



**ETHICS CODE
FOR FEDARB
ARBITRATORS
AND
MEDIATORS**

PREAMBLE

Arbitration and mediation have 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 and mediators therefore undertake significant responsibilities to the public and to the parties they serve. These include ethical obligations.

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

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 or mediated, and other relevant codes of ethics. 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. Arbitrators should comply with codes that are specifically applicable to them or to their activities. Mediators must do so as well.

In addition, certain aspects of the conduct of arbitrators and mediators, including some matters covered by this Code, may be governed by agreements of the parties, by FedArb's 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 or mediated agreements.

ETHICS CODE

1. A FedArb arbitrator or mediator shall uphold the fairness, integrity, and efficiency of the arbitration or mediation process.

1.01 In order for commercial arbitration or mediation to be effective, the public must have confidence in the fairness, integrity, and efficiency of the arbitration or mediation process. Therefore, it is important that FedArb arbitrators and mediators foster such principles.

1.02 In all cases in which they are involved, FedArb arbitrators and mediators should observe the fundamental standards of ethical conduct. The ethical obligations of the arbitrator attach as soon as the arbitrator or mediator becomes aware of potential selection by the parties and continues throughout the proceeding. Where specifically set forth in this Code, such obligations continue where relevant even after the Final

Award has been rendered or the mediation is complete, such as the obligation to maintain the confidentiality of arbitration and mediation proceedings.

- 1.03 An arbitrator or mediator has responsibilities to the parties, to other participants in the proceeding, and to the legal profession. An arbitrator or mediator should seek to discover, and should refuse to lend approval or consent to, any attempt by a party or its representative to use arbitration or mediation 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 or mediation process.
- 1.04 Persons should accept appointment as arbitrators or mediators only if they believe that they can be available to conduct and complete the arbitration or mediation promptly and fairly, avoiding unnecessary delays.
- 1.05 Throughout all stages of the proceeding, arbitrators and mediators should conduct themselves in a manner that is fair to all parties and should not be swayed or influenced by outside pressure, by fear of criticism, or by self-interest.
- 1.06 FedArb arbitrators and mediators are bound by contract and rule to abide by all established deadlines for decision making and to secure extensions of such deadlines solely from FedArb personnel and not from the parties or their counsel.

2. FedArb arbitrator or mediator shall maintain the confidentiality appropriate to the arbitration or mediation process.

- 2.01 Unless otherwise agreed by the parties, or required by applicable rules, rulings, or law, an arbitrator or mediator shall maintain the confidentiality of all matters relating to arbitration or mediation proceedings, including the decisions rendered or reached. The same obligation applies to all persons who may assist an arbitrator or mediator during a proceeding, and it is the arbitrator's or mediator's duty to ensure that such persons are informed of and comply with this obligation.
- 2.02 An arbitrator or mediator should not use confidential information acquired during the arbitration or mediation proceeding to gain personal advantage or advantage for others, or to affect adversely the interest of another.
- 2.03 Unless otherwise provided by written agreement of the parties, an arbitrator should not discuss a case with any party or its representatives in the absence of any other party. Unless all other parties consent

mediators are expected to engage in ex parte discussions but should ensure that the parties are aware of such activities.. If a party fails to appear at a hearing after having been given due notice, the arbitrator or mediator may discuss the case with any party or parties that have appeared. An arbitrator who is part of a three member panel 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 an arbitration should take place only in the presence of the entire panel. An arbitrator or mediator should not discuss a case with persons not involved directly in the arbitration or mediation 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.

2.04 An arbitrator shall not inform anyone (other than FedArb) of any decision in a matter in advance of informing all parties. In cases involving panels of more than one arbitrator, an arbitrator shall not disclose to anyone the deliberations of the panel. An arbitrator or mediator shall not participate in post-arbitral or mediation proceedings, except (i) if requested to make a correction or clarification to an award or agreement, (ii) if required by law, or (iii) if requested by all parties to participate in a subsequent dispute resolution procedure in the same case. A mediator shall keep all discussions with the parties confidential except to the extent a party permits disclosure to another party or otherwise.

3. A FedArb arbitrator or mediator shall disclose any interest or relationship likely to create an appearance of bias or to affect impartiality.

3.01 An arbitrator or mediator is responsible for disclosing, at the earliest practical time, any existing or potential conflict of interest or relationship that could reasonably be perceived by a party as affecting the arbitrator's or mediator's impartiality. An interest or relationship which creates a direct or indirect financial or personal interest in the outcome of the arbitration or mediation, 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 or mediator's family, a domestic partner or household member, and his/her current employees, partners, and business associates. An arbitrator or mediator should make a reasonable effort to inform himself or herself of any such interests or relationships.

Disclosure should be made to all parties. Where more than one arbitrator or mediator is appointed, each should inform the others of the interests and relationships that have been disclosed.

