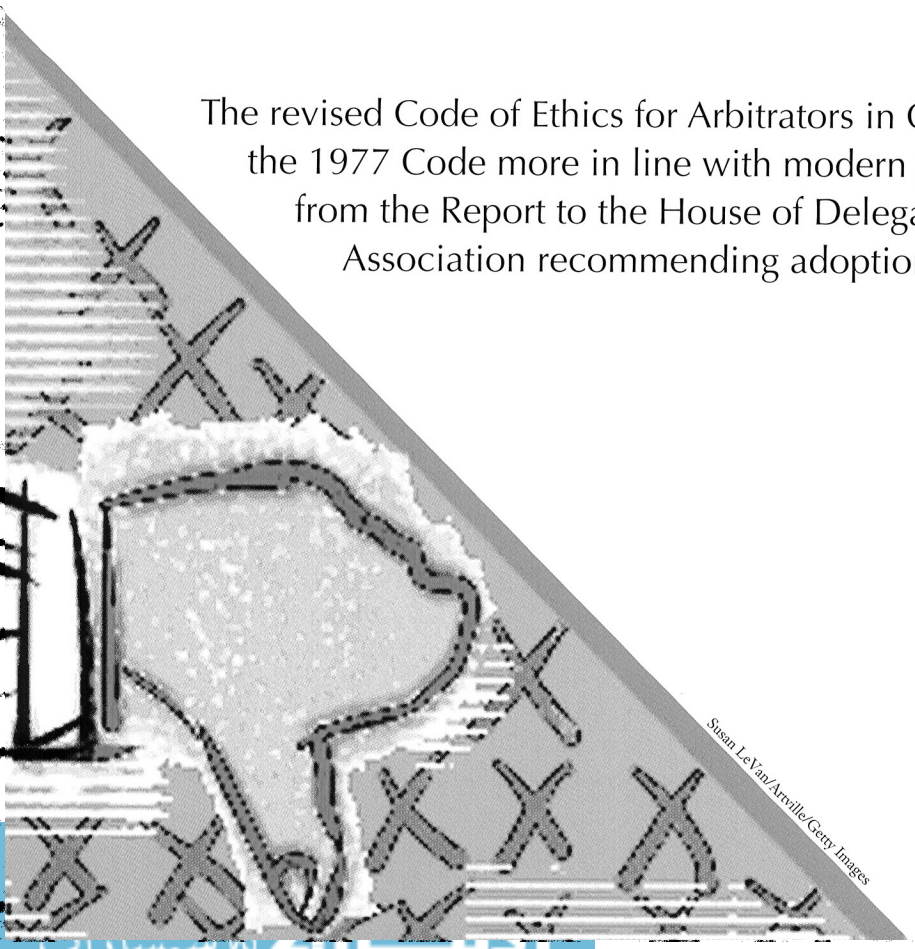
Revised Code of Ethics for Commercial Arbitrators Explained

