

ETHICS IN ADR:
RULES GOVERNING NEUTRALS

PROGRAM OUTLINE

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ETHICS IN ADR: RULES GOVERNING NEUTRALS

I. HISTORY: Very little regulation

II. BACKGROUND:

- A. Motivation for development of regulation
- B. Process
- C. Predicted future developments

III. THE RULES:

A. Neutrality Requirements for Temporary Judges (Judges Pro Tempore):

Contained in CRC Rule 244:

1. Oath and certification (Rule 244(b); see California Code of Judicial Ethics (Division II to Appendix to CRC), Canon 6)
2. Disclosure
3. Procedure for disqualification (CCP Sections 170.1 - 170.5, incorporated by reference in Rule 244)

B. Neutrality Requirements for Arbitrators:

Contained in "Ethics Standards for Neutral Arbitrators in Contractual Arbitration" (Division VI of Appendix to CRC):

1. Inapplicable to:

- (a) "Party" arbitrators (Standard 3(b)(1))
- (b) International, "judicial," attorney-client fee, labor-relations and certain special types of arbitrations (Standard 3(b)(2))

2. Duties:

- (a) General duty re integrity, fairness and impartiality (Standard 5)
- (b) Duty to decline appointment if cannot be impartial (Standard 6) and to disqualify self if unable to continue to be impartial (Standard 10(c))
- (c) Duty to refuse gift, bequest or favor (Standard 11)
- (d) Duties and limitations re future professional relationships or employment (Standard 12)
- (e) Duty to inform self (Standard 9)
- (f) Duties of Disclosure (Standards 7 and 8 - see below)

3. Very extensive **disclosure requirements** (Standard 7)

4. Additional very extensive **disclosure requirements for “consumer arbitrations” administered by a “provider organization”** (Standard 8)

See definitions in Standard 2(d) (“consumer arbitration”) and Standard 2(g) (“provider organization”)

5. Limitations on ex parte communications (Standard 14)

6. Confidentiality (Standard 15)

7. Regulation of compensation (Standard 16)

8. Regulation of Marketing (Standard 17)

See also Code of Judicial Ethics (Division II of Appendix to CRC), Canon 6(D), applicable to court-appointed arbitrators.

C. Neutrality Requirements for Referees:

1. Consent and certification as a part of Order of Appointment (CRC Rules 244.1(a), 244.2(c); see California Code of Judicial Ethics, Canon 6)
2. Required disclosures (Rules 244.1(c), 244.2(e))

D. Neutrality Requirements for Mediators: None as yet adopted

- E. No Enforcement by Commission on Judicial Performance. (Rules of the Commission on Judicial Performance, Rule 138(b); CRC Rule 6.55(b); Rothman, California Judicial Conduct Handbook (West Group 1999), Section 1:33.)

IV. EX PARTE CONTACTS WITH NEUTRAL BY ATTORNEYS PARTICIPATING IN ADR:

- A. In general, ex parte contact with **Temporary Judge, Arbitrator or Referee** prohibited (see Code of Judicial Ethics, Canons 3B(7) and 6(D)(2))

Exceptions (with strict limitations):

1. For scheduling, administrative purposes, or emergencies that do not deal with substantive matters (but re arbitrators, compare Standard 14, Ethics Standards for Neutral Arbitrators in Contractual Arbitration, cited at II,B,5, *supra*).
2. Obtaining expert advice on the law.

- B. Ex parte contact with **Mediator** perfectly permissible

CANON 6

COMPLIANCE WITH THE CODE OF JUDICIAL ETHICS

A. Judges

Anyone who is an officer of the state judicial system and who performs judicial functions, including, but not limited to, a magistrate, court commissioner, referee, court-appointed arbitrator, judge of the State Bar Court, temporary judge,* or special master, is a judge within the meaning of this Code. All judges shall comply with this Code except as provided below.

ADVISORY COMMITTEE COMMENTARY

For the purposes of this Canon, if a retired judge is serving in the assigned judges program, the judge is considered to "perform judicial functions." Because retired judges who are privately retained may perform judicial functions, their conduct while performing those functions should be guided by this Code.

B. Retired Judge Serving in the Assigned Judges Program

A retired judge who has filed an application to serve on assignment, meets the eligibility requirements set by the Chief Justice for service, and has received an acknowledgment of participation in the assigned judges program shall comply with all provisions of this Code, except for the following:

- 4C(2) Appointment to governmental positions
- 4D(2) Participation in business entities and managing investments
- 4E Fiduciary* activities

C. Retired Judge as Arbitrator or Mediator

A retired judge serving in the assigned judges program is not required to comply with Canon 4F of this Code relating to serving as an arbitrator or mediator, or performing judicial functions in a private capacity, except as otherwise provided in the *Standards and Guidelines for Judges Serving on Assignment* promulgated by the Chief Justice.

ADVISORY COMMITTEE COMMENTARY

In California, article VI, section 6 of the California Constitution provides that a "retired judge who consents may be assigned to any court" by the Chief Justice. Retired judges who are serving in the assigned judges program pursuant to the above provision are bound by Canon 6B, including the requirement of Canon

1 4G barring the practice of law. Other provisions of California law, and standards
 2 and guidelines for eligibility and service set by the Chief Justice, further define the
 3 limitations on who may serve on assignment.
 4

5 **D. Temporary Judge*, Referee, or Court-appointed Arbitrator¹**
 6

7 A temporary judge, a person serving as a referee pursuant to Code of
 8 Civil Procedure section 638 or 639, or a court-appointed arbitrator shall comply
 9 only with the following Code provisions:
 10

11 (1) A temporary judge, referee or court-appointed arbitrator shall comply
 12 with Canons 1 [integrity and independence of the judiciary], 2A [promoting
 13 public confidence], 3B(3) [order and decorum] and (4) [patient, dignified, and
 14 courteous treatment], 3B(6) [require lawyers to refrain from manifestations of
 15 any form of bias or prejudice], 3D(1) [action regarding misconduct by another
 16 judge] and (2) [action regarding misconduct by a lawyer], when the temporary
 17 judge, referee or court-appointed arbitrator is actually presiding in a proceeding or
 18 communicating with the parties, counsel, or court personnel while serving in the
 19 capacity of a temporary judge, referee or court-appointed arbitrator in the case.
 20

21 (2) A temporary judge, referee or court-appointed arbitrator shall, from
 22 the time of notice and acceptance of appointment until termination of the
 23 appointment:
 24

25 (a) Comply with Canons 2B(1) [not allow family or other relationships to
 26 influence judicial conduct], 3B(1) [hear and decide all matters unless
 27 disqualified] and (2) [be faithful to and maintain competence in the law], 3B(5)
 28 [perform judicial duties without bias or prejudice], 3B(7) [accord full right to be
 29 heard to those entitled; avoid ex parte communications, except as specified] and
 30 (8) [dispose of matters fairly and promptly], 3C(1)[discharge administrative
 31 responsibilities without bias and with competence and cooperatively], (2)
 32 [require staff and personnel to observe standards of conduct and refrain from
 33 bias and prejudice]and (4) [make only fair, necessary, and appropriate
 34 appointments];
 35

36 (b) Not lend the prestige of judicial office to advance his, her, or another
 37 person's pecuniary or personal interests and not use his or her judicial title in any
 38 written communication intended to advance his, her, or another person's pecuniary
 39 or personal interests, except to show his, her, or another person's qualifications;
 40

¹ Reference should be made to relevant commentary to analogous or individual Canons cited or described in this Canon and appearing elsewhere in this Code.

1 (c) Not personally solicit memberships or donations for religious, fraternal,
2 educational, civic, or charitable organizations from the parties and lawyers
3 appearing before the temporary judge, referee, or court-appointed arbitrator;
4

5 (d) Under no circumstance accept a gift, bequest, or favor if the donor is a
6 party, person, or entity whose interests are reasonably likely to come before the
7 temporary judge, referee, or court-appointed arbitrator. A temporary judge,
8 referee, or court-appointed arbitrator shall discourage members of the judge's
9 family residing in the judge's household from accepting benefits from parties who
10 are reasonably likely to come before the temporary judge, referee, or court-
11 appointed arbitrator.

12
13 (e) Disqualify himself or herself in any proceeding in which disqualification
14 is required by law;
15

16 (f) In all proceedings, disclose in writing or on the record information as
17 required by law, or information that the temporary judge, referee or court-
18 appointed arbitrator believes the parties or their lawyers might consider relevant to
19 the question of disqualification, even where it is believed that there is no actual
20 basis for disqualification; and
21

22 (g) In all proceedings, disclose in writing or on the record membership in
23 any organization that practices invidious discrimination on the basis of race, sex,
24 religion, national origin, or sexual orientation, except for membership in a religious
25 or an official military organization of the United States and membership in a
26 nonprofit youth organization so long as membership does not violate Canon 4A
27 [conduct of extrajudicial activities].
28

29 (3) A temporary judge, referee, or court-appointed arbitrator, from the
30 time of notice and acceptance of appointment until the case is no longer pending in
31 any court, shall not make any public comment about a pending or impending
32 proceeding in which the temporary judge, referee, or court-appointed arbitrator
33 has been engaged, and shall not make any nonpublic comment that might
34 substantially interfere with such proceeding. The temporary judge, referee or
35 court-appointed arbitrator shall require similar abstention on the part of court
36 personnel subject to his or her control. This Canon does not prohibit the following:
37

38 (a) Statements made in the course of the official duties of the temporary
39 judge, referee or court-appointed arbitrator; and
40

41 (b) Explanations for public information about the procedures of the court.
42

1 (4) From the time of appointment and continuing for two years after the
2 case is no longer pending in any court, a temporary judge, referee or court-
3 appointed arbitrator shall under no circumstances accept a gift, bequest, or favor
4 from a party, person, or entity whose interests have come before the temporary
5 judge, referee or court-appointed arbitrator in the matter. The temporary judge,
6 referee or court-appointed arbitrator shall discourage family members residing in
7 the household of the temporary judge, referee or court-appointed arbitrator from
8 accepting any benefits from such parties, persons or entities during the time period
9 stated in this subdivision. The demand for or receipt by a temporary judge, referee
10 or court appointed arbitrator of a fee for his or her services rendered or to be
11 rendered shall not be a violation of this Canon.

