

SMA Code of Ethics

Arbitral Ethics

Dick Corwin, SMA member

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“Arbitration: A better resolution”

Sam Houston Hotel

In general, why ethics for arbitration?

- Encourage confidence in the arbitral process
- Accountability
- Guidance
- Impartiality – Independent judgment
- Propriety (e.g., communications with parties)
- Expectations and constraints
- Protecting arbitral parties

Why ethics for arbitration, in particular?

- Considerable autonomy
- Deference to arbitrator decisions
- No licensing
- Fundamentally private process
- Relationships

“We should . . . be even more scrupulous to safeguard the impartiality of arbitrators than judges, since the former have completely free rein to decide the law as well as the facts and are not subject to appellate review” 393 U.S. 145, 149 (1968)

Typical topics of arbitral ethic codes?

- Conflicts of interest
- Favoritism or “influence”
- Communication
- Confidentiality
- Proper discharge of responsibilities
- Competence

An issue:

- Enforcement*

*signing

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- 2 [O]bserve the highest standards of personal and professional conduct, free from impropriety or the appearance of impropriety
- 3 Before accepting appointment an arbitrator may only inquire as to the general nature of the dispute and the names of the parties and their affiliates involved [and] shall not participate in a proceeding in which he has allowed others to inform him of details of the case . . . prior to the first hearing
- 3 [A]n Arbitrator [may not act] in any proceeding in which he, his associates, or his relatives have a financial interest, or where his association with either the parties, counsel or other Arbitrators may give rise to an inference of bias without making a full disclosure of the relationship (see SMA rules, §9)
- 5 SMA members shall [not] confer with the party or counsel appointing him regarding the selection of a third Arbitrator
- 6 [A]ll communications between the disputants or their counsel and the Panel shall be conducted through the Chairman
- 7 “[C]ompromise for compromise sake” should be avoided in favor of objective adjudication
- 9 No discussion on the merits of the case is permitted at any time between Arbitrators unless all three are present
- 10 In case of complaint of misconduct of a[n] [SMA] member, [the member] shall have the right of explaining or denying the alleged complaint to the Committee [on Professional Conduct], which shall make such recommendations to the Board of Governors, as it deems advisable. [M]embers agree to abide by the decision of a majority of the Board without right of appeal in any [forum].