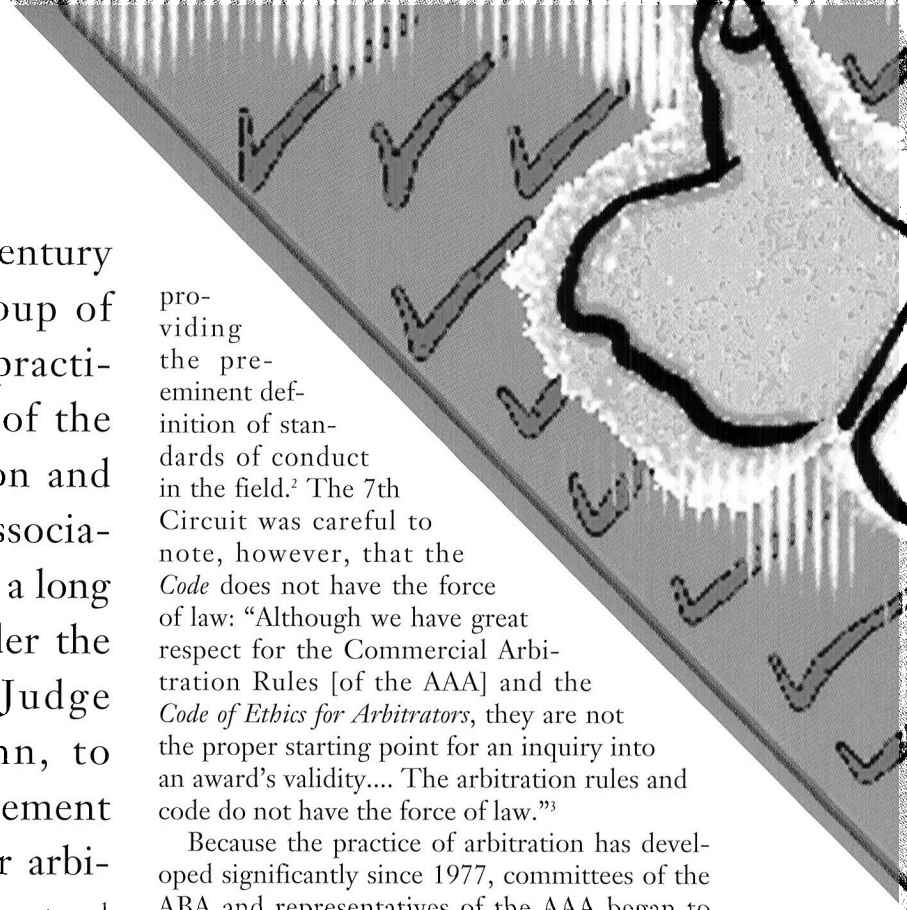
Both the AAA and the ABA House of Delegates Have Approved the Revised Code

By Bruce Meyerson and John M. Townsend



Susan LeVan/Arville/Getty Images

The revised Code of Ethics for Arbitrators in Commercial Disputes brings the 1977 Code more in line with modern practice. This article is adapted from the Report to the House of Delegates of the American Bar Association recommending adoption of revisions to the Code.



About a quarter century ago, a small group of arbitrators and practitioners, representatives of the American Bar Association and American Arbitration Association, met over a long weekend, under the leadership of Judge Howard Holtzmann, to draft an important statement defining ethical duties for arbitrators in commercial disputes.[1] Their effort became the 1977 AAA-ABA Code of Ethics for Arbitrators in Commercial Disputes (the 1977 Ethics Code). It has proved to be an invaluable ethical framework for arbitrators and others involved in the dispute resolution field.

Many federal and state courts have cited the *1977 Ethics Code* with approval as providing the preeminent definition of standards of conduct in the field.[2] The 7th Circuit was careful to note, however, that the *Code* does not have the force of law: "Although we have great respect for the Commercial Arbitration Rules [of the AAA] and the *Code of Ethics for Arbitrators*, they are not the proper starting point for an inquiry into an award's validity.... The arbitration rules and code do not have the force of law."[3]

Because the practice of arbitration has developed significantly since 1977, committees of the ABA and representatives of the AAA began to review whether changes in the laws governing arbitration, the increasing globalization of commercial transactions, and changes in the public perception and expectations of arbitration required revisions to the *1977 Ethics Code*. The ABA efforts were aided by representatives of the CPR Institute for Dispute Resolution, the College of Commercial Arbitrators, and the National Arbitration Forum.

After several years of study and negotiations, agreement was reached by a joint ABA-AAA working group on a proposed revision (the *2004 Revision*).[4] The Executive Committee of the AAA Board of Directors approved the *2004 Revision* at its September 2003 meeting, and it is anticipated that the ABA House of Delegates will approve the revisions at the ABA Mid-Year Meeting in

---

Bruce Meyerson, a mediator and arbitrator in Phoenix, Ariz., is a former judge of the Arizona Court of Appeals and the immediate past chair of the ABA Section of Dispute Resolution. He participated as a member of the ABA delegation on the 2004 revision of the 1977 AAA-ABA Code of Ethics.

