



PREPARING YOUR ARBITRATION DISCLOSURES

What to Include in Your Disclosure Letter



Webinar
October 2017

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Speaker



William E. Hartsfield

Hamilton & Hartsfield, P.C.
Dallas, Texas



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Goals

- Compliance with Ethical Standards
- Compliance with Legal Standards
- Protecting the Process and You



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Starting Point for Disclosures



Have you viewed your disclosures from the perspective of a party wanting to vacate your award?



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Disclosures



- **2004 Disclosure Standard**
- **Scope of Database**
 - Electronic
 - Year
 - Type of Data
- **General Contacts**
 - Announcements
 - Holiday Cards
 - Seminars



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- **Service as a Neutral**

- Similar matters
- Same representatives
- Same parties

- **Service as a Neutral in the Industry**

- Health Care
- Hospitality
- Transportation



- **Service as an Advocate, Expert, Presenter, or Other Role**

- **Service as an Attorney**

- **Clients in the Same Industry**

- Real Estate
- Communications
- Software



- **Family Connections**

- Similar claim
- Related industry

- **Business Connections**

- Vendor
- Organizations

- **Investments**

- Same company or industry
- Index funds



- **Inquiries not made**

- Social Media
- Paper Files
- Data Base
- Representatives' Biographies
- Shared Space
- Past Employers
- Data Not Available



- **Possible Errors**
 - Spelling
 - Omissions
 - Information Supplied by Parties
- **Websites**
 - Personal
 - Martindale
 - State Bar
- **Past and Future Contacts**



- **Request for Parties to Inquire**
- **Parties' Questions or Requests**
- **Neutrality**
- **Review**



Concluding Remarks



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Questions



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NEUTRALS' DISCLOSURES

2017

This paper is presented with the understanding that the author is not engaged in the rendering of legal or other professional services, and the paper is intended only to be a brief discussion of the laws and issues presented. It is not a comprehensive analysis. Because of the paper's generality and because the disclosure standard for commercial arbitrators evolves the material may not apply to all situations and may not, after its publication date, reflect the most current best practice. For these reasons, the reader should not rely or act upon this discussion without further reading and consultation. Furnishing this paper does not create, any relationship with the seminar participant or any reader.

Disclosure Standard These disclosures were prepared based upon the revised Code of Ethics for Arbitrators effective March 1, 2004. Disclosures under that standard should not be construed as an indication that I consider the information likely to affect impartiality or independence.

Scope of Database With respect to the above arbitration based on the information provided, a search of our electronic database (which only dates back to May 1996) did not reveal any matters to disclose nor do I recall any matters based on the information provided other than: _____

General Contacts Over the years, I or the firm may have exchanged firm announcements, holiday cards or similar communications with counsel or other attorneys with their firm.

Services as a Neutral I have served or am serving as a neutral in similar matters and with respect to similar issues and may do so in the future.

I will entertain offers to serve as a neutral in other cases with a party or its representative involved in this case while this arbitration is pending. Any such contact or engagement will be disclosed in this case. If either party has a concern about this practice at this time or has a concern in the future based upon a disclosure, they should contact you, the AAA case manager.

Service as a Neutral in an Industry I have served and am serving as a neutral in mediations and arbitrations in which one of the parties was or is a restaurant or is connected to the hospitality industry. I do not know what relationship, if any, exists between those entities or persons and any of the persons or entities identified in the materials provided.

Services as an Advocate, Expert or Presenter Although not currently doing so, I have defended clients who are non-subscribers in personal injury actions in the past. I have also

represented employees who have made various claims against employers, but I have not identified a matter involving a non-subscriber. With respect to all of these types of matters, some of the proceedings involved an ERISA plan.

Due to the length of my practice, I may have been involved in controversies in the past as an advocate or expert concerning issues similar to the disputes in this matter or with respect to similar issues and may have lectured, presented papers or written materials on the same or similar topics and may do so in the future.

