Emerging Issues in Arbitration Ethics

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I. Ethics Requirements and Guidance for Labor and Employment Arbitrators and Practitioners

A. Sources

Arbitration in both the employment and labor contexts is respected as a streamlined, flexible, and fair dispute resolution mechanism, enhanced by the use of decision makers with expertise in the field. The favor with which arbitration is viewed stems from several factors, but arbitration’s ethical underpinnings are an essential element in acceptance by parties and deference from the courts.

The sources of ethical obligations and guidance in arbitration are varied and may depend upon whether labor or employment arbitration is involved, what entity is handling the administration of the arbitration, and in what jurisdiction the case is proceeding.¹ Set forth below is a summary

¹ Definition of Terms: “Employment arbitration,” for purposes of this paper, refers to the arbitration of non-collective-bargaining employment issues, whether the arbitration occurs pursuant to (1) a program in which an employer requires, as a condition of employment, that an employee agree to arbitrate all claims against the employer
of the sources that guide or govern the conduct of arbitrators and, to a more limited extent, the conduct of counsel representing parties in arbitrations:

Χ  The Code of Professional Responsibility for Arbitrators of Labor-Management Disputes. Applicable to arbitrators dealing with rights or grievance arbitration in the collective bargaining context, this Code was developed in 1974, superseding a prior “Code of Ethics and Procedural Standards for Labor-Management Arbitration,” which had been approved in 1951 by the National Academy of Arbitrators (NAA), a committee of the American Arbitration Association (AAA), and representatives of the Federal Mediation and Conciliation Service (FMCS). A Joint Steering Committee composed of representatives from the foregoing organizations drafted the existing Code. It was adopted in 1975, and has been amended a few times since then. One of the most recent amendments related to the question of advertising. In June 2001, the membership of the NAA ratified an amendment to the Code that replaced the prohibition against advertising with a prohibition against only false or misleading advertising. (Also, a change was ratified in June 2000 exempting websites from what then was a proscription against advertising. That language was obviated by the lifting in 2001 of the ban on advertising.) Additional changes were adopted by the NAA on June 6, 2003, as a result of a consent agreement with the Federal Trade Commission, addressed below.

Χ  The Code of Ethics for Arbitrators in Commercial Disputes. This Code was prepared in 1977 by a joint committee consisting of representatives of the American Arbitration Association and the American Bar Association. It then was approved and recommended by both organizations. This Code applies to arbitrators of employment cases that do not arise under collective bargaining agreements. Such cases often involve allegations of statutory discrimination, breach of contract, or torts, and they generally proceed to arbitration pursuant to an arbitration arrangement to which the employee has agreed as part of an individually negotiated contract of employment or to which the employee has been required to agree as a condition of employment.²

²The Code of Ethics for Arbitrators in Commercial Disputes is undergoing review and revision. The ABA Section on Dispute Resolution Section has stated that, “since its promulgation by the ABA and the American Arbitration Association in 1977, the Code of Ethics for Arbitrators in Commercial Disputes has been the definitive statement of ethical principles for American Arbitrators. Recognizing that the 1977 Code had become unresponsive to current concerns and provided inadequate guidance in numerous respects the Arbitration Committee of the Dispute Resolution Section convened a committee including representatives of the Ethics Committee, AAA and CPR Institute for Dispute Resolution.” A draft of the proposed revised Code, Working Draft of The Code of Ethics for

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Jurisdiction-specific rules and standards. Many court-annexed ADR programs have specific standards of ethics, certification procedures, and procedural directives. These systems tend to focus on mediation, but some address general service as a neutral, including arbitration of matters such as employment litigation. See, e.g., ADR Rule 5, Rules of the Georgia Supreme Court (provides that Ethical Standards for Neutrals established by the Georgia Commission on Dispute Resolution on September 28, 1995, be made Appendix C to the Court’s ADR Rules), and Rule 31 of the Tennessee Supreme Court Rules Regarding Alternative Dispute Resolution. Policies set forth in court rules usually are limited to court-annexed arbitration, but California has adopted an extensive combination of standards that have broad application to arbitrators in contractual arbitration, which includes the arbitration employment claims but expressly excludes labor arbitration. Division VI of the Appendix to the California Rules of Court, Ethical Standards for Neutral Arbitrators in Contractual Arbitration. These standards are controversial because of their scope and specificity. In addition, the Revised Uniform Arbitration Act (2000) contains disclosure obligations in Section 12. Further, the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq., and some state arbitration statutes include ethics-based issues within the grounds for vacatur, as addressed below.

In the labor context, many state public-sector boards require arbitrators serving on their panels to comply with the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes. See, e.g., Regulations of the Illinois Department of Labor, Section 110.40 (B).

Provider-specific rules and codes. Most arbitration providers have adopted an ethics code and rules that contain certain ethical obligations. For example, the American Arbitration Association is a party to and requires its arbitrators to adhere to the ethical standards set by the Code of Ethics for Arbitrators in Commercial Disputes and the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes, as applicable. In addition, AAA’s Labor Arbitration Rules and AAA’s National Rules for the Resolution of Employment Disputes (NRRED) address disclosure requirements. See AAA’s NRRED Rule 11 (b) and AAA’s Labor Arbitration Rule 17. Similarly, Section C, Article 9.4 of the CPR Institute for Dispute Resolution’s Program to Resolve Employment Disputes sets forth specific disclosure requirements.

The Federal Arbitration Act and state arbitration laws. The Federal Arbitration Act (FAA), 9 U.S.C. Section 1, et seq., and many state arbitration laws set forth the highly limited statutory grounds upon which a court may vacate an arbitration award. The FAA and many of the state laws provide for vacatur if the challenging party establishes that the award was procured by corruption or fraud or that there was evident partiality on the part of the arbitrator. The FAA, however, does not provide for vacatur of an award procured by corruption or fraud or that there was evident partiality on the part of the arbitrator.

Arbitrators in Domestic and International Arbitrations, was developed in late 2002, and further action is expected in 2003.

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of the arbitrator. The Revised Uniform Arbitration Act (2000), which has been adopted by a few states and is under consideration in several more, provides in Section 23 for vacatur on the same grounds as provided in FAA.

