

**GUIDELINES FOR STANDARDS  
OF PROFESSIONAL RESPONSIBILITY  
FOR ARBITRATORS  
IN MANDATORY EMPLOYMENT ARBITRATION**

**PREAMBLE**

Arbitration is commonly used to resolve employment disputes. Employment arbitration is a significant part of the system of justice on which our society relies for a fair determination of legal rights. All persons who act as employment arbitrators therefore undertake serious responsibilities to the public as well as to the parties. Those responsibilities include important ethical obligations. Arbitrators occupy a position of trust in relation both to the parties they serve and to the administrative agencies handling their cases.

**SCOPE OF THE GUIDELINES**

These Guidelines are a privately developed set of standards of professional conduct for arbitrators engaged in the resolution of disputes arising under an agreement to arbitrate pursuant to an employer-promulgated arbitration plan or procedure where the arbitration of employment-related disputes is a condition of employment.

The word “arbitrator” as used in the Guidelines applies to any individual, irrespective of specific title, who serves in an impartial capacity in a covered arbitration dispute procedure that confers authority to decide issues or to make formal recommendations. The Guidelines are not designed to apply to mediation, conciliation, or other procedures in which the third party is not authorized in advance to make decisions or recommendations, except as specifically provided for in Section 2.E. These Guidelines do not apply to partisan representatives on tripartite boards. The Guidelines do not supersede applicable laws or arbitration rules of an administrative agency to which the parties have agreed, and should be read in conjunction with other rules of ethics. They do not establish new or additional grounds for judicial review of arbitration awards. The Guidelines do not authorize or permit any organization adopting or applying the Guidelines, or any internal tribunal of such an organization, to review arbitration awards on their merits.

**SECTION 1. ARBITRATOR’S QUALIFICATIONS AND RESPONSIBILITIES TO THE PROFESSION**

**A. General Qualifications**

**1. Essential personal qualifications of an arbitrator include honesty, integrity, impartiality, and general competence in employment law and management of employment arbitration issues.**

a. An arbitrator must demonstrate ability to exercise these personal qualities faithfully and with good judgment at every stage of the arbitration process.

**2. An arbitrator must be as ready to rule for one party as for the other on each issue in every case.**

## **B. Qualifications for Special Cases**

**1. If a case requires specialized knowledge or expertise outside the arbitrator's competence, the arbitrator must decline appointment, withdraw, or seek and obtain approval for technical assistance.**

## **C. Responsibilities to the Profession**

**1. An arbitrator must uphold the dignity and integrity of the office and endeavor to provide effective service to the parties.**

a. To this end, an arbitrator must keep current with principles, practices, and developments that are relevant to the arbitrator's field of practice.

**2. Arbitrators may disseminate truthful information about their experience and qualifications.**

**3. An arbitrator must not engage in conduct that would appear to compromise the arbitrator's impartiality.**

## **SECTION 2. RESPONSIBILITIES TO THE PARTIES**

### **A. Recognition of Diversity in Arbitration Provisions**

**1. An arbitrator must try to understand and observe the terms of the arbitration agreement under which the arbitrator serves.**

**2. That understanding does not relieve an arbitrator from a corollary responsibility to try to discern any attempt by any party to use arbitration for an improper purpose. The arbitrator must not approve, consent to, or participate in any way in such an attempt.**

a. Cases arising under an employer-promulgated arbitration plan require particular vigilance to ensure procedural fairness and to protect the integrity and reputation of employment arbitration. Arbitrators who undertake such cases must be sure that their powers and the procedures to be followed satisfy minimum standards of due process and fairness.

**3. If the arbitration plan under which an arbitrator is appointed lacks fundamental due process, the arbitrator must insist upon an agreed correction as a condition of service and, failing agreement, must decline the appointment and withdraw from any further participation.**

**4. One party may be made solely responsible for arbitrator fees pursuant to applicable law, agency rules, or agreement of the parties.**

**5. To ensure fundamental fairness, arbitrators must exercise special care when accepting appointments or hearing cases where one party is not represented.**

a. The arbitrator must inform unrepresented parties that the arbitrator is not representing either party and explain the difference between the arbitrator's role as a third-party neutral and a lawyer's or advocate's role as one who represents a client. While the arbitrator may not assist either party in the presentation of its case, the arbitrator may explain the arbitration process to an unrepresented party.