12
13 (5) A temporary judge, referee or court-appointed arbitrator shall, from
14 time of notice and acceptance of appointment and continuing indefinitely after the
15 termination of the appointment:

16
17 (a) Comply with Canons 3(B)(11) [no disclosure of nonpublic information
18 acquired in a judicial capacity] (except as required by law);

19
20 (b) Not commend or criticize jurors sitting in a proceeding before the
21 temporary judge, referee or court-appointed arbitrator for their verdict other than
22 in a court order or opinion in such proceeding, but may express appreciation to
23 jurors for their service to the judicial system and the community.

24
25 (6) A temporary judge, referee or court-appointed arbitrator shall comply
26 with Canon 6D(2) until the appointment has been terminated formally or until
27 there is no reasonable probability that the temporary judge, referee or court-
28 appointed arbitrator will further participate in the matter. A rebuttable
29 presumption that the appointment has been formally terminated shall arise if,
30 within one year from the appointment or from the date of the last hearing scheduled
31 in the matter, which ever is later, neither the appointing court nor counsel for any
32 party in the matter has informed the temporary judge, referee or court appointed
33 arbitrator that the appointment remains in effect.

34
35 (7) A lawyer who has been a temporary judge, referee, or court-appointed
36 arbitrator in a matter shall not accept any representation relating to the matter
37 without the informed written consent of all parties.

38
39 (8) When by reason of serving as a temporary judge, referee, or court-
40 appointed arbitrator in a matter, he or she has received confidential information
41 from a party, the person shall not, without the informed written consent of the
42 party, accept employment in another matter in which the confidential information
43 is material.

1
2 *(Canon 6D amended effective March 4, 1999.)*

3
4 **ADVISORY COMMITTEE COMMENTARY**

5 *Any exceptions to the Canons do not excuse a judicial officer's separate*
6 *statutory duty to disclose information that may result in the judicial officer's recusal*
7 *or disqualification.*

8
9 **E. Judicial Candidate**

10
11 **A candidate* for judicial office shall comply with the provisions of**
12 **Canon 5.**

13
14 **F. Time for Compliance**

15
16 **A person to whom this Code becomes applicable shall comply**
17 **immediately with all provisions of this Code except Canons 4D(2) and 4F and**
18 **shall comply with these Canons as soon as reasonably possible and shall do so in**
19 **any event within a period of one year.**

20
21 *Canon 6D amended effective March 4, 1999; previously amended effective April*
22 *15, 1996; adopted effective January 15, 1996.*

23
24 **ADVISORY COMMITTEE COMMENTARY**

25 *If serving as a fiduciary* when selected as a judge, a new judge may,*
26 *notwithstanding the prohibitions in Canon 4F, continue to serve as fiduciary* but*
27 *only for that period of time necessary to avoid adverse consequences to the*
28 *beneficiary of the fiduciary relationship and in no event longer than one year.*
29 *Similarly, if engaged at the time of judicial selection in a business activity, a new*
30 *judge may, notwithstanding the prohibitions in Canon 4D(2), continue in that*
31 *activity for a reasonable period but in no event longer than one year.*

- (d) **[Order unsealing record]** The Attorney General or other prosecuting authority filing a notice of intervention or nonintervention must submit a proposed order indicating the documents that are to be unsealed or to remain sealed.
- (e) **[Case management]** The court, at the request of the parties, or on its own motion, may hold a conference at any time in a False Claims Act case to determine what case management is appropriate for the case, including the lifting or partial lifting of the seal, the scheduling of trial and other events, and any other matters that may assist in managing the case. Cases under the False Claims Act are exempt from rules 201.7 and 212, but are subject to such case management orders as the court may issue.

Rule 243.8 adopted effective July 1, 2002.

Drafter's Notes

2002—See note following rule 243.5.

Rule 243.9. Electronic recordings offered in evidence—transcripts

- (a) **[Transcript of electronic recording]** Unless otherwise ordered by the trial judge, a party offering into evidence an electronic sound or sound-and-video recording must tender to the court and to opposing parties a typewritten transcript of the electronic recording. The transcript must be marked for identification. A duplicate of the transcript, as defined in Evidence Code section 260, must be filed by the clerk and must be part of the clerk's transcript in the event of an appeal. Any other recording transcript provided to the jury must also be marked for identification, and a duplicate must be filed by the clerk and made part of the clerk's transcript in the event of an appeal.

(Subd (a) amended and lettered effective January 1, 2003.)

- (b) **[Transcription by court reporter not required]** Unless otherwise ordered by the trial judge, the court reporter need not take down or transcribe an electronic recording that is admitted into evidence.

(Subd (b) amended and lettered effective January 1, 2003.)

Rule 243.9 amended and renumbered effective January 1, 2003; adopted as rule 203.5 effective July 1, 1988; previously amended effective January 1, 1997.

Rule 244. Temporary judge—stipulation, order, oath, assignment, compensation, and other matters

- (a) **[Stipulation]** Except as provided in rule 1727, the stipulation of the parties that a case may be tried by a temporary judge must be in writing and must state the name and office address of the member of the State Bar agreed upon. It must be submitted for approval to the presiding judge or to the supervising judge of a branch court. This subdivision does not apply to the selection of a court commissioner to act as a temporary judge.

(Subd (a) amended effective July 1, 2001; previously amended and relettered effective July 1, 1993; previously amended effective January 1, 2001.)

- (b) **[Order and oath]** The order designating the temporary judge must be endorsed upon the stipulation, which must then be filed. The temporary judge must take and subscribe the oath of office and certify that he or she is aware of and will comply with applicable provisions of canon 6 of the Code of Judicial Ethics and these rules. The oath and certification must be attached to the stipulation and order of designation, and the case will then be assigned to the temporary judge for trial. After the oath is filed, the temporary judge may proceed with the hearing, trial, and determination of the case.

A filed oath and order, until revoked, may be used in any case in which the parties stipulate to the designated temporary judge. The stipulation must specify the filing date of the oath and order.

This subdivision does not apply to the selection of a court commissioner to act as a temporary judge.

(Subd (b) amended effective July 1, 2001; previously amended and relettered effective July 1, 1993.)

- (c) **[Disclosure to the parties]** In addition to any other disclosure required by law, no later than five days after appointment as a temporary judge or, if the temporary judge is not aware of his or her appointment or of a matter subject to disclosure at that time, as soon as practicable thereafter, a temporary judge must disclose to the parties:

- (1) Any matter subject to disclosure under subdivisions (D)(2)(f) and (D)(2)(g) of canon 6 of the Code of Judicial Ethics; and
- (2) Any significant personal or professional relationship the temporary judge has or has had with a party, attorney, or law firm in the instant case, including the number and nature of any other proceedings in the past 24 months in which the temporary judge has been privately compensated by

a party, attorney, law firm, or insurance company in the instant case for any services, including, but not limited to, service as an attorney, expert witness, or consultant or as a judge, referee, arbitrator, mediator, settlement facilitator, or other alternative dispute resolution neutral.

(Subd (c) adopted effective July 1, 2001.)

- (d) **[Disqualification]** Requests for disqualification of temporary judges are determined as provided in Code of Civil Procedure sections 170.1, 170.2, 170.3, 170.4, and 170.5.

(Subd (d) amended and relettered effective July 1, 2001; adopted effective July 1, 1993, as subd (c).)

- (e) **[Use of court facilities, court personnel, and summoned jurors]** A party who has elected to use the services of a privately compensated temporary judge is deemed to have elected to proceed outside the courthouse, and court facilities, court personnel, or summoned jurors must not be used, except upon a finding by the presiding judge that the use would further the interests of justice. For all matters pending before privately compensated temporary judges, the clerk must post a notice indicating the case name and number as well as the telephone number of a person to contact to arrange for attendance at any proceeding that would be open to the public if held in a courthouse.

(Subd (e) amended and relettered effective July 1, 2001; adopted effective July 1, 1993, as subd (d).)

- (f) **[Order for appropriate hearing site]** The presiding judge or supervising judge, on request of any person or on the judge's own motion, may order that a case before a privately compensated temporary judge must be heard at a site easily accessible to the public and appropriate for seating those who have made known their plan to attend hearings. The request must be by letter with reasons stated and must be accompanied by a declaration that a copy of the request was mailed to each party, to the temporary judge, and to the clerk for placement in the file. The order may require that notice of trial or of other proceedings be given to the requesting party directly. An order for an appropriate hearing site is not grounds for withdrawal of a stipulation.

(Subd (f) amended and relettered effective July 1, 2001; adopted effective July 1, 1993, as subd (e).)

- (g) **[Motion to withdraw stipulation or to seal records; complaint for intervention]** A motion to withdraw a stipulation for the appointment of a

temporary judge must be supported by a declaration of facts establishing good cause for permitting the party to withdraw the stipulation, and must be heard by the presiding judge or a judge designated by the presiding judge. A declaration that a ruling is based on error of fact or law does not establish good cause for withdrawing a stipulation. Notice of the motion must be served and filed, and the moving party must mail or deliver a copy to the temporary judge. If the motion is granted, the case must be transferred to the trial court docket.