John M. Townsend is a Washington, D.C., partner of Hughes Hubbard & Reed LLP, where he chairs the Arbitration and ADR Group. He is a member of the Executive Committee of the AAA's Board of Directors. He also chairs the AAA's Law Committee and served as a member of the AAA delegation on the 2004 revision of the 1997 ABA-AAA Code of Ethics.

February 2004.[5] Assuming that occurs, the *2004 Revision* will become effective March 1, 2004.

The *2004 Revision* preserves the style and format, and much of the language, of the *1977 Ethics Code*. It is called a revision, rather than a new document, to signal its continuity with the many unchanged provisions of the *1977 Ethics Code* and respect for the degree of judicial acceptance that it has achieved. All provisions of the *2004 Revision* are subject to any contrary principles that may be found in governing law or applicable arbitration rules and also to the right of the parties to any arbitration to reach agreement on different rules and standards.

The 2004 Revision of the Code of Ethics can be found in the Rules and Procedures page of the AAA Web site at (www.adr.org)

Presumption of Neutrality

The most fundamental and far-reaching change contained in the *2004 Revision* is the application of a presumption of neutrality to all arbitrators, including party-appointed arbitrators. By contrast, the *1977 Ethics Code* presumed that the party-appointed arbitrators to a three-person panel (tripartite arbitration) would not be neutral.[6] This meant that, in practice, they were not only free to act as advocates for the positions of the party that appointed them, they were expected to act that way. Under the *1977 Ethics Code*, party-appointed arbitrators were to be considered "nonneutral unless both parties inform the arbitrators that all three arbitrators are to be neutral or unless the contract, the applicable arbitration rules, or any governing law requires that all three arbitrators be neutral."[7] Thus, absent contrary indications in the parties' agreement, the governing law or arbitral rules, the default rule was that all party-appointed arbitrators were considered nonneutral when no agreement for their neutrality had been made.

The *2004 Revision* reverses the presumption of nonneutrality for party-appointed arbitrators. Instead, it establishes a presumption of neutrality for all arbitrators. Thus, they will all be held to the same standard. The presumption appears in the Introductory Note on Neutrality in the *2004 Revision*, which states:

> This Code establishes a presumption of neutrality for all arbitrators, including party-appointed arbitrators, which applies unless the parties' agreement, the arbitral rules agreed to by the parties or applicable laws provide otherwise.

This presumption is reaffirmed in Canon IX.A of the *2004 Revision*.

The concept of neutrality embodied in the *2004 Revision* encompasses both independence and impartiality. This is codified in Canon I.B, which provides that an arbitrator should accept appointment only if fully satisfied that he or she can serve "impartially" and "independently" from the parties, potential witnesses, and the other arbitrators. The Comment to Canon I explains that arbitrators do not contravene the Canon if by virtue of experience or expertise they have views on certain general issues likely to arise in an arbitration, but emphasizes that "an arbitrator may not have prejudged any of the specific legal or factual determinations to be addressed during the arbitration."

As with the other provisions of the *2004 Revision*, the presumption of neutrality is subject to contrary principles established by agreement of the parties, the governing law or applicable arbitration rules.[8] For example, some parties in domestic arbitrations in the United States are likely to continue to prefer that their party-appointed arbitrators not be neutral.

In recognition of this preference, the *2004 Revision* continues to permit party-appointed arbitrators to be partisan, but only when it is shown that "all parties" intended that they may be "predisposed" toward the party who appointing them. This balance is struck by two provisions of new Canon IX. First, Canon IX.A provides: "In tripartite arbitrations to which this Code applies, all three arbitrators are presumed to be neutral and are expected to observe the same standards as the third arbitrator."

