

# Guidelines for Arbitrator Conduct

## Introduction

ARIAS-U.S. is a not-for-profit corporation organized principally as an educational society dedicated to promoting the integrity of the arbitration process in insurance and reinsurance disputes. Through seminars and publications, ARIAS-U.S. seeks to train knowledgeable and reputable professionals for service as panel members in industry arbitrations. The ARIAS-U.S. Board of Directors certifies as arbitrators individual members who are qualified in accordance with criteria and procedures established by the membership and the Board.

The continued viability of arbitration to resolve industry disputes largely depends on the quality of the arbitrators, their understanding of complex issues, their experience, their good judgment and their personal and professional integrity. In order to properly serve the parties and the process, arbitrators must observe high standards of ethical conduct and must render decisions fairly. The provisions of these Guidelines for Arbitrator Conduct should be construed to advance these objectives.

These Guidelines are intended to provide standards of conduct to guide insurance and reinsurance arbitrators, whether or not certified by ARIAS-U.S., when they are involved in arbitrations in the United States. Comments accompanying the canons explain and illustrate the meaning and purpose of each canon. The Guidelines do not, however, take the place of, or supersede, agreements entered into by the parties nor do they displace applicable laws or arbitration procedures.

Nothing in these Guidelines is intended to or should be deemed to establish new or additional grounds for judicial review of arbitration appointments or arbitration awards nor establish any substantive legal duty on the part of arbitrators.

## Purpose

The purpose of these Guidelines is to provide guidance for the conduct of insurance and reinsurance arbitrations, whether conducted by a single arbitrator or a panel of arbitrators, regardless of how appointed, except where inconsistent with the agreement of the parties or applicable law. Reinsurance agreements frequently contain provisions which establish that disputes will be resolved by a panel of three arbitrators. Each party appoints an arbitrator, and the third arbitrator or umpire is then selected by the two arbitrators or, failing such agreement, by an agreed-upon procedure or an independent institution. Unless inconsistent with the agreement of the parties or applicable law, the two arbitrators appointed by the parties should observe the same ethical standards as a single arbitrator or an umpire on a panel of arbitration except where noted below.

## 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. They should be honest, act in good faith, be diligent, and not seek to advance their own interests at the expense of the parties.
3. Arbitrators have a responsibility to act in a fair, diligent and objective manner in dealing with the parties and counsel in considering the respective positions of the parties and in rendering their decisions. Arbitrators should act without being influenced by outside pressure, fear of criticism or self-interest.

## **Code of Conduct - Canon II**

**Fairness: Arbitrators shall conduct the dispute resolution process in a fair manner and shall serve only in those matters in which they can render a just decision. If at any time the arbitrator is unable to conduct the process fairly or render a just decision, the arbitrator should withdraw.**

### **Comments:**

Although party-appointed arbitrators may be initially predisposed toward the position of the party who appointed them (unless prohibited by the contract), they should avoid reaching a final judgment until after both parties have had a full and fair opportunity to present their respective cases and the panel has fully deliberated the issues. It is preferable that arbitrators advise the appointing party, when accepting an appointment, that they will ultimately decide issues presented in the arbitration objectively. Party-appointed arbitrators are obligated to act in good faith with integrity and fairness, should not allow their appointment to influence their decision on any matter before them, and should make all decisions justly.

After accepting an appointment, arbitrators should avoid entering into any financial, business, professional, family or social relationship or acquiring any financial or personal interest which would likely affect their ability to render a just decision.

## **Code of Conduct - Canon III**

**Competence: Candidates for appointments as arbitrators should accurately represent their qualifications to serve.**

### **Comments:**

Candidates should provide up-to-date information regarding their relevant training, education and experience to the appointing party (or parties if nominated or selected to serve as the third arbitrator or umpire) to ensure that their qualifications satisfy the reasonable expectations of the party or parties. Individuals who serve on arbitration panels have a responsibility to be familiar with the practices and procedures customarily used in arbitration that promote confidence in the fairness and efficiency of the process as an accessible forum to resolve industry disputes.

## **Code of Conduct - Canon IV**

**Disclosure: Candidates 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 should make a reasonable 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 potential witnesses.

2. 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; 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 If required by the contract or law.

3. The duty to disclose all past and present interests or 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.

## **Code of Conduct - Canon V**

**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. The party-appointed arbitrator should, at the first meeting with the parties, disclose whether communications with the party or its counsel have taken place. In complying with this disclosure requirement, it is sufficient that the party-appointed arbitrator disclose the fact that such communication has occurred without disclosing the content of the communication, except that party-appointed arbitrators should identify any documents that they have examined relating to the proceeding. Party-appointed arbitrators also may consult in confidence with the party who appointed them concerning the acceptability of persons under consideration for appointment as the third arbitrator or umpire.
3. Except as provided above, party-appointed arbitrators may only communicate with a party concerning the dispute provided all parties agree to such communications and then only to the extent and for the time period that is specifically agreed upon.
4. 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.
5. Whenever third arbitrators or umpires communicate in writing with one party, they should at the same time send a copy of the communication to each other arbitrator and party. Whenever third arbitrators or umpires receive any written communication concerning the case from one party that has not already been sent to every other party, they should forward the written communication to the other arbitrators and party.
6. Except as provided above or unless otherwise provided in applicable arbitration rules or in an agreement of the parties, third arbitrators or umpires should not discuss a case with any party in the absence of the other party, except in any of the following circumstances.

