



## **ARIAS-U.S. Ethics Course**

### *Full Quiz Questions and Explanations*

1. Based upon the foregoing conversation, can Mr. White accept the appointment?
  - a. No, he cannot accept the appointment without additional information.
    - i. Correct. Nothing in the Code requires Mr. White to reject the appointment at this time. First, the Code does not contain a cap on the number of appointments an arbitrator may accept from a party, firm, third party administrator or manager. Canon I, however, does require Mr. White to uphold the integrity of the arbitration process and provides that he should consider certain influencing factors before accepting appointments. As further explained in Comment 4 (h) and (j), “consistent with the arbitrator’s obligation to render a just decision, before accepting an appointment as an arbitrator the candidate should consider whether a significant percentage of the candidate’s appointments, or total revenue earned, as an arbitrator in the past five years have come from the firm involved in the proposed matter.” And, if so, whether those appointments would likely affect their judgment.” The fact that the number of appointments, or revenue earned, on appointments by Ms. Smith’s clients represents a very small percentage of Mr. White’s total appointments, and total revenue earned, does not mean that Mr. White may accept this appointment without obtaining more information. In fact, under Canon II - Comment 1, Mr. White has a duty to conduct the dispute resolution process in a fair manner and serve only in those matters in which he can render a just decision. Based upon the limited conversation with Attorney Smith, Mr. White does not have enough information to make that judgment. Rather, before accepting the appointment he should ascertain “the identities of the parties, including as appropriate and to the extent known, present and former affiliates, predecessors and successors, identities of counsel, identities of other arbitrators, identities of witnesses; general factual background; and the anticipated issues and positions of the parties
  - b. No, he must refuse to serve on the basis of this conversation.
  - c. Yes, he may accept the appointment on the basis of this conversation.
2. With respect to Attorney Smith's suggestion that, based upon her experience with Mr. White in a past arbitration, she knows that he is "receptive to the late notice defense," which of the following statements is true:
  - a. No matter what Attorney Smith believes or what she remembers of her past cases with Mr. White, Mr. White has an obligation to disregard all of that and render a different result in this new case.
  - b. Mr. White must decline the appointment because Attorney Smith has made clear that she expects Mr. White to render a decision in this new case similar to that rendered in a previous case.







- c. Mr. White should disclose both his involvement in a prior arbitration involving Great Coverage and the Treaty and that he wrote a white paper on late notice.
    - i. Correct. Under Canon IV, 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. Specifically, Comment 2(a) and (b) make clear that candidates for appointment as arbitrators should disclose any relevant positions taken in published works or prior testimony, as well as prior appointments involving the parties and/or contracts or claims at issue. Because Mr. White broadly circulated his white paper it is irrelevant that it was not formally published in the Quarterly or elsewhere. In the event Mr. White perceives a conflict between his disclosure obligations and the confidentiality of the prior proceedings, Comment 3 suggests that Mr. White balance the two by disclosing his involvement in the Great Coverage arbitrations involving the same contracts, but on a different issue, the details of which he need not and should not disclose
  - d. Mr. White does not need to disclose the prior arbitration involving the Treaty because that arbitration did not involve the late-notice issue, but he should disclose the communication to Attorney Smith regarding his late notice white paper.
7. How should Mr. Solomon respond to the request for additional information?
- a. He should refuse to respond to a request for additional information, as the questions go beyond the level of disclosure that are specifically spelled out in the ARIAS questionnaire.
  - b. He may disclose if prior proceedings' confidential information is not disclosed. If he doesn't believe he can fairly or fully respond without doing so his response should note it is incomplete or lacks detail because of confidentiality obligations.
    - i. Correct. Regardless of the methodology for umpire selection set forth in the contract, Mr. Solomon's disclosure obligations, as set forth under Canon IV, are to the Panel and all parties. Canon VI – Comment 2 provides that arbitrators should be faithful to the relationship of trust and confidentiality inherent in their position, and, unless otherwise agreed by the parties, or required or allowed by applicable rules or law, arbitrators should keep confidential all matters relating to the arbitration proceedings and decision. Canon IV provides that a candidate for appointment shall disclose any past or present involvement with the contracts or claims at issue. Comment 3 provides that when there is a conflict between the duty to disclose and the obligation to preserve confidentiality an arbitrator should provide the substance of the requested information without identifying details if that can be done in a manner that does not breach confidentiality and is not misleading. If information is being withheld, the umpire candidate should disclose that fact and the reason the information has been withheld. In this case, Mr. Solomon may only disclose information on the prior Great Coverage arbitration if he can do so without



violating the confidentiality orders entered in that arbitration and the confidentiality requirements of the Canons. A quasi-judicial privilege, if it exists in these circumstances, should not be used to shield a breach of a confidentiality obligation.

