

National Standards for Serving as an Arbitrator

Purpose

This document summarizes the principal national standards, ethical obligations, qualifications, and best practices for individuals serving as arbitrators in the United States. It is intended for use by attorneys, neutrals, dispute resolution organizations, and prospective arbitrators.

I. Governing Standards

In the United States, arbitrators are generally expected to comply with:

1. The American Arbitration Association (AAA) and American Bar Association (ABA) Code of Ethics for Arbitrators in Commercial Disputes.
2. The Code of Professional Responsibility for Arbitrators of Labor-Management Disputes.
3. The Federal Arbitration Act (FAA).
4. Applicable state arbitration statutes.
5. Rules of the administering organization, such as AAA, JAMS, FINRA, CPR, or a court-annexed arbitration program.
6. Applicable court decisions concerning neutrality, disclosure, due process, and arbitrator misconduct.

Although standards vary by subject matter, the core obligations of an arbitrator are consistent across commercial, labor, consumer, employment, and securities arbitration.

II. Core Qualifications for Serving as an Arbitrator

An individual serving as an arbitrator should possess the following minimum qualifications:

- Demonstrated integrity and impartiality.
- Strong professional reputation.
- Knowledge of arbitration procedure and applicable law.
- Ability to analyze evidence and make reasoned decisions.

- Excellent written and oral communication skills.
- Ability to manage hearings efficiently and fairly.
- Freedom from conflicts of interest.
- Sufficient time and availability to complete the matter promptly.

Many arbitration organizations also require:

- A minimum number of years of professional experience, commonly 10–15 years.
- Professional licensure in law, accounting, engineering, construction, finance, labor relations, or another relevant field.
- Prior experience in litigation, negotiation, mediation, or dispute resolution.
- Completion of approved arbitrator training programs.
- Continuing education in ethics and arbitration practice.

III. Fundamental Ethical Standards

A. Neutrality and Impartiality

An arbitrator must remain neutral and impartial at all times. The arbitrator must not favor either party because of:

- Personal relationships
- Financial interests
- Political or social beliefs
- Prior dealings
- Repeated appointments by a party or law firm
- Race, gender, age, religion, nationality, disability, or other protected status

An arbitrator should avoid both actual bias and the appearance of bias.

Examples of Conduct That Violates Neutrality

- Accepting gifts, favors, or hospitality from a party.
- Discussing the merits of the case privately with one side.

- Making statements that suggest prejudgment.
- Serving despite a significant undisclosed relationship with a party, witness, or attorney.

B. Independence

An arbitrator must act independently from the parties, counsel, employers, and outside organizations. The arbitrator may not permit outside pressure, public opinion, business relationships, or future business opportunities to influence the decision.

C. Competence and Diligence

An arbitrator should accept appointment only when the arbitrator:

- Has the knowledge and skill necessary to hear the matter.
- Can devote sufficient time to the case.
- Is physically and mentally able to perform the assignment.
- Can complete the matter within required deadlines.

An arbitrator should decline appointment when lacking the necessary subject matter expertise.

IV. Disclosure Requirements

Before accepting appointment, and throughout the proceeding, an arbitrator must disclose any circumstance that could reasonably raise questions regarding impartiality or independence.

Required disclosures may include:

- Prior representation of a party or attorney.
- Business, financial, or social relationships.
- Prior service as arbitrator, mediator, expert, or consultant involving a party.
- Ownership interests in a party or affiliate.
- Family relationships.
- Significant prior appointments by the same party or law firm.

- Public statements or writings concerning the issues in dispute.

Continuing Duty to Disclose

The obligation to disclose continues throughout the arbitration. If a new conflict arises after appointment, the arbitrator must disclose it immediately.

Failure to disclose can result in:

- Removal from the case
- Vacatur of the award
- Loss of future appointments
- Ethical sanctions
- Civil liability in limited circumstances

V. Confidentiality

Arbitrators must preserve the confidentiality of the proceeding unless disclosure is required by law or authorized by the parties.

Confidential information includes:

- Pleadings and evidence
- Hearing testimony
- Settlement discussions
- Deliberations
- Draft awards
- Final awards, unless publication is authorized

An arbitrator must not:

- Discuss the case with nonparticipants.
- Use confidential information for personal or professional advantage.
- Retain or disclose sensitive information after the matter concludes.

VI. Prohibition on Ex Parte Communications

Except where expressly permitted by applicable arbitration rules, an arbitrator may not engage in ex parte communications with one party without the other party present.

Improper ex parte communication includes:

- Private telephone calls
- Email communications about the merits
- Side meetings
- Receiving documents from one party without copying the other side

Permissible administrative communications may include scheduling, logistics, and procedural matters, provided both parties receive notice.