A motion to seal records in a cause before a privately compensated temporary judge must be served and filed and must be heard by the presiding judge or a judge designated by the presiding judge. The moving party must mail or deliver a copy of the motion to the temporary judge and to any person or organization who has requested that the case be heard at an appropriate hearing site.

A motion for leave to file a complaint for intervention in a cause before a privately compensated temporary judge must be served and filed, and must be assigned for hearing as a law and motion matter. The party seeking intervention must mail or deliver a copy of the motion to the temporary judge. If intervention is allowed, the case must be returned to the trial court docket unless all parties stipulate in the manner prescribed in subdivision (a) to proceed before the temporary judge.

(Subd (g) amended and relettered effective July 1, 2001; adopted effective July 1, 1993, as subd (f).)

(h) [Compensation] Temporary judges must not be compensated by the parties unless the parties agree in writing on a rate of compensation to be paid by the parties.

(Subd (h) amended and relettered effective July 1, 2001; adopted effective July 1, 1995, as subd (g).)

Rule 244 amended effective July 1, 2001; adopted effective January 1, 1949; previously amended effective April 1, 1962, July 1, 1981, July 1, 1987, July 1, 1993, July 1, 1995, and January 1, 2001.

Drafter's Notes

1981—Rule 244 was amended to substitute the term “temporary judge” in place of the outdated wording “judge pro tempore.”

1987—The council amended rules 244 and 532 to streamline the appointment of temporary judges. The amendments will (1) permit the order designating a temporary judge to be signed by the supervising judge in a branch court, (2) allow a temporary judge to execute a blanket oath, and (3) allow the court to sign a blanket order designating a temporary judge.

1995—On the recommendation of the Civil and Small Claims Standing Advisory Committee, the council amended rules 244 and 532 concerning the compensation of temporary judges. The change was in conformance with recent amendments to Penal Code section 94.

January 2001—These amendments provide an alternative means of obtaining a stipulation in small claims cases. The court must post a conspicuous sign inside or just outside the courtroom accompanied by oral, videotape, or audiotape notification by a court officer on the day of the hearing, stating that the case will be heard by a pro tem judge absent objection.

July 2001—Revised rules 244, 244.1, 244.2, 1604, and 1606 update rules relating to references to correspond to recent legislation; clarify that the reference procedure may not be used to appoint a person to conduct a mediation; enhance enforcement of and compliance with ethical standards applicable to temporary judges, referees, and court-appointed arbitrators; and clarify that courts are not prohibited from compensating temporary judges.

Rule 244.1. Reference by agreement

- (a) **[Reference pursuant to Code of Civil Procedure section 638]** A written agreement for an order appointing a referee pursuant to section 638 of the Code of Civil Procedure must be presented with a proposed order to the judge to whom the case is assigned, or to the presiding judge or supervising judge if the case has not been assigned. The proposed order must state the name, business address, and telephone number of the proposed referee and, if he or she is a member of the State Bar, the proposed referee's State Bar number. If the proposed referee is a former California judicial officer, he or she must be an active or inactive member of the State Bar. The proposed order must bear the proposed referee's signature indicating consent to serve and certification that he or she is aware of and will comply with applicable provisions of canon 6 of the Code of Judicial Ethics and these rules. The written agreement and proposed order must clearly state whether the scope of the reference covers all issues or is limited to specified issues.

(Subd (a) amended effective July 1, 2001.)

- (b) **[Purposes of reference]** A court must not use the reference procedure under Code of Civil Procedure section 638 to appoint a person to conduct a mediation. Nothing in this subdivision is intended to prevent a court from appointing a referee to conduct a mandatory settlement conference or, following the termination of a reference, from appointing a person who previously served as a referee to conduct a mediation.

(Subd (b) adopted effective July 1, 2001.)

(c) **[Disclosure by referee]** In addition to any other disclosure required by law, no later than five days prior to the deadline for parties to file a motion for disqualification of the referee under Code of Civil Procedure section 170.6 or, if the referee is not aware of his or her appointment or of a matter subject to disclosure at that time, as soon as practicable thereafter, a referee must disclose to the parties:

- (1) Any matter subject to disclosure under subdivisions (D)(2)(f) and (D)(2)(g) of canon 6 of the Code of Judicial Ethics; and
- (2) Any significant personal or professional relationship the referee has or has had with a party, attorney, or law firm in the instant case, including the number and nature of any other proceedings in the past 24 months in which the referee has been privately compensated by a party, attorney, law firm, or insurance company in the instant case for any services, including, but not limited to, service as an attorney, expert witness, or consultant or as a judge, referee, arbitrator, mediator, settlement facilitator, or other alternative dispute resolution neutral.

(Subd (c) adopted effective July 1, 2001.)

(d) **[Objections to the appointment]** An agreement for an order appointing a referee does not constitute a waiver of grounds for objection to the appointment under section 641 of the Code of Civil Procedure, but any objection must be made with reasonable diligence. Any objection to the appointment of a person as a referee must be in writing and must be filed and served upon all parties and the referee.

(Subd (d) amended and relettered effective July 1, 2001; adopted effective July 1, 1993, as subd (b).)

(e) **[Use of court facilities and court personnel]** A party who has elected to use the services of a privately compensated referee pursuant to section 638 of the Code of Civil Procedure is deemed to have elected to proceed outside the courthouse; therefore, court facilities and court personnel must not be used, except upon a finding by the presiding judge that the use would further the interests of justice. For all matters pending before privately compensated referees, the clerk must post a notice indicating the case name and number as well as the telephone number of a person to contact to arrange for attendance at any proceeding that would be open to the public if held in a courthouse.

(Subd (e) amended and relettered effective July 1, 2001; adopted effective July 1, 1993, as subd (c).)

- (f) **[Order for appropriate hearing site]** The presiding judge or supervising judge, on request of any person or on the judge's own motion, may order that a case before a privately compensated referee must be heard at a site easily accessible to the public and appropriate for seating those who have made known their plan to attend hearings. The request must be by letter with reasons stated and must be accompanied by a declaration that a copy of the request was mailed to each party, to the referee, and to the clerk for placement in the file. The order may require that notice of trial or of other proceedings be given to the requesting party directly. An order for an appropriate hearing site is not grounds for withdrawal of a stipulation.

(Subd (f) amended and relettered effective July 1, 2001; adopted effective July 1, 1993, as subd (d).)

- (g) **[Motion to withdraw stipulation or to seal records; complaint for intervention]** A motion to withdraw a stipulation for the appointment of a referee must be supported by a declaration of facts establishing good cause for permitting the party to withdraw the stipulation, and must be heard by the presiding judge or a judge designated by the presiding judge. A declaration that a ruling is based on an error of fact or law does not establish good cause for withdrawing a stipulation. Notice of the motion must be served and filed, and the moving party must mail or deliver a copy to the referee. If the motion is granted, the case must be transferred to the trial court docket.

A motion to seal records in a cause before a privately compensated referee must be served and filed and must be heard by the presiding judge or a judge designated by the presiding judge. The moving party must mail or deliver a copy of the motion to the referee and to any person or organization who has requested that the case take place at an appropriate hearing site.

A motion for leave to file a complaint for intervention in a cause before a privately compensated referee must be served and filed, and must be assigned for hearing as a law and motion matter. The party seeking intervention must mail or deliver a copy of the motion to the referee. If intervention is allowed, the case must be returned to the trial court docket unless all parties stipulate in the manner prescribed in subdivision (a) to proceed before the referee.

(Subd (g) amended and relettered effective July 1, 2001; adopted effective July 1, 1993, as subd (e).)

- (h) **[Copies to office of presiding judge]** A copy of the order appointing the referee, the referee's report under Code of Civil Procedure section 643, and

any order of the court concerning the compensation of the referee must be forwarded to the office of the presiding judge of the court. On a monthly basis, the presiding judge must forward copies of these orders and reports to the Reference Research Project at the Administrative Office of the Courts.

(Subd (h) adopted effective July 1, 2001.)

Rule 244.1 amended effective July 1, 2001; adopted effective July 1, 1993.

Drafter's Notes:

2001—See note following rule 244.

Rule 244.2. Reference by order

- (a) **[Motion for reference pursuant to Code of Civil Procedure section 639]** A motion by a party for the appointment of a referee pursuant to section 639 of the Code of Civil Procedure must be served and filed and must be heard in the department to which the case is assigned or, if the case has not been assigned, in the department in which law and motion matters are heard. The motion must specify the matter or matters to be included in the requested reference.

(Subd (a) amended effective July 1, 2001; previously amended effective January 1, 1996.)

- (b) **[Purposes of reference]** A court may order the appointment of a referee under Code of Civil Procedure section 639 only for the purposes specified in that section. A court must not use the reference procedure under Code of Civil Procedure section 639 to appoint a person to conduct a mediation. Nothing in this subdivision is intended to limit the power of a court to appoint a referee to conduct a mandatory settlement conference in a complex case or to prevent a court, following the termination of a reference, from appointing a person who previously served as a referee to conduct a mediation.

(Subd (b) adopted effective July 1, 2001.)

- (c) **[Reference order]** A discovery referee must not be appointed pursuant to Code of Civil Procedure section 639(a)(5) unless the exceptional circumstances of the particular case require it. A referee must not be appointed at a cost to the parties unless the court can make one of the findings required by Code of Civil Procedure section 639(d)(6). Before an order appointing a referee is issued, the proposed referee must certify that he or she is aware of and will comply with applicable provisions of canon 6 of the Code of Judicial Ethics and these rules.

