



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

**January 1, 2019**

**COMMUNICATION WITH THE PARTIES:** Arbitrators, in communicating with the parties, should avoid impropriety or the appearance of impropriety.

### **COMMENTS:**

1. If an agreement between the parties or applicable arbitration rules establish the manner or content of communications among arbitrators and the parties, those procedures should be followed.
2. Party-appointed arbitrators may communicate with the party who is considering appointing them about their fees and, excepting those who by contract are required to be “neutral” or the equivalent, may also communicate about the merits of the case prior to acceptance of the appointment until the date determined for the cessation of ex parte communications.
3. A party-appointed arbitrator should not review any documents that the party appointing him or her is not willing to produce to the opposition. A party-appointed arbitrator should, once all members of the Panel are selected, disclose to the other members of the Panel and the parties all documents that they have examined relating to the proceeding. Party-appointed arbitrators may consult in confidence with the party who appointed them concerning the acceptability of persons under consideration for appointment as the umpire.
4. Except as provided above, party-appointed arbitrators may only communicate with a party concerning the dispute provided all parties agree to such communications or the Panel approves such communications, and then only to the extent and for the time period that is specifically agreed upon or ordered.
5. When party-appointed arbitrators communicate in writing with a party concerning any matter as to which communication is permitted, they are not required to send copies of any such written communication to any other party or arbitrator.
6. Where communications are permitted, a party-appointed arbitrator may (a) make suggestions to the party that appointed him or her with respect to the usefulness of expert evidence or issues he or she feels are not being clearly presented; (b) make suggestions about what arguments or aspects of argument in the case to emphasize or abandon; and (c) provide his or her impressions as to how an issue might be viewed by the Panel, but may not disclose the content or substance of communications or deliberations among the Panel members. An arbitrator should not edit briefs, interview or prepare witnesses, or preview demonstrative evidence to be used at the hearing.
7. Whenever the umpire communicates in writing with one party on subjects relating to the conduct of the arbitration or orders, the umpire should at the same time send a copy of the communication to each other arbitrator and party. Whenever the umpire receives any written



communication concerning the case from one party on subjects relating to the conduct of the arbitration that has not already been sent to every other party, the umpire should promptly forward the written communication to the other arbitrators and party.

8. Except as provided above or unless otherwise provided in applicable arbitration rules or in an agreement of the parties, the umpire should not discuss a case with a single arbitrator, party or counsel in the absence of the other arbitrator, party or counsel, except in one of the following circumstances:

- a) Discussions may be had with a single arbitrator, party or counsel concerning ministerial matters such as setting the time and place of hearings or making other arrangements for the conduct of the proceedings. However, the umpire should promptly inform the other arbitrator, party or counsel of the discussion and should not make any final determination concerning the matter discussed before giving each arbitrator, party or counsel an opportunity to express its views.
- b) If all parties request or consent to it, such discussion may take place.
- c) If a party fails to be present at a hearing after having been given due notice, the panel may discuss the case with any party or its counsel who is present and the arbitration may proceed.