Disclaimer: The Disclosure Checklist is a work product of the Disclosure Subcommittee of the Arbitration Committee of the Section of Dispute Resolution. The American Bar Association has not adopted this Checklist as Policy. The Section of Dispute Resolution has declined to adopt it as Policy. Some of the members of the Section of Dispute Resolution, as well as commentators from other ABA Sections and from other organizations, have expressed strong views critical of the Checklist. Critiques of the Checklist and the approach the Subcommittee took in drafting it can be found by clicking here.

Disclosures for Arbitrators in Domestic Commercial Disputes: A Checklist

By the Disclosure Subcommittee of the Arbitration Committee, American Bar Association Section of Dispute Resolution

Introduction

The Disclosure Subcommittee (“Subcommittee”) of the ABA Dispute Resolution Section’s Arbitration Committee was formed to develop a checklist for arbitrators in domestic commercial disputes to assist them in making disclosures of interests and relationships that might create an appearance of partiality. Excluded from the purview of this paper, at the request of practitioners in these areas, are arbitrators in labor disputes involving collective bargaining agreements and arbitrators in international arbitrations. Concerns have been expressed that parties—and arbitrators—may face the prospect that a duly considered, properly prepared, and otherwise seemingly fair award rendered after a lengthy and expensive hearing could be vacated due to a failure by an arbitrator to disclose a particular relationship. The Subcommittee drafted the Checklist, with accompanying Commentary, for commercial arbitrators to consult in

1 The Disclosure Subcommittee is comprised of Russel Murray (Chair), Catherine Shanks, James Stone, and Michael Timpane. The Subcommittee expresses its appreciation to former Chair, Kurt Detman, for his assistance and leadership during his tenure, which included the preparation and circulation of the first draft of this paper.

2 This paper is primarily for use by arbitrators in domestic commercial arbitrations and not by arbitrators in labor arbitrations involving collective bargaining agreements or by arbitrators in international arbitrations. Arbitrators in labor arbitrations are covered by the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes and are exempted in the Code of Ethics for Commercial Arbitrators (infra, footnote 6), and the international arbitration community has adopted the International Bar Association (“IBA”) Guidelines as approved by the Council of the IBA on May 22, 2004. The IBA disclosure guidelines create three categories of conflicts of interest: a “red category” of conflicts that must be disclosed, some of which may be waived by the parties—but only if such waiver is in writing—and some of which are deemed not to be waivable under any circumstances; an “orange” category, which must be disclosed but may be waived; and a “green” category that the IBA deems not rising to the level even of needing disclosure. The IBA Guidelines are available at: http://www.ibanet.org/legalpractice/Arbitration.cfm#Guides.
identifying and disclosing interests and relationships, or other circumstances that could pose such “appearance of partiality” issues.

Many statutes, standards, cases, and ethics codes direct arbitrators to make disclosures, but they offer little guidance on how best to do so or where to draw the line. One challenge for the Subcommittee was to establish a reasonable balance between the arbitrators’ duty to disclose and the burdens imposed on arbitrators in trying to identify, evaluate, and disclose all relationships that may be of assistance to the parties in selecting the arbitrator and which, if left undisclosed, might later provide a basis for setting aside an award. Other challenges included protecting the interests of the parties and the integrity of the arbitral process while keeping in mind the vagaries and disparities among various arbitration interest groups.

The Subcommittee received comments from several arbitrator groups urging that their group, or a particular substantive area, be expressly excluded from using the Checklist. In response, the Subcommittee wishes to make clear that no one arbitrator or group of arbitrators is required to use this Checklist, and the Subcommittee does not purport to know what disclosure may or may not be reasonable or responsible in a given circumstance. Instead, as stated elsewhere in the Commentary, the Checklist is intended and designed as a tool to assist arbitrators who wish help in deciding what to disclose, not as a hammer to force disclosures where the arbitrator has made his or her own determination that disclosure is unnecessary. Each arbitrator must decide what to disclose, and each assumes the risks attendant the decision including the risk that the parties or a court may one day disagree. The Subcommittee has proposed the Checklist, however, because many arbitrators have asked for guidance in this area and because of the monetary and non-monetary costs to the parties, as well as the reputation cost to the arbitrator, that may be incurred when the arbitrator fails to disclose a matter that is later used as a basis to challenge the award.