Service as an Attorney Over the years, I or other attorneys with the firm have represented entities or individuals that obtained loans from various lenders and have represented entities or individuals that made loans. I do not know what relationship, if any, that the companies listed above may have with any of the persons or entities identified in the materials provided.

Firm Clients in the Same Industry The firm represents a window manufacturer, [name of client], and that representation includes warranty matters. I do not know what, if any, relationship exists between any of these entities and any of these parties.

Family Connections My brother worked in the [industry]. My sister made a claim for [description of relevant claim]. One of my uncles, now deceased for more than ten years, was the [title] of [name of company].

I and my relatives have received medical services at various health care providers in the DFW area. I do not know what relationship, if any, exists between those health care providers and any of the persons or entities identified in the materials provided.

Client Connections Clients may also have a connection to the [identify] field but are not so identified in our database, and I do not have any recollection of others.

Inquiries not made and Possible Errors I have not made an inquiry of any of my relatives other than my spouse. However, the attachment identifies their professions, employers, and geographic locations.

I have not reviewed the roster of any law firm or agency to identify any attorney not listed on the supplied materials that I might know. Further, I have not reviewed the biography of any individual attorney listed in supplied materials to identify any past or current associations of that individual with any entity which I may have a past or current association.

My investments in publicly traded companies are through mutual or index funds. I have not made any independent inquiry into the publicly traded companies in such funds. If either party would like for me to make an independent inquiry into the publicly-traded companies of any of these funds, I will be glad to do so.

With respect to any individual attorney or law firm, it is possible that the individual or the firm was involved in a matter with one of our clients which information does not appear in our database, and I have no recollection of it.

The process of reviewing records for making disclosures was limited to a search of this firm's electronic database and did not include a search of its physical records, public databases, any AAA database, social networks, my social media accounts or the Internet. Please note that the electronic database dates back only to May of 1996 and may not be complete and thus there

may be matters not in the database and which I do not presently remember which may be disclosable. For example, the database does not list witnesses including expert witnesses, does not list the names of party representatives in mediations or arbitrations and does not list participants in any seminars or classes at which I have lectured. Further, it is possible that an attorney participated in a matter but the name was not entered into the database. On occasion, I have found data entry errors in the database which cause a past contact not to be found when the database was searched. At other times, a spelling error existed in the information used for a database search which caused a past contact not to be found. Similarly, the use of a nickname either in the information provided or in the database may cause a past contact not to be found. Please note that the database does not include a list of clients or persons that I or other attorneys in the firm may have represented only while working at prior law firms before forming our current firm in 1994, nor does it contain opposing parties and their counsel relating to matters handled at prior firms. Further, I do not have access to a database or files that would include entities or persons that I may have represented while working at prior law firms and which did not become clients of our firm or that would include opposing parties or their counsel. For those items not in the database, I can only rely on my recollection for such entities or persons.

Websites My contact or other information about me appears at: www.facebook.com, www.linkedin.com, www.martindale.com, www.avvo.com, www.lawyers.com, and lawyers.findlaw.com.

Materials not Available Please note that our law firm did share space with other attorneys in the past, and I do not have access to the records of these other attorneys to conduct a check for possible disclosures.

Attachments Attached is a list of other organizations of which I am or was a member not listed in the biography on file with the American Arbitration Association. Please note that I have not listed every civic, charitable, religious or political organization to which I or my spouse belong or to which we have made donations. I am not aware that any of these organizations are relevant to this arbitration, but rather list them from an abundance of caution in the event that there is some connection of which I am not aware.

Past and Future Contacts Because I have practiced in this area for many years, have served as a neutral in numerous matters, have presented a number of papers at various functions including events in other states, have attended many functions, have lectured at the University of North Texas and other institutions and continue to have an active practice, I could have met or communicated with counsel or others involved in this matter and not recall that contact. I may see counsel or other attorneys in their firms, agency or others involved in this proceeding at functions, seminars, bar activities or other events in the future. It is also possible that counsel or others involved in this matter may have participated in matters in which I served as a neutral or as an advocate or expert, and I do not recall that participation or I was not aware of their participation.

