



Disclosure and Challenge of an Arbitrator in International Cases

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 International rules require that arbitrators be impartial and that the parties have confidence in their impartiality. The rules require arbitrators to "disclose to the administrator any circumstance likely to give rise to justifiable doubts as to the arbitrator's impartiality or independence." This is also addressed in detail in the AAA's Code of Ethics for Commercial Arbitrators.

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

A. Arbitrators serving on the AAA's board or on any of its advisory 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 serving 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 disclosures by arbitrators, the AAA has adopted the Notice of Appointment form which must be executed by arbitrators 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.

Q. Are there any general principles regarding disclosures?

A. Yes. They are as follows:

1. Although the major burden of disclosure falls on the arbitrator, responsibility to ascertain potentially disqualifying facts also rests on the parties;
2. Every disclosure, no matter how insignificant, should be communicated to the parties;
3. If information received from the arbitrator or another source seems vague or incomplete, further inquiries may be made by the Association 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:

1. Whether the relationship is in the past, present, or anticipated in the future;
2. The nature of the relationship;
3. The duration of relationship (from when to when);
4. Whether business is being conducted directly or indirectly;
5. Whether the disclosed relationship is professional, social, or familial;
6. The extent of contact - daily, weekly, monthly, yearly;
7. 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.);
8. Whether the relationship affects 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 Association regarding the arbitrator's disclosure and are 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 Association will 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 Association will review the parties' written contentions regarding the reaffirmation or removal of the arbitrator and will make a determination. The International rules provide the Association in its sole discretion to make a decision on a challenge of an arbitrator in a given case.

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 Association 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. Under the legal regimes of most countries, as well as under U.S. law, the failure of an arbitrator to properly disclose a relationship with one of the parties, their counsel, or a witness may result in the arbitration award being vacated.

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

A. Contact the case manager assigned to your case. Case managers have the most knowledge about every aspect of your case and are there to assist you throughout the process.