Then Canon IX.B states:

> Notwithstanding this presumption, there are certain types of tripartite arbitration in which it is expected by all parties that the two arbitrators appointed by the parties may be predisposed toward the party appointing them. Those arbitrators, referred to in this Code as "Canon X arbitrators," are not to be held to the standards of neutrality and independence applicable to other arbitrators.

The *2004 Revision* refers to nonneutral arbitrators as "Canon X arbitrators" because that Canon establishes the special ethical obligations of

party-appointed arbitrators who are not expected to meet the standards of neutrality.

The grouping of provisions applicable to non-neutral party-appointed arbitrators in Canon X represents an architectural solution designed to reconcile different points of view on the subject of non-neutral arbitrators. On one side, there were strong feelings that the endorsement of non-neutral party-appointed arbitrators in the *1977 Ethics Code* had taken American domestic arbitration out of the mainstream of international arbitration, where the prevailing view is that all arbitrators, including party-appointed arbitrators, should be independent of the parties and impartial to the extent possible. Those sharing this position argued that a code of ethics could achieve international respect only if it required all arbitrators to be neutral.[9] On the countervailing side was the view that use of nonneutral party-appointed arbitrators was an accepted, well established practice in many types of American domestic arbitration, and American courts have accepted the practice as consistent with legal standards established by the Federal Arbitration Act.[10] Those inclined toward this view did not necessarily think that the practice of allowing partisan party-appointed arbitrators was desirable—indeed, many have said that it has had regrettable effects on the arbitration process. But they nevertheless argued that a code of ethics should embrace (and provide guidance for) arbitrators serving in all legal and accepted forms of commercial arbitration.

The solution represented by the *2004 Revision* demonstrates a firm preference for arbitrator neutrality, while providing a tent large enough to accommodate those who have specifically agreed otherwise. The *2004 Revision*, therefore, provides that Canon X arbitrators are expected to observe all of the ethical obligations prescribed by Code, except those from which they are expressly excused. However, these ethical obligations differ from those of neutral party-appointed arbitrators in several carefully defined respects. Canon X.A permits Canon X arbitrators to be "predisposed" toward the party who appointed them. Canon X.B provides that Canon X arbitrators are not obliged to withdraw because of alleged partiality when requested to do so by the non-appointing party. And Canon X.C allows Canon X arbitrators to generally engage in *ex parte* communications with their appointing party.

On the other hand, Canon X.A requires Canon X arbitrators to act in good faith and with integrity and fairness. These arbitrators may not, for example, engage in delaying tactics or harassment.[11] They are required to make the same disclosures of interests and relationships that was previously required by the *1977 Ethics Code* only of neutral arbitrators.[12] And they are subject to specific limitations on the scope of their *ex parte* communications with the appointing parties and with the third arbitrator, although they are permitted far more freedom to engage in such communications than are neutral arbitrators.[13]

Effect on Drafting

Because the long-standing American practice has been to consider party-appointed arbitrators to be nonneutral, the change of this presumption in the ethics code (see sidebar on this page regarding a parallel rule change in the AAA Commercial Arbitration Rules), will undoubtedly bring about a fundamental change in the drafting of tripartite arbitration agreements. From now on, attorneys who draft such agreements will be well advised to clarify in the arbitration provision the parties' understanding regarding the "status" of party-appointed arbitrators, particularly if they desire them to act as Canon X arbitrators (i.e., to act as partisan arbitrators for the appointing parties).

Parallel Changes in the Revised AAA Commercial Rules

In anticipation of the Revisions to the *Code of Ethics for Commercial Arbitrators* discussed in this article, the AAA amended the AAA Commercial Rules, effective July 2003.

The revised rules adopt a presumption of neutrality with respect to the role of party-appointed arbitrators: In cases commenced after July 1, 2003, if the parties do not specifically agree that the arbitrators they appoint will not be neutral, the AAA Commercial Rules will deem the party-appointed arbitrators to be neutral. AAA Commercial Rule R-12(b). provides:

> Where the parties have agreed that each party is to name one arbitrator, the arbitrators so named must meet the standards of Section R-17 with respect to impartiality and independence unless the parties have specifically agreed pursuant to Section R-17(a) that the party-appointed arbitrators are to be non-neutral and need not meet those standards.