Request for Parties to Inquire As my search for disclosures was based on the material supplied, the parties are requested to provide any additional related entities or individuals for either party that they desire to be included in the search for disclosures.

It is respectfully requested that the parties and their counsel make a diligent inquiry to determine whether there are any other contacts or facts that may be relevant and if so, I ask

that they communicate it to you, the case manager. Similarly, while this matter is pending, if any other contacts or facts come to light that may be relevant, it is respectfully requested that the parties and their counsel communicate it immediately to you, the case manager.

Parties' Questions or Requests If the parties need any additional details about these matters, have a question about a specific matter, desire that I conduct additional inquiries, or have a question about my background not addressed in my AAA résumé or disclosures, please let me know.

Neutrality Nothing would prevent me from serving as an impartial, neutral arbitrator in this matter.



William E. Hartsfield, Esq.
Hamilton & Hartsfield, P.C

Current Employer-Title	Hamilton & Hartsfield, P.C. - Shareholder
Profession	Attorney - Employment Law, Employee Benefits, ERISA, Franchises, Liquor Liability, Software and Application Service Provider Licensing, Website Agreements, Trade Secrets, Trademarks, Service Marks, Copyright, Internet Law, E-commerce, Manufacturers, Health Care Providers, Hospitals, Physicians, Physician Practices, Third Party Plan Administrators, Restaurants, Hotels
Work History	Shareholder/Director, Hamilton & Hartsfield, P.C., 1994-present; Adjunct Professor, University North Texas, 2009-present; Shareholder/Director/Of Counsel, Miller, Hiersche, Martens & Hayward, 1988-93; Corporate Counsel, TGI Friday's Inc., 1981-88; Associate, Carrington, Coleman, Sloman & Blumenthal, 1977-81; Briefing Attorney, Honorable Sam D. Johnson, Texas Supreme Court, 1976-77; U.S. Navy Reserve, Judge Advocate General Corps, 1973-76.
Experience	Over 25 years of experience litigating employment matters, representing both plaintiffs and defendants and both employers and employees, including FLSA, Title VII, OSHA, ADA, ERISA, FMLA, collective and class actions, state wage and hour disputes, state discrimination laws, torts, personal injuries, noncompete agreements, emergency and injunctive relief, and individual employment contracts. Over 20 years of experience representing franchisors and franchisees (e.g., termination, royalties and fees, transfers and valuations, regulations, disclosures, encroachment, enforcement, trademark or copyright infringement, renewals, noncompetition, confidentiality, nonsolicitation of employees, advertising and marketing obligations, development obligations and post termination obligations); software developers, licensors and licensees; individual physicians, physician practices, health care providers, hospitals, and third party plan administrators; manufacturers; authors and media and entertainment companies; restaurants; and hotels. Has handled consumer matters involving the Texas Deceptive Trade Practices Act, consumer loan and warranty disputes (e.g., homeowner disputes, home repair disputes, Truth in Lending disclosures, and sales of goods and services), and landlord-tenant disputes. Adjunct Professor, University North Texas, Arbitration: Essential Concepts, Fall 2009 to date.
Alternative Dispute Resolution Experience	Since 1989, chair and panelist in over 450 arbitrations and mediator in over 360 disputes. As an arbitrator, has handled various employment disputes such as non-compete or confidentiality agreements, commission disputes, discrimination claims, (e.g., Title VII, OSHA, ADA, ADEA, COBRA, ERISA, GINA, NLRA, and FMLA claims), workers' compensation discrimination, occupational injury claims, FLSA claims, collective and class actions, wage and hour claims, discrimination claims, torts, personal injuries, fraud claims, emotional distress, employment contracts, invasion of privacy and public employment disputes including school districts, county agencies, cities, fire departments and law enforcement (e.g.,

