); Builders Association of Greater Chicago (Board of Directors 1993-1996); American Subcontractors Association (Board of Directors; Governmental Relations Committee, Chair (1990-2000); Construction Financial Management Association (Chicago Chapter, Legal Counsel (1990-1994).

HONORS: Recipient of ABA Forum on Construction Industry Cornerstone Award for Lifetime Achievement in the field of Construction Law (2004); Chambers USA, America’s Leading Lawyers for Business stated “rivals extol Stanley Sklar as “one of the preeminent construction law practitioners in the country.” Member of Lambda Alpha Honorary Land Economics Society and Leading Lawyer Network – Construction consisting of top 5% of lawyers in Illinois; Leading Lawyer Network of Lawyer Neutrals.

EDUCATION: University of Illinois, B.S. Industrial Administration, 1960; Northwestern University School of Law, J.D., 1964


COMPENSATION: Please contact for compensation arrangements.

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STANDING ORDER RELATING TO THE DISCOVERY OF ELECTRONICALLY STORED INFORMATION

Parties and counsel in this case shall familiarize themselves with, and conduct themselves consistently with, the Principles Relating to the Discovery of Electronically Stored Information incorporated in this order. If any party believes that there is good cause why this case should be exempted, in whole or in part, from this order, that party may raise the reason with the Court.

General Provisions

Section 1.01 Purpose

The purpose of the Principles is to assist courts in the administration of Federal Rule of Civil Procedure 1, to secure the just, speedy, and inexpensive determination of every civil case, and to promote, whenever possible, the early resolution of disputes regarding the discovery of electronically stored information ("ESI") without Court intervention. Understanding of the feasibility, reasonableness, costs, and benefits of various aspects of electronic discovery will inevitably evolve as judges, attorneys and parties to litigation gain more experience with ESI and as technology advances.

Section 1.02 Cooperation

An attorney's zealous representation of a client is not compromised by conducting discovery in a cooperative manner. The failure of counsel or the parties to litigation to cooperate in facilitating and reasonably limiting discovery requests and responses raises litigation costs and contributes to the risk of sanctions.

Section 1.03 Discovery Proportionality
The proportionality standard set forth in Fed. R. Civ. P. 26(b)(2)(C) should be applied in each case when formulating a discovery plan. To further the application of the proportionality standard in discovery, requests for production of ESI and related responses should be reasonably targeted, clear, and as specific as practicable.

**Early Case Assessment Provisions**

**Section 2.01 Duty to Meet and Confer on Discovery and to Identify Disputes for Early Resolution**

(a) Prior to the initial status conference with the Court, counsel shall meet and discuss the application of the discovery process set forth in the Federal Rules of Civil Procedure and the Principles to their specific case. Among the issues to be considered for discussion are:

1. the identification of relevant and discoverable ESI;
2. the scope of discoverable ESI to be preserved by the parties;
3. the formats for preservation and production of ESI;
4. the potential for conducting discovery in phases or stages as a method for reducing costs and burden; and
5. the procedures for handling inadvertent production of privileged information and other privilege waiver issues under Rule 502 of the Federal Rules of Evidence.

(b) Disputes regarding ESI that counsel for the parties are unable to resolve shall be presented to the Court at the initial status conference, Fed. R. Civ. P. Rule 16(b) Scheduling Conference, or as soon as possible thereafter.

(c) Disputes regarding ESI will be resolved more efficiently if, before meeting with opposing counsel, the attorneys for each party review and understand how their client's data is stored and retrieved in order to determine what issues must be addressed during the meet and confer discussions.

(d) If the Court determines that any counsel or party in a case has failed to cooperate and participate in good faith in the meet and confer process or is impeding the purpose of the Principles, the Court may require additional discussions prior to the commencement of discovery, and may impose sanctions, if appropriate.
Section 2.02 E-Discovery Liaison(s)

In most cases, the meet and confer process will be aided by participation of an e-discovery liaison(s) as defined in the Principle. In the event of a dispute concerning the preservation or production of ESI, each party shall designate an individual(s) to act as e-discovery liaison(s) for purposes of meeting, conferring, and attending court hearings on the subject. Regardless of whether the e-discovery liaison(s) is an attorney (in-house or outside counsel), a third party consultant, or an employee of the party, the e-discovery liaison(s) must:

(a) be prepared to participate in e-discovery dispute resolution;

(b) be knowledgeable about the party's e-discovery efforts;

(c) be, or have reasonable access to those who are, familiar with the party's electronic systems and capabilities in order to explain those systems and answer relevant questions; and

(d) be, or have reasonable access to those who are, knowledgeable about the technical aspects of e-discovery, including electronic document storage, organization, and format issues, and relevant information retrieval technology, including search methodology.

Section 2.03 (Preservation Requests and Orders)

(a) Appropriate preservation requests and preservation orders further the goals of the Principles. Vague and overly broad preservation requests do not further the goals of the Principles and are therefore disfavored. Vague and overly broad preservation orders should not be sought or entered. The information sought to be preserved through the use of a preservation letter request or order should be reasonable in scope and mindful of the factors set forth in Rule 26(b)(2)(C).

(b) To the extent counsel or a party requests preservation of ESI through the use of a preservation letter, such requests should attempt to ensure the preservation of relevant and discoverable information and to facilitate cooperation between requesting and receiving counsel and parties by transmitting specific and useful information. Examples of such specific and useful information include, but are not limited to:

(1) names of the parties;

(2) factual background of the potential legal claim(s) and identification of potential cause(s) of action;

(3) names of potential witnesses and other people reasonably anticipated to have relevant evidence;
relevant time period; and
other information that may assist the responding party in assessing what information to preserve.

