



ETHICS CODE FOR ARBITRATORS

PREAMBLE

Arbitration has become an integral part of the system of justice on which commercial actors rely for fair determination of their legal rights. Upon accepting their office, commercial arbitrators therefore undertake significant responsibilities to the public and to the parties that they serve. These include essential ethical obligations.

The purpose of this Code is to provide guidance to arbitrators of Federal Arbitration, Inc. (“FedArb”) regarding ethical issues that may arise during or related to the arbitration process. It applies to each of the arbitrators in FedArb proceedings, regardless of how they are chosen. FedArb establishes this Code to ensure that its arbitrators and personnel maintain high standards of dispute settlement and foster continued confidence by the public in the arbitration process.

This Code should be applied in conjunction with the applicable canons of ethics and laws of professional responsibility in the jurisdiction where each dispute is heard, and other relevant codes of ethics. In particular, most states have promulgated codes of ethics for judges and other public judicial officers. In some instances, these codes apply to certain activities of private judges, such as court-ordered arbitrations. Arbitrators should comply with codes that are specifically applicable to them or to their activities.

In addition, certain aspects of the conduct of arbitrators, including some matters covered by this Code, may be governed by agreements of the parties, by FedArb’s arbitration rules, or by other applicable law (e.g. state or federal statutes). This Code does not take the place of or supersede such agreements, rules, or laws, and does not establish new or additional grounds for judicial review of arbitration awards.

ETHICS CODE

1. An arbitrator should uphold the fairness, integrity, and efficiency of the arbitration process.

- A. In order for commercial arbitration to be effective, the public must have confidence in the fairness, integrity, and efficiency of the arbitration process. Therefore, it is important that FedArb arbitrators foster such principles.
- B. In all cases in which they are involved, FedArb arbitrators should observe the fundamental standards of ethical conduct. The ethical obligations of the arbitrator attach as soon as the arbitrator becomes aware of potential selection by the parties and continues throughout the proceeding. Where specifically set forth in this Code, such obligations continue even after the

decision in the case has been rendered, such as the obligation to maintain the confidentiality of arbitration proceedings.

- C. An arbitrator has responsibilities to the parties, to other participants in the proceeding, and to the legal profession. An arbitrator should seek to discover and refuse to lend approval or consent to any attempt by a party or its representative to use arbitration for a purpose other than the fair and efficient resolution of a dispute. In addition, he/she should make all reasonable efforts to prevent delaying tactics, harassment of other parties or participants, or other abuse or disruption of the arbitration process.
- D. Persons should accept appointment as arbitrators only if they believe that they can be available to conduct and complete the arbitration promptly, swiftly, and fairly, avoiding unnecessary delays and any arbitrary action.
- E. Throughout all stages of the proceeding, arbitrators should conduct themselves in a manner that is fair to all parties and should not be swayed or influenced by outside pressure, by public clamor, by fear of criticism, or by self-interest.

2. An arbitrator should maintain the confidentiality appropriate to the process of arbitration.

- F. Unless otherwise agreed by the parties, or required by applicable rules, rulings, or law, an arbitrator should maintain the confidentiality of all matters relating to arbitration proceedings, including the decisions rendered. The same obligation applies to all persons who may assist an arbitrator during a proceeding, and it is the arbitrator's duty to ensure that such persons are informed of and comply with this obligation.
- G. An arbitrator should not use confidential information acquired during the arbitration proceeding to gain personal advantage or advantage for others, or to affect adversely the interest of another.
- H. Unless otherwise provided in an agreement of the parties, an arbitrator should not discuss a case with any party in the absence of any other party, unless all other parties consent. However, if a party fails to appear at a hearing after having been given due notice, the arbitrator may discuss the case with any party who is present. An arbitrator may discuss procedural matters concerning the case with another member of the arbitration panel whether or not all panel members are present. All deliberations and discussions of the merits of a case should take place only in the presence of the entire panel. An arbitrator should not discuss a case with persons not involved directly in the arbitration unless advance consent of all parties is obtained or the identity of the parties and details of the case are sufficiently obscured to eliminate any realistic probability of identification.

