



Disclosure and Challenge of an Arbitrator

Fact Sheet

The purpose of this Fact Sheet is to provide a brief explanation regarding the disclosure and challenge process on American Arbitration Association® (AAA®) matters. Please make sure to review the applicable rules and guides for additional information.

Q. Are arbitrators obligated to make disclosures?

A. Arbitrators must disclose any relationship between themselves and a party, a party's representative, or a witness. The AAA's rules require that neutral arbitrators be impartial, and that the parties have confidence in their impartiality. The rules require every neutral arbitrator "to disclose to the AAA any circumstances likely to affect his or her impartiality, including any bias or any financial or personal interest in the result of the arbitration or any past or present relationship with the parties or their representatives." This is also dealt with in detail in the AAA's *Code of Ethics for Commercial Arbitrators*.

Q. I am an AAA Board or Council Member. Need I disclose this to the parties?

A. Arbitrators serving on the AAA's board or on any of its committees are encouraged to disclose such facts. A party that is active in a particular industry may have a case with the AAA, while at the same time serve on an AAA committee. Therefore, to ensure that an arbitrator is not serving on a committee with a representative from either party, it is best that such service be disclosed at the outset.

Q. What is the process for an arbitrator to make a disclosure?

A. To facilitate disclosure by arbitrators, the AAA has adopted the Notice of Appointment form which must be executed by every neutral arbitrator in every case at the time of appointment. The arbitrator must indicate on this form whether or not there is a disclosure to be made. Any subsequent disclosures can be in letter form.

Q. Are there any general principles regarding disclosures?

A. They are as follows: every disclosure, no matter how insignificant should be communicated to the parties; and, if information received from the arbitrator or another source seems vague or incomplete, further inquiries may be made by the AAA to gather pertinent facts for transmittal to the parties.

Q. What details should be articulated in the disclosure?

A. When making a disclosure the arbitrator should provide the following information regarding the relationship that is being disclosed:

- Whether the relationship is in the past, present, or anticipated in the future;
- The nature of the relationship;
- The duration of relationship (from when to when);
- Whether business is being conducted directly or indirectly;
- Whether the disclosed relationship is professional, social or familial;
- The extent of contact—daily, weekly, monthly, yearly;
- The contact event (e.g., business meetings; occupying space in the same building; consultation; legal professional representation; professional or trade association meeting or committee work; intimate social gathering; large group social gathering; etc.);

· Will the relationship affect the arbitrator's ability to act impartially?

Q. What happens after an arbitrator makes a disclosure?

A. The parties are notified, in writing, by the case administrator, regarding the arbitrator's disclosure and given a specific time period within which to comment on the arbitrator's disclosure. If both parties agree that the arbitrator should be removed, the AAA will so notify the arbitrator, and a replacement arbitrator may be appointed.

Q. What if the parties don't agree to remove the arbitrator?

A. In such instances the AAA will review the parties' written contentions regarding the reaffirmation or removal of the arbitrator, and will make a determination which is final and binding. The Rules provide conclusive administrative authority with the AAA, subject always to court review in contested situations, to rule on the arbitrator's qualifications to serve in a given case.

Q. Do I need to disclose prior arbitrations or contact with the law firms involved or only with counsel on the current case?

A. All contact with the firm or parties involved shall be disclosed.

Q. What if I am contemplating accepting an additional appointment to serve as a neutral on a matter that involves counsel or a party on a current appointment?

A. As an arbitrator on a case, you have an ethical obligation to those case participants to avoid entering into any new business relationships that might give the appearance of bias. If you decide to accept such a new appointment, you must disclose this on both cases. Note that it would be inappropriate for you to make a "conditional" disclosure on an existing case, such as, "I am thinking of accepting an appointment on case X unless a party on this case objects." This would place a party who wants to object in a "no win" situation. If the party withholds its objection and you take the new case, then the first case proceeds with an arbitrator that one party deems unacceptable. If a party voices its objection and you decline the new appointment, then the objecting party would be concerned that you would begrudge them the loss of business.

Q. Can an arbitrator be removed for the appearance of bias during the proceeding?

A. If an arbitrator, at any time, discloses a degree of bias that clearly violates the requirement of impartiality, the AAA may arrange for the replacement of the arbitrator, after consultation with the parties.

Q. Will the arbitrator be informed of a party's challenge?

A. Arbitrators are generally not advised by the AAA when their service has been challenged. In the event we must seek further clarification from the arbitrator regarding a disclosure, we do so without making reference to any particular party.

Q. Can the final award be vacated if the arbitrator fails to make a disclosure?

A. As guidelines for the exercise of arbitrator discretion in this area, the following circumstances were deemed sufficient by the courts to require vacatur of the award on the ground of partiality:

1. Present or recent attorney-client relationship;
2. Relationship of consanguinity within six degree (e.g. second cousins);
3. Business dealings which are significant, ongoing, or regularly conducted;
4. Close social relations or friendships;
5. Arbitrator had a case in which the arbitrator was a party or counsel before one who is now a party or counsel.

Q. Who should I contact if I have questions regarding disclosures or any other general questions about the process?

A. Contact the case administrator assigned to your case. The case administrator has the most knowledge about every aspect of your case and is there to assist you throughout the process.