**B. Disclosure**

**1. After being notified of an appointment, an arbitrator must disclose to the parties, or to an appointing agency administering the case, any facts or circumstances that might raise a reasonable doubt about the arbitrator's independence and impartiality. The arbitrator must also disclose any other matters required by law or by rules that are applicable to the proceeding.**

**2. The arbitrator must disclose all personal, social, professional, financial, or other interests related to a party, representative, known witness, and other arbitrators in the proceeding.**

a. This disclosure requirement applies to any past or present relationship, including appointment as an arbitrator or other dispute-resolution neutral.

b. The arbitrator must disclose any continuing service as a representative of or consultant to employers, employees, unions, or organizations of employers or employees.

c. If an attorney or consultant represents a party to the proceeding, the arbitrator must disclose any relationships with that attorney's or consultant's firm.

d. An arbitrator may establish social or professional relationships with others in the field, but must disclose any relationship with a representative or other arbitration participant that might raise a reasonable doubt about the arbitrator's impartiality.

e. The arbitrator must disclose any known or easily discoverable relationships that members of the arbitrator's family or household have with any participants.

f. Disclosure must include a description of the nature, frequency, and duration of the relationship.

**3. An arbitrator must know or discover the source of the arbitrator's selection, and whether the arbitrator's selection was a joint appointment, an appointment by a neutral designating agency or government body, an appointment pursuant to a statute, an appointment in a compulsory arbitration arrangement from a panel unilaterally formed by one of the parties, or an appointment directly by one party. If the arbitrator discovers that the appointment was from a panel unilaterally formed by one of the parties in a**

**compulsory arbitration arrangement, or from an appointment directly by one party, the arbitrator must decline the appointment.**

**4. After notice of selection to serve, the arbitrator must make required disclosures in writing to all representatives or to unrepresented parties, and must afford parties a reasonable period of time to object to the appointment before taking further action on the case.**

a. If a conflict of interest exists, the arbitrator must decline an appointment, even if all parties waive objection.

b. An arbitrator must withdraw from service (1) if an objection by a party is made within the time provided for an objection after the disclosure, without need for a party to provide a reason, or (2) if, at any time during the proceeding, all parties request an arbitrator to withdraw.

**5. After the arbitrator has made initial disclosures, the duty to disclose continues throughout the arbitration proceeding if new facts or circumstances, including selection to serve as an arbitrator in another case with one of the parties or representatives, come to the attention or recollection of the arbitrator.**

a. The arbitrator must make subsequent disclosures in writing as soon as practicable.

b. An arbitrator must not delay a pending proceeding beyond the time reasonably required to receive any objection and to determine whether the facts and circumstances compel the arbitrator's withdrawal from further service.

**6. An arbitrator must respond to a motion by a party during a proceeding for arbitrator recusal or removal. Applicable law or procedures for treating arbitrator challenges established by an administrative agency handling the case must be followed. Otherwise, the arbitrator must grant the motion if there is sufficient evidence of a lack of independence or impartiality, or other reasonable grounds to require withdrawal.**

### **C. Privacy of Proceedings and Publication of Awards**

**1. The arbitrator must treat all significant aspects of an arbitration proceeding as confidential unless all parties waive this requirement or applicable law permits or requires disclosure.**

a. An arbitrator may only permit attendance by persons other than the parties or their representatives when the parties agree or when an applicable law requires or permits.

b. An arbitrator may not discuss the case at any time with persons not directly involved unless the arbitrator first obtains the consent of all parties or unless the identity of the parties and details of the case are sufficiently obscured to eliminate any realistic

probability of identification. An arbitrator need not obtain advance consent when discussing with another arbitrator issues arising in a case. The arbitrator acting in the case retains sole responsibility for the decision and the discussion must remain confidential. Similarly, an arbitrator who teaches arbitration in a college or university or in a continuing education program need not obtain advance consent to discuss issues arising in a case provided the arbitrator does not disclose any identifying information.

c. An arbitrator may not publish an award without the consent of the parties. An arbitrator may ask the parties for consent to publish only at or after the time the award is issued. The arbitrator may state in writing to each party that failure to answer the inquiry within 30 days will be considered an implied consent to publish the award with all identifying information redacted.

d. Applicable laws, regulations, or practices of the parties may permit or even require exceptions to the above noted principles of privacy.