This shift to a presumption of neutrality is consistent with the *2004 Revision* (which provided the premise for) this change.

The AAA also modified Rule R-16 pertaining to disclosure. As revised Rule R-16 (1) requires all arbitrators to disclose circumstances likely to give rise to justifiable doubt as to the arbitrator's impartiality or independence, (2) clarifies that the disclosure obligation remains in effect throughout the arbitration, and (3) states that disclosures made pursuant to the rules are not to be construed as an indication that the arbitrator considers the disclosed circumstances likely to affect his or her impartiality or independence.

Duties of Party-Appointed Arbitrators

Investigation and Disclosure of Status

One of the significant features of the *2004 Revision* is contained in Canon IX, which imposes a duty on every party-appointed arbitrator to ascertain and disclose whether he or she will be acting as a neutral arbitrator or as a Canon X arbitrator. Canon IX.C(3) provides that, in the event of doubt or uncertainty, all party-appointed arbitrators should serve in a neutral capacity until such doubt or uncertainty is resolved. This ethical requirement is new.

Under Canon IX.C, each party-appointed arbitrator now has an obligation to (1) ascertain his or her status as early as possible (and not later than the first meeting of the arbitrators and the parties), and (2) provide a timely report on the subject to the parties and the other arbitrators.

Canon IX.C also imposes on each party-appointed arbitrator a duty to investigate in discharging their obligation to ascertain and disclose their status. Canon IX.C(1) calls for this investigation to include a review of the terms of the parties' written or oral agreement (or an agreement implied from an established course of dealings or well-recognized custom and usage in their trade or profession), the applicable arbitration rules, and the applicable law bearing upon arbitrator neutrality.

The status of the party-appointed arbitrator as neutral or non-neutral arbitrator is one subject that party-appointed arbitrators are expressly permitted to discuss *ex parte* with the appointing party.[14]

Canon IX.C(2) provides that a party-appointed arbitrator's conclusion (following the required investigation) that the parties intended him or her to serve as a Canon X arbitrator may be overridden by the parties, the administering arbitral institution, or the arbitral panel. Until a party-appointed arbitrator reaches this conclusion (or is unable to reach a conclusion as to his or her status), he or she is required by Canon IX.C(3) to act as a neutral arbitrator (pending any contrary decision by the parties, the administering institution or the panel.

Disclosure of Interests and Relationships

The *2004 Revision* subjects all arbitrators to the same obligations to disclose interests or relationships likely to affect impartiality or which might create an appearance of partiality. This is new. Under the *1977 Ethics Code*, partisan party-appointed arbitrators were required to disclose information sufficient to describe the general nature and scope of any interest or relationship, but they were not required to provide the detail expected from neutral arbitrators.

Under the *2004 Revision*, specifically, Canons II.A, X.B, all arbitrators, including Canon X arbitrators, are required to disclose any interest or relationship likely to affect their impartiality or which might create an appearance of partiality. This duty encompasses "any known ... financial or personal interest in the outcome of the arbitration" or existing or past relationships.[15]

> *"The solution represented by the 2004 Revision demonstrates a firm preference for arbitrator neutrality, while providing a tent large enough to accommodate those who have specifically agreed otherwise."*

The standard for disclosure of relationships in the Canon II.A(2) of the *2004 Revision* is new. It is whether known financial, business, professional or personal relationships "might reasonably affect impartiality or lack of independence in the eyes of any of the parties." Canon II.B requires prospective arbitrators to make a reasonable effort to inform themselves of relevant interests or relationships. And any doubt as to whether or not disclosure is to be made should be resolved in favor of disclosure.[16] The disclosure obligation defined by Canon II.A continues, as under the *1977 Ethics Code*, throughout the arbitration.[17]

The *2004 Revision* omits the Introductory Note that preceded Canon II of the *1977 Ethics Code*. This Note adopted the approach to disclosure in the concurring opinion of Justice White in *Commonwealth Coatings Corp. v. Continental Casualty Co.*, the Supreme Court's only exploration of the subject of disclosure by arbitrators.[18] The *1977 Ethics Code's* preference for Justice White's approach to disclosure and the closely related legal question of what constitutes "evident partiality," rather than the approach taken in Justice Black's plurality opinion, is now well established in the case law.[19] Thus, it appears that the 1977 Introductory Note is no longer needed.