(c) If the recipient of a preservation request chooses to respond, that response should provide the requesting counsel or party with useful information regarding the preservation efforts undertaken by the responding party. Examples of such useful and specific information include, but are not limited to, information that:

(1) identifies what information the responding party is willing to preserve and the steps being taken in response to the preservation letter;

(2) identifies any disagreement(s) with the request to preserve; and

(3) identifies any further preservation issues that were not raised.

(d) Nothing in the Principles shall be construed as requiring the sending of a preservation request or requiring the sending of a response to such a request.

Section 2.04 Scope of Preservation

(a) Every party to litigation and its counsel are responsible for taking reasonable and proportionate steps to preserve relevant and discoverable ESI within its possession, custody or control. Determining which steps are reasonable and proportionate in particular litigation is a fact specific inquiry that will vary from case to case. The parties and counsel should address preservation issues at the outset of a case, and should continue to address them as the case progresses and their understanding of the issues and the facts improves.

(b) Discovery concerning the preservation and collection efforts of another party may be appropriate but, if used unadvisedly, can also contribute to the unnecessary expense and delay and may inappropriately implicate work product and attorney-client privileged matter. Accordingly, prior to initiating such discovery a party shall confer with the party from whom the information is sought concerning: (i) the specific need for such discovery, including its relevance to issues likely to arise in the litigation; and (ii) the suitability of alternative means for obtaining the information. Nothing herein exempts deponents on merits issues from answering questions concerning the preservation and collection of their documents, ESI, and tangible things.

(c) The parties and counsel should come to the meet and confer conference prepared to discuss the claims and defenses in the case including specific issues, time frame, potential damages, and targeted discovery that each anticipates requesting. In addition, the parties and counsel should be prepared to discuss reasonably foreseeable preservation issues that relate
directly to the information that the other party is seeking. The parties and counsel need not raise every conceivable issue that may arise concerning its preservation efforts; however, the identification of any such preservation issues should be specific.

(d) The following categories of ESI generally are not discoverable in most cases, and if any party intends to request the preservation or production of these categories, then that intention should be discussed at the meet and confer or as soon thereafter as practicable:

(1) "deleted," "slack," "fragmented," or "unallocated" data on hard drives;
(2) random access memory (RAM) or other ephemeral data;
(3) on-line access data such as temporary internet files, history, cache, cookies, etc.;
(4) data in metadata fields that are frequently updated automatically, such as last-opened dates;
(5) backup data that is substantially duplicative of data that is more accessible elsewhere; and
(6) other forms of ESI whose preservation requires extraordinary affirmative measures that are not utilized in the ordinary course of business.

(e) If there is a dispute concerning the scope of a party's preservation efforts, the parties or their counsel must meet and confer and fully explain their reasons for believing that additional efforts are, or are not, reasonable and proportionate, pursuant to Rule 26(b)(2)(C). If the parties are unable to resolve a preservation issue, then the issue should be raised promptly with the Court.

Section 2.05 Identification of Electronically Stored Information

(a) At the Rule 26(f) conference or as soon thereafter as possible, counsel or the parties shall discuss potential methodologies for identifying ESI for production.
(b) Topics for discussion may include, but are not limited to, any plans to:

(1) eliminate duplicative ESI and whether such elimination will occur only within each particular custodian's data set or whether it will occur across all custodians;
(2) filter data based on file type, date ranges, sender, receiver, custodian, search terms, or other similar parameters; and
(3) use keyword searching, mathematical or thesaurus-based topic or concept clustering, or other advanced culling technologies.

Section 2.06 Production Format

(a) At the Rule 26(f) conference, counsel and the parties should make a good faith effort to agree on the format(s) for production of ESI (whether native or some other reasonably usable form). If counsel or the parties are unable to resolve a production format issue, then the issue should be raised promptly with the Court.

(b) ESI stored in a database or a database management system often can be produced by querying the database for discoverable information, resulting in a report or a reasonably usable and exportable electronic file for review by the requesting counsel or party.

(c) ESI and other tangible or hard copy documents that are not text-searchable need not be made text-searchable.

(d) Generally, the requesting party is responsible for the incremental cost of creating its copy of requested information. Counsel or the parties are encouraged to discuss cost sharing for optical character recognition (OCR) or other upgrades of paper documents or non-text-searchable electronic images that may be contemplated by each party.

Education Provisions

Section 3.01

Because discovery of ESI is being sought more frequently in civil litigation and the production and review of ESI can involve greater expense than discovery of paper documents, it is in the interest of justice that all judges, counsel and parties to litigation become familiar with the fundamentals of discovery of ESI. It is expected by the judges adopting the Principles that all counsel will have done the following in connection with each litigation matter in which they file an appearance:

(1) Familiarize themselves with the electronic discovery provisions of Federal Rules of Civil Procedure, including Rules 26, 33, 34, 37, and 45, as well as any applicable State Rules of Procedure; and

Section 3.02

Judges, attorneys and parties to litigation should also consult The Sedona Conference® publications relating to electronic discovery\(^1\), additional materials available on web sites of the courts\(^2\), and of other organizations\(^3\) providing educational information regarding the discovery of ESI.\(^4\)

ENTER:

Dated: ____________________ __________________________________

______________________________

Geraldine Soat Brown
United States Magistrate Judge

\(^1\) [http://www.thesedonaconference.org/content/miscFiles/publications.html?grp=wgs110](http://www.thesedonaconference.org/content/miscFiles/publications.html?grp=wgs110)

\(^2\) E.g. [http://www.ilnd.uscourts.gov/home/](http://www.ilnd.uscourts.gov/home/)


\(^4\) E.g. [http://www.du.edu/legalinstitute](http://www.du.edu/legalinstitute)
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.
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