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Chapter 143 Texas Government Code, Oklahoma Fire and Police Arbitration Act. and New Mexico Personnel Act); commercial disputes such as franchise agreements, asset purchase agreements, service contracts, stock purchase agreements, insurance agreements and securities disputes; and consumer matters such as sales of goods and services, breach of warranty, fraud, misrepresentation, Texas Deceptive Trade Practices Act, bad faith, homeowner disputes, and landlord-tenant disputes. Franchise arbitrations have involved termination; royalty and fee disputes; marketing, advertising and signage disputes; transfers; infringement; patents; enforcement of standards, restrictions and obligations; encroachment; noncompete, nonsolicitation and confidentiality violations; disclosures; contract interpretation; misrepresentation; fraud; audits; renewals, indemnification; website / Internet / electronic commerce disputes; and multiparty disputes. Parties in the arbitrations have included individual physicians, physician practices, health care providers, hospitals, third party plan administrators, and health plan beneficiaries; insurance carriers; power and energy companies; manufacturers; wholesale and retail companies; home builders and construction and real estate companies; banks, lenders and mortgage and brokerage companies; communication, telephone, wireless, television, radio, publishing, media and entertainment companies; software and internet companies; non profit companies; franchisors and franchisees; licensors and licensees; restaurants and hotels. As a mediator, has handled employment matters as well as consumer matters such as motor vehicle warranties, insurance coverage disputes, bad faith claims, fraud, homeowner disputes, and landlord-tenant disputes.

Alternative Dispute Resolution Training

AAA Clarity in Award Writing, 2017; AAA/ICDR/Mediation.org Panel Conference, 2016; AAA Panel Dynamics: Staying On Course When Things Don't Go As Planned, 2015; AAA Principled Deliberation, 2014; National Academy of Arbitrators, Southwest/Rockies Region Annual Labor Management Conference, 2014; Chapter 143 Local Government Code Training for Arbitrators 2014, 2013, 2012, 2011, 2009; National Academy of Arbitrators, Southwest Region Annual Labor Management Conference, 2013, 2012, 2011, 2010, 2009,2008; AAA Managing the Arbitration Process for Efficiency & Economy Following the Preliminary Hearing, 2012; AAA Regaining Speed and Economy in Dispute Resolution, 2011; AAA Thirty Steps to a Better Arbitration, 2011; AAA The Ethics Behind "Better, Faster, Cheaper" in ADR, 2011; AAA/ICDR Neutrals Conference, 2010; AAA Efficient ADR, 2010; AAA, ADR Strategies That Save Time and Money, 2010; ADR Section of the Texas Bar Assoc., The Arbitration Roundtable, 2009; AAA/ICDR Neutrals Conference, 2009; Chapter 143 Local Government Code Use of Force Continuum in Police Cases 2008; ADR Section of the Texas Bar Association, Annual Alternative Dispute Resolution Seminar, 2007; ADR Section of the Texas Bar Association, The Arbitration Roundtable, 2007; AAA Pro Se: Managing Cases Involving Self-Represented Parties (ACE002), 2006; AAA Chairing an Arbitration Panel: Managing Procedures, Process & Dynamics (ACE005), 2005; Faculty, AAA Arbitration Advocacy Workshop, 2005; Faculty, National Academy of Arbitrators, How to Do Employment Arbitration Effectively & Efficiently, 2005; Faculty, AAA Arbitration Advocacy Workshop, 2004; AAA Neutrals Conference, 2004; AAA Arbitrator Ethics and Disclosure (ACE003), 2004; AAA Arbitration Awards: Safeguarding, Deciding & Writing Awards (ACE001), 2004; AAA Labor Arbitrator II Training: Advanced Case

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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.