X Model Rules of Professional Conduct and state provisions regarding legal ethics. The Model Rules of Professional Conduct address the conduct of lawyers representing parties in arbitration and, now, to lawyers who serve as third-party neutrals. The Model Rules were substantially revised in 2002, pursuant to the recommendations of the ABA’s Commission on the Evaluation of the Rules of Professional Conduct (“Ethics 2000”). These revisions are addressed in detail below, as are some state authorities.

B. Processes for Enforcement and Guidance

With most of the foregoing sources, questions arise regarding enforcement and guidance. Court-connected systems in some jurisdictions have developed or are developing complaint procedures. These systems, however, tend to focus on mediation. See Rule 10.300 of the Florida Rules of Civil Procedure. For arbitrators functioning in the employment field, a complaint alleging breach of the Code of Ethics for Arbitrators in Commercial Disputes or provider rules could be posed to the provider, but formalized systems for initiating complaints or seeking opinions seldom are found within these entities.

In the field of labor arbitration, the National Academy of Arbitrators (NAA) is the primary caretaker of the Code of Professional Responsibility for Arbitrators of Labor Management Disputes and thus is the provider of guidance through opinion letters. The NAA maintains a complaint or “grievance” procedure which may involve investigation and hearing within the NAA’s Committee on Professional Responsibility and Grievances (CPRG). An established breach of the Code may result in the NAA taking disciplinary action against the arbitrator-member. At its most severe level, discipline may constitute suspension or expulsion from membership. The NAA’s disciplinary reach, however, is limited to its members, of which there are only approximately 550. The NAA admits only experienced arbitrators who perform no advocacy work and maintain established labor arbitration practices.3 Therefore, only a portion of the pool of active labor arbitrators fall within the disciplinary authority of the NAA. Those labor arbitrators whose work is limited or who maintain advocacy connections will not be members and thus will not be subject to the complaint mechanisms offered by the NAA. (Arguably, however, the reach of the NAA may extend to non-members through the admission process. If an applicant were shown to have engaged in violations of the Code, admission might be declined.) For labor arbitrators who are not NAA members, complaints regarding ethical

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3The process by which an applicant for membership is evaluated includes the NAA Membership Committee’s examination of the nature, duration, and volume of the applicant’s labor arbitration practice, verification of the arbitrator’s body of work, review of references from party representatives, and consideration of input from NAA members. Membership is conferred by a two-thirds vote of the Board of Governors. Constitution of the National Academy of Arbitrators, Article V, Section 1 and Bylaws, Article VI, Section 4.
lapses may be submitted to the AAA, FMCS, or other provider entity, such as the state labor boards, many of which have adopted the Code. Such an entity may remove a person from its panel of arbitrators if a violation is shown.

In addition, the ethics committees of some states have opined that a lawyer may be subject to disciplinary action if the state’s code and disciplinary rules are breached by the lawyer-neutral in the course of service as a neutral. Ethics Opinion No. F10 #241, Mississippi Bar (1997). In fact, the New Jersey Advisory Committee on Professional Ethics and the New Jersey Committee on Attorney Advertising concluded in a joint opinion that a lawyer serving as a third party neutral is “acting as a lawyer.” New Jersey Advisory Committee on Professional Ethics Opinion 676 and New Jersey Committee on Attorney Advertising Opinion 18. In addition, counsel could be subject to disqualification or disciplinary action for breaches of legal ethics committed in the course of representing a client in arbitration, but the arbitrator’s role, if any, in such action is not clear. In New York, enforcement of professional ethics through disqualification of counsel is reserved for the judiciary and is outside the arbitrator’s authority. Bidermann Industries Licensing, Inc. v. Avmar NV, 173 A.D.2d 401, 570 N.Y.S.2d 33 (NY App., 1st Dept., 1991). But see Canaan Venture Partners v. Salzman, 1996 Conn. Super. LEXIS 244 (Conn. Sup., Stamford, 1996), and compare Croushore v. Buchanan Ingersoll PC, 32 Pa. D&C 4th 142 (C.P., Allegheny, Pa., 1996, and T & T Builders, Inc. v. Freitag, 1993 Ohio App. LEXIS 83 (Ohio Ct. App., Cuyahoga, 1993).

Finally, breaches of ethics by the arbitrator could lead or contribute to vacatur of an award, although the end result in the particular case affects only the direct interests of the parties and seldom those of the arbitrator. An unfortunate example of an appalling breach of ethics, logic, and good sense which led to vacatur for bias is found in Flexsys America v. Local Union 12610, 88 F. Supp. 2d 600, 164 LRRM 2985 (S. D. W. V., 2000). The actions of counsel or the parties also may lead to vacatur when, for example, the conduct has contributed to the creation of evident bias. See, e.g., Valrose Maui, Inc., v. Maclyn Morris, Inc., 105 F. Supp. 2d 1118 (D. Hawaii, 2000).

In the end, however, the most potent enforcement and monitoring mechanisms for ethical behavior by arbitrators may be found in the selection process and market demand. Arbitrators are selected by the parties, and an arbitrator whose integrity is tarnished will not be able to maintain a career.

II. MODEL RULE REVISIONS APPLICABLE TO LAWYERS SERVING AS OR APPEARING BEFORE EMPLOYMENT AND LABOR ARBITRATORS

A. Introduction
Every lawyer who handles labor or employment arbitrations or who serves as an arbitrator should be familiar with the amendments to the Model Rules of Professional Conduct as developed by The Commission on the Evaluation of the Rules of Professional Conduct (“Ethics 2000”) and adopted by the American Bar Association in 2002. The three primary changes regarding neutral services are: (a) the amendment of Model Rule 1.12, which extends to mediators the restriction on subsequent representation that previously applied only to judges and arbitrators; (b) the addition of a new rule, Model Rule 2.4, “Lawyer Serving As Third-Party Neutral”; and (c) inclusion in Model Rule 1.0 of a definition of “tribunal” which includes “arbitrator.”

The backdrop for these changes is found in the Preamble: A Lawyer’s Responsibilities, which identifies the different roles attorneys play. Expanding beyond the representational, client-centered analysis that was characteristic of the pre-Ethics 2000 version of the Model Rules, the Preamble as amended now recognizes that, “[i]n addition to these representational functions, a lawyer may serve as a third-party neutral, a nonrepresentational role helping the parties to resolve a dispute or other matter.”