An interesting new provision in the *2004 Revision*, Canon II.H, deals with disclosure of confidential information. Under this provision, an arbitrator who believes that the Code's disclosure requirements call for privileged or confidential information to be divulged should either withdraw, or obtain consent to the disclosure from the person who provided the information.

Consistent with the principle of party autonomy, the *2004 Revision* expressly states in Canon I.C that the existence of any relationship or interest "does not render it unethical for one to serve as an arbitrator where the parties have consented to the arbitrator's appointment or continued services following full disclosure of the relevant facts" in accordance with the *Code*. So long as the arbitrator makes a full disclosure of the interest or relationship, the parties are free to consent to continued service or appointment and the arbitrator may ethically accept the appointment or continue to serve.

Communications with the Parties and the Other Arbitrators

The *2004 Revision* clarifies the limits on permissible communications between arbitrators and the parties, and establishes new guidelines on communications between party-appointed arbitrators and the chair of the tribunal in tripartite arbitrations.

The *2004 Revision* provides guidance, absent in the *1977 Ethics Code*, on what a *prospective* arbitrator may discuss on an *ex parte* basis with the appointing party concerning the potential appointment. Canon III.B(1) limits the discussion to three general subjects: (1) the identities of the parties, counsel or witnesses, (2) the general nature of the case, and (3) the arbitrator's suitability or availability for the appointment. Discussion of the merits of the case is specifically prohibited, except to a limited extent for Canon X arbitrators.

In addition, Canon III.B allows a party-appointed arbitrator to consult with the appointing party concerning (a) the choice of the third arbitrator, (b) compensation, and (c) the status of the arbitrator as a neutral arbitrator or as a Canon X arbitrator.[20]

The *2004 Revision* parallels recent changes to the AAA Commercial Rules that also address the subject of communication between the parties and a prospective arbitrator. New AAA commercial rule R-18(a) provides:

> No party and no one acting on behalf of any party shall communicate *ex parte* with an arbitrator or a candidate for arbitrator concerning the arbitration, except that a party, or someone acting on behalf of a party, may communicate ex parte with a candidate for direct appointment pursuant to Section R-12 in order to advise the candidate of the general nature of the controversy and of the anticipated proceedings and to discuss the candidate's qualifications, availability, or independence in relation to the parties or to discuss the suitability of candidates for selection as a third arbitrator where the parties or party-designated arbitrators are to participate in that selection.

The *2004 Revision* provides more detailed guidance than does Rule R-18(a). For example, the *2004 Revision* permits *ex parte* communications regarding arrangements for compensation, including the submission of routine requests for payment.[21] Canon III.B(3) and (4) allows both neutral and Canon X arbitrators to discuss with the party who appointed them the selection of the third arbitrator (as does AAA commercial rule R-18(a)). By contrast, the *1977 Ethics Code* only allowed nonneutral party-appointed arbitrators to discuss selection of the third arbitrator with the party who appointed them.

Provided a Canon X arbitrator has disclosed the intention to engage in such communications, Canon X.C(2) permits this arbitrator to communicate with the appointing party concerning the merits or "any other aspect of the case," subject to certain enumerated exceptions. If these communications occurred prior to the arbitrator's appointment, or prior to the first hearing or the parties' first meeting with the arbitrators, a Canon X arbitrator is to disclose, at or before the first hearing or meeting, *the fact* that the communication took place. There is no obligation to disclose the content of the communication.[22] A single timely disclosure of the Canon X arbitrator's intention to participate in such communications in the future is sufficient. These provisions parallel those in the *1977 Ethics Code* regarding nonneutral party-appointed arbitrators.