An order appointing a referee under Code of Civil Procedure section 639, whether based on a motion of a party or on the court's own motion, must be in writing and must address all of the matters required by Code of Civil Procedure section 639. If the referee is a member of the State Bar, the order must include the referee's State Bar number. The referee's certification that he or she is aware of and will comply with applicable provisions of canon 6 of the Code of Judicial Ethics and these rules must be attached to the order. When the issue of economic hardship is raised before the commencement of the referee's services, the court must determine a fair and reasonable apportionment of reference costs. The court may modify its order as to the apportionment and may consider a recommendation by the referee as a factor in determining any modification.

(Subd (c) adopted effective July 1, 2001.)

- (d) **[Selecting the referee]** The court must appoint the referee or referees as provided in Code of Civil Procedure section 640. If the referee is a former California judicial officer, he or she must be an active or inactive member of the State Bar.

(Subd (d) amended and relettered effective July 1, 2001; adopted effective July 1, 1993, as subd (b).)

- (e) **[Disclosure by referee]** In addition to any other disclosure required by law, no later than five days prior to the deadline for parties to file a motion for disqualification of the referee under Code of Civil Procedure section 170.6 or, if the referee is not aware of his or her appointment or of a matter subject to disclosure at that time, as soon as practicable thereafter, a referee must disclose to the parties:

- (1) Any matter subject to disclosure under subdivisions (D)(2)(f) and (D)(2)(g) of canon 6 of the Code of Judicial Ethics; and
- (2) Any significant personal or professional relationship the referee has or has had with a party, attorney, or law firm in the instant case, including the number and nature of any other proceedings in the past 24 months in which the referee has been privately compensated by a party, attorney, law firm, or insurance company in the instant case for any services, including, but not limited to, service as an attorney, expert witness, or consultant or as a judge, referee, arbitrator, mediator, settlement facilitator, or other alternative dispute resolution neutral.

(Subd (e) adopted effective July 1, 2001.)

- (f) **[Objection to reference]** Participation in the selection procedure under subdivision (d) does not constitute a waiver of grounds for objection to the appointment under section 641 of the Code of Civil Procedure, or objection to the rate or apportionment of compensation of the referee, but any objection must be made with reasonable diligence. Any objection to the appointment of a person as a referee must be in writing and must be filed and served upon all parties and the referee.

(Subd (f) amended and relettered effective July 1, 2001; adopted effective July 1, 1993, as subd (c); previously amended effective January 1, 1996.)

- (g) **[Use of court facilities]** A reference ordered pursuant to section 639 of the Code of Civil Procedure entitles the parties to the use of court facilities and court personnel to the extent provided in the order of reference. The proceedings may be held in a private facility, but if so, the private facility must be open to the public upon request of any person.

(Subd (g) amended and relettered effective July 1, 2001; adopted effective July 1, 1993, as subd (d).)

- (h) **[Discovery referees]** When a referee is appointed under section 639(a)(5) of the Code of Civil Procedure to assist in the resolution of a discovery dispute:

- (1) The order appointing the referee must clearly state whether the referee is being appointed for all discovery purposes or only for limited purposes.
- (2) The referee is authorized to set the date, time, and place for all hearings determined by the referee to be necessary, to direct the issuance of subpoenas, to preside over hearings, to take evidence, and to rule on objections, motions, and other requests made during the course of the hearing.

(Subd (h) amended and relettered effective July 1, 2001; adopted effective July 1, 1993, as subd (e).)

- (i) **[Copies to office of presiding judge]** A copy of the order appointing the referee, the referee's report under Code of Civil Procedure section 643, and any order of the court concerning the compensation of the referee must be forwarded to the office of the presiding judge of the court. On a monthly basis, the presiding judge must forward copies of these orders and reports to the Reference Research Project at the Administrative Office of the Courts.

(Subd (i) adopted effective July 1, 2001.)

**DIVISION VI. Ethics Standards for Neutral Arbitrators in Contractual
Arbitration**

Standard 1. Purpose, intent, and construction

- (a) These standards are adopted under the authority of Code of Civil Procedure section 1281.85 and establish the minimum standards of conduct for neutral arbitrators who are subject to these standards. They are intended to guide the conduct of arbitrators, to inform and protect participants in arbitration, and to promote public confidence in the arbitration process.
- (b) For arbitration to be effective there must be broad public confidence in the integrity and fairness of the process. Arbitrators are responsible to the parties, the other participants, and the public for conducting themselves in accordance with these standards so as to merit that confidence.
- (c) These standards are to be construed and applied to further the purpose and intent expressed in subdivisions (a) and (b) and in conformance with all applicable law.
- (d) These standards are not intended to affect any existing civil cause of action or create any new civil cause of action.

Comment to Standard 1

Code of Civil Procedure section 1281.85 provides that, beginning July 1, 2002, a person serving as a neutral arbitrator pursuant to an arbitration agreement shall comply with the ethics standards for arbitrators adopted by the Judicial Council pursuant to that section.

While the grounds for vacating an arbitration award are established by statute, not these standards, an arbitrator's violation of these standards may, under some circumstances, fall within one of those statutory grounds. (See Code Civ. Proc., § 1286.2.) A failure to disclose within the time required for disclosure a ground for disqualification of which the arbitrator was then aware is a ground for vacatur of the arbitrator's award. (See Code Civ. Proc., § 1286.2(a)(6)(A).) Violations of other obligations under these standards may also constitute grounds for vacating an arbitration award under section 1286.2(a)(3) if "the rights of the party were substantially prejudiced" by the violation.

While vacatur may be an available remedy for violation of these standards, these standards are not intended to affect any civil cause of action that may currently exist nor to create any new civil cause of action. These standards are also not intended to establish a ceiling on what is considered good practice in arbitration or to discourage efforts to educate arbitrators about best practices.

Standard 2. Definitions

As used in these standards:

(a) [Arbitrator and neutral arbitrator]

(1) “Arbitrator” and “neutral arbitrator” mean any arbitrator who is subject to these standards and who is to serve impartially, whether selected or appointed:

(A) Jointly by the parties or by the arbitrators selected by the parties;

(B) By the court, when the parties or the arbitrators selected by the parties fail to select an arbitrator who was to be selected jointly by them; or

(C) By a dispute resolution provider organization, under an agreement of the parties.

(2) Where the context includes events or acts occurring before an appointment is final, “arbitrator” and “neutral arbitrator” include a person who has been served with notice of a proposed nomination or appointment.

(b) “Applicable law” means constitutional provisions, statutes, decisional law, California Rules of Court, and other statewide rules or regulations that apply to arbitrators who are subject to these standards.

(c) “Conclusion of the arbitration” means the following:

(1) When the arbitrator is disqualified or withdraws or the case is settled or dismissed before the arbitrator makes an award, the date on which the arbitrator’s appointment is terminated;

(2) When the arbitrator makes an award and no party makes a timely application to the arbitrator to correct the award, the final date for making an application to the arbitrator for correction; or

(3) When a party makes a timely application to the arbitrator to correct the award, the date on which the arbitrator serves a corrected award or a denial on each party, or the date on which denial occurs by operation of law.

- (d) “Consumer arbitration” means an arbitration conducted under a predispute arbitration provision contained in a contract that meets the criteria listed in paragraphs (1) through (3) below. “Consumer arbitration” excludes arbitration proceedings conducted under or arising out of public or private sector labor-relations laws, regulations, charter provisions, ordinances, statutes, or agreements.
- (1) The contract is with a consumer party, as defined in these standards;
 - (2) The contract was drafted by or on behalf of the nonconsumer party; and
 - (3) The consumer party was required to accept the arbitration provision in the contract.
- (e) “Consumer party” is a party to an arbitration agreement who, in the context of that arbitration agreement, is any of the following:
- (1) An individual who seeks or acquires, including by lease, any goods or services primarily for personal, family, or household purposes including, but not limited to, financial services, insurance, and other goods and services as defined in section 1761 of the Civil Code;
 - (2) An individual who is an enrollee, a subscriber, or insured in a health-care service plan within the meaning of section 1345 of the Health and Safety Code or health-care insurance plan within the meaning of section 106 of the Insurance Code;
 - (3) An individual with a medical malpractice claim that is subject to the arbitration agreement; or
 - (4) An employee or an applicant for employment in a dispute arising out of or relating to the employee’s employment or the applicant’s prospective employment that is subject to the arbitration agreement.
- (f) “Dispute resolution neutral” means a temporary judge appointed under article VI, section 21 of the California Constitution, a referee appointed under Code of Civil Procedure section 638 or 639, an arbitrator, a

neutral evaluator, a special master, a mediator, a settlement officer, or a settlement facilitator.

- (g) “Dispute resolution provider organization” and “provider organization” mean any nongovernmental entity that, or individual who, coordinates, administers, or provides the services of two or more dispute resolution neutrals.
- (h) “Domestic partner” means a domestic partner as defined in Family Code section 297.
- (i) “Financial interest” means a financial interest within the meaning of Code of Civil Procedure section 170.5.
- (j) “Gift” means a gift as defined in Code of Civil Procedure section 170.9(1).
- (k) “Honoraria” means honoraria as defined in Code of Civil Procedure section 170.9(h) and (i).
- (l) “Lawyer in the arbitration” means the lawyer hired to represent a party in the arbitration.
- (m) “Lawyer for a party” means the lawyer hired to represent a party in the arbitration and any lawyer or law firm currently associated in the practice of law with the lawyer hired to represent a party in the arbitration.
- (n) “Member of the arbitrator’s immediate family” means the arbitrator’s spouse or domestic partner and any minor child living in the arbitrator’s household.
- (o) “Member of the arbitrator’s extended family” means the parents, grandparents, great-grandparents, children, grandchildren, great-grandchildren, siblings, uncles, aunts, nephews, and nieces of the arbitrator or the arbitrator’s spouse or domestic partner or the spouse of such person.
- (p) **[Party]**
 - (1) “Party” means a party to the arbitration agreement:

- (A) Who seeks to arbitrate a controversy pursuant to the agreement;
- (B) Against whom such arbitration is sought; or
- (C) Who is made a party to such arbitration by order of a court or the arbitrator upon such party's application, upon the application of any other party to the arbitration, or upon the arbitrator's own determination.