3 The ABA Section of Labor and Employment Law Council (“LEL Council”) submitted comments stating that the LEL Council voted in June 2008 to request exemption of both labor and employment disputes from “any best practices disclosure document produced by the [ABA Dispute Resolution] Section.” Labor arbitrations are exempted (infra, footnote 6) but arbitrators in most employment arbitrations are subject to the Code of Ethics for Commercial Arbitrators and therefore may find this Checklist and Commentary useful in making disclosures. Similarly, the Financial Industry Regulatory Authority, Inc. (“FINRA,” f/k/a NASD) commented that it is a self-regulatory organization with its own rulemaking and enforcement responsibilities, that it has its own arbitrator disclosure requirements, and that FINRA arbitrators are not subject to state-mandated disclosure requirements or other guidelines or standards. Also, a working group from the ABA International Law Section commented that, among other things, the Checklist and Commentary are “completely at odds with international [arbitration] practice…” The Subcommittee notes that few disclosure statutes, standards, guidelines, codes or cases draw distinctions based upon the nature of the substantive claims in the arbitration (other than labor disputes) or as to national versus international venue in stating arbitrator disclosure requirements or in deciding whether adequate disclosures were made, but in response has excluded international arbitrators or arbitrations from the ambit of this White Paper.

4 Arbitrators should keep in mind that parties, when considering an arbitrator for an appointment, routinely perform a web-search of the arbitrator’s name. If the arbitrator has had an award challenged in the past on grounds of “failure to disclose,” the parties will quickly become aware of that fact, as courts in such cases almost always disclose the arbitrators’ names. Even where the award was upheld, court opinions often appear critical of the arbitrator’s failures to disclose, and parties may choose to appoint another
The Checklist is not a roadmap for losing parties seeking vacatur nor for judges in examining, for example, whether “there was evident partiality or corruption in the arbitrators.” It is a disclosure Checklist, not a disqualification or vacatur checklist, and is meant not only to assist domestic commercial arbitrators in satisfying legal disclosure requirements but also to satisfy ethical obligations including those in The Code of Ethics for Arbitrators in Commercial Disputes (“Code of Ethics for Commercial Arbitrators”). In accepting an appointment, an arbitrator is representing that he or she can serve with fairness and integrity. Thus, by making disclosures, the arbitrator is not admitting that there is a conflict or inviting a challenge, he or she is simply providing information—in an abundance of caution and in the interests of full disclosure—that may be helpful to the parties in selecting an arbitrator and in giving them reasonable assurance that post-award challenges on “failure to disclose” grounds are both unlikely and, if attempted, unlikely to succeed.

The Commentary provides explanations and examples to help guide the user in working through the Checklist. The Checklist also provides definitions for terms used and a format for recalling and considering what information to disclose. Together, the Checklist and Commentary may provide a useful tool for commercial arbitrators in making disclosures.

Background

The numerous arbitrator disclosure guidelines, codes of ethics, and similar practice standards are mostly, but not entirely, voluntary or lack the force of law. The Federal Arbitration Act (“FAA”), for example, says nothing on the topic of disclosure. The RUAA imposes binding disclosure obligations, but to date has been adopted in only 12 states and the District of Columbia. A few states, such as California, have statutory disclosure requirements for arbitrators, but in other jurisdictions there are no statutes or rules mandating disclosure. The result is that much of the guidance for arbitrator disclosures has come, often sporadically and inconsistently, from the courts.
Many arbitrators are familiar with cases around the country in which arbitration awards have been challenged, and in some instances vacated, because an arbitrator failed to disclose certain information that was later determined to reflect actual or perceived partiality. The Supreme Court addressed the issue in the Commonwealth Coatings case, where an arbitration award was set aside because an arbitrator failed to disclose his substantial interest in a firm that had significant business ties with a party to the arbitration. Justice Black’s plurality opinion for the court states that arbitrators, under the FAA’s “evident partiality” test, must “disclose to the parties any dealings that might create an impression of possible bias” or face having the award set aside.