Canon X.C(4) of the *2004 Revision* clarifies that Canon X arbitrators may not, at any time during the arbitration, communicate with the appointing party concerning the deliberations of the arbitrators or "any matter or issue taken under consideration by the panel after the record is closed or such matter or issue has been submitted for decision." It also carries forward the prohibitions contained in the *1977 Ethics Code* against disclosure of the deliberations of the arbitrators or of any "final or interim decision" in advance of the time it is given to all parties.

Moreover, there are new restrictions on com-

munications between Canon X arbitrators and the neutral arbitrator. The *2004 Revision* prohibits these arbitrators from communicating orally with a neutral arbitrator concerning "any matter or issue" arising or expected to arise in the arbitration in the absence of the other Canon X arbitrator. Canon X.C(5) provides that if a Canon X arbitrator communicates in writing with the neutral arbitrator, that arbitrator must simultaneously provide a copy of the written communication to the other Canon X arbitrator. These provisions embody a fundamental reform designed to preserve the impartiality and independence of the neutral chair of the arbitral tribunal in tripartite arbitration proceedings when the two party-appointed arbitrators are acting as nonneutral arbitrators.

"The 2004 Revision preserves the style and format, and much of the language, of the 1977 Ethics Code."

Arbitrator Suitability

In addition to imposing impartiality and independence standards that form the bedrock of the presumption of neutrality, the *2004 Revision* also imposes an obligation on the arbitrator to determine his or her competence and availability to serve in the case. The *1977 Ethics Code* only admonished prospective arbitrators not to accept an appointment if unavailable to conduct the proceeding promptly. Canon I.B of the *2004 Revision* establishes new guidelines for a prospective arbitrator considering an appointment. An arbitrator may accept appointment only if fully satisfied that he or she: (1) can serve impartially; (2) can serve independently from the parties, potential witnesses, and the other arbitrators; (3) is competent to serve; and (4) can be available to commence the arbitration in accordance with its requirements and thereafter to devote appropriate time and attention to its completion. Canon X arbitrators are excused from items (1) and (2), but not from items (3) and (4) under Canon X.A(2).

Advertising, Representation, and Compensation

The *1977 Ethics Code* stated that solicitation of appointment as an arbitrator is inconsistent with the integrity of the arbitration process. The *2004 Revision* eliminates this statement. Canon VIII provides that advertising and promotion of an individual's willingness or availability to serve as an arbitrator must be accurate and truthful, and must not imply any willingness to accept appointment other than in accordance with the Code. There is nothing in the *2004 Revision* precluding an arbitrator from distributing advertisements in electronic or print medium, from making personal presentations to prospective users of arbitral services, or from responding to inquiries concerning the arbitrator's availability, qualifications, experience or fee arrangements.[23]

The *2004 Revision* contains a provision that should interest those who follow developments in the rules governing the "practice of law." The *1977 Ethics Code* forbade an arbitrator to deny to a party the opportunity to be represented by counsel; it also required the arbitrator to be courteous to parties and their lawyers. Canon IV.A and C in the *2004 Revision* states that an arbitrator should not deny a party the opportunity to be represented by counsel "or by any other person chosen by the party." It also applies the duty of courtesy to the parties and their "representatives." These changes undoubtedly should be read in the context of recent efforts in some states to insist that arbitrating parties may only be represented by persons admitted to the bar at the place of arbitration. The Introductory Note on Construction cautions, however, that all provisions of the *2004 Revision* are subject to contrary provisions of applicable law.

Finally, in order to bring together provisions relating to arbitrator compensation that had been separated in the *1977 Ethics Code*, Canon VII of the *2004 Revision* groups the ethical rules relating to the compensation of arbitrators in one place. These rules apply to all arbitrators. In a development that should be welcomed by parties and counsel, new Canon VII.B(3) includes a specific caution that "[a]rbitrators should not, absent extraordinary circumstances, request increases in the basis of their compensation during the course of a proceeding."