B. Major Changes in the Model Rules of Professional Conduct

1. Background

As noted above, the amended Preamble to the Model Rules represents a major change because it formally recognizes that lawyers may function not just as client representatives and advisors but also as third-party neutrals. The rule changes that follow have incorporated that concept in a minimalistic way, as opposed to the more sweeping changes that had been recommended by the CPR-Georgetown Commission on Ethics and Standards for ADR. Some flaws exist, and they largely are attributable to an apparent failure of the drafters to recognize (a) the substantial and critical distinctions between arbitration and mediation and, in some cases, (b) the traditions and underpinnings of labor and employment arbitration as distinct from other forms of arbitration. Each rule change is addressed below.

2. Rule 1.12: Former Judge, Arbitrator, Mediator or Other Third-Party Neutral

a. Overview

The Comments to this Rule indicate that the revisions are viewed as simply extending to mediators and “other third-party neutrals” the restrictions which previously had existed only for judges and arbitrators. The realignment of language, however, has resulted in a change that relates to arbitrators’ law clerks.
b. Text

The changes in Model Rule 1.12 are as follows:

4 The amendments to the Model Rules became final in August 2002. The text portions reprinted in this paper, however, include the editing marks to assist the reader in identifying the changes in the rules.
RULE 1.12: FORMER JUDGE OR, ARBITRATOR, MEDIATOR OR OTHER THIRD-PARTY NEUTRAL

(a) Except as stated in paragraph (d), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer, arbitrator or law clerk to such a person or as an arbitrator, mediator or other third-party neutral, unless all parties to the proceeding give informed consent after consultation, confirmed in writing.

(b) A lawyer shall not negotiate for employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially as a judge or other adjudicative officer or as an arbitrator, mediator or other third-party neutral. A lawyer serving as a law clerk to a judge, or other adjudicative officer or arbitrator may negotiate for employment with a party or lawyer involved in a matter in which the clerk is participating personally and substantially, but only after the lawyer has notified the judge, or other adjudicative officer or arbitrator.

(c) If a lawyer is disqualified by paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in the matter unless:

1. the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and
2. written notice is promptly given to the parties and any appropriate tribunal to enable them to ascertain compliance with the provisions of this rule.

(d) An arbitrator selected as a partisan of a party in a multi member arbitration panel is not prohibited from subsequently representing that party.

c. Elimination of Restrictions Regarding Arbitrators’ Law Clerks

A rearrangement of wording in Rule 1.12 (a) and (b) has eliminated arbitrators’ law clerks from the restrictions on subsequent representation or negotiation for employment. The restriction now applies only to law clerks who work for judges and adjudicative officers. The Reporter’s Explanation states, “The term ‘arbitrator’ was moved because arbitrators, like mediators and other third-party neutrals, typically do not have law
clerks.” In many areas of the country, however, there are time-honored apprenticeship relationships or intern systems under which a new or aspiring arbitrator or a law student will assist an established arbitrator in handling case administration and in drafting awards. While these individuals only occasionally are called “law clerks,” many of their responsibilities are similar to those performed by law clerks who work for judges. Similarly, many employment arbitrators maintain practices within law firms and use law clerks, interns, and associates to assist with research and proofreading. (The AAA takes the position that use of such assistance must be disclosed in the arbitrator’s biography and that any intention the arbitrator has to bill for the clerk’s, intern’s, or associate’s time also must be disclosed in the arbitrator’s fee schedule.)

Regardless of the change in the rule and the misguided understanding expressed in the Reporter’s Notes, arbitrators and their law clerks or interns are well advised to adhere to the law-clerk restrictions stated in Model Rule 1.12.

3. Model Rule 2.4: Lawyer Serving as Third-Party Neutral

a. Overview

Model Rule 2.4 is an entirely new rule, reflecting the recognition stated in the Preamble that among the various roles performed by lawyers is service in the nonrepresentational capacity as a third-party neutral. The new rule limits its focus to the lawyer’s obligation to ensure that the role of lawyer-neutral is not confused with that of the lawyer-representative.

b. Text

The new rule states as follows:

5 The Code of Professional Responsibility for Arbitrators of Labor Management Disputes, Section 2(H)(a), permits such arrangements in labor arbitration by allowing the arbitrator, without prior consent of the parties, to “use the services of an assistant for research, clerical duties, or preliminary drafting under the direction of the arbitrator, which does not involve the delegation of any decision-making function.” Where the labor arbitrator may wish to delegate decision-making functions, he or she is permitted by Section 2(H)(b) to “suggest to the parties an allocation of responsibility between the arbitrator and an assistant or associate,” but the arbitrator must not exert pressure on the parties to accept such a suggestion. The former system is used often, the latter seldom.

6 An arbitrator using such services must exercise caution to ensure that he or she is not delegating any portion of the decision-making function. The Code of Ethics for Arbitrators in Commercial Disputes provides in Canon V. C that “[a]n arbitrator should not delegate the duty to decide to any other person.”
RULE 2.4: LAWYER SERVING AS THIRD-PARTY NEUTRAL

(a) A lawyer serves as a third-party neutral when the lawyer assists two or more persons who are not clients of the lawyer to reach a resolution of a dispute or other matter that has arisen between them. Service as a third-party neutral may include service as an arbitrator, a mediator or in such other capacity as will enable the lawyer to assist the parties to resolve the matter.

(b) A lawyer serving as a third-party neutral shall inform unrepresented parties that the lawyer is not representing them. When the lawyer knows or reasonably should know that a party does not understand the lawyer's role in the matter, the lawyer shall explain the difference between the lawyer's role as a third-party neutral and a lawyer's role as one who represents a client.

c. Highlights and Concerns

i. Definition of Third-Party Neutral

Rule 2.4 defines third-party neutral by stating that a “lawyer serves as a third-party neutral when the lawyer assists two or more persons who are not clients of the lawyer to reach a resolution of a dispute or other matter that has arisen between them.” If the term “arbitrator” were not included in the examples given in the sentence which follows this definition, one would question whether “service as a third-party neutral” as defined in the Model Rules actually includes arbitration, because it is questionable whether an arbitrator “assists” the parties in resolving a matter or whether the arbitrator just resolves it.