(2) "Party" includes the representative of a party, unless the context requires a different meaning.

- (q) "Party-arbitrator" means an arbitrator selected unilaterally by a party.
- (r) "Private practice of law" means private practice of law as defined in Code of Civil Procedure section 170.5.
- (s) "Significant personal relationship" includes a close personal friendship.

Comment to Standard 2

Subdivision (a). The definition of "arbitrator" and "neutral arbitrator" in this standard is intended to include all arbitrators who are to serve in a neutral and impartial manner and to exclude unilaterally selected arbitrators.

Subdivisions (l) and (m). Arbitrators should take special care to note that there are two different terms used in these standards to refer to lawyers who represent parties in the arbitration. In particular, arbitrators should note that the term "lawyer for a party" includes any lawyer or law firm currently associated in the practice of law with the lawyer hired to represent a party in the arbitration.

Subdivision (p)(2). While this provision generally permits an arbitrator to provide required information or notices to a party's attorney as that party's representative, a party's attorney should not be treated as a "party" for purposes of identifying matters that an arbitrator must disclose under standards 7 or 8, as those standards contain separate, specific requirements concerning the disclosure of relationships with a party's attorney.

Other terms that may be pertinent to these standards are defined in Code of Civil Procedure section 1280.

Standard 3. Application and effective date

- (a) Except as otherwise provided in this standard and standard 8, these standards apply to all persons who are appointed to serve as neutral

arbitrators on or after July 1, 2002, in any arbitration under an arbitration agreement, if:

- (1) The arbitration agreement is subject to the provisions of title 9 of part III of the Code of Civil Procedure (commencing with section 1280); or
 - (2) The arbitration hearing is to be conducted in California.
- (b) These standards do not apply to:
- (1) Party arbitrators, as defined in these standards; or
 - (2) Any arbitrator serving in:
 - (A) An international arbitration proceeding subject to the provisions of title 9.3 of part III of the Code of Civil Procedure;
 - (B) A judicial arbitration proceeding subject to the provisions of chapter 2.5 of title 3 of part III of the Code of Civil Procedure;
 - (C) An attorney-client fee arbitration proceeding subject to the provisions of article 13 of chapter 4 of division 3 of the Business and Professions Code;
 - (D) An automobile warranty dispute resolution process certified under California Code of Regulations title 16, division 33.1;
 - (E) An arbitration of a workers' compensation dispute under Labor Code sections 5270 through 5277;
 - (F) An arbitration conducted by the Workers' Compensation Appeals Board under Labor Code section 5308;
 - (G) An arbitration of a complaint filed against a contractor with the Contractors State License Board under Business and Professions Code sections 7085 through 7085.7; or
 - (H) An arbitration conducted under or arising out of public or private sector labor-relations laws, regulations, charter provisions, ordinances, statutes, or agreements.

- (c) Persons who are serving in arbitrations in which they were appointed to serve as arbitrators before July 1, 2002, are not subject to these standards in those arbitrations. Persons who are serving in arbitrations in which they were appointed to serve as arbitrators before January 1, 2003, are not subject to standard 8 in those arbitrations.

Comment to Standard 3

With the exception of standard 8, these standards apply to all neutral arbitrators appointed on or after July 1, 2002, who meet the criteria of subdivision (a). Arbitration provider organizations, although not themselves subject to these standards, should be aware of them when performing administrative functions that involve arbitrators who are subject to these standards. A provider organization's policies and actions should facilitate, not impede, compliance with the standards by arbitrators who are affiliated with the provider organization.

Standard 4. Duration of duty

- (a) Except as otherwise provided in these standards, an arbitrator must comply with these ethics standards from acceptance of appointment until the conclusion of the arbitration.
- (b) If, after the conclusion of the arbitration, a case is referred back to the arbitrator for reconsideration or rehearing, the arbitrator must comply with these ethics standards from the date the case is referred back to the arbitrator until the arbitration is again concluded.

Standard 5. General duty

An arbitrator must act in a manner that upholds the integrity and fairness of the arbitration process. He or she must maintain impartiality toward all participants in the arbitration at all times.

Comment to Standard 5

This standard establishes the overarching ethical duty of arbitrators. The remaining standards should be construed as establishing specific requirements that implement this overarching duty in particular situations.

Maintaining impartiality toward all participants during all stages of the arbitration is central to upholding the integrity and fairness of the arbitration. An arbitrator must perform his or her duties impartially, without bias or prejudice, and must not, in performing these duties, by words or conduct manifest partiality, bias, or prejudice, including but not limited to partiality, bias, or prejudice based upon race, sex, religion, national origin, disability, age, sexual

orientation, socioeconomic status, or the fact that a party might select the arbitrator to serve as an arbitrator in additional cases. After accepting appointment, an arbitrator should avoid entering into any relationship or acquiring any interest that might reasonably create the appearance of partiality, bias, or prejudice. An arbitrator does not become partial, biased, or prejudiced simply by having acquired knowledge of the parties, the issues or arguments, or the applicable law.

Standard 6. Duty to refuse appointment

Notwithstanding any contrary request, consent, or waiver by the parties, a proposed arbitrator must decline appointment if he or she is not able to be impartial.

Standard 7. Disclosure

- (a) **[Intent]** This standard is intended to identify the matters that must be disclosed by a person nominated or appointed as an arbitrator. To the extent that this standard addresses matters that are also addressed by statute, it is intended to include those statutory disclosure requirements, not to eliminate, reduce, or otherwise limit them.
- (b) **[General provisions]** For purposes of this standard:
 - (1) *(Collective bargaining cases excluded)* The terms “cases” and “any arbitration” do not include collective bargaining cases or arbitrations conducted under or arising out of collective bargaining agreements between employers and employees or between their respective representatives.
 - (2) *(Offers of employment or professional relationship)* If an arbitrator has disclosed to the parties in an arbitration that he or she will entertain offers of employment or of professional relationships from a party or lawyer for a party while the arbitration is pending as required by subdivision (b) of standard 12, the arbitrator is not required to disclose to the parties in that arbitration any such offer from a party or lawyer for a party that he or she subsequently receives or accepts while that arbitration is pending.
 - (3) *(Names of parties in cases)* When making disclosures about other pending or prior cases, in order to preserve confidentiality, it is sufficient to give the name of any party who is not a party to the pending arbitration as “claimant” or “respondent” if the party is an individual and not a business or corporate entity.

- (c) **[Time and manner of disclosure]** Within ten calendar days of service of notice of the proposed nomination or appointment, a proposed arbitrator must disclose to all parties in writing all matters listed in subdivisions (d) and (e) of this standard of which the arbitrator is then aware. If an arbitrator subsequently becomes aware of a matter that must be disclosed under either subdivision (d) or (e) of this standard, the arbitrator must disclose that matter to the parties in writing within 10 calendar days after the arbitrator becomes aware of the matter.
- (d) **[Required disclosures]** A person who is nominated or appointed as an arbitrator must disclose all matters that could cause a person aware of the facts to reasonably entertain a doubt that the proposed arbitrator would be able to be impartial, including all of the following:
- (1) *(Family relationships with party)* The arbitrator or a member of the arbitrator's immediate or extended family is a party, a party's spouse or domestic partner, or an officer, director, or trustee of a party.
 - (2) *(Family relationships with lawyer in the arbitration)* The arbitrator, or the spouse, former spouse, domestic partner, child, sibling, or parent of the arbitrator or the arbitrator's spouse or domestic partner is:
 - (A) A lawyer in the arbitration;
 - (B) The spouse or domestic partner of a lawyer in the arbitration;
or
 - (C) Currently associated in the private practice of law with a lawyer in the arbitration.
 - (3) *(Significant personal relationship with party or lawyer for a party)* The arbitrator or a member of the arbitrator's immediate family has or has had a significant personal relationship with any party or lawyer for a party.
 - (4) *(Service as arbitrator for a party or lawyer for party)*
 - (A) The arbitrator is serving or, within the preceding five years, has served:

- (i) As a neutral arbitrator in another prior or pending noncollective bargaining case involving a party to the current arbitration or a lawyer for a party.
 - (ii) As a party-appointed arbitrator in another prior or pending noncollective bargaining case for either a party to the current arbitration or a lawyer for a party.
 - (iii) As a neutral arbitrator in another prior or pending noncollective bargaining case in which he or she was selected by a person serving as a party-appointed arbitrator in the current arbitration
- (B) [Case information] If the arbitrator is serving or has served in any of the capacities listed under (A), he or she must disclose:
- (i) The names of the parties in each prior or pending case and, where applicable, the name of the attorney representing the party in the current arbitration who is involved in the pending case, who was involved in the prior case, or whose current associate is involved in the pending case or was involved in the prior case.
 - (ii) The results of each prior case arbitrated to conclusion, including the date of the arbitration award, identification of the prevailing party, the amount of monetary damages awarded, if any, and the names of the parties' attorneys.
- (C) [Summary of case information] If the total number of the cases disclosed under (A) is greater than five, the arbitrator must provide a summary of these cases that states:
- (i) The number of pending cases in which the arbitrator is currently serving in each capacity;
 - (ii) The number of prior cases in which the arbitrator previously served in each capacity;
 - (iii) The number of prior cases arbitrated to conclusion; and
 - (iv) The number of such prior cases in which the party to the current arbitration, the party represented by the lawyer for a party in the current arbitration or the party

represented by the party-arbitrator in the current arbitration was the prevailing party.