VII. Duty to Conduct a Fair Hearing

An arbitrator must provide all parties with a full and fair opportunity to be heard.

The arbitrator should:

- Permit each side to present evidence and argument.
- Treat all parties equally.
- Allow reasonable cross-examination.
- Rule consistently on objections and procedural issues.
- Maintain order and professionalism.
- Avoid unnecessary delay or expense.

The arbitrator may control the proceeding by:

- Limiting cumulative evidence
- Establishing schedules
- Setting reasonable time limits
- Issuing procedural orders

However, the arbitrator must not deny a party a meaningful opportunity to present its case.

VIII. Hearing Management Standards

An arbitrator should manage the case in a manner that is:

- Efficient
- Fair
- Transparent
- Timely

Best practices include:

1. Holding a preliminary conference.
2. Establishing a scheduling order.
3. Clarifying the issues and claims.
4. Setting deadlines for discovery and motions.
5. Confirming hearing procedures in advance.
6. Maintaining an organized record.
7. Issuing decisions promptly.

A well-managed arbitration should avoid unnecessary delay, excessive discovery, and repeated continuances.

IX. Award Writing Standards

An arbitrator must issue an award that is:

- Timely
- Clear
- Final
- Within the scope of the submission

The award should include:

- Identification of the parties

- Summary of claims and defenses
- Findings of fact, if required
- Conclusions of law, if required
- Relief awarded or denied
- Signature and date

An arbitrator must not:

- Decide issues not submitted by the parties.
- Include personal attacks or improper commentary.
- Delay issuance of the award without justification.

A reasoned award should explain the basis of the decision sufficiently for the parties to understand the outcome.

X. Special Standards by Type of Arbitration

A. Commercial Arbitration

Commercial arbitrators must comply with the AAA–ABA Code of Ethics and should possess expertise in the industry or legal field involved.

B. Labor Arbitration

Labor arbitrators are governed by the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes and should maintain strict neutrality between labor and management.

C. Consumer Arbitration

Consumer arbitrators should take additional care to ensure:

- Equal access to the process
- Plain-language procedures
- Protection against unfair surprise
- Balanced treatment where one party has greater resources

D. Employment Arbitration

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Employment arbitrators should ensure the employee has a meaningful opportunity to present claims and should avoid procedures that unfairly limit discovery or remedies.

E. Securities Arbitration

Arbitrators serving in securities matters must comply with FINRA qualification and training requirements, including specific rules concerning disclosure and industry expertise.

XI. Disqualification and Removal

An arbitrator should withdraw or be removed if:

- A conflict of interest exists.
- The arbitrator cannot remain impartial.
- The arbitrator lacks competence.
- The arbitrator becomes unavailable.
- A party successfully challenges the appointment.

Grounds for challenge often include:

- Evident partiality
- Failure to disclose conflicts
- Misconduct
- Refusal to hear material evidence
- Bias or prejudice

Courts may vacate an award when serious misconduct or evident partiality is shown.

XII. Continuing Education and Professional Development

To maintain professional standards, arbitrators should complete ongoing education in:

- Ethics
- Arbitration procedure
- Evidence

- Award writing
- Diversity, equity, and inclusion
- Technology and virtual hearings
- Relevant substantive law

Many organizations require annual or periodic continuing education to remain on an arbitrator roster.

XIII. Technology and Virtual Hearing Standards

When conducting remote or hybrid proceedings, an arbitrator should:

- Use secure videoconferencing platforms.
- Protect confidentiality and data security.
- Confirm participant identity.
- Ensure all parties have equal access to technology.
- Maintain a clear record of proceedings.
- Establish protocols for exhibits, witnesses, and interruptions.

The arbitrator should avoid using unsecured devices, public networks, or unauthorized recordings.

XIV. Best Practices Checklist for Arbitrators

Before Accepting Appointment:

- Review the case for conflicts.
- Confirm qualifications and availability.
- Make all required disclosures.
- Review applicable rules.

During the Proceeding:

- Remain neutral and professional.

- Avoid ex parte communications.
- Treat parties equally.
- Maintain confidentiality.
- Manage the hearing efficiently.

At Conclusion:

- Issue a timely and reasoned award.
- Preserve confidentiality.
- Dispose of records appropriately.
- Disclose any post-award issues if necessary.

XV. Conclusion

Serving as an arbitrator requires more than subject matter expertise. An arbitrator must demonstrate impartiality, integrity, competence, confidentiality, and respect for due process. National standards are designed to preserve public confidence in arbitration and to ensure that every party receives a fair and neutral hearing.

The most important principle is that an arbitrator must not only be fair, but must also appear fair to all parties involved.