Of further concern is the Reporter’s Explanation which goes a step beyond the concept of assistance and adds that the assistance is “at the request of the parties.” The language may not be problematic, but it lacks precision as applied to both arbitration and mediation. Arbitration occasionally may take place not at the request of both parties but upon the demand of one and an administrative appointment by a provider entity or an order from a court. Similarly, mediations under certain court plans are mandatory and, through some court plans and agency mediations such those conducted by some EEOC offices, the mediator is assigned, not selected. “Request” thus seems imprecise in this context.

ii. Obligation of Lawyer to Explain Role

The concerns leading to Rule 2.4(b) arose primarily in the context of mediation, where the blurring of the roles of legal advisor and neutral may occur, even with represented parties. Nonetheless, in the realm of arbitration, this rule is wise in its application to situations involving
arbitrations with unsophisticated unrepresented parties. Indeed, even before this rule was adopted, lawyer-arbitrators who handled employment cases with unrepresented parties commonly took steps to ensure that unrepresented parties understood that, even though the arbitrator was a lawyer, he or she was not functioning as an advocate for or representative of either party and was not able to provide legal advice. Even after unrepresented parties have heard and acknowledged this disclaimer, they often nevertheless press for legal advice from the arbitrator, whom they perceive to be a source of wisdom and knowledge.

While the principle embodied in Model Rule 2.4(b) is sound, the inflexibility of the rule may make it ill suited for application in labor and employment arbitration. Very often in both labor and employment arbitration, a party may not have legal representation but may be highly sophisticated and experienced with the forum and the law. In such cases, a required disclaimer of this nature easily would seem ludicrous or, worse, could be misconstrued in those labor-relations circles in which efforts are being taken to keep labor arbitration from becoming “overly legalized.” In employment arbitration, a sophisticated but terminated CEO may handle his or her own breach of employment contract arbitration and the Senior Vice President for Administration who has handled numerous prior arbitrations may be presenting the case for the employer. These individuals are unlikely to misunderstand the arbitrator’s role and, again, the disclaimer, which provides for no use of discretion by the arbitrator in determining whether the disclaimer is necessary, begins to seem ridiculous.

4. Arbitrator Included within Definition of Tribunal: Duty of Candor to the Arbitrator

Model Rule 1.0: Terminology adds a definition of “tribunal” which includes arbitration. Specifically, Rule 1.0(m) reads as follows:

(m) "Tribunal" denotes a court, an arbitrator in a binding arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter.

As a result, therefore, the principles of Rule 3.3, Duty of Candor Toward the Tribunal, extend to the arbitrator. Accordingly, the following obligations apply to the attorney representing a client in arbitration:

(a) A lawyer shall not knowingly:
(1) make a false statement of material fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client;

(3) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(4) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer’s client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(b) (c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

(e) A lawyer may refuse to offer evidence that the lawyer reasonably believes is false.

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

III. DISCLOSURE OBLIGATIONS OF LABOR AND EMPLOYMENT ARBITRATORS

A. Importance of Arbitral Disclosures
Employment and labor arbitrators have significant obligations regarding the disclosures that they must make to the parties and counsel. This obligation is based not only on the necessity of ensuring that the arbitrator has no direct interest in the outcome of the proceeding and that there is no appearance of bias but also on the importance of the parties’ right to make an informed selection of their decision maker. Indeed, choice of decision maker is one of the grand, albeit often unspoken, advantages of arbitration. The parties generally are free to seek an arbitrator who has specialized knowledge, attributes, or experience and to avoid those who possess certain characteristics or connections. Such considerations in the selection process are fully appropriate and help to maximize the level of satisfaction with the process. Thus, disclosure of background and of those connections that might raise doubt about fairness or fitness is imperative to the protection of the process.

When selecting arbitrators, parties have access to formal and informal sources of information about the candidates. Among the most important of the formal sources of information is what the arbitrator says about himself or herself in the official biography maintained by the provider agency. Arbitrators usually are required by the provider entities to place certain information, such as current employment, in their biographies. In addition, however, when an arbitrator learns that he or she has been selected to serve, the arbitrator has an obligation to advise the parties of any connections specific to the parties or the counsel which might be perceived as conflicts of interest or might taint the appearance of impartiality. Such disclosures, noted the court in *Parks v. Sombke*, 127 Md. App. 245, 732 A.2d 907 (Cir. Ct., Calvert Cty, MD., 1999), give complete effect to the right of the parties to make a fully informed choice of decision maker. These general obligations and goals are the same regardless of the type of arbitration being conducted.

Different codes, rules, and traditions, however, apply in labor as compared to employment arbitration, and the scope of matters subject to disclosure and the means by which the disclosures are made differ in some significant ways. Regardless of the nature of the arbitration, arbitrators are well advised to be liberal in the information they offer the parties when nominated or selected to serve. It often is difficult to assess what a party may view as indicating potential partiality or impairing neutrality. Attention to the broad range of matters that may affect the appearance of impartiality thus is essential to protect the integrity and acceptability of the process, whether it takes place in the labor or the employment context.

**B. Labor Arbitration**

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7In fact, when a labor or employment case is administered by the AAA, the arbitrator’s oath is accompanied by the arbitrator’s statement of whether he or she has any matters to disclose. If there are such matters, the arbitrator communicates the disclosure in writing to AAA, and AAA conveys the information to the parties. This spares the arbitrator from knowledge of the source of an objection to continued service or of any requests for elaboration. It also spares the parties from the awkwardness of having to respond directly to the arbitrator about reservations that may arise from a disclosure.

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Labor arbitrators’ disclosure obligations are set forth in the *Code of Professional Responsibility for Arbitrators of Labor-Management Disputes* as well as principles of law, the contracts under which they serve, and, of course, personal ethics. Rule 2 (B) of the *Code of Professional Responsibility for Arbitrators of Labor-Management Disputes* provides as follows:

**B. Required Disclosures**

1. Before accepting an appointment, an arbitrator must disclose directly or through the administrative agency involved, any current or past managerial, representational, or consultative relationship with any company or union involved in a proceeding in which the arbitrator is being considered for appointment or has been tentatively designated to serve. Disclosure must also be made of any pertinent pecuniary interest.

   a. The duty to disclose includes membership on a Board of Directors, full-time or part-time service as a representative or advocate, consultation work for a fee, current stock or bond ownership (other than mutual fund shares or appropriate trust arrangements) or any other pertinent form of managerial, financial or immediate family interest in the company or union involved.

2. When an arbitrator is serving concurrently as an advocate for or representative of other companies or unions in labor relations matters, or has done so in recent years, such activities must be disclosed before accepting appointment as an arbitrator.

