



ICLP Code of Ethics for Arbitrators in Commercial Disputes

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The Code of Ethics for Arbitrators in Commercial Disputes

1. ACCEPTANCE OF APPOINTMENT

A. One should accept appointment as an arbitrator only if fully satisfied:

- (1) that he can serve impartially;
- (2) that he can serve independently from the parties, potential witnesses, and the other arbitrators;
- (3) that he is competent to serve; and
- (4) that he is available to commence the arbitration and thereafter to devote the time and attention to its completion that the parties are reasonably entitled to expect.
- (5) that he has an adequate knowledge of the nature of the Dispute

B. It is inappropriate to contact parties in order to solicit appointment as arbitrator

2. AN ARBITRATOR SHOULD UPHOLD THE INTEGRITY AND FAIRNESS OF THE ARBITRATION PROCESS.

- (1) An arbitrator has a responsibility not only to the parties but also to the process of arbitration itself, and shall 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 parties whose rights will be decided, and to all other participants in the proceedings and the proceedings should be conducted with dignity and decorum.

(2) After accepting appointment and while serving as an arbitrator, and for a reasonable period of time after the decision of a case, 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.

(3) Arbitrators should conduct themselves in a way that is fair to all parties and should not be swayed by outside pressure, and fear of criticism or self interest. They should avoid conduct and make statements that give the appearance of partiality towards or against any party. An Arbitrator should ensure that his conduct is beyond reproach.

(4) An arbitrator should not exceed the authority given by agreement.

(5) 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.

(6) 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.

(7) 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.

(8) 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, if by virtue of such experience or expertise they have views on certain general

issues likely to arise in the arbitration, but an arbitrator shall not prejudge any of the specific factual or legal determinations to be addressed during the arbitration.

3. 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 including share holdings in companies or other investments when relevant 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 witnesses or their advisors. They should also disclose any such relationships involving their families or household members or their current employers, partners, or professional or business associates.

(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 obliged to disclose by the agreement of the parties, the rules or practices of an institution, or applicable law regulating arbitrator disclosure.

(5) All Arbitrators shall be presumed to be neutral.

B. The failure to make such disclosure creates an appearance of bias and may by itself be a ground for disqualification. Disclosure should also be in writing and communicated to all parties and arbitrators

4. AN ARBITRATOR SHOULD AVOID IMPROPRIETY

OR THE APPEARANCE OF IMPROPRIETY IN COMMUNICATING WITH PARTIES.

A. 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.

(4) 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

B. Unless otherwise provided 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.

C. Arbitrator shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the proceedings and they should ensure that justice must not only be done but be seen to be done.

D. No arbitrator should accept any gift or substantial hospitality, directly or indirectly from any party to the arbitration. Sole Arbitrators and presiding arbitrators should be particularly meticulous in avoiding significant social or professional contact with any party to the arbitration other than in the presence of the other parties

5. AN ARBITRATOR SHOULD CONDUCT THE PROCEEDINGS FAIRLY AND DILIGENTLY

(1) All arbitrators should devote such time and attention as the parties may reasonably require having regard to all the circumstances of the case and shall do their best to conduct the arbitration expeditiously.

(2) An arbitrator should conduct the proceedings in an evenhanded manner. The arbitrator should be patient and courteous to the parties, their representatives, and the witnesses and should encourage similar conduct by all participants.

(3) 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.

(4) The arbitrator should not deny any party the opportunity to be represented by counsel or by any other person chosen by the party.

(5) 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.

(6) 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, and request documents or other evidence.

(7) 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.

(8) Co-arbitrators should afford each other full opportunity to participate in all aspects of the proceedings

6. AN ARBITRATOR SHOULD MAKE DECISIONS IN A JUST, INDEPENDENT AND DELIBERATE MANNER.

(1) The arbitrator should, after careful deliberation, decide all issues submitted for determination. An arbitrator should decide no other issues.

(2) An arbitrator should decide all matters justly, exercising independent judgment, and should not permit outside pressure to affect the decision.

(3) An arbitrator should not delegate the duty to decide to any other person.

(4) 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.

7. AN ARBITRATOR SHOULD BE FAITHFUL TO THE RELATIONSHIP OF TRUST AND CONFIDENTIALITY INHERENT IN THAT OFFICE.

(1) 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.

(2) The arbitrator should keep confidential all matters relating

to the arbitration proceedings and decision.

(3) It is not proper at any time for an arbitrator to inform anyone of any decision in advance. 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.

(4) 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 member to such an office.

8. 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, should be 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 concerning payments should be in the presence of all parties

(3) In the absence of extraordinary circumstances, the arbitrator should not request increases in the basis of their compensation during the course of a proceeding.

C. An Arbitrator shall not engage in advertising or promoting Arbitration services nor his willingness or availability to serve as an arbitrator.

9. PROCEDURE FOR DISQUALIFICATION

- (1) If an arbitrator considers he is disqualified the decision should be taken at the earliest opportunity
- (2) If the Arbitrator is uncertain but he is aware of the circumstances that would warrant disqualification, he should raise the matter at the earliest opportunity
- (3) Disqualification is for the Arbitrator to decide and should not be a trivial objection
- (4) If parties are to be heard, it is best done openly during the sittings
- (5) If the Arbitrator considers it is improper to act as an Arbitrator he should disqualify himself.

10. CHALLENGE OF AN ARBITRATOR

Where a party challenges an Arbitrator it should be done at the earliest opportunity. Such challenge should be investigated by the Arbitral Tribunal itself if the challenged arbitrator does not resign in consequence of the challenge. A dissatisfied party can challenge the decision of the Tribunal in the High Court.