Discussions may be had with a party concerning ministerial matters such as setting the time and place of hearings or making other arrangements for the conduct of the proceedings. However, the arbitrator should promptly inform the other party of the discussion and should not make any final determination concerning the matter discussed before giving each absent party 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 who is present and the arbitration may proceed.

## **Code of Conduct - Canon VI**

**Confidentiality: Arbitrators should be faithful to the relationship of trust and confidentiality inherent in their position.**

### **Comments:**

1. Arbitrators are in a relationship of trust with the parties and should not, at any time, use confidential information acquired during the arbitration proceeding to gain a personal advantage or advantage for others, or to affect adversely the interest of another.
2. 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.
3. It is not proper at any time for arbitrators to (1) inform anyone of an arbitration decision, whether interim or final, in advance of the time it is given to all parties; (2) inform anyone concerning the contents of the deliberations of the arbitrators; or (3) assist a party in post-arbitral proceedings, except as is required by law.
4. Unless otherwise agreed by the parties or by applicable rules, arbitrators are not obligated to return or retain notes taken during the arbitration. Notes, records and recollections of arbitrators are confidential and shall not be disclosed to the parties, the public, or anyone else, unless (1) all parties and the panel agree to such disclosure, or (2) a disclosure is required by law.

## **Code of Conduct - Canon VII**

**Advancing the Arbitral Process: Arbitrators shall exert every reasonable effort to expedite the process and to promptly issue procedural communications, interim rulings, and written awards.**

### **Comments:**

1. When the agreement of the parties sets forth procedures to be followed in conducting the arbitration or refers to rules to be followed, it is the obligation of the arbitrators to comply with such procedures or rules unless the parties agree otherwise.
2. Individuals should only accept arbitration appointments if they are prepared to commit the time necessary to conduct the arbitration process promptly.

Arbitrators should make all reasonable efforts to prevent delaying tactics, harassment of parties or other participants, or other abuse or disruption of the arbitration process. Arbitrators should be patient and courteous to the parties, to their lawyers and to the witnesses, and should encourage (and, if necessary, order) similar conduct of all participants in the proceedings. Arbitrators may question fact witnesses or experts during the hearing for explanation and clarification to help them understand and assess the testimony; however, arbitrators should refrain from assuming an advocacy role and should avoid interrupting counsel's examination unless clarification is essential at the time.

## **Code of Conduct - Canon VIII**

**Just Decisions: Arbitrators should make decisions justly, exercising independent judgment and should not permit outside pressure to affect decisions.**

### **Comments:**

1. When an arbitrator's authority is derived from an agreement between the parties, arbitrators should neither exceed that authority nor do less than is required to exercise that authority completely.

2. Arbitrators should, after careful review, analysis and deliberation with the other members of the panel, fairly and justly decide all issues submitted for determination. Arbitrators should decide no other issues.

3. Arbitrators should not delegate the duty to decide to any other person.

4. In the event that all parties agree upon a settlement of issues in dispute and request arbitrators to embody that agreement in an award, they may do so, but are not required to do so unless satisfied with the propriety of the terms of settlement. Whenever arbitrators embody a settlement by the parties in an award, they should state in the award that it is based on an agreement of the parties.

## **Code of Conduct - Canon IX**

**Advertising: Arbitrators shall be truthful in advertising services offered and their availability to accept arbitration appointments.**

### **Comments:**

1. It is inconsistent with the integrity of the arbitration process for persons to solicit a particular appointment for themselves. However, a person may indicate a general willingness to serve as an arbitrator.

2. Arbitrators shall make only accurate and truthful statements about their skills or qualifications. A prospective arbitrator shall not promise results.

3. In an advertisement or other communication to the public, an individual who is an ARIAS-U.S. certified arbitrator may use the phrase "ARIAS-U.S. Certified Arbitrator" or "certified by ARIAS-U.S. as an arbitrator" or similar phraseology.

## **Code of Conduct - Canon X**

**Fees: Prospective arbitrators shall fully disclose and explain the basis of compensation, fees and charges to the appointing party or to both parties if chosen to serve as the third arbitrator or umpire.**

### **Comments:**

1. Information about fees should be addressed when an appointment is being considered. Arbitrators shall not enter into a fee agreement that is contingent upon the outcome of the arbitration process. Arbitrators shall not give or receive any commission, rebate or similar remuneration for referring a person for alternative dispute resolution services.

2. The better practice in reaching an understanding about fees is to confirm the arrangement in writing at the time an arbitration appointment is accepted.