Management Issues, 2003; Faculty, AAA Arbitration Advocacy Workshop, 2002; AAA Employment Arbitrator II Training: Advanced Case Management Issues, 2002; AAA Arbitrator Update 2001; AAA Commercial Arbitrator Training, 1999; Faculty, AAA Employment Arbitrator Training, 1999; AAA Employment Arbitrator Training, 1996.

MEDIATION: Texas Mediator Credentialing Association, Negotiating Skills in Mediation 2013; Association of Attorney Mediators, Advanced Mediator Training 2011; AAA, The Myth of Mediator as Settlement Broker 11/10; AAA Advanced Mediator Training, 2009; AAM Advanced Mediator Training 2009; Dallas Bar Assoc., Judicial Roundtable: State of Mediation in Dallas, 2005; Dallas Bar Assoc., Civil Collaborative Dispute Resolution Process I, 2005; Dallas Bar Assoc., Civil Collaborative Dispute Resolution Process II, 2005; AAM, Advanced Mediator Training, 2004, 1996, 1993; AAM, Advanced Attorney Mediator Training, 2002, 2001; Dallas Bar Assoc., Mediation Update, 2001; Dallas Bar Assoc., Amateur Psychological Profiling for Mediators, 2001; Dallas Bar Assoc., Advanced Mediation, 2000, 1991; SMU, Resolving Workplace Disputes, 1998; ADR/AAM, Joint Meeting, 1998; Dallas Bar Assoc., Ethical Mediation Advocacy, 1998; Attorney-Mediator Institute, Basic Mediator Training for Attorneys Only, 1996, 1992, 1991; Dallas Bar Assoc., Advocacy in Mediation; Dallas Bar Assoc., Mediation in Employment; Dallas Bar Assoc., Mediation Seminar; Dallas Bar Assoc., Group Mediator Training; AAM, 1992 Annual Meeting; Dallas Bar Assoc., Fundamentals of Mediation; AAM, Mediation Training; Dallas Bar Assoc., Mediator Training By Attorneys for Attorneys; AAA Mediation Training Workshop.

Professional Licenses

Admitted to the Bar: Texas, 1976; U.S. District Court: Northern, Eastern, and Western Districts of Texas, 1976; U.S. Court of Appeals, Fifth Circuit, 1995.

Professional Associations

Dallas Area Labor and Employment Law Group (Past President); Texas Bar Association (ADR Section; Labor and Employment Law Section; Litigation Section; Intellectual Property Section); Dallas Bar Association (ADR Section; Employment Section; Franchise Section); Texas Mediator Credentialing Association; Texas Mediation Trainers Roundtable; Texas Workers' Compensation Commission (ADR Section); Northwestern University School of Law (Merrill Lynch Claim Resolution Process); Certified Independent Hearing Examiner, Texas Education Agency; Dallas Area Rapid Transit Authority (Trial Board Panel 2008-2010); Dallas Bar Foundation; Texas Bar Foundation; College of the State Bar of Texas; International Mediation Institute (IMI) Certified Mediator.

Education

Texas A & M University (BA, summa cum laude-1973); Harvard University (JD-1976).

Publications and Speaking Engagements

Speaker, AAA Recorded Webinar - Preparing Your Arbitration Disclosures, 2017.

INVESTIGATING EMPLOYEE CONDUCT, West, 1988-14; "What Every Employer Should Be Doing about Sexual Harassment," BUSINESS & LEGAL REPORTS, 1997; "How to Write Your Employee Handbook," BUSINESS & LEGAL REPORTS, 1993; "Employee Benefits: Compliance Made Simple,"

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BUSINESS & LEGAL REPORTS, 1989; "How to Hire and Fire," BUSINESS & LEGAL REPORTS, 1986; numerous articles in the TEXAS BAR JOURNAL, THE PRACTICAL LAWYER, and CCH LABOR LAW JOURNAL.

Citizenship
Languages
Locale

United States of America
English
Dallas, Texas, United States of America

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