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## **CODE OF ETHICAL CONDUCT FOR ARBITRATORS**

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# CODE OF ETHICAL CONDUCT FOR ARBITRATORS

## PREAMBLE

The FORUM expects Arbitrators to observe fundamental standards of ethical conduct. Various aspects of Arbitrator conduct, including some matters covered by this Code, may be governed by agreements of the parties or applicable rules or law. This Code does not take the place of, or supersede, any such agreements, rules and laws, and does not establish any new or additional grounds for judicial review of arbitration awards. While this Code is intended to provide ethical guidelines, it is not part of the arbitration rules or the Code of Procedure of the FORUM or of any other organization.

This Code of Ethical Conduct applies to all FORUM proceedings in which disputes or claims are submitted to one or more Arbitrators.

The FORUM presumes that all Arbitrators are neutral, whether appointed by the parties directly or selected from a list provided by the FORUM, unless expressly provided in an agreement by the parties. The special ethical considerations of Party-appointed non-neutral Arbitrators are covered by Canon Eight.

*Portions of this Code have been modeled after or taken from the Code of Ethics for Arbitrators in Commercial Disputes, prepared, approved and recommended by a Special Committee of the American Bar Association ([www.americanbar.org](http://www.americanbar.org))*

# CODE OF ETHICAL CONDUCT FOR ARBITRATORS

## CANON ONE

**An Arbitrator should uphold the integrity and fairness of the dispute resolution process.**

- A. An Arbitrator should recognize a responsibility to the parties whose rights will be decided, to other participants in the proceeding, to the integrity and fairness of the process itself and to the public.
- B. An Arbitrator should perform duties diligently, conduct a proceeding as effectively and economically as practicable, and conclude a case as efficiently and promptly as the circumstances reasonably permit.

- C. Arbitrators should treat all parties equally and conduct themselves in a way that is fair to all parties. They should not be swayed by outside pressure, by public clamor, by fear of criticism or by self-interest.
- D. An Arbitrator should be patient with and courteous to the parties, their lawyers and the participants, and should encourage similar conduct by all participants in the proceedings.
- E. An Arbitrator should comply with applicable procedures and rules, and should neither exceed authority nor do less than is required to exercise authority completely.
- F. An Arbitrator should make all reasonable efforts to prevent delaying tactics, harassment of parties by other participants or other abuses or disruption of the process.
- G. The ethical obligations of an Arbitrator begin upon appointment and continue throughout all stages of the proceeding.

## **CANON TWO**

### **An Arbitrator should disclose any interest or relationship that affects impartiality or creates an unfavorable appearance of partiality or bias.**

- A. An Arbitrator should avoid entering into any financial, business, professional, family or social relationship, or acquiring any financial or personal interest, that adversely affects impartiality or might reasonably create the unfavorable appearance of partiality or bias. For a reasonable period of time after a case, Arbitrators should avoid entering into any such relationship, or acquiring any such interest, in circumstances that might reasonably create the impression that they had been influenced by the anticipation or expectation of the relationship or interest.
- B. Persons who are asked to serve as Arbitrators should, before accepting, disclose:
  - (1) Any financial, personal or material interest in the outcome of the arbitration;
  - (2) Any existing or past material, financial, business, professional, family or social relationships that affect impartiality or might reasonably create an unfavorable appearance of partiality or bias;
  - (3) The nature and extent of any prior knowledge they may have of the dispute;  
and
  - (4) Any additional matters, relationships, or interests they are obligated to disclose.
- C. Persons asked to serve as Arbitrators should disclose any such relationships they personally have with any Party, lawyer or individual whom they understand will be a witness. They should also disclose any such relationships involving immediate members of their families or their current employers, partners or business associates.
- D. Arbitrators should make a reasonable effort to inform themselves of any interests or relationships described above.
- E. The obligation to disclose the material interests or significant relationships described above is a continuing duty. An Arbitrator must disclose any such interests or relationships regardless of the stage in the proceedings in which they arise, or are recalled or discovered.
- F. Disclosure should be made to all parties and to any other Arbitrator.

- (1) If the Arbitrator would need to disclose confidential or privileged information in order to comply with this code, the Arbitrator must obtain permission from the holder of the confidence or privilege.
  - (2) If the Arbitrator cannot obtain permission, the Arbitrator should withdraw.
- G. Any doubt as to whether or not to disclose should be resolved in favor of disclosure.
- H. In the event the Parties, having knowledge of the Arbitrator's interests, relationships and prior knowledge, nevertheless desire that individual to serve as the Arbitrator, that individual may properly serve.
- I. In the event that all parties ask an Arbitrator to withdraw because of prejudice or bias, the Arbitrator should do so. In the event that fewer than all of the parties ask an Arbitrator to withdraw because of prejudice or bias, the Arbitrator should withdraw unless either of the following circumstances exists:
- (1) Other applicable rules exist determining challenges; or
  - (2) The Arbitrator, after carefully considering the matter, determines that the reason for the challenge is not substantial, that the Arbitrator can act and decide the case impartially and fairly, and that withdrawal would cause unfair delay or expense to another Party or would be contrary to the ends of justice.
- J. After accepting an appointment an Arbitrator should not withdraw unless compelled to by unexpected circumstances that would make it impossible or impracticable to continue.
- (1) An Arbitrator may withdraw if parties fail or refuse to remit agreed upon compensation.
  - (2) If an Arbitrator withdraws before completing an assignment for any reason, the Arbitrator should take reasonable steps to protect the parties' interests, including returning evidentiary materials and protecting confidentiality.