Some courts, however, have chosen not to follow Justice Black’s opinion in Commonwealth Coatings, finding that it was not backed by a majority of the Justices. These courts have instead often followed the concurring opinion of Justice White to the effect that failure to disclose an essentially trivial or insubstantial relationship would not be grounds for setting aside an award. Several subsequent cases have held, for example, that an appearance of bias was not enough to set aside an award—the challenging party must also present “evidence of bias [that is] … direct, definite and capable of demonstration.”

One of the more recent and most widely noted decisions interpreting Commonwealth Coatings is the Positive Software case in which the Fifth Circuit, en banc, determined that Justice White’s concurring opinion in Commonwealth Coatings provided only limited support for Justice Black’s opinion for the Court and did not lend it majority status. Thus relieved of any obligation to follow Justice’s Black’s opinion, the Fifth Circuit concluded that the arbitrator’s failure to disclose that he and an attorney for a party had been two of 34 attorneys who previously represented the same corporation (which was not itself a party to arbitration proceeding) in an unrelated litigation seven years earlier was trivial and, therefore, that the failure to disclose was not grounds for setting aside the award.

A dissenting opinion by Judge Reavely and joined by four other Fifth Circuit Judges reached the opposite conclusion. Together, the opinions in Positive Software provide an excellent review of both sides of the controversy over Commonwealth Holdings and highlight the difficulty in predicting what a court—or even members of the same court—may or may not find lacking in an arbitrator’s disclosures.

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10 See 9 U.S.C. §§ 10(a)(1)-(3).
11 393 U.S. at 149.
12 Id. at 150-51. Other opinions, including Judge Reavely’s dissent in Positive Software, infra, note 14, conclude that the opinions of Justice White and Justice Black in Commonwealth Coatings are “... easily compared and easily reconciled ...” (173 F.3d at 287.)
14 Positive Software Solutions, Inc. v. New Century Mortgage Corp., 476 F.3d 278 (5th Cir. 2007).
15 A three judge panel had previously concluded that the award should be set aside for failure to disclose (436 F.3d 495), upholding the decision of the District Court (337 F.Supp.2d 862).
Despite what may be perceived as a trend in federal courts away from imposing Justice Black’s “appearance of bias” disclosure standard, some states have legislated\textsuperscript{16} and some courts have held\textsuperscript{17} that an arbitration award must be vacated under this standard if disclosures are not made. In developing the Checklist and Commentary, the Subcommittee reviewed many sources of disclosure obligations including the Code of Ethics for Commercial Arbitrators, the Revised Uniform Arbitration Act ("RUAA"),\textsuperscript{18} disclosure guidelines of various provider organizations, as well as various state statutes and court rules. In addition, nearly all of the disclosure standards, ethical codes, disclosure requirements of arbitration service providers, and state statutes mentioned herein have adopted some variation of an appearance of bias or appearance of partiality standard:

**Canon II, Code of Ethics for Commercial Arbitrators:** [Arbitrators should disclose] … any known existing or past financial, business, professional or personal relationships which might reasonably affect impartiality … in the eyes of any of the parties … [and] any such relationships involving their families or household members or their current employers, partners, or professional or business associates that can be ascertained by reasonable efforts …

**Section 12, RUAA:** [A]n arbitrator, after making a reasonable inquiry, shall disclose … any known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator …

While each of these has its own unique wording, most have disclosure provisions generally similar to those in Canon II of the Code of Ethics for Commercial Arbitrators, including:

(1) an obligation to disclose known facts that a party might reasonably consider likely to affect impartiality;

(2) an obligation to make a reasonable investigation to ascertain facts requiring disclosure; and

(3) a continuing duty to make disclosures as they may become known during the arbitration proceedings.

\textsuperscript{16} See, \textit{e.g.}, Cal. Code Civ. P. § 1281.9 (a)-(b). This California statute creates a virtual strict liability vacatur standard for the non-disclosure of specified information.

\textsuperscript{17} See, \textit{Schmitz v. Zilveti}, 20 F.3d 1043 (9th Cir. 1994); \textit{Ovitz v. Shulman}, 133 Cal. App. 4th 830 (2005). In addition, some state courts have chosen to follow Justice Black’s opinion in \textit{Commonwealth Coatings}, including the Texas Supreme Court (\textit{Burlington Northern Railroad Co. et al v. Tuco Inc. et al}, 960 S.W.2d 629 (Texas 1997))—putting it at odds with the federal courts in Texas (Fifth Circuit).

