



## **ARIAS•U.S. Code of Conduct - Canon I**

### **Integrity:**

**Arbitrators should uphold the integrity of the arbitration process and conduct the proceedings diligently.**

#### **Comments:**

1. The foundation for broad industry support of arbitration is confidence in the fairness and competence of the arbitrators.
2. Arbitrators owe a duty to the parties, to the industry, and to themselves to be honest; to act in good faith; to be fair, diligent, and objective in dealing with the parties and counsel and in rendering their decisions, including procedural and interim decisions; and not to seek to advance their own interests at the expense of the parties. Arbitrators should act without being influenced by outside pressure, fear of criticism or self-interest.
3. The parties' confidence in the arbitrator's ability to render a just decision is influenced by many factors, which arbitrators must consider prior to their service. There are certain circumstances where a candidate for appointment as an arbitrator must refuse to serve:
  - a) where the candidate has a material financial interest in a party that could be substantially affected by the outcome of the proceedings;
  - b) where the candidate does not believe that he or she can render a decision based on the evidence and legal arguments presented to all members of the panel;
  - c) where the candidate currently serves as a lawyer for one of the parties (where the candidate's law firm, but not the candidate, serves as lawyer for one of the parties the candidate may not serve as an arbitrator unless the candidate derives no income from the firm's representation of the party and there is an ethical wall established between the candidate and the firm's work for the party);
  - d) where the candidate is nominated for the role of umpire and is currently a consultant or expert for one of the parties;
  - e) where the candidate is nominated for the role of umpire and the candidate was contacted prior to nomination by a party, its counsel or the party's appointed arbitrator with respect to the matter for which the candidate is nominated as umpire; or

f) where the candidate sits as an umpire in one matter and the candidate is solicited to serve as a party-appointed arbitrator or expert in a new matter involving a new matter by a party to the matter where the candidate sits as an umpire.

4. Consistent with the arbitrator's obligation to render a just decision, before accepting an appointment as an arbitrator the candidate should consider whether any of the following factors would likely affect their judgment and, if so, should decline the appointment:

a) whether the candidate has a financial interest in a party;

b) whether the candidate currently serves in a non-neutral role on a panel involving a party and is now being proposed for an umpire role in an arbitration involving that party;

c) whether the candidate has previously served as a consultant (which term includes service on a mock or shadow panel) or expert for or against one of the parties;

d) whether the candidate has involvement in the contracts or claims at issue such that the candidate could reasonably be called as a fact witness;

e) whether the candidate has previously served as a lawyer for either party;

f) whether the candidate has previously had any significant professional, familial or personal relationships with any of the lawyers, fact witnesses or expert witnesses involved such that it would prompt a reasonable person to doubt whether the candidate could render a just decision;

g) whether a significant percentage of the candidate's appointments as an arbitrator in the past five years have come from a party involved in the proposed matter;

h) whether a significant percentage of the candidate's appointments as an arbitrator in the past five years have come from a law firm or third-party administrator or manager involved in the proposed matter;

i) whether a significant percentage of the candidate's total revenue earned as an arbitrator, consultant or expert witness in the past five years has come from a party involved in the proposed matter;

j) whether a significant percentage of the candidate's total revenue earned as an arbitrator, consultant or expert witness in the past five years has come from a law firm or third-party administrator or manager involved in the proposed matter; and

5. ***Relationship between comments 3 and 4.*** Comment 3 sets forth circumstances in which an arbitrator must refuse to serve. If none of those circumstances applies, comment 4 sets forth circumstances an arbitrator should nevertheless consider in deciding whether to serve. In some cases, comment 3 will “almost” apply – usually because the arbitrator has a relationship described in comment 3 with an entity that is related to a party to the current arbitration, but that is not strictly within the definition of “party.” Thus, one of the circumstances set forth in comment 3 may apply

- (i) to an entity that is an affiliate of a party to the current arbitration, but that is not within the definition of “party,” or
- (ii) to an entity having the same third-party administrator or manager as a party to the current arbitration.

In such a case, the arbitrator should refuse to serve, in line with the general principle that in upholding the integrity of the arbitration process an arbitrator should not get too close to the edge on issues of ethics or process fairness. If, however, it is clear that the relationship between the entity with the “comment 3” relationship to the arbitrator and the party to the current arbitration is attenuated, and that, by reason of the attenuation, the reasons for the mandatory “do not serve” rules in comment 3 are not implicated, then the arbitrator may (but need not) choose to serve.

6. The parties to a proceeding in which an individual is sitting as an umpire or is being proposed as umpire may, by agreement reached without the involvement, knowledge, or participation of the umpire or candidate, waive any of the provisions of paragraphs 3 (c), (d), (e), or (f) above and 5. The umpire or candidate shall be informed of such agreement.
7. Consistent with the arbitrator’s obligation to render a just decision, an arbitrator should consider whether accepting an appointment as a consultant or expert in a new matter by a party to the arbitration where the person sits as an arbitrator would likely affect his or her judgment in the matter where he or she sits as an arbitrator.