

The Facts: Elizabeth Bartholet

Harvard Law School professor Elizabeth Bartholet served as a National Arbitration Forum (FORUM) neutral from 2003 through early 2005. According to her testimony under oath, she resigned not because she felt the FORUM was biased but because she opposed Rule 21(C) and other similar court and arbitration rules. Bartholet continued to hear cases even after being removed from the case in question. Bartholet testified under oath about her FORUM arbitration experiences in connection with a lawsuit filed in Illinois state court (*Carr v. Gateway, Inc.*, No. 03-L-1271, Illinois Third Judicial Circuit (Madison Co.)). The deposition transcript has been made public, of which selected portions have been taken out of context by some arbitration opponents.

Documents

Confusion arose when Bartholet thought she was unfairly removed from a case. She initially disagreed when the parties received documents citing that she had an alleged scheduling conflict, when she did not.

In fact, erroneous notice documents were sent, purely as the result of a clerical mistake. All of the incorrect documents were sent on the same day by the same case coordinator who was new to the FORUM. Fortunately, the proper documents notifying the parties that Bartholet had been removed as arbitrator by the claimant, and not due to a scheduling conflict, were also mailed to the appropriate parties. Bartholet also received copies of both the correct notice of removal and the incorrect cover letter.

Selection of Arbitrators

In the deposition transcript, Bartholet reports that she was removed as an arbitrator after she had ruled in favor of a credit card company claimant in 18 of her first 19 arbitration awards, and then issued a significant counterclaim award in favor of a consumer respondent.

Bartholet was removed as an arbitrator under National Arbitration Forum Rule 21(C). Rule 21 of the National Arbitration Forum *Code of Procedure* permits a party to request the removal of one arbitrator candidate without cause. Rule 21 removals represent a standard procedure that the National Arbitration Forum holds in common with the other major arbitration administrators and nearly 20 state courts. Such removal requests are exercised in a small percentage of cases. This limited arbitrator selection device cannot achieve any systematic advantage.

Arbitrators Make Impartial and Fair Decisions

Bartholet in much of her deposition describes a system where dedicated arbitrators make impartial and fair decisions. For example, Bartholet reports that in all of her work as a neutral, she remained faithful to the FORUM's Arbitrator Code of Conduct, Canon One of which states that "an arbitrator should uphold the integrity and fairness of the dispute resolution process" and "treat all parties equally and conduct themselves in a way that is fair to all parties and should not be swayed by outside pressure, by public clamor, by fear of criticism or by self-interest."

In sum, Professor Bartholet's subjective perceptions and speculation are simply belied by the facts. The fact is that Ms. Bartholet was removed as an arbitrator by one or more parties under National Arbitration Forum Rule 21(C) —the sort of procedural maneuvering that has long been practiced in nearly all arbitration administrators and under the rules of nearly 20 state courts. As an administrator, the National Arbitration Forum can not remove arbitrators. Requests for removal under Rule 21(C) are submitted by one or more of the parties. The fact is that Ms. Bartholet received no pressure from the National Arbitration Forum to decide cases in a certain way.

For more on Ms. Bartholet's experience, see page 18 of Professor Rutledge's recent Report, [Arbitration – A Good Deal for Consumers: A Response to Public Citizen](#).