#### **D. Jurisdiction**

**1. An arbitrator must observe faithfully both the limitations and inclusions of the jurisdiction conferred by an agreement, by any other submission under which the arbitrator serves, and by any settlement of some or all of the issues in a case at any stage of the proceedings.**

#### **E. Mediation by an Arbitrator**

**1. An arbitrator may accept or decline an invitation by the parties to mediate or engage in a mediation/arbitration process.**

a. An arbitrator may suggest mediation or any other dispute resolution process.

**2. If an arbitrator serves as a mediator, the arbitrator is required to establish a clear understanding of**

a. rules surrounding ex parte discussions and

b. the arbitrator's further participation in the matter in the event that the matter is not resolved.

#### **F. Delegation and Use of Assistants**

**1. An arbitrator must not delegate any decision-making function to another person without consent of the parties.**

a. Without prior consent of the parties, an arbitrator may use the services of an assistant for research, clerical duties, or preliminary drafting under the direction of the arbitrator.

### **G. Consent Awards**

**1. Upon the request of all parties to the proceeding, an arbitrator may issue an award agreed to by the parties, provided that the arbitrator is satisfied that all parties knowingly agreed to its terms.**

a. This section does not apply to awards in class action arbitrations.

### **H. Avoidance of Delay**

**1. An arbitrator must plan a work schedule so that present and future commitments will be fulfilled in a timely manner.**

a. When planning is disrupted, the arbitrator must promptly notify the parties or any administrative agency and provide a reasonable estimate of any additional time required.

**2. An arbitrator must cooperate with the parties and with any administrative agency involved in avoiding delays.**

a. An arbitrator must decline any request for service if the arbitrator is unable to schedule a hearing as soon as the parties wish.

**3. Once the case record has been closed, an arbitrator must adhere to the time limits for an award, as stipulated in the agreement of the parties, or as provided by regulation of an administrative agency, or as otherwise agreed.**

a. If the arbitrator cannot render an award within the required time, the arbitrator must seek an extension of time from the parties.

### **I. Fees and Expenses**

**1. An arbitrator must try to keep total charges for services and expenses reasonable in light of the nature of the case.**

**2. An arbitrator must maintain adequate records to support charges for services and expenses and must make an accounting to the parties or to an involved administrative agency upon request.**

**3. At or before acceptance of an appointment, the arbitrator must establish in writing, with all parties and any administrative agency, the basis for any charges or expenses, including any cancellation fee, compensation in the event of withdrawal, and compensation for study and preparation time.**

a. In proceedings under the rules or administration of an administrative agency, the arbitrator must communicate about compensation through that agency. In proceedings without an administrative agency, the arbitrator must copy all parties on communications about compensation.

**4. Arbitrators may charge per diem rates, hourly rates, or any other reasonable method of calculating the fee, or any combination thereof. The method for calculating the fee must be disclosed to the parties at or before acceptance of the appointment.**

a. Per diem charges for a hearing must not exceed actual time spent or allocated for the hearing. An arbitrator may specify a per diem for a hearing that applies regardless of the length of the hearing.

b. Time charged for other than hearings, whether it be per diem, hourly, or other method, must not exceed actual time spent.

c. Charges for expenses must not exceed actual and reasonable expenses incurred in the case. When time or expenses are involved for two or more sets of parties on the same day or trip, the arbitrator must prorate such time or expenses appropriately. An arbitrator may, without violating this provision, stipulate in advance a minimum charge for a hearing.

**5. An arbitrator may require deposits of the estimated fees and expenses for the case as a condition of going forward with the arbitration. The arbitrator must safeguard the parties' deposits and use them only for legitimate fees and expenses.**

## **J. External Law and Independent Research**

**1. An arbitrator must make a reasonable effort to address and follow public law whenever public law is at issue in a case.**

**2. An arbitrator may conduct legal research independently and may decide the case without advising the parties about such research or the results of any such research, so long as the arbitrator does not decide the case on the basis of a rationale or position that no party has presented or argued.**

a. If the arbitrator concludes the case should be decided on the basis of a rationale or position not presented or argued by any party, the arbitrator must first give all parties an opportunity to respond.