An arbitrator must disclose such activities to an administrative agency if on that agency's active roster or seeking placement on a roster. Such disclosure then satisfies this requirement for cases handled under that agency's referral.

   a. It is not necessary to disclose names of clients or other specific details. It is necessary to indicate the general nature of the labor relations advocacy or representational work involved, whether for companies or unions or both, and a reasonable approximation of the extent of such activity.

   b. An arbitrator on an administrative agency's roster has a continuing obligation to notify the agency of any significant changes pertinent to this requirement.
c. When an administrative agency is not involved, an arbitrator must make such disclosure directly unless the arbitrator is certain that both parties to the case are fully aware of such activities.

3. An arbitrator must not permit personal relationships to affect decision-making.

Prior to acceptance of an appointment, an arbitrator must disclose to the parties or to the administrative agency involved any close personal relationship or other circumstance, in addition to those specifically mentioned earlier in this section, which might reasonably raise a question as to the arbitrator's impartiality.

a. Arbitrators establish personal relationships with many company and union representatives, with fellow arbitrators, and with fellow members of various professional associations. There should be no attempt to be secretive about such friendships or acquaintances but disclosure is not necessary unless some feature of a particular relationship might reasonably appear to impair impartiality.

4. If the circumstances requiring disclosure are not known to the arbitrator prior to acceptance of appointment, disclosure must be made when such circumstances become known to the arbitrator.

5. The burden of disclosure rests on the arbitrator. After appropriate disclosure, the arbitrator may serve if both parties so desire. If the arbitrator believes or perceives that there is a clear conflict of interest, the arbitrator should withdraw, irrespective of the expressed desires of the parties.

Disclosure obligations also are addressed within the rules of the various providers. The AAA’s Labor Arbitration Rules, Amended and Effective December 1, 2002, are among the most well known and often are adopted by the parties even when their cases are not administered through the AAA. AAA’s Rule 17 provides as follows:

No person shall serve as a neutral arbitrator in any arbitration under these rules in which that person has any financial or personal interest in the result of the arbitration. Any prospective or designated neutral arbitrator shall immediately disclose any circumstance likely to affect impartiality,
including any bias or financial or personal interest in the result of the arbitration. . . .

Upon objection of a party to the continued service of a neutral arbitrator, the AAA, after consultation with parties and the arbitrator shall determine whether the arbitrator should be disqualified and shall inform the parties of its decision, which shall be conclusive.

In functioning under these rules and the Code of Professional Responsibility for Arbitrators in Labor-Management Disputes, the question for the labor arbitrator often is whether a particular connection might be “likely to affect impartiality” or “might reasonably appear to impair impartiality.” While the arbitrator knows the limits of his or her ability to disregard connections, the question of appearance is more difficult to assess. There is no dispute within the labor relations community about the obligation of an arbitrator to disclose past employment by a party or counsel, regardless of how remote in time, and any financial interest, such as the ownership of stock in a corporate employer. It is in the area of personal and professional contacts, however, that some debate arises.

A general rule by which all arbitrators should function is that, if a circumstance is such that the arbitrator thinks perhaps a disclosure should be made, then he or she probably should make the disclosure and sleep well for having done so. The labor-relations community, however, is relatively small and, in many regions, professionally interactive and congenial. With those characteristics sometimes arises a general expectation that everyone knows everyone else and is aware of nearly all the professional, and even personal, connections that may exist. In these communities, it arguably may become absurd to disclose certain organizational contacts, such as when an arbitrator and counsel both serve on the executive committee of a section of a bar association. In fact, the Rule 2(B)(2) of the Code, cited above, indicates that the listing by the arbitrator of certain items on the biography on file with the administering agency may be sufficient disclosure. When a direct connection is present, however, it is advisable for the labor arbitrator to make a specific written disclosure upon selection rather than assuming that the parties or counsel have reviewed the biography.

Rule 2(B)(3) of the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes addresses personal relationships developed through professional organizations and provides that “disclosure is not necessary unless some feature of a particular relationship might reasonably appear to impair impartiality.” A pertinent inquiry, however, addresses whose perception is being assessed. In view of that concern, it is better to err on the side of full, even excessive, disclosure. Arbitrators and counsel must remember that those who may be most directly affected by the proceeding (i.e., the grievant, the supervisor, the department head, etc.) usually are not part of the professional labor relations community and may not understand an arbitrator’s familiarity with counsel unless it is explained to them and they are reassured by their own representatives.
Hence, disclosure by the arbitrator followed by the attorney’s discussion of the disclosure with the client will help to protect the essential appearance of fairness which engenders broad faith in the process and acceptance of its outcome.

Indeed, the Supreme Court in *Commonwealth Coatings Corp. v. Continental Casualty Co.*, 393 U.S. 145, 89 S. Ct. 337, 21 L. Ed. 2d 301 (1968), advised that arbitrators should err on the side of disclosure. Although the Court was addressing financial and business relationships in the commercial context, the following passage from Justice White’s concurring opinion in *Commonwealth Coatings* nonetheless is apt:

> And it is far better that the relationship be disclosed at the outset, when the parties are free to reject the arbitrator or accept him with knowledge of the relationship and continuing faith in his objectivity, than to have the relationship come to light after the arbitration, when a suspicious or disgruntled party can seize on it as a pretext for invalidating the award.

Even taking a very broad view of disclosure in the labor context, it is unlikely that parties and arbitrators would feel that an arbitrator is obligated to disclose the number and nature of prior cases he or she has had with any of the parties or their counsel or the fact that a considerable volume of the arbitrator’s practice is derived from one of the parties or its law firm. In fact, Formal Advisory Opinion No. 22 (1991) by the NAA’s Committee on Professional Responsibility and Grievances states as follows:

> Previous or current service as a neutral arbitrator for a particular employer and/or union is not a relationship requiring disclosure under the Code. Absent some personal relationship or other special circumstance mandating disclosure, such service is not a “circumstance . . . which might reasonably raise a question as to the arbitrator’s impartiality.”


By contrast, disclosures of this nature are specifically and wisely required in the employment context, as addressed in the next section.

**C. Employment Arbitration**

1. **Standards**
The arbitrator’s obligation to disclose is more specific in the employment context and is
governed by the Code of Ethics for Commercial Arbitration, certain state requirements,8 and
provider rules such as the AAA’s National Rules for the Resolution of Employment Disputes.
Within the employment context, some of the participants are likely to have had minimal
exposure to the process and are less familiar with the reputations of various arbitrators. In
employment arbitration arising under condition-of-employment plans, the employee may be
highly suspicious of both the process and the players. Therefore, full and expanded disclosure
becomes a critical element of the right to make an informed choice of arbitrator and is essential
to enhance post-award satisfaction with the process.