- (5) (*Compensated service as other dispute resolution neutral*) The arbitrator is serving or has served as a dispute resolution neutral other than an arbitrator in another pending or prior noncollective bargaining case involving a party or lawyer for a party and the arbitrator received or expects to receive any form of compensation for serving in this capacity.
- (A) [Time frame] For purposes of this paragraph (5), “prior case” means any case in which the arbitrator concluded his or her service as a dispute resolution neutral within two years before the date of the arbitrator’s proposed nomination or appointment, but does not include any case in which the arbitrator concluded his or her service before January 1, 2002.
- (B) [Case information] If the arbitrator is serving or has served in any of the capacities listed under this paragraph (5), he or she must disclose:
- (i) The names of the parties in each prior or pending case and, where applicable, the name of the attorney in the current arbitration who is involved in the pending case, who was involved in the prior case, or whose current associate is involved in the pending case or was involved in the prior case;
 - (ii) The dispute resolution neutral capacity (mediator, referee, etc.) in which the arbitrator is serving or served in the case; and
 - (iii) In each such case in which the arbitrator rendered a decision as a temporary judge or referee, the date of the decision, the prevailing party, the amount of monetary damages awarded, if any, and the names of the parties’ attorneys.
- (C) [Summary of case information] If the total number of cases disclosed under this paragraph (5) is greater than five, the arbitrator must also provide a summary of the cases that states:

- (i) The number of pending cases in which the arbitrator is currently serving in each capacity;
 - (ii) The number of prior cases in which the arbitrator previously served in each capacity;
 - (iii) The number of prior cases in which the arbitrator rendered a decision as a temporary judge or referee; and
 - (iv) The number of such prior cases in which the party to the current arbitration or the party represented by the lawyer for a party in the current arbitration was the prevailing party.
- (6) (*Current arrangements for prospective neutral service*) Whether the arbitrator has any current arrangement with a party concerning prospective employment or other compensated service as a dispute resolution neutral or is participating in or, within the last two years, has participated in discussions regarding such prospective employment or service with a party.
- (7) (*Attorney-client relationships*) Any attorney-client relationship the arbitrator has or has had with a party or lawyer for a party. Attorney-client relationships include the following:
- (A) An officer, a director, or a trustee of a party is or, within the preceding two years, was a client of the arbitrator in the arbitrator's private practice of law or a client of a lawyer with whom the arbitrator is or was associated in the private practice of law;
 - (B) In any other proceeding involving the same issues, the arbitrator gave advice to a party or a lawyer in the arbitration concerning any matter involved in the arbitration; and
 - (C) The arbitrator served as a lawyer for or as an officer of a public agency which is a party and personally advised or in any way represented the public agency concerning the factual or legal issues in the arbitration.
- (8) (*Other professional relationships*) Any other professional relationship not already disclosed under paragraphs (2)-(7) that the

arbitrator or a member of the arbitrator's immediate family has or has had with a party or lawyer for a party, including the following:

- (A) The arbitrator was associated in the private practice of law with a lawyer in the arbitration within the last two years.
- (B) The arbitrator or a member of the arbitrator's immediate family is or, within the preceding two years, was an employee of or an expert witness or a consultant for a party; and
- (C) The arbitrator or a member of the arbitrator's immediate family is or, within the preceding two years, was an employee of or an expert witness or a consultant for a lawyer in the arbitration.

- (9) (*Financial interests in party*) The arbitrator or a member of the arbitrator's immediate family has a financial interest in a party.
- (10) (*Financial interests in subject of arbitration*) The arbitrator or a member of the arbitrator's immediate family has a financial interest in the subject matter of the arbitration.
- (11) (*Affected interest*) The arbitrator or a member of the arbitrator's immediate family has an interest that could be substantially affected by the outcome of the arbitration.
- (12) (*Knowledge of disputed facts*) The arbitrator or a member of the arbitrator's immediate or extended family has personal knowledge of disputed evidentiary facts relevant to the arbitration. A person who is likely to be a material witness in the proceeding is deemed to have personal knowledge of disputed evidentiary facts concerning the proceeding.
- (13) (*Membership in organizations practicing discrimination*) The arbitrator's membership in any organization that practices invidious discrimination on the basis of race, sex, religion, national origin, or sexual orientation. Membership in a religious organization, an official military organization of the United States, or a nonprofit youth organization need not be disclosed unless it would interfere with the arbitrator's proper conduct of the proceeding or would cause a person aware of the fact to reasonably entertain a doubt concerning the arbitrator's ability to act impartially.

- (14) Any other matter that:
- (A) Might cause a person aware of the facts to reasonably entertain a doubt that the arbitrator would be able to be impartial;
 - (B) Leads the proposed arbitrator to believe there is a substantial doubt as to his or her capacity to be impartial, including, but not limited to, bias or prejudice toward a party, lawyer, or law firm in the arbitration; or
 - (C) Otherwise leads the arbitrator to believe that his or her disqualification will further the interests of justice.
- (e) **[Inability to conduct or timely complete proceedings]** In addition to the matters that must be disclosed under subdivision (d), an arbitrator must also disclose:
- (1) If the arbitrator is not able to properly perceive the evidence or properly conduct the proceedings because of a permanent or temporary physical impairment; and
 - (2) Any constraints on his or her availability known to the arbitrator that will interfere with his or her ability to commence or complete the arbitration in a timely manner.
- (f) **[Continuing duty]** An arbitrator's duty to disclose the matters described in subdivisions (d) and (e) of this standard is a continuing duty, applying from service of the notice of the arbitrator's proposed nomination or appointment until the conclusion of the arbitration proceeding.

Comment to Standard 7

This standard requires arbitrators to disclose to all parties, in writing within 10 days of service of notice of their proposed nomination or appointment, all matters they are aware of at that time that could cause a person aware of the facts to reasonably entertain a doubt that the proposed arbitrator would be able to be impartial and to disclose any additional such matters within 10 days of becoming aware of them.

Timely disclosure to the parties is the primary means of ensuring the impartiality of an arbitrator. It provides the parties with the necessary information to make an informed selection of an arbitrator by disqualifying or ratifying the proposed arbitrator following disclosure. See also standard 10, concerning disclosure and disqualification requirements relating to concurrent and

subsequent employment or professional relationships between an arbitrator and a party or attorney in the arbitration. A party may disqualify an arbitrator for failure to comply with statutory disclosure obligations (see Code Civ. Proc., § 1281.91(a)). Failure to disclose, within the time required for disclosure, a ground for disqualification of which the arbitrator was then aware is a ground for *vacatur* of the arbitrator's award (see Code Civ. Proc., § 1286.2(a)(6)(A)).

The arbitrator's overarching duty under this standard, which mirrors the duty set forth in Code of Civil Procedure section 1281.9, is to inform parties about matters that could cause a person aware of the facts to reasonably entertain a doubt that the proposed arbitrator would be able to be impartial. While the remaining subparagraphs of (d) require the disclosure of specific interests, relationships, or affiliations, these are only examples of common matters that could cause a person aware of the facts to reasonably entertain a doubt that the arbitrator would be able to be impartial. The absence of the particular interests, relationships, or affiliations listed in the subparagraphs does not necessarily mean that there is no matter that could reasonably raise a question about the arbitrator's ability to be impartial and that therefore must be disclosed. An arbitrator must make determinations concerning disclosure on a case-by-case basis, applying the general criteria for disclosure under paragraph (d).

Code of Civil Procedure section 1281.85 specifically requires that the ethical standards adopted by the Judicial Council address the disclosure of interests, relationships, or affiliations that may constitute conflicts of interest, including prior service as an arbitrator or other dispute resolution neutral entity. Section 1281.85 further provides that the standards "shall be consistent with the standards established for arbitrators in the judicial arbitration program and may expand but may not limit the disclosure and disqualification requirements established by this chapter [chapter 2 of title 9 of part III, Code of Civil Procedure, sections 1281–1281.95]."

Code of Civil Procedure section 1281.9 already establishes detailed requirements concerning disclosures by arbitrators, including a specific requirement that arbitrators disclose the existence of any ground specified in Code of Civil Procedure section 170.1 for disqualification of a judge. This standard does not eliminate or otherwise limit those requirements; in large part, it simply consolidates and integrates those existing statutory disclosure requirements by topic area. This standard does, however, expand upon or clarify the existing statutory disclosure requirements in the following ways:

- Requiring arbitrators to disclose to the parties any matter about which they become aware after the time for making an initial disclosure has expired, within 10 calendar days after the arbitrator becomes aware of the matter (subdivision (f)).
- Expanding required disclosures about the relationships or affiliations of an arbitrator's family members to include those of an arbitrator's domestic partner (subdivisions (d)(1) and (2); see also definitions of immediate and extended family in standard 2).
- Requiring arbitrators, in addition to making statutorily required disclosures regarding prior service as an arbitrator for a party or attorney for a party, to disclose prior services both as neutral arbitrator selected by a party arbitrator in the current arbitration and as any other type of dispute resolution neutral for a party or attorney in the arbitration (e.g., temporary judge, mediator, or referee) (subdivisions (d)(4)(C) and (5)).