## **SECTION 3. RESPONSIBILITIES TO ADMINISTRATIVE AGENCIES**

### **A. General Responsibilities**

**1. An arbitrator must be candid, accurate, and fully responsive to an administrative agency concerning qualifications, availability, and all other pertinent matters.**

**2. An arbitrator must observe policies and rules of an administrative agency in cases referred by that agency, provided such rules are consistent with due process and public law.**

### **B. Improper Influence**

**1. An arbitrator must not seek to influence an administrative agency by any improper means, including gifts or other inducements to agency personnel.**

## **SECTION 4. PREHEARING CONDUCT**

### **A. General Principles**

**1. All prehearing matters must be handled with complete impartiality by the arbitrator.**

a. The primary purpose of prehearing discussions involving the arbitrator is to determine procedural matters so that the hearing can proceed without unnecessary obstacles. When an administrative agency handles some or all aspects of the arrangements prior to a hearing, the arbitrator will only become involved as appropriate and necessary.

b. Copies of any prehearing correspondence between the arbitrator and any party must be made available to all parties.

### **B. Discovery**

**1. The arbitrator shall have the authority to order such discovery, by way of deposition, interrogatory, document production, or otherwise, as the arbitrator considers necessary to a full and fair exploration of the issues in dispute, consistent with the expedited nature of arbitration.**

## **SECTION 5. HEARING CONDUCT**

### **A. General Principles**

**1. An arbitrator must provide a fair and adequate hearing that ensures all parties a sufficient opportunity to present their evidence and arguments.**

a. Within the limits of this responsibility, an arbitrator must conform to the various types of hearing procedures desired by the parties.

b. An arbitrator must not intrude into a party's presentation so as to prevent that party from putting forward its case fairly and adequately. An arbitrator may ask questions to clarify the record and may request further information when necessary to ensure the arbitrator's understanding of the evidence.

### **B. Ex Parte Hearings**

**1. In determining whether to conduct an ex parte hearing, an arbitrator must consider relevant legal, contractual, and other pertinent circumstances.**

**2. Before proceeding ex parte, an arbitrator must try to determine whether the absent party has been given adequate notice of the time, place, and purposes of the hearing, and must try to contact the missing party.**

**3. An arbitrator must consider requests to reopen the record upon a showing by the absent party of good cause for failure to appear.**

### **C. Bench Decisions; Full or Summary Awards and Opinions**

**1. When an arbitrator understands, before accepting an appointment, that the parties expect a bench decision at the conclusion of the hearing, the arbitrator must comply with that understanding unless all parties agree otherwise.**

a. If the parties do not notify the arbitrator before the arbitrator's acceptance of the appointment of their desire for a bench decision, the arbitrator may decline to issue a bench decision.

b. If any party objects, the arbitrator must not render a bench decision except in extraordinary circumstances.

**2. If the parties inform the arbitrator before acceptance of the appointment of their desire for either a full written award and opinion or a summary written award and opinion within a stated time period, the arbitrator must comply with the understanding unless all parties agree otherwise.**

## **SECTION 6. POST-HEARING CONDUCT**

### **A. Post-Hearing Briefs and Submissions**

**1. An arbitrator must comply with mutual agreements regarding the filing or nonfiling of post-hearing briefs or submissions.**

**2. An arbitrator must not consider a post-hearing brief or submission that has not been provided to the other party or parties.**

## **B. Award; Disclosure of Terms**

- 1. An arbitrator must ensure that any final award is based on as complete a factual and legal record as is feasible.**
- 2. An arbitrator must not disclose a prospective award to any party prior to its simultaneous issuance to all parties. An arbitrator must not explore possible alternative awards unilaterally with one party, unless all parties so agree.**

## **SECTION 7. POST-AWARD CONDUCT**

### **A. Clarification or Interpretation of Awards**

- 1. An arbitrator must not clarify or interpret a final award without the consent of all parties. When all parties consent to a clarification or interpretation, the arbitrator must afford all parties an opportunity to be heard.**
  - a. An arbitrator may correct typographical errors, an evident material miscalculation of figures, an evident material mistake in the description of any person, thing, or property referred to in the award, or an imperfection in a matter of form not affecting the merits of the controversy, and may make corrections required by law, provided all parties have an opportunity to be heard.

### **B. Retaining Remedial Jurisdiction**

- 1. An arbitrator may retain remedial jurisdiction in an award to resolve any questions that may arise over the interpretation, application, or implementation of a remedy. Such retained jurisdiction does not extend to any other part of the award. Any party may request exercise of such retained jurisdiction.**

### **C. Enforcement of Award**

- 1. The arbitrator's responsibility does not extend to the enforcement of an award.**
- 2. An arbitrator must not voluntarily participate in legal enforcement proceedings.**