Conclusion

The *1977 Ethics Code* remains an historic document that greatly enhanced the integrity of and respect for arbitration process throughout the United States and the world. The *2004 Revision* makes this *Code* even better and even more in tune with modern, contemporary practice. It also brings American standards closer to standards accepted in international commercial arbitration. ■

ENDNOTES

[1] Labor arbitration is generally conducted under the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes.

[2] E.g., *Lifecare Int'l Inc. v. CD Medical Inc.*, 68 F.3d 429, 435 (11th Cir. 1995); *Burlington Northern R.R. v. Tuco Inc.*, 960 S.W.2d 629, 636-37 (Tex. 1997).

[3] *Merit Ins. Co. v. Leatherby Ins. Co.*, 714 F.2d 673, 680 (7th Cir. 1983). Accord *ANR Coal Co. v. Cogentrix of N.C., Inc.*, 173 F. 3d 493, 497n (4th Cir. 1999); Lifecare Int'l Inc., *supra* n. 1, 68 F. 3d at 435.

[4] The ABA members of the working group were Sara Adler, Carol Emory, Bruce Meyerson and Kenneth B. Reisenfeld. The AAA members were James H. Carter, Jr., John D. Feerick, Florence Peterson and John M. Townsend. Kathleen Scanlon of CPR participated in the working group meetings.

[5] The Report to the American Bar Association was prepared by Robert A. Holtzman, Benjamin H. Sheppard Jr. and Kenneth B. Reisenfeld. That report formed the basis of this article.

[6] In this situation, the parties' agreement usually provides that each party will appoint one arbitrator and the third arbitrator will be appointed by the two party-appointed arbitrators.

[7] *1977 Ethics Code*, Canon VII, Introductory Note.

[8] The Introductory Note on Construction states: "All provisions of this Code should therefore be read as subject to contrary provisions of applicable law and arbitration rules. They should also be read as subject to contrary agreements of the parties. Nevertheless, this Code imposes no obligation on any arbitrator to act in a manner inconsistent with the arbitrator's fundamental duty to preserve the integrity and fairness of the arbitral process."

[9] They contended that an ethics code should deal with the ethical obligations of nonneutral party-appointed arbitrators in some sort of appendix, if it had to deal with them at all.

[10] See, e.g., *Delta Mine Holding v. AFC Coal Properties*, 280 F.3d 815 (8th Cir. 2001).

[11] Canon X.A(1).

[12] Canon X.A, B.

[13] Canon X.C.

[14] Canon III.B(4).

[15] Canon II.A(1) and (2).

[16] Canon II.D.

[17] Canon II.C.

[18] 393 U.S. 145, 150 (1968), *reh'g den.*, 393 U.S. 1112 (1969). See *Beebe Med. Ctr., Inc. v. InSight Health Serv. Corp.*, 751 A.2d 426, 441 (Del. Ch. 1999) ("the Code's pertinent provisions are drawn in large measure from the principles articulated in Justice White's concurrence"); *Merit Ins. Co. v. Leatherby Ins. Co.*, 714 F.2d 673, 682 (7th Cir. 1983) ("the Code of Ethics for Arbitrators ... treats Justice White's opinion as a surer guide to the view of the majority of the Supreme Court than Justice Black's").

[19] See, e.g., *ANR Coal Co., supra* n. 3, 173 F. 3d at 498-99; *Merit Ins.*, 714 F.2d at 682 ("Our court ... treated Justice White's opinion as authoritative.").

[20] Canon III.B(2)(b), (3)(c), and (4).

[21] No similar provision is in the revised AAA commercial rules because these rules provide that all arrangements with regard to compensation should be made through the AAA. rule R-51(c).

[22] Canon X.C(3).

[23] Comment to Canon VIII.