In this regard, Rule 11 of AAA’s NRRED provides as follows:

8California has adopted very strict standards that apply to employment, but not to labor, arbitrators. Division VI of
the Appendix to the California Rules of Court, Ethical Standards for Neutral Arbitrators in Contractual Arbitration.
b. Standards of Disclosure by Arbitrator

Prior to accepting appointment, the prospective arbitrator shall disclose all information that might be relevant to the standards of neutrality set forth in this Section, including but not limited to service as a neutral in any past or pending case involving any of the parties and/or their representatives or that may prevent a prompt hearing.

Under this rule, it is expected that the arbitrator will disclose all prior cases with any of the parties, their counsel, or their counsel’s law firms.

Arbitrators of employment disputes also are governed by the Code of Ethics for Arbitrators in Commercial Disputes, approved in 1977 by the AAA and a special committee of the ABA. Canon II provides, “An arbitrator should disclose any interest or relationship likely to affect impartiality or which might create an appearance of partiality or bias.” This is similar to the labor arbitrator’s obligation under the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes, which requires disclosure of relationships or circumstances that “might reasonably raise a question as to the arbitrator’s impartiality.” The Code of Ethics for Arbitrators in Commercial Disputes provides greater elaboration and more specificity, however, in the following provisions:

Introductory Note

This code reflects the prevailing principle that arbitrators should disclose the existence of interests or relationships that are likely to affect their impartiality or that might reasonably create an appearance that they are biased against one party or favorable to another. These provisions of the code are intended to be applied realistically so that the burden of detailed disclosure does not become so great that it is impractical for persons in the business world to be arbitrators, thereby depriving parties of the services of those who might be best informed and qualified to decide particular types of case. [Footnote quoting Commonwealth Coatings omitted. See discussion above.]

This code does not limit the freedom of parties to agree on whomever they choose as an arbitrator. When parties, with knowledge of a person's interests and relationships, nevertheless desire that individual to serve as an arbitrator, that person may properly serve.

Disclosure

J. Drucker, Arbitrator 20 Ethics in Arbitration, ABA 2003

A. Persons who are requested to serve as arbitrators should, before accepting, disclose

1. any direct or indirect financial or personal interest in the outcome of the arbitration;

2. any existing or past financial, business, professional, family or social relationships which are likely to affect impartiality or which might reasonably create an appearance of partiality or bias. Persons requested to serve as arbitrators should disclose any such relationships which they personally have with any party or its lawyer, or with any individual whom they have been told will be a witness. They should also disclose any such relationships involving members of their families or their current employers, partners or business associates.

B. Persons who are requested to accept appointment as arbitrators should make a reasonable effort to inform themselves of any interests or relationships described in the preceding paragraph A.

C. The obligation to disclose interests or relationships described in the preceding paragraph A is a continuing duty which requires a person who accepts appointment as an arbitrator to disclose, at any stage of the arbitration, any such interests or relationships which may arise, or which are recalled or discovered.

As noted above, the *Code of Ethics for Arbitrators in Commercial Disputes* is undergoing revision, the results of which will be discussed in this ABA session. See footnote 2, above.

**2. Consequences of a Failure to Disclose**

The consequences of a failure to disclose may be dire. Take, as a recent example, a commercial arbitration case in which the lawyer-arbitrator failed to disclose his firm’s representation of the medical group to which the respondent’s expert witness belonged. The failure led the court to note as follows:

The presumptive validity of consensual arbitration awards depends upon the underlying integrity of the arbitration process. The arbitrator’s failure to disclose his relationships . . . deprived the appellees of pertinent information necessary to make a knowledgeable selection of an impartial arbitrator. The appellees were
entitled to make an independent decision as to whether they would accept the arbitrator, in spite of his previous affiliations.


Still, vacatur on nondisclosure grounds is relatively rare. As stated in Matter of Atlantic Rayon Corp., 277 App. Div. 554, 100 N.Y.S. 2d 849 (1st Dept., 1950), “Courts are loath to sustain belated claims of disqualification after an adverse award.” Even where the courts find that the arbitrator should have made a disclosure, any presumption of evident partiality often will be overcome by an indication that the connection did not create or would not have created actual bias. See Drinana v. State Farm Mutual Automobile Insurance Co., 153 Ill. 2d 207, 606 N.E. 2d 1181 (Ill, 1992); DeVore v. IHC Hospitals, Inc., 884 P. 2d 1246 (Utah, 1994). Courts have recognized that a given circumstance or relationship may be too trivial to require disclosure and, also, that open declaration or public knowledge of the circumstances or relationship might negate the necessity to disclose. In St. Paul Insurance v. Lusis, 6 Wn. App. 205, 492 P.2d 575 (Wash., 1971), the court applied the latter principle in denying vacatur when an arbitrator failed to disclose his membership on the board of governors of a trial attorneys’ group and his service on that organization’s board with one of respondent’s attorneys.

3. The Continuing Duty to Disclose

The duty to disclose continues throughout the proceeding. In the relatively small worlds of employment and labor law, arbitrators and counsel must be aware that disclosable events or relationships may arise from communications regarding other, unrelated cases. In Valrose Maui, Inc., v. Maclyn Morris, Inc., 105 F. Supp. 2d 1118 (D. Hawaii, 2000), after the arbitration hearing, but before the award was issued, Valrose Maui’s attorney spoke with the arbitrator about serving as a mediator in an unrelated matter. After the award was issued, the arbitrator was selected to mediate the unrelated matter. Applying Hawaii law but noting that the analysis would have been the same under the identical language of the Federal Arbitration Act, 19 U.S.C. §§1, et seq., the court found that although there was no intent to influence the arbitrator and that there was no actual bias, the undisclosed ex parte discussion and the appointment as mediator in the unrelated matter nonetheless required a finding of evident bias and a holding of vacatur.
4. California Requirements