- c. Mr. Solomon must refuse to respond because the request came from the parties and not the arbitrators; this contract provides that the arbitrators select the umpire.
8. How should Mr. Solomon respond to Behemoth Re's objections?
- a. There is no appearance of impropriety because Mr. Solomon has served as a party-appointed arbitrator for each of the parties, including Behemoth Re, within the past four years.
  - b. Mr. Solomon may refuse to step down as umpire if he believes his prior service as a party-appointed arbitrator for Great Coverage and its affiliate does not create an appearance of partiality
    - i. Correct. Mr. Solomon's prior service as a party-appointed arbitrator for Behemoth Re does not necessarily cancel out any bias or appearance of bias that may exist due to his service in arbitrations involving Great Coverage, and vice versa. Additionally, even if Mr. Solomon determines that the seven appointments by Great Coverage or its affiliate represented an insignificant portion of his income over the past five years, it may not be appropriate for him to serve as the umpire pursuant to the Code. Prior service as a party-appointed arbitrator for one or more of the parties, including affiliates (as defined in the Code), does not automatically disqualify an umpire candidate. Canon I - Comment 2 describes the duty arbitrators owe to the parties, the industry, and to themselves to be honest, to act in good faith, and to be fair, diligent, and objective in dealing with the parties and counsel and, in rendering their decisions, not to seek to advance their own interests at the expense of the parties. Comment 3 sets forth factors that require an arbitrator to refuse to serve. Comment 4 sets forth factors that an arbitrator should consider before accepting an appointment to determine if any of them would likely affect the arbitrator's judgment. These include, in subparagraphs (g), (h), and (i), whether appointments by either the party or counsel would affect the arbitrator's ability to render a just decision. As Canon II makes clear, an arbitrator "shall serve only in those matters in which [the arbitrator] can render a just decision."
  - c. Mr. Solomon should refuse to step down if the appointments involving Great Coverage and its affiliate are an insignificant portion of his income over the past five years.
9. What, if anything, should Mr. Solomon disclose regarding Universal?
- a. Nothing. The parties didn't provide corporate organizational charts or information on affiliates so he may assume they are interested only in named parties, or that the relationships have changed since he first studied them.



- b. Nothing, because he has not retained complete records concerning managing agent involvement in his cases Mr. Solomon is justified in believing that any information he provided might be misleading and might prevent him from receiving the appointment.
  - c. Nothing, disclosure is only required with respect to named parties to an arbitration.
  - d. He should provide best recollection regarding managing agents that he believes may be involved and number/status of assignments where Universal acted on behalf of named party if he recalls or has a record of them, even if records are incomplete.
    - i. Correct. 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. Canon IV - Comment 2(b) requires disclosure of the extent of previous appointments with either party and with claims managers involved in the subject dispute. The Code's definition of party includes the individual or entity that is named as the petitioner or respondent in the arbitration, as well as the affiliates of the named party. For purposes of disclosure, the entity and the named party must have 1) common majority ownership and 2) its "insurance and/or reinsurance disputes, as applicable, are managed by the same individuals that manage the party's insurance and/or reinsurance disputes." Therefore, Mr. Solomon should disclose his roles that involve Universal, if he believes it has common ownership and management control with Behemoth Re. Additionally, Canon 1 makes clear that in considering whether an arbitrator can serve he/she should consider the number of appointments involving claims managers as well as named parties.
10. What position should Ms. Black take during panel deliberations on Behemoth Re's motion?
- a. Ms. Black should advocate strongly against the Panel issuing a subpoena to ABC Brokerage because that is the position that Great Coverage has taken, and she wants to continue receiving appointments from Great Coverage.
  - b. Ms. Black should vote in favor of issuing the subpoena to ABC Brokerage if she believes that the ABC Broker's records are relevant to Behemoth Re's defense.
    - i. Correct. Canon I – Comment 2 provides that "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 with counsel, and in rendering their decision, 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." Also, Canon II – Comment 2 provides that: [p]arty-appointed arbitrators are obligated to act in good faith and with integrity and fairness, should not allow their appointment to influence their decision on any matter before them, and should make all decisions justly.
11. How should Umpire Solomon respond to Universal Management's request for him to serve as a party-appointed arbitrator in a separate arbitration against The Best Insurance Company?



