



2026 SPRING CONFERENCE

April 29 - May 01

JW Marriott, Nashville, TN

NASHVILLE

Corporate Counsel Speaks: Ethical Accountabilities for the Arbitral Process

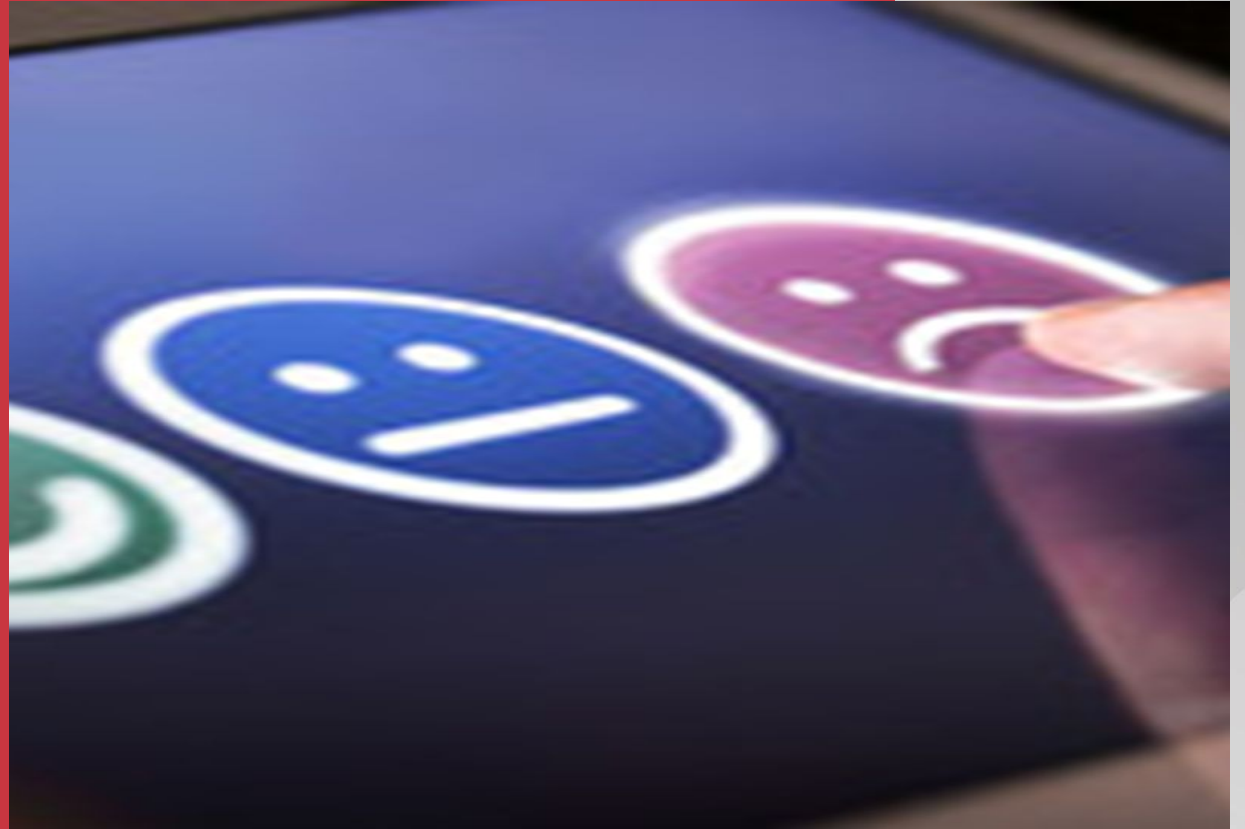


Susan Mack, Moderator
Patricia Taylor Fox
Steven Najjar
Joshua Schwartz
Alysa Wakin

- Arbitration is a matter of contracting.
- The “Buck” Stops with Corporate Counsel.



Ethics Committee Survey Results



Corporate Counsel as Sheriff

How can this work in practice?



Ethical Considerations for Counsel

Rules of Professional Conduct (NY, 2025)

PREAMBLE:

“A lawyer, as a member of the legal profession, is a representative of clients and an officer of the legal system with special responsibility for the quality of justice.”

“As an officer of the legal system, each lawyer has a duty to uphold the legal process; to demonstrate respect for the legal system . . .”

“The relative autonomy of the legal profession carries with it special responsibilities of self-governance. Every lawyer is responsible for observance of the Rules of Professional Conduct and also should aid in securing their observance by other lawyers.”

Issue: Panel Selection

- **Hired gun arbitrators**
- **Panel member failure to reveal potentially relevant or disqualifying conflicts**
- **Umpire candidates with clear conflicts filling out questionnaires, potentially forcing a party and its counsel to use a strike**
- **Improper efforts to disqualify umpire candidates nominated by opposing party**
- **Improper efforts to force resignation of party arbitrator**

Issue: Conduct of the Hearing (including Motions)

- **Ex parte communications after cut-off**
- **Party arbitrators acting as advocates**
- **Improper use of excluded evidence**

Issue: Panel Deliberations

- **Exclusion of party arbitrator from deliberations/communications**
- **Arbitrator breaches of confidentiality regarding related or similar matters**
- **Breaches of decorum/name calling**
- **Arbitrator breaches of confidentiality of panel deliberations (without cause)**

Questions & Comments