- Requiring the arbitrator to disclose if he or she or a member of his or her immediate family is or was an employee, expert witness, or consultant for a party or a lawyer in the arbitration (subdivisions (d)(8)(A) and (B)).
- Requiring the arbitrator to disclose if he or she or a member of his or her immediate family has an interest that could be substantially affected by the outcome of the arbitration (subdivision (d)(11)).
- If a disclosure includes information about five or more cases, requiring arbitrators to provide a summary of that information (subdivisions (d)(4) and (5)).
- Requiring arbitrators to disclose membership in organizations that practice invidious discrimination on the basis of race, sex, religion, national origin, or sexual orientation (subdivision (d)(13)).
- Requiring the arbitrator to disclose any constraints on his or her availability known to the arbitrator that will interfere with his or her ability to commence or complete the arbitration in a timely manner (subdivision (d)).
- Clarifying that the duty to make disclosures is a continuing obligation, requiring disclosure of matters that were not known at the time of nomination or appointment but that become known afterward (subdivision (e)).

It is good practice for an arbitrator to ask each participant to make an effort to disclose any matters that may affect the arbitrator's ability to be impartial.

Standard 8. Additional disclosures in consumer arbitrations administered by a provider organization

(a) [General provisions]

- (1) *(Reliance on information provided by provider organization)*. Except as to the information in (c)(1), an arbitrator may rely on information supplied by the administering provider organization in making the disclosures required by this standard. If the information that must be disclosed is available on the Internet, the arbitrator may comply with the obligation to disclose this information by providing the Internet address at which the information is located and notifying the party that the arbitrator will supply hard copies of this information upon request.
- (2) *(Reliance on representation that not a consumer arbitration)* An arbitrator is not required to make the disclosures required by this standard if he or she reasonably believes that the arbitration is not a consumer arbitration based on reasonable reliance on a consumer

party's representation that the arbitration is not a consumer arbitration.

- (b) **[Additional disclosures required]** In addition to the disclosures required under standard 7, in a consumer arbitration as defined in standard 2 in which a dispute resolution provider organization is coordinating, administering, or providing the arbitration services, a person who is nominated or appointed as an arbitrator on or after January 1, 2003 must disclose the following within the time and in the same manner as the disclosures required under standard 7(c):
- (1) *(Relationships between the provider organization and party or lawyer in arbitration)* Any significant past, present, or currently expected financial or professional relationship or affiliation between the administering dispute resolution provider organization and a party or lawyer in the arbitration. Information that must be disclosed under this standard includes:
 - (A) A party, a lawyer in the arbitration, or a law firm with which a lawyer in the arbitration is currently associated is a member of the provider organization.
 - (B) Within the preceding two years the provider organization has received a gift, bequest, or favor from a party, a lawyer in the arbitration, or a law firm with which a lawyer in the arbitration is currently associated.
 - (C) The provider organization has entered into, or the arbitrator currently expects that the provider organization will enter into, an agreement or relationship with any party or lawyer in the arbitration or a law firm with which a lawyer in the arbitration is currently associated under which the provider organization will administer, coordinate, or provide dispute resolution services in other non-collective bargaining matters or will provide other consulting services for that party, lawyer, or law firm.
 - (D) The provider organization is coordinating, administering, or providing dispute resolution services or has coordinated, administered, or provided such services in another pending or prior noncollective bargaining case in which a party or lawyer in the arbitration was a party or a lawyer. For purposes of this paragraph, "prior case" means a case in which the dispute

resolution neutral affiliated with the provider organization concluded his or her service within the two years before the date of the arbitrator's proposed nomination or appointment, but does not include any case in which the dispute resolution neutral concluded his or her service before July 1, 2002.

- (2) (*Case information*) If the provider organization is acting or has acted in any of the capacities described in paragraph (1)(D), the arbitrator must disclose:
 - (A) The names of the parties in each prior or pending case and, where applicable, the name of the attorney in the current arbitration who is involved in the pending case or who was involved in the prior case;
 - (B) The type of dispute resolution services (arbitration, mediation, reference, etc.) coordinated, administered, or provided by the provider organization in the case; and
 - (C) In each prior case in which a dispute resolution neutral affiliated with the provider organization rendered a decision as an arbitrator, a temporary judge appointed under article VI, § 4 of the California Constitution, or a referee appointed under Code of Civil Procedure sections 638 or 639, the date of the decision, the prevailing party, the amount of monetary damages awarded, if any, and the names of the parties' attorneys.
- (3) (*Summary of case information*) If the total number of cases disclosed under paragraph (1)(D) is greater than five, the arbitrator must also provide a summary of these cases that states:
 - (A) The number of pending cases in which the provider organization is currently providing each type of dispute resolution services;
 - (B) The number of prior cases in which the provider organization previously provided each type of dispute resolution services;
 - (C) The number of such prior cases in which a neutral affiliated with the provider organization rendered a decision as an arbitrator, a temporary judge, or a referee; and

- (D) The number of prior cases in which the party to the current arbitration or the party represented by the lawyer in the current arbitration was the prevailing party.
- (c) **[Relationship between provider organization and arbitrator]**. If a relationship or affiliation is disclosed under paragraph (b), the arbitrator must also provide information about the following:
- (1) Any financial relationship or affiliation the arbitrator has with the provider organization other than receiving referrals of cases, including whether the arbitrator has a financial interest in the provider organization or is an employee of the provider organization;
 - (2) The provider organization's process and criteria for recruiting, screening, and training the panel of arbitrators from which the arbitrator in this case is to be selected;
 - (3) The provider organization's process for identifying, recommending, and selecting potential arbitrators for specific cases; and
 - (4) Any role the provider organization plays in ruling on requests for disqualification of the arbitrator.
- (d) **[Effective date]** The provisions of this standard take effect on January 1, 2003. Persons who are serving in arbitrations in which they were appointed to serve as arbitrators before January 1, 2003, are not subject to this standard in those pending arbitrations.

Comment to Standard 8

This standard only applies in consumer arbitrations in which a dispute resolution provider organization is administering the arbitration. Like standard 7, this standard expands upon the existing statutory disclosure requirements. Code of Civil Procedure section 1281.95 requires arbitrators in certain construction defect arbitrations to make disclosures concerning relationships between their employers or arbitration services and the parties in the arbitration. This standard requires arbitrators in all consumer arbitrations to disclose any financial or professional relationship between the administering provider organization and any party, attorney, or law firm in the arbitration and, if any such relationship exists, then the arbitrator must also disclose his or her relationship with the dispute resolution provider organization. This standard does not require an arbitrator to disclose if the provider organization has a financial interest in a party or lawyer in the arbitration or if a party or lawyer in the arbitration has a financial interest in the provider organization because provider organizations are prohibited under Code of Civil Procedure section 1281.92 from administering any consumer arbitration where any such relationship exists.

Subdivision (b). Currently expected relationships or affiliations that must be disclosed include all relationships or affiliations that the arbitrator, at the time the disclosure is made, expects will be formed. For example, if the arbitrator knows that the administering provider organization has agreed in concept to enter into a business relationship with a party, but they have not yet signed a written agreement formalizing that relationship, this would be a “currently expected” relationship that the arbitrator would be required to disclose.

Standard 9. Arbitrators’ duty to inform themselves about matters to be disclosed

- (a) **[General duty to inform him or herself]** A person who is nominated or appointed as an arbitrator must make a reasonable effort to inform himself or herself of matters that must be disclosed under standards 7 and 8.
- (b) **[Obligation regarding extended family]** An arbitrator can fulfill the obligation under this standard to inform himself or herself of relationships or other matters involving his or her extended family and former spouse that are required to be disclosed under standard 7 by:
 - (1) Seeking information about these relationships and matters from the members of his or her immediate family and any members of his or her extended family living in his or her household; and
 - (2) Declaring in writing that he or she has made the inquiry in (1).
- (c) **[Obligation regarding relationships with associates of lawyer in the arbitration]** An arbitrator can fulfill the obligation under this standard to inform himself or herself of relationships with any lawyer associated in the practice of law with the lawyer in the arbitration that are required to be disclosed under standard 7 by:
 - (1) Informing the lawyer in the arbitration, in writing, of all such relationships within the arbitrator’s knowledge and asking the lawyer if the lawyer is aware of any other such relationships;
 - (2) Declaring in writing that he or she has made the inquiry in (1) and attaching to this declaration copies of his or her inquiry and any response from the lawyer in the arbitration.
- (d) **[Obligation regarding service as a neutral other than an arbitrator before July 1, 2002]** An arbitrator can fulfill the obligation under this standard to inform himself or herself of his or her service as a dispute

resolution neutral other than as an arbitrator in cases that commenced prior to July 1, 2002 by:

- (1) Asking any dispute resolution provider organization that administered those prior services for this information; and
 - (2) Declaring in writing that he or she has made the inquiry in (1) and attaching to this declaration copies of his or her inquiry and any response from the provider organization.
- (e) **[Obligation regarding relationships with provider organization]** An arbitrator can fulfill his or her obligation under this standard to inform himself or herself of the information that is required to be disclosed under standard 8 by:
- (1) Asking the dispute resolution provider organization for this information; and
 - (2) Declaring in writing that he or she has made the inquiry in (1) and attaching to this declaration copies of his or her inquiry and any response from the provider organization.

Comment to Standard 9

This standard expands arbitrators existing duty of reasonable inquiry that applies with respect to financial interests under Code of Civil Procedure section 170.1(a)(3), to require arbitrators to make a reasonable effort to inform themselves about all matters that must be disclosed. This standard also clarifies what constitutes a reasonable effort by an arbitrator to inform himself or herself about specified matters, including relationships or other matters concerning his or her extended family and relationships with attorneys associated in the practice of law with the attorney in the arbitration (such as associates encompassed within the term "lawyer for a party").