- 3.02 An arbitrator or mediator should not proceed with the process of arbitration or mediation 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 or mediator should withdraw, notwithstanding receipt of a waiver by all parties. An arbitrator or mediator may seek guidance at his/her own expense from the FedArb Council concerning the propriety of serving whether or not he/she receives waivers from all parties.
- 3.03 An arbitrator or mediator's disclosure obligations continue throughout the course of the arbitration or mediation and require him/her to disclose, at any stage of the process, any such interest or relationship that may arise, or that is recalled by the arbitrator or mediator, or discovered, that would have been subject to disclosure under these rules.
- 3.04 An arbitrator or mediator should not provide multiple, unrelated dispute resolution services to a party or its representative or insurer simultaneously, unless such services can be undertaken without an actual or apparent conflict of interest. Where the arbitrator or mediator believes it is appropriate to accept an additional engagement as an arbitrator or mediator, though already performing dispute resolution services for a party, its representative, or its insurer involving a party, its representative, or its insurer, the arbitrator or mediator should accept such work only after a written consent has been obtained from the other parties to both the pending and the additional arbitration or mediation.
- 3.05 After an award or decision is rendered in an arbitration, or a mediation has concluded an arbitrator or mediator should refrain from any conduct involving a party, its representative, or its insurer that would cast reasonable doubt on the integrity of the arbitration or mediation process, absent disclosure to and consent by all the parties to the arbitration or mediation. This does not preclude an arbitrator or mediator from later serving as an arbitrator or mediator in another matter involving the same party, its representative, or its insurer, provided that appropriate disclosures are made about the prior arbitration or mediation to the parties in the new matter.
- 3.06 This set of rules is not intended to limit the freedom of parties to agree on whomever they choose as an arbitrator or mediator, notwithstanding the chosen arbitrator's or mediator's interests and relationships.
- 3.07 Significant differences should apply to the significance of a given disclosure or relationship in connection with arbitrations as opposed to mediations, since mediators lack the power to decide matters. It is for the parties, however, to decide what weight to give such disclosures or relationships.

4. A FedArb arbitrator or mediator should conduct the proceedings or mediations in an evenhanded and unbiased manner, and avoid impropriety or the appearance of impropriety.

4.01 An arbitrator or mediator should remain impartial throughout the course of the arbitration or mediation. The arbitrator or mediator should be aware of and avoid the potential for bias based on the parties' backgrounds, personal attributes, conduct during the arbitration or mediation, or on the arbitrator's or mediator's preexisting knowledge of or opinion about the merits of the dispute. An arbitrator or mediator should not permit a social or professional relationship with a party or the party's representative to affect his/her decision-making.

4.02 An arbitrator or mediator should perform his/her duties diligently and conclude the case as promptly as circumstances reasonably permit. An arbitrator or mediator should be courteous to the parties, to their representatives, and to the witnesses, and should encourage similar conduct by all participants in the proceedings.

4.03 Unless otherwise provided in an agreement of the parties, an arbitrator or mediator should accord to all parties the right to appear and to be heard after due notice of the time and place of hearing or mediation, either in person, by representative, or by teleconference.

4.04 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 ensure that the communication is sent to all other parties and/or arbitrators. Mediators are normally engaged to communicate in writing with fewer than all the parties, but should ensure that all parties are aware that such communications are taking place and have no objection to them.

4.05 When the tribunal in a matter has multiple arbitrators, the arbitrators should afford each other full opportunity to participate in all aspects of the arbitration proceedings.

5. A FedArb arbitrator or mediator should avoid actions that could cause them to withdraw from their dispute resolution assignments.

5.01 An arbitrator may properly suggest to the parties that they discuss the possibility of settlement consistent with the FedArb Rules but must refrain from doing so repeatedly or insistently. 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. An arbitrator should

in general take care not to create a situation where he/she would be unable to continue and conclude the matter.

5.02 A mediator also should in general take care not to create a situation where he/she would be unable to continue. Discussing settlement is an essential aspect of mediation. Mediators must, however, for example, avoid asserting positions or opinions on matters in a dispute where the mediator has no established expertise.

6. A FedArb arbitrator should make all decisions, and a FedArb mediator shall conduct negotiation with fairness, independence, and after due consideration of the facts and law.

6.01 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 fear of criticism, or by self-interest. An arbitrator may not delegate the duty to decide to any other person.

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

6.03 If an arbitrator or mediator is concerned about the possible consequences of a proposed agreement, the arbitrator or mediator should inform the parties of that concern. In such circumstances, an arbitrator or mediator may request additional specific information, seek to advise 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 Delegates on February 9, 2004; and Model Standards of Conduct for Mediators approved by the American Bar Association in August 2005.