No discussion of disclosure would be complete without reference to the newly adopted standards in California. In 2002, the California Judicial Council created standards that impose extensive disclosure obligations upon arbitrators of contractual cases, including employment disputes. *Ethics Standards for Neutral Arbitrators in Contractual Arbitration*, Division VI of the Appendix to the California Rules of Court (2002). The Standards identify a number of connections which, if held by the arbitrator, must be disclosed. Many of these connections also are subject to disclosure if held not only by the arbitrator but also if held by a member of the arbitrator’s immediate family in some instances, the expanded immediate family (including former spouses) in others, and, in still others, the arbitrator’s extended family. The arbitrator’s “extended family” includes his or her great-grandparents and great-grandchildren, aunts and uncles, nieces and nephews, and spouses of each. Under Standard 9, however, the duty to disclose regarding connections held by members of the extended family (and ex-spouses) is fulfilled if the arbitrator inquires of his or her immediate family and any extended family members residing with the arbitrator and confirms in writing to the parties that these inquiries have been made. With this provision, the principles and expected disclosures are not overly onerous and reflect matters about which the parties should be entitled to know. In addition to the familial connections, however, the Standards also impose an obligation upon arbitrators to make disclosures regarding relationships with and practices of provider entities. It is this requirement that is posing the greatest challenge for both arbitrators and provider organizations.

IV. ADVERTISING AND SOLICITATION BY ARBITRATORS

A. Labor Arbitrators: A Brief Saga of the NAA the FTC

Until recently, the *Code of Professional Responsibility for Arbitrators of Labor Management Disputes* prohibited advertising by labor arbitrators. In fact, Opinion Letters by the NAA elaborated on this prohibition, examining and opining on various actions that were considered to be advertising and therefore were violations of the Code. After much debate, however, the National Academy of Arbitrators (NAA) in 2001 voted to delete this prohibition, replacing it with a prohibition against “false or misleading advertising.” *Code of Professional Responsibility for Arbitrators of Labor-Management Disputes*, Section 1(C)(3). (This was preceded in June 2000 by a partial lifting of the ban through an amendment that permitted arbitrators to maintain websites.)

With regard to solicitation, however, the NAA left intact Section 1(C)(4), which provided as follows:

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9 NAA Opinion #16, Advertising and Solicitation (October 29, 1987), NAA Opinion #14, Advertising and Solicitation (June 7, 1986), and NAA Opinion #18, Advertising and Solicitation (May 29, 1988).
(4) An arbitrator must not solicit arbitration assignments.

   a. Solicitation, as prohibited by this section, includes the making of requests for arbitration work through personal contacts with individual parties, orally or in writing.

As a result of a consent agreement that the NAA executed in late 2002 with the Federal Trade Commission (“FTC”), however, the NAA agreed to cease enforcement of the foregoing rule against solicitation and the opinions regarding advertising. The NAA also agreed to revoke the anti-solicitation provisions of the Code, and, after much debate, the NAA membership reluctantly so voted on June 6, 2003.

The FTC had alleged that the restrictions against solicitation operated in restraint of competition, even if solicitation created an appearance of partiality. The NAA had been prepared to defend against the FTC’s complaint as it related to the solicitation bar. (As noted above, the NAA already had revoked its ban on advertising, but formal opinions based upon the prior rule remained on the books, thus leading the FTC to address the issue of advertising in the consent agreement.) The cost of pursuing litigation, however, became daunting for this small organization of only approximately 550 members. Accordingly, the consent agreement was executed and Section 1 (C) of the Code amended to add a new section (C) (2) and (3), as follows:

ARBITRATOR'S QUALIFICATIONS
AND RESPONSIBILITIES TO THE PROFESSION

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 should keep current with principles, practices and developments that are relevant to the arbitrator's field of practice.

2. An arbitrator shall not make false or deceptive representations in the advertising and/or solicitation of arbitration work.

3. An arbitrator shall not engage in conduct that would compromise or appear to compromise the arbitrator's impartiality.
a. Arbitrators may disseminate or transmit truthful information about themselves through brochures or letters, among other means, provided that such material and information is disclosed, disseminated or transmitted in good faith to representatives of both management and labor.

4. An experienced arbitrator should cooperate in the training of new arbitrators.

The consent agreement requires the NAA to cease “regulating, restricting, impeding, declaring unethical, interfering with, or advising against the advertising or publishing by any person of the prices, terms or conditions of sale of Arbitrators’ services or by any organization with which Arbitrators are affiliated.” Under the consent agreement, the NAA is permitted to develop, adopt, and enforce ethical guidelines regarding arbitrator representations and disclosure obligations that would apply when solicitations have taken place. Thus, the NAA also adopted Section 1 (C) (3), which may salvage at least some of the philosophical and ethical underpinnings of the now-defunct solicitation ban.

B. Employment Arbitrators

The Code of Ethics for Arbitrators in Commercial Disputes does not address advertising. With regard to solicitation, however, Canon I (“An Arbitrator Should Uphold the Integrity and Fairness of the Arbitration Process”), Section B provides as follows:

It is inconsistent with the integrity of the arbitration process for persons to solicit appointment for themselves. However, a person may indicate a general willingness to serve as an arbitrator.

Proposed revisions to the Code of Ethics for Arbitrators in Commercial Disputes being considered in late 2002 would allow advertising and promotion when done in a “discreet and professional manner” and which does not: (a) present inaccurate or misleading information, (b) make comparisons with others, (c) include statements about the quality of the arbitrator’s service or the success of his or her practice, or (d) imply “any willingness to accept an appointment otherwise than in accordance with the Code.” The late-2002 proposed revisions to the Code of Ethics for Arbitrators of Commercial Disputes would deem it “inappropriate to solicit appointment as an arbitrator in a particular case.” Canon VIII of the Working Draft, The Code of Ethics for Arbitrators in Domestic and International Commercial Disputes (Revised 2002).
V. SUGGESTIONS FOR DEALING WITH UNREPRESENTED PARTIES

Parties who represent themselves in employment arbitration often pose challenges for both the arbitrator and the opposing counsel. The issue of unrepresented parties is of less concern in labor arbitration, for the non-attorney representatives of unions and employers often are sophisticated and skillful in the presentation of arbitration proceedings and possess a thorough understanding of the process and the contractual principles at issue. By contrast, in employment arbitration, the unrepresented party (usually, but not always, the employee-claimant) often is unfamiliar with the process and with the potentially daunting legal and factual issues. In such cases, interaction with an unrepresented employee-claimant poses a host of ethical dilemmas for both the arbitrator and opposing counsel.