### **CANON THREE**

#### **In communicating with the parties, an Arbitrator should avoid impropriety or the appearance of impropriety.**

- A. An Arbitrator should not discuss a case with any Party in the absence of each other Party, except in any of the following circumstances:
- (1) Discussions may be had with a Party concerning such matters as the identities of the Parties, counsel or witnesses and the general nature of the case, setting the time and place of proceedings or making other arrangements for the conduct of the proceedings or procedural questions. The Arbitrator should not make any final determination concerning the matter discussed before giving each absent Party an opportunity to respond.
  - (2) In response to inquiries from a Party or its counsel to determine suitability and availability for appointment, which may include receiving information about the general nature of the case, however, should not include a discussion of the merits.
  - (3) If a Party fails to be present at a proceeding after having been given due notice, the Arbitrator may discuss the case with any Party who is present.

- (4) Private discussions may take place if requested or consented to by all parties.
  - (5) Such discussions may take place as otherwise provided in applicable rules or in an agreement of the parties.
- B. Whenever an Arbitrator communicates in writing with one Party, the Arbitrator should at the same time send a copy of the communication to each other Party.

#### **CANON FOUR**

##### **In order to accept an appointment as Arbitrator an Arbitrator should be competent and available to serve.**

- A. An Arbitrator should meet the qualifications delineated in the Parties' agreement or where applicable, the FORUM Code of Procedure.
- B. An Arbitrator should undertake adequate preparation and diligence throughout the Arbitration.
- C. The Arbitrator should be available to conduct the Arbitration in a reasonable amount of time and should withdraw if unable to continue in a timely and competent manner.

#### **CANON FIVE**

##### **An Arbitrator should be honest and trustworthy and maintain confidentiality.**

- A. An Arbitrator is in a relationship of trust with the parties and should not, at any time, use confidential information acquired during the proceeding to gain personal advantage or advantage for others, or to adversely affect the interest of another.
- B. Unless otherwise agreed by the parties, or required by applicable rules or law, an Arbitrator shall keep confidential all matters relating to the proceedings and shall not disclose to anyone except the parties at any time confidential awards or settlements.

#### **CANON SIX**

##### **An Arbitrator should make decisions in a just, independent, and deliberate manner.**

- A. An Arbitrator should, after careful deliberation, decide all issues submitted for determination and no other issues.
- B. An Arbitrator should not delegate to any other person the duty to decide.
- C. In the event that all parties agree upon a settlement of the issues in dispute and ask an Arbitrator to embody that agreement in an award, an Arbitrator may do so, but is not required to do so unless satisfied with the propriety of the terms of the agreement. Whenever an Arbitrator embodies a settlement in an award, the Arbitrator should state in the award that it is based on an agreement of the parties. An arbitrator may discuss settlement but should not exert pressure to settle and should not be present at settlement talks or act as a mediator unless agreed to by all of the Parties.

## **CANON SEVEN**

### **An Arbitrator should be truthful and accurate in matters of advertising, marketing and compensation.**

- A. Advertising and marketing of an Arbitrator should accurately reflect the Arbitrator's qualifications, experience, fees and availability.
- B. An arbitrator should uphold the dignity of the office in areas regarding compensation such that there is agreement to rates and charges prior to the engagement.
- C. Arbitrators should avoid bargaining with parties over the amount of payments, engaging in negotiations concerning payments or discussing payments in any way that would create an appearance of coercion or other impropriety. Matters concerning fees should be handled by the FORUM.

## **CANON EIGHT**

### **Arbitrators appointed by one Party should comply with this Code except for the exemptions provided in for Canon Nine for designated non-neutral Arbitrators.**

Arbitrators appointed by one party are presumed neutral and have the obligation to determine, and report to the Parties, the FORUM and the other Arbitrators if any agreement by the Parties' or applicable law would indicate that one or more of the Arbitrators would be designated as non-neutral.

## **CANON NINE**

### **Arbitrators designated as non-neutral should adhere to this Code with the substitution where applicable, of these special ethical guidelines.**

- A. A non-neutral Arbitrator is obligated to inform all Parties, other Arbitrators and the FORUM of his or her non-neutral status.
- B. A non-neutral Arbitrator is obligated to complete the FORUM's disclosure requirements but is not subject to removal based on the relationship or prior knowledge of the appointing Party.
- C. A non-neutral Arbitrator may engage in *ex parte* communication with the Party that appointed the Arbitrator until deliberations begin unless the Parties agree otherwise.

### **The FORUM**

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