\textsuperscript{18} The full text and commentary of the RUAA may be found at http://www.nccusl.org. As of June 2008, the RUAA has been adopted in 12 states and the District of Columbia, and legislation is pending in four other states.
In order to simplify the drafting of the Checklist and Commentary, therefore, the Subcommittee often uses the specific disclosure language from the Code of Ethics for Commercial Arbitrators rather than create separate commentary and checklists for each set of standards.19

Some jurisdictions have more rigorous disclosure requirements than the Code of Ethics for Commercial Arbitrators (California for example20), sometimes including specific and detailed obligations. The Subcommittee has not attempted to address all disclosure requirements in all jurisdictions, and arbitrators are advised to determine whether specific disclosure requirements may be applicable in their jurisdictions. In addition, various provider organizations may have their own defined disclosure requirements, or even the arbitration agreement between the parties may require certain disclosures. Arbitrators must look to these and other possible sources of disclosure obligations, which may require disclosures in addition to those addressed in the Checklist.21

The Checklist and Commentary suggest that the arbitrator first make a reasonable investigation to learn of any facts that may give rise to the appearance of arbitrator partiality and then disclose them before accepting the appointment. If, after accepting the appointment, the arbitrator learns of a potential arbitrator partiality issue, the arbitrator should make disclosure at that time. The Checklist and Commentary also take into account the realities of today’s world of interconnected and complex business, family, and social relationships. As Justice White’s concurring opinion in Commonwealth Coatings recognized,

“[A]n arbitrator’s business relationships may be diverse indeed, involving more or less remote commercial connections with great numbers of people. He cannot be expected to provide the parties with his complete and unexpurgated business biography.”22

The challenge is where to draw the line between disclosing any known facts or circumstances that might reasonably affect impartiality and providing a complete and unexpurgated biography. The Subcommittee has chosen to draw the line favoring “when in doubt, disclose,” with the philosophy that in most instances to err on the side of over-disclosure is to the benefit of the parties and the arbitral process.

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19 In addition, the Code of Ethics for Commercial Arbitrators was selected because it has already been approved and adopted by the ABA.
20 California Code of Civil Procedure (“CCP”) §1281.9 requires disclosure of “matters that could cause a person aware of the facts to reasonably entertain a doubt that the proposed neutral arbitrator would be able to be impartial.” Moreover, under CCP §1286.2(a)(6), vacatur for failure to make a disclosure required by §1281.9 is automatic.
21 This paper is not a complete legal review of all disclosure requirements, so readers should inform themselves of local statutes, court rules, case law and arbitration provider rules that may govern disclosure requirements where the arbitration is being held. Attached to this paper is an excellent summary entitled “Disclosure Guidelines for Commercial Arbitration” prepared by Professor Mary A. Bedikian of the Michigan State University College of Law.
22 393 U.S. at 151.
Moreover, arbitrators often find themselves confronted with very practical questions such as: “What level of inquiry do I need to undertake before making disclosures?” “How many degrees of separation do I need to disclose?” “How far back in time do I need to go?” “Do in-laws count?” “What about my college friends, do I have to disclose them too?” “Do I have to scan the membership roster of every club and organization that I’ve ever been a member of to be sure I’ve disclosed everything?” “Should I make ‘standard’ responses in all my disclosures?” These questions are not idle ones if the arbitrator is to provide the parties with full information to make informed choices and to protect the award from challenge and vacatur.

The Checklist and Commentary frame the suggested domestic commercial arbitrator disclosures in three relationship categories and one catch-all category: (1) disclosure of the arbitrator’s own relationships; (2) disclosure of the arbitrator’s family members’ relationships; (3) disclosure of relationships of the arbitrator’s business and professional associates; and (4) other circumstances that might implicate partiality. It is hoped that this Checklist and Commentary will be useful for all arbitrators, including independent arbitrators and non-lawyer-arbitrators, attempting to comply with disclosure requirements from many sources—the RUAA, state statutory schemes that may differ from the RUAA, applicable case law, local court rules, model standards of professional conduct such as the Code of Ethics for Commercial Arbitrators, and arbitration provider groups. It may also be a useful tool for provider-affiliated commercial arbitrators in filling out disclosure forms drafted by arbitration provider organizations.