- I. An arbitrator should not inform anyone of any decision in a matter in advance of informing all parties. In cases involving panels of more than one arbitrator, an arbitrator should not disclose to anyone the deliberations of the panel. An arbitrator should not participate in post-arbitral proceedings, except (i) if requested to make a correction or clarification to an award, (ii) if required by law, or (iii) if requested by all parties to participate in a subsequent dispute resolution procedure in the same case.
3. **An arbitrator should disclose any interest or relationship likely to create an appearance of bias or affect impartiality.**
- J. An arbitrator is responsible for disclosing, at the earliest practical date, any existing or potential conflict of interest or relationship that could reasonably be perceived by a party as affecting the arbitrator's impartiality. An interest or relationship which creates a direct or indirect financial or personal interest in the outcome of the arbitration, or the existence of financial, business, familial or personal relationships with a party, its representative, or a witness must be disclosed. The disclosure requirement extends to members of the arbitrator's family, a domestic partner or household member, and his/her current employees, partners, and business associates. An arbitrator should make a reasonable effort to inform himself or herself of any such interests or relationships.
- K. An arbitrator should not proceed with the process of arbitration unless all parties have acknowledged and waived any actual or potential conflict of interest. If the conflict of interest casts serious doubt on the integrity of the process, an arbitrator should withdraw, notwithstanding receipt of a full waiver. An arbitrator may seek guidance in this regard from the FedArb Council if he/she has doubts about the propriety of serving despite having received waivers from all parties.
- L. An arbitrator's disclosure obligations continue throughout the course of the arbitration and require the arbitrator to disclose, at any stage of the process, any such interest or relationship that may arise, or that is recalled or discovered that would have been subject to disclosure under these rules. Disclosure should be made to all parties. Where more than one arbitrator is appointed, each should inform the others of the interests and relationships that have been disclosed.
- M. In the course of an arbitration, an arbitrator should not provide additional dispute resolution services to a party, its representative, or its insurer, unless the arbitrator believes such service can be undertaken without an actual or apparent conflict of interest. Where the arbitrator believes it is appropriate to accept an additional engagement as a mediator or arbitrator involving a party, its representative, or its insurer, the arbitrator should accept such work only

after a written waiver of conflict has been obtained from the other parties to the pending arbitration.

- N. After an award or decision is rendered in an arbitration, an arbitrator should refrain from any conduct involving a party, its representative, or its insurer that would cast reasonable doubt on the integrity of the arbitration process, absent disclosure to and consent by all the parties to the arbitration. This does not preclude an arbitrator from later serving as an arbitrator or in another neutral capacity with a party, its representative, or its insurer, provided that appropriate disclosures are made about the prior arbitration to the parties in the new matter.
 - O. This set of rules is not intended to limit the freedom of parties to agree on whomever they choose as an arbitrator, notwithstanding the chosen arbitrator's interests and relationships.
- 4. An arbitrator should conduct the proceedings in an evenhanded and unbiased manner, and avoid impropriety or the appearance of impropriety.**
- P. An arbitrator should remain impartial throughout the course of the arbitration. The arbitrator should be aware of and avoid the potential for bias based on the parties' backgrounds, personal attributes, conduct during the arbitration, or on the arbitrators preexisting knowledge of or opinion about the merits of the dispute. An arbitrator should not permit a social or professional relationship with a party or the party's representative to affect his/her decision-making.
 - Q. An arbitrator should perform his/her duties diligently and conclude the case as promptly as circumstances reasonably permit. An arbitrator should be courteous to the parties, to their representatives, and to the witnesses, and should encourage similar conduct by all participants in the proceedings.
 - R. Unless otherwise provided in an agreement of the parties, an arbitrator should accord to all parties the right to appear and to be heard after due notice of the time and place of hearing, either in person, by proxy, or by teleconference.
 - S. Unless otherwise provided in an agreement of the parties, whenever an arbitrator communicates in writing with a party, the arbitrator should, at the same time, send the same communication to all other parties. Whenever an arbitrator receives a written communication concerning the case from one party that has not already been sent to all other parties and/or arbitrators, the arbitrator should require that the communication be sent to all other parties and/or arbitrators.

T. When there is more than one arbitrator, the arbitrators should afford each other full opportunity to participate in all aspects of the arbitration proceedings.

5. An arbitrator should withdraw under certain circumstances.

U. It is not improper for an arbitrator to suggest to the parties that they discuss the possibility of settlement, however the arbitrator must take care not to create a situation where he/she would be unable to continue.

6. An arbitrator should make all decisions with fairness, independence, and after due consideration of the facts and law.

V. An arbitrator should, after careful consideration of the facts and law and after exercising independent judgment, promptly or otherwise within the time period agreed by the parties, decide all issues submitted for determination and issue an award or the written decision required. An arbitrator's decision must be fair and impartial, and should not be influenced by outside pressure, by public clamor, by fear of criticism, or by self-interest. An arbitrator may not delegate the duty to decide to any other person.

W. It is not improper for an arbitrator to suggest to the parties that they discuss the possibility of settlement of the case, consistent with the FedArb Rules. An arbitrator should not be present in settlement discussions without the consent of all parties, and should not exert pressure on any party to settle.

X. If all parties agree upon a settlement of the issues in dispute and request an arbitrator to embody that agreement in an award, the arbitrator should do so, unless the arbitrator believes the terms of the agreement are improper, illegal, or undermine the integrity of the arbitration process.

Y. If an arbitrator is concerned about the possible consequences of a proposed agreement, the arbitrator should inform the parties of that concern. In such circumstances, an arbitrator may request additional specific information, seek to educate the parties, refer one or more parties for specialized advice, or withdraw from the case.

See also Code of Ethics for Arbitrators in Commercial Disputes, approved by the American Bar Association of Delgates on February 9, 2004.