



## **ARIAS•U.S. Code of Conduct – Canon IV**

**DISCLOSURE:** Candidates for appointment as arbitrators should disclose any interest or relationship likely to affect their judgment. Any doubt should be resolved in favor of disclosure.

### **COMMENTS:**

1. Before accepting an arbitration appointment, candidates for appointment as arbitrators should make a diligent effort to identify and disclose any direct or indirect financial or personal interest in the outcome of the proceeding or any existing or past financial, business, professional, family or social relationship that others could reasonably believe would be likely to affect their judgment, including any relationship with persons they are told will be arbitrators or potential witnesses. Such disclosures should include, where appropriate and known by a candidate, information related to the candidate's current employer's direct or indirect financial interest in the outcome of the proceedings or the current employer's existing or past financial or business relationship with the parties that others could reasonably believe would be likely to affect the candidate's judgment.

2. A candidate for appointment as arbitrator shall also disclose:

- a) relevant positions taken in published works or in expert testimony;
- b) the extent of previous appointments as an arbitrator by either party, either party's counsel or either party's third party administrator or manager; while it may be true in some circumstances that only the party technically appoints the arbitrator, the purpose of this rule is to require disclosure of the relationships between the candidate and the parties as well as the candidate and either parties' counsel or third party administrator or manager; such relationships that must be disclosed include appointments as an arbitrator where the party's counsel and/or the party's third party administrator or manager acted as counsel or third party administrator or manager for a party making the appointment; and
- c) any past or present involvement with the contracts or claims at issue.

3. No later than when arbitrators first meet or communicate with both parties, arbitrators should disclose the information in paragraphs 1 and 2 above to the entire panel and all parties. When confronted with a conflict between the duty to disclose and the obligation to preserve confidentiality, an arbitrator should attempt to reconcile the two objectives by providing the substance of the information requested without identifying details, if that can be done in a manner that does not breach confidentiality and is not misleading. An arbitrator who decides that it is necessary and appropriate to withhold certain information should notify the parties of the fact and the reason that information has been withheld.

4. It is conceivable that the conflict between the duty to disclose and some other obligation, such as a commitment to keep certain information confidential, may be irreconcilable. When an arbitrator is unable to meet the ethical obligations of disclosure because of other conflicting obligations, the arbitrator should withdraw from participating in the arbitration, or, alternatively, obtain the informed consent of both parties before accepting the assignment.



5. After the Panel has been accepted by the parties, an arbitrator should recognize the consequences to the parties and the process of a decision to withdraw and should not withdraw at his or her own instigation absent good reason, such as serious personal or family health issues. In the event that an arbitrator is requested by all parties to withdraw, the arbitrator must do so. In the event that an arbitrator is requested to withdraw by less than all of the parties, the arbitrator should withdraw only when one or more of the following circumstances exist.

- a) when procedures agreed upon by the parties for resolving challenges to arbitrators have been followed and require withdrawal;
- b) if the arbitrator, after carefully considering the matter, determines that the reason for the challenge is substantial and would inhibit the arbitrator's ability to act and decide the case fairly; or
- c) if required by the contract or law.

6. The duty to disclose all interests and relationships is a continuing obligation throughout the proceeding. If any previously undisclosed interests or relationships described in -paragraphs 1 and 2 above are recalled or arise during the course of the arbitration, they should be disclosed immediately to all parties and the other arbitrators together with an explanation of why such disclosure was not made earlier.