Standard 10. Disqualification

- (a) An arbitrator is disqualified if:
- (1) The arbitrator fails to comply with his or her obligation to make disclosures and a party serves a notice of disqualification in the manner and within the time specified in Code of Civil Procedure section 1281.91;
 - (2) The arbitrator complies with his or her obligation to make disclosures within 10 calendar days of service of notice of the

proposed nomination or appointment and, based on that disclosure, a party serves a notice of disqualification in the manner and within the time specified in Code of Civil Procedure section 1281.91;

- (3) The arbitrator makes a required disclosure more than 10 calendar days after service of notice of the proposed nomination or appointment and, based on that disclosure, a party serves a notice of disqualification in the manner and within the time specified in Code of Civil Procedure section 1281.91; or
- (4) A party becomes aware that an arbitrator has made a material omission or material misrepresentation in his or her disclosure and, within 15 days after becoming aware of the omission or misrepresentation and within the time specified in Code of Civil Procedure section 1281.91(c), the party serves a notice of disqualification that clearly describes the material omission or material misrepresentation and how and when the party became aware of this omission or misrepresentation; or
- (5) If any ground specified in Code of Civil Procedure section 170.1 exists and the party makes a demand that the arbitrator disqualify himself or herself in the manner and within the time specified in Code of Civil Procedure section 1281.91(d).

- (b) For purposes of this standard, “obligation to make disclosure” means an arbitrator’s obligation to make disclosures under standards 7 or 8 or Code of Civil Procedure section 1281.9.
- (c) Notwithstanding any contrary request, consent, or waiver by the parties, an arbitrator must disqualify himself or herself if he or she concludes at any time during the arbitration that he or she is not able to conduct the arbitration impartially.

Comment to Standard 10

Code of Civil Procedure section 1281.91 already establishes requirements concerning disqualification of arbitrators. This standard does not eliminate or otherwise limit those requirements or change existing authority or procedures for challenging an arbitrator’s failure to disqualify himself or herself. The provisions of subdivisions (a)(1), (2), and (5) restate existing disqualification procedures under section 1281.91; (b) and (d) when an arbitrator makes, or fails to make, initial disclosures or where a section 170.1 ground exists. The provisions of subdivisions (a)(3) and (4) clarify the requirements relating to disqualification based on disclosure made by the arbitrator after appointment or based on the discovery by the party of a material omission or misrepresentation in the arbitrator’s disclosure.

Standard 11. Duty to refuse gift, bequest, or favor

- (a) An arbitrator must not, under any circumstances, accept a gift, bequest, favor, or honoraria from a party or any other person or entity whose interests are reasonably likely to come before the arbitrator in the arbitration.
- (b) From service of notice of appointment or appointment until two years after the conclusion of the arbitration, an arbitrator must not, under any circumstances, accept a gift, bequest, favor, or honoraria from a party or any other person or entity whose interests have come before the arbitrator in the arbitration.
- (c) An arbitrator must discourage members of his or her family residing in his or her household from accepting a gift, bequest, favor, or honoraria that the arbitrator would be prohibited from accepting under subdivisions (a) or (b).
- (d) This standard does not prohibit an arbitrator from demanding or receiving a fee for services or expenses.

Comment to Standard 11

Gifts and favors do not include any rebate or discount made available in the regular course of business to members of the public.

Standard 12. Duties and limitations regarding future professional relationships or employment

- (a) **[Offers as lawyer, expert witness, or consultant]** From the time of appointment until the conclusion of the arbitration, an arbitrator must not entertain or accept any offers of employment or new professional relationships as a lawyer, an expert witness, or a consultant from a party or a lawyer for a party in the pending arbitration.
- (b) **[Offers for other employment or professional relationships]** In addition to the disclosures required by standards 7 and 8, within ten calendar days of service of notice of the proposed nomination or appointment, a proposed arbitrator must disclose to all parties in writing if, while that arbitration is pending, he or she will entertain offers of employment or new professional relationships in any capacity other than as a lawyer, expert witness, or consultant from a party or a lawyer

for a party, including offers to serve as a dispute resolution neutral in another case. A party may disqualify the arbitrator based on this disclosure by serving a notice of disqualification in the manner and within the time specified in Code of Civil Procedure section 1281.91(b).

- (c) **[Acceptance of offers prohibited unless intent disclosed]** If an arbitrator fails to make the disclosure required by subdivision (b) of this standard, from the time of appointment until the conclusion of the arbitration the arbitrator must not entertain or accept any such offers of employment or new professional relationships, including offers to serve as a dispute resolution neutral.
- (d) **[Relationships and use of confidential information related to the arbitrated case]** An arbitrator must not at any time:
 - (1) Without the informed written consent of all parties, enter into any professional relationship or accept any professional employment as a lawyer, an expert witness, or a consultant relating to the case arbitrated; or
 - (2) Without the informed written consent of the party, enter into any professional relationship or accept employment in another matter in which information that he or she has received in confidence from a party by reason of serving as an arbitrator in a case is material.

Standard 13. Conduct of proceeding

- (a) An arbitrator must conduct the arbitration fairly, promptly, and diligently and in accordance with the applicable law relating to the conduct of arbitration proceedings.
- (b) In making the decision, an arbitrator must not be swayed by partisan interests, public clamor, or fear of criticism.

Comment to Standard 13

Subdivision (a). The arbitrator's duty to dispose of matters promptly and diligently must not take precedence over the arbitrator's duty to dispose of matters fairly.

Conducting the arbitration in a procedurally fair manner includes conducting a balanced process in which each party is given an opportunity to participate. When one but not all parties are unrepresented, an arbitrator must ensure that the party appearing without counsel has an adequate opportunity to be heard and involved. Conducting the arbitration promptly and

diligently requires expeditious management of all stages of the proceeding and concluding the case as promptly as the circumstances reasonably permit. During an arbitration, an arbitrator may discuss the issues, arguments, and evidence with the parties or their counsel, make interim rulings, and otherwise to control or direct the arbitration. This standard is not intended to restrict these activities.

The arbitrator's duty to uphold the integrity and fairness of the arbitration process includes an obligation to make reasonable efforts to prevent delaying tactics, harassment of any participant, or other abuse of the arbitration process. It is recognized, however, that the arbitrator's reasonable efforts may not successfully control all conduct of the participants.

For the general law relating to the conduct of arbitration proceedings, see chapter 3 of title 9 of part III of the Code of Civil Procedure, sections 1282–1284.2, relating to the conduct of arbitration proceedings. See also Code of Civil Procedure section 1286.2 concerning an arbitrator's unreasonable refusal to grant a continuance as grounds for *vacatur* of the award.

Standard 14. Ex parte communications

- (a) An arbitrator must not initiate, permit, or consider any ex parte communications or consider other communications made to the arbitrator outside the presence of all of the parties concerning a pending or impending arbitration, except as permitted by this standard, by agreement of the parties, or by applicable law.
- (b) An arbitrator may communicate with a party in the absence of other parties about administrative matters, such as setting the time and place of hearings or making other arrangements for the conduct of the proceedings, as long as the arbitrator reasonably believes that the communication will not result in a procedural or tactical advantage for any party. When such a discussion occurs, the arbitrator must promptly inform the other parties of the communication and must give the other parties an opportunity to respond before making any final determination concerning the matter discussed.
- (c) An arbitrator may obtain the advice of a disinterested expert on the subject matter of the arbitration if the arbitrator notifies the parties of the person consulted and the substance of the advice and affords the parties a reasonable opportunity to respond.

Comment to Standard 14

See also Code of Civil Procedure sections 1282.2(e) regarding the arbitrator's authority to hear a matter when a party fails to appear and 1282.2(g) regarding the procedures that must be followed if an arbitrator intends to base an award on information not obtained at the hearing.

Standard 15. Confidentiality

- (a) An arbitrator must not use or disclose information that he or she received in confidence by reason of serving as an arbitrator in a case to gain personal advantage. This duty applies from acceptance of appointment and continues after the conclusion of the arbitration.
- (b) An arbitrator must not inform anyone of the award in advance of the time that the award is given to all parties. This standard does not prohibit an arbitrator from providing all parties with a tentative or draft decision for review or from providing an award to an assistant or to the provider organization that is coordinating, administering, or providing the arbitration services in the case for purposes of copying and distributing the award to all parties.

Standard 16. Compensation

- (a) An arbitrator must not charge any fee for services or expenses that is in any way contingent on the result or outcome of the arbitration.
- (b) Before accepting appointment, an arbitrator, a dispute resolution provider organization, or another person or entity acting on the arbitrator's behalf must inform all parties in writing of the terms and conditions of the arbitrator's compensation. This information must include any basis to be used in determining fees and any special fees for cancellation, research and preparation time, or other purposes.

Standard 17. Marketing

- (a) An arbitrator must be truthful and accurate in marketing his or her services and must not make any representation that directly or indirectly implies favoritism or a specific outcome. An arbitrator must ensure that his or her personal marketing activities and any activities carried out on his or her behalf, including any activities of a provider organization with which the arbitrator is affiliated, comply with this requirement.
- (b) An arbitrator must not solicit business from a participant in the arbitration while the arbitration is pending.

Comment to Standard 17

Subdivision (b). This provision is not intended to prohibit an arbitrator from accepting another arbitration from a party or attorney in the arbitration while the first matter is pending, as long as the arbitrator complies with the provisions of standard 12 and there was no express solicitation of this business by the arbitrator.

Drafter's Notes

Standards 1–17 implement Code of Civil Procedure section 1281.85, which requires the Judicial Council to adopt ethics standards for all neutral arbitrators serving in arbitrations pursuant to an arbitration agreement. Among other things, they address the disclosure of interests, relationships, or affiliations that may constitute conflicts of interest, the acceptance of gifts, the establishment of future professional relationships, ex-parte communication, fees, and marketing.