These challenges are recognized in Model Rule of Professional Conduct 2.4(b), which provides that an arbitrator who also is a lawyer must inform the unrepresented party that the lawyer-arbitrator is not a representative of either party. The arbitrator may be obliged to provide an expanded explanation of the difference between the role of legal counsel and the role of the arbitrator if it appears that the party may not fully understand. In such explanations, the arbitrator often must stress that he or she cannot provide legal advice. The arbitrator then must carefully walk the line between explaining the process, which is permissible, and explaining the law, which is not.

Set forth below are some suggested approaches for counsel and arbitrators who are dealing with unrepresented parties in employment arbitration:

- When the arbitration is handled through an administering body, the case administrator may be enlisted to talk with the party about the risks of self representation.

- Counsel and the arbitrator should remain sensitive to cultural and socioeconomic characteristics that may make the unrepresented employee feel marginalized. It may be necessary to discuss vacation schedules, but there seldom is a reason to offer details about yachting in the Aegean.

- Counsel and the arbitrator should try to avoid using legal terms such as “the record,” “de minimis,” and “voir dire” unless it is clear that the unrepresented party is conversant with such terms. The arbitrator should take steps to ensure that the unrepresented party understands the basic labels, such as Claimant and Respondent, that are being used.

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10 See discussion in Section II(B)(3), above, regarding this provision.
• The arbitrator also may find it helpful to explain, during the early pre-hearing phases, the order in which matters will proceed at hearing. Some arbitrators prepare detailed written pre-hearing instructions that outline the entire process.

• Arbitrators and counsel should ensure that they use the same degree of formality with the unrepresented party as with others who are involved in process. Familiarity, even when used with equanimity, can be misconstrued. Therefore, use of surnames may be advisable even for arbitrators who customarily proceed in a more informal manner.

• Arbitrators and counsel should minimize small talk.

• Arbitrators should avoid being in the hearing room with only one party or entering or leaving with anyone associated with the hearing. (This includes the court reporter. Unrepresented parties often do not understand the independence of reporters and view them as being associated with the party by whom they were retained.)

Some parties tend to draw suspicious conclusions from facts and actions that would be unremarkable to those who function regularly in and understand the worlds of arbitration and law. The case of *Drexel Burnham Lambert Inc. v. Pyles*, 701 F. Supp. 217, 1988 U.S. Dist. LEXIS 14030 (ND Ga., 1988), illustrates the problems that may arise from informal interactions in any arbitration setting but especially in cases involving unrepresented parties. In *Pyles*, the claimant was a stockbroker and former attorney representing himself. He sought to vacate the award, alleging that the arbitrators’ impartiality was tainted because, during a break in the hearing, the arbitrators and Drexel’s representatives conversed on subjects unrelated to the arbitration. The stockbroker argued that the arbitrators might have been influenced by the “casual friendly chatting.” The court noted the heavy burden that must be met by the party seeking to vacate an award, applied a very limited approach to bias, and concluded that the circumstances cited by the claimant did not create the “evident partiality” required by law to vacate the award. Even though the effort to vacate failed, the entire bias-based aspect of the proceeding for vacatur could have been avoided had the arbitrators and counsel been more attentive to the conclusions to which someone outside the world of arbitration could jump.
Jacquelin F. Drucker is a full-time arbitrator of employment, labor, and commercial cases. Her practice spans the United States and the Caribbean. Ms. Drucker is listed on the American Arbitration Association’s National Employment Arbitration Roster, the AAA’s Labor Panel, and other major national and local panels. A member of the National Academy of Arbitrators, she serves as a permanent labor arbitrator under dozens of collective bargaining agreements and handles cases in a wide variety of industries. Fifty percent of Ms. Drucker’s practice is devoted to arbitration of employment cases arising under various ADR systems and pursuant to individual employment contracts. Ms. Drucker has arbitrated employment disputes involving claims of all forms of statutory discrimination, alleged breaches of individual employment contracts of executives, sales agents, physicians, attorneys, and other personnel, and claimed breaches of non-compete, trade-secret, and anti-poaching clauses.

Ms. Drucker is on the faculty of Cornell University School of Industrial and Labor Relations and the Cornell Institute on Conflict Resolution, where she teaches programs on employment arbitration, labor arbitration, employment mediation, sexual harassment, and employment law. She was the designer of and lead instructor for the AAA’s 1999/2000 nationwide training program for its Employment Arbitration Panel and is one of four lead trainers for the AAA’s 2002-2003 nationwide advanced employment arbitrator training program. Ms. Drucker recently traveled to The Republic of Panamá to conduct a training program that she developed, at the request of that country’s government, for its employment and labor arbitrators and mediators.

During her 28-year career in employment law and labor relations, Ms. Drucker practiced employment and labor law on the management side, spent several years as a union lobbyist, and, before relocating to New York City in 1990, served as the General Counsel, Vice Chair, and Executive Director of the then newly formed Ohio Employment Relations Board. She was instrumental in the development of Ohio’s collective bargaining law, the formation of its adjudicatory and impasse-resolution board, and the operation of the state’s labor mediation service. While engaged in the private practice of law, Ms. Drucker litigated a variety of employment discrimination claims, handled NLRB matters, and served as counsel to the Governor’s Task Force on Collective Bargaining.

Ms. Drucker has written and lectured extensively on employment and labor law and ADR. She is Editor in Chief of *ADR in Employment Law*, a treatise that is being produced by the American Bar Association and will be published in 2004 by BNA, Inc., and is associate editor of *Discipline and Discharge in Arbitration* (Brand, ed., ABA/BNA, 1998). She is sole author of *Collective Bargaining Law in Ohio* (788 pp, West Publishing, 1993), which frequently is cited by Ohio's highest courts and is regarded as the definitive treatise in the field of labor law and impasse resolution in the state. Her recent articles include “Employment Arbitration: Structure, Law, and Practice,” *2003 National CLE Conference on Labor and Employment Law* (LEI, Inc., 2003); “The Evolving Role of Arbitration in the Workplace,” *University of Louisville 2001 Carl Warns Institute* (2002); “Manifest Disregard of the Law: Why Written ‘Reasoned Awards’ Are Preferred in Employment Arbitration,” *Conflict Management*, Spring 2001 (ABA Litigation Section, ADR Committee). Ms. Drucker also is an Education Director for Interactive Employment Training, Inc.’s CD-ROM, "What Supervisors Need to Know about Sexual Harassment.”

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