- a. Umpire Solomon must decline the appointment and disclose the offer to Great Coverage and the current panel, as well as the panel in the two pending Universal Management disputes where he is currently serving as umpire
    - i. Correct. Under Canon I - Comment 3 (f) arbitrators should uphold the integrity of the arbitration process and conduct the proceedings diligently and "where the candidate sits as an umpire in one matter and the candidate is solicited to serve as a party-appointed arbitrator in a new matter by a party to the matter where the candidate sits as an umpire" the candidate for appointment as an arbitrator must refuse to serve. Here, Universal is an affiliate of Behemoth Re and the definition of party in the Code includes affiliates. Canon IV - Comment 6 provides for a continuing obligation throughout the proceeding to disclose all interests and relationships. Additionally, accepting a party-appointed assignment while serving as umpire puts that individual in a position of at least incurring the appearance of impropriety in communicating with one party ex parte while serving as umpire in an arbitration in which that party is involved, which is inconsistent with Canon V and immediate disclosure does not necessarily cure that appearance of impropriety.
  - b. Umpire Solomon can accept the appointment, but he must disclose it in the Great Coverage/ Behemoth Re arbitration, as well as in any pending Universal arbitrations, once the new panel in the new arbitration has been fully formed.
  - c. Umpire Solomon can accept the appointment, but he must make immediate disclosure in the Great Coverage/ Behemoth Re arbitration and in any pending Universal arbitrations.
  - d. Mr. Solomon should consider declining the appointment and disclose the offer in the Great Coverage/ Behemoth Re arbitration and in any pending Universal arbitrations.
12. What should Ms. Black do regarding her previous omission to disclose her involvement on the mock arbitration panel?
- a. Nothing. Because her involvement in the mock arbitration panel has concluded, there is no need for Ms. Black to disclose it now.
  - b. Nothing. Because the mock arbitration panel did not concern the Treaty, or claims at issue, in the arbitration there is no need for Ms. Black to disclose her involvement.
  - c. Ms. Black must immediately disclose her involvement in the mock arbitration panel, and explain that it was omitted from her original disclosures as an oversight on her part.
    - i. Correct. Neither the conclusion of her involvement in the mock arbitration panel nor the fact that the mock arbitration panel did not involve the same Treaty, or claims at issue, in this arbitration excuse Ms. Black from making the disclosure as soon as she discovers the mistake. Canon IV – Comment 6 provides that the "duty to disclose all interests and relationships is a continuing obligation throughout the proceeding." If any previously undisclosed interests or relationships described in Comment 1 are recalled or arise during the course of the arbitration, they should be disclosed immediately to all parties and the other arbitrators, along with an explanation with why the disclosure had not



been made earlier.

13. How should Mr. White respond to Attorney Smith?

- a. As long as he doesn't tell her what was said during panel deliberations, he can tell her that he thinks the most critical point to establish is the date notice should have been given.
- b. He can review and comment on potential exhibits.
- c. He can ask her about the evidence that she thinks is most, or least, helpful, and give her feedback on how persuasive he thinks it will be and how to best address the evidence within the context of the case, without revealing panel discussions.
  - i. Correct. Under Canon V – Comment 6, arbitrators, when communicating with the parties, should avoid impropriety or the appearance of impropriety, and shall not disclose the contents of communications among the arbitrators. It is permissible, however, for Mr. Smith to make suggestions about what arguments or aspects of arguments in the case to emphasize or abandon, as well provide how an issue may be viewed by the Panel. He may not, however, preview the demonstrative exhibits, as requested by Attorney Smith.

14. How should Umpire Solomon handle the news of Mr. Freund's involvement?

- a. Umpire Solomon should disclose to the parties that because of Mr. Freund's involvement he might not be able to rule against Great Coverage and, therefore, must regretfully resign from the Panel.
- b. Given the case is on the eve of hearing, and Mr. Freund's involvement came late in the process, he should not disclose his relationship, as it could lead to more expense, an allegation of bias or a request for a replacement umpire.
- c. Umpire Solomon should disclose that he has socialized with Mr. Freund he need not disclose Mr. Freund's friendship with Perry Pruitt as he is not involved in that relationship.
- d. He should disclose and advise if it will impair ability to decide case fairly based solely on evidence. If he believes it may impair ability to be impartial, he should offer to resign, and may continue to serve if both parties request him to do so.
  - i. Correct. Cannon VIII requires arbitrators to make decisions justly, to exercise independent judgment and to not permit outside pressure to affect decisions. Each of those factors is for Umpire Solomon to decide, but the relationship, especially one that has personal importance to the arbitrator, must be disclosed. Canon IV – Comment 5 indicates that an arbitrator should recognize the consequences of withdrawal and should do so only with good reason, such as serious personal or family health issues. Canon IV - Comment 6, makes clear that the obligation to disclose is a continuing one.





15. As a party-appointed arbitrator it is White's responsibility to ensure that the party that appointed him presents a convincing case and it is appropriate for him to take steps to rehabilitate the witness at the earliest possible opportunity.
- a. True
  - b. False
    - i. Correct. Canon VII makes it clear that arbitrators may question witnesses during the hearing for explanation and clarification to help them understand and assess the testimony, but they should refrain from assuming an advocacy role or interrupting counsel's examination unless immediate clarification is essential.
16. How should Ms. Black respond to Great Coverage's counsel's request?
- a. She should share such insights as she is able without revealing deliberations.
  - b. She should tell counsel she is unable to discuss the award with him until after the Panel issues its Final Award
  - c. She should defer the discussion with counsel and, on her own initiative, suggest the panel amend the scheduling order to make clear that ex parte communications may resume, and the scope of permitted communications.
    - i. Correct. Canon V - Comment 4 provides that party-appointed arbitrators may only communicate with a party concerning the dispute provided all parties agree or the panel approves such communications and then only to the extent and for the time period that is specifically agreed or ordered. Even when ex parte communications are permitted, an arbitrator may not disclose the content or substance of communications or deliberations among panel members.