DISCLOSURE CHECKLIST AND COMMENTARY

The disclosure Checklist is organized into four general categories:

I. **Self** (interests and relationships of the arbitrator).
II. **Relatives** (interests and relationships of the arbitrator’s family members).
III. **Business and Professional Associates** (relationships of the arbitrator’s business and professional associates).
IV. **Other** (additional circumstances that implicate arbitrator partiality).

The **Self** category is the most inclusive and suggests the most extensive inquiry and disclosure of any of the categories, including disclosure of subcategories of business or professional and social relationships. Next is **Relatives** (the term is defined in the Checklist footnotes) and suggests both business and social relationship disclosures, but with a lesser level of inquiry than for **Self**. The **Business and Professional Associates** category also suggests disclosure of business, professional, and social relationships, but with a higher level of inquiry and disclosure of business and professional relationships because of the financial benefits that may flow to the arbitrator from such relationships. Finally, the **Other** category is intended for disclosure of interests or circumstances that may come to mind while completing the rest of the checklist that do not neatly fit elsewhere.

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23 The Disclosure Subcommittee notes that many service providers, such as AAA and JAMS, have their own disclosure checklists that the arbitrator must use in order to be appointed.
The Commentary is divided into two sections, General Guidelines that apply to all categories in the Checklist and Category-Specific Guidelines. The Commentary contains discussions, examples, and explanations to assist the arbitrator in making disclosures. In addition, definitions for key terms used throughout are included in the Checklist footnotes. Together, the Checklist and Commentary are intended to add consistency to the disclosure process, to assure that ample information is provided to assist the parties and counsel in selecting domestic commercial arbitrators, to minimize the risk of challenge or vacatur of an award, and thereby to enhance the arbitral process for all involved.

GENERAL GUIDELINES

What to Disclose, and When

The Subcommittee recommends that arbitrators in domestic commercial disputes recite three mantras while completing the Checklist and throughout the arbitration process. The first is, “if in doubt, disclose.” The second is, “disclose early, often, and in writing.” The third is, “the duty to disclose is ongoing during the arbitration proceedings.” As expressed by Justice White in his concurring opinion in Commonwealth Coatings:

It is far better that the relationship be disclosed at the outset, when the parties are free to reject the Arbitrator or accept him with knowledge of the relationship and continuing faith in his objectivity, than to have the relationship come to light after the arbitration, when a suspicious or disgruntled party can seize on it as a pretext for invalidating the award.²⁴

The Subcommittee therefore recommends that all domestic commercial arbitrators review and follow these general guidelines, culled from Canon II of the Code of Ethics for Commercial Arbitrators, each time they are offered or considered for an appointment:

1. YOU HAVE AN OBLIGATION TO DISCLOSE:

• ANY DIRECT OR INDIRECT FINANCIAL OR PERSONAL INTEREST IN THE OUTCOME OF THE ARBITRATION.

• ANY EXISTING OR PAST FINANCIAL, PROFESSIONAL OR PERSONAL RELATIONSHIPS THAT MIGHT REASONABLY AFFECT YOUR IMPARTIALITY OR LACK OF INDEPENDENCE IN THE EYES OF A PARTY, INCLUDING SUCH RELATIONSHIPS OF:
  o YOUR FAMILY OR HOUSEHOLD MEMBERS.
  o YOUR CURRENT EMPLOYERS, PARTNERS, OR PROFESSIONAL OR BUSINESS ASSOCIATES.

• ANY KNOWLEDGE YOU HAVE OF THE DISPUTE.

²⁴ 393 U.S. at 151.
• ANY OTHER MATTERS, RELATIONSHIPS OR INTERESTS YOU MAY BE OBLIGATED TO DISCLOSE BY AGREEMENT OF THE PARTIES, RULES OR PRACTICES OF AN INSTITUTION, OR APPLICABLE LAW.

2. YOUR OBLIGATION TO DISCLOSE IS ONGOING THROUGHOUT THE ARBITRATION PROCEEDING.

3. ANY DOUBTS AS TO WHETHER TO DISCLOSE SHOULD BE RESOLVED IN FAVOR OF DISCLOSURE.

4. WHILE YOUR OBLIGATION IS ONLY TO DISCLOSE MATTERS KNOWN TO YOU, YOU HAVE A DUTY OF INQUIRY TO USE REASONABLE EFFORTS TO INFORM YOURSELF OF ALL DISCLOSABLE MATTERS.

These guidelines, standing alone, may raise as many questions as they answer, and the Checklist and Commentary are designed to help in answering most disclosure questions that may arise.

Once a decision to disclose a particular relationship or circumstance is made, it is important to impart enough information to the parties for them to make an informed decision as to whether to accept or to challenge the arbitrator’s appointment or selection.\(^{25}\) The Subcommittee recommends that each disclosure answer the “Who,” “What,” “When,” and “Where” of the relationship disclosed. The more information that is provided by the arbitrator, the more difficult it will be for a disgruntled party to challenge the award. In other words, if the challenging party accepted the appointment with full knowledge of the disclosed relationship, the party will be hard-pressed to object later.

Arbitrators should keep in mind in making disclosure of a particular relationship that he or she is not admitting or suggesting that a conflict of interest or partiality exists—the arbitrator is only saying, “Here is a relationship that the parties may want to know about.” \textit{Disclosure does not mean disqualification.} The Code of Ethics for Commercial Arbitrators requires only that information be made available to the parties, and does not suggest that recusal or disqualification is required. Although excessive disclosures arguably may concern the parties unnecessarily, full explanation of the relationship should ease most concerns—and the integrity of the arbitration process will be the better for the disclosure having been made.

\textbf{The Duty of Inquiry}

Canon II of the Code of Ethics for Commercial Arbitrators, like most other disclosure standards, requires that the arbitrator make disclosures “after making a reasonable effort to inform themselves of any interests or relationships” that should be disclosed. This is quite similar to the RUAA Section 12 duty to make “reasonable

\(^{25}\) While Canon II does not expressly require that disclosures be made in writing, written disclosures are strongly recommended—to avoid squabbles after the fact over what was disclosed. In addition, Canon II does not require that records be kept of matters that may one day be subject to disclosure, but the Subcommittee recommends that adequate records be kept such that meaningful disclosures may readily be made.
inquiry.” The Comment to RUAA §12 at subsection 3 states that “[t]he extent of this
inquiry may depend on the circumstances of the situation and the custom in a particular
industry.” The Subcommittee believes that this Comment is equally pertinent to the
Code of Ethics for Commercial Arbitrators and other disclosure standards.

The Subcommittee has provided in the Commentary recommendations as to
what may be a reasonable level of inquiry under a variety of circumstances. Different
levels of inquiry be appropriate depending upon the category or sub-category in which
the relationship arises. These varying levels of inquiry are discussed more fully in the
Category-Specific Commentary, below.

**Time as a Factor**

One of the most common questions is, “How far back in time do I have to go in
making disclosures?” The Subcommittee considered whether time limitations—such as,
“Within the last 5 years have you ...?”—should provide a cut-off on disclosure
requirements. Ultimately, the Subcommittee decided not to use time limits in the
recommended Checklist because, while relevant, time limits alone are not determinative
of whether particular information or relationships should be disclosed. For example, if an
arbitrator was a college roommate of, or had a close personal relationship with, one of
the parties or counsel 15 years ago, but had not had any contact with the person for 6
years, the relationship should be disclosed, and a question in the form of, “Have you,
within the last 5 years, had a social relationship with a party or counsel?” would not
suggest that disclosure of the relationship was expected. On the other hand, the fact of
merely having seen counsel for a party at, say, an ABA Convention, may not suggest
that disclosure was necessary, even if within the last year.

The better question, rather than “when” a particular relationship occurred, is
whether the relationship, when viewed objectively, was such that a party might
reasonably consider the relationship likely to affect the arbitrator’s impartiality. Thus, the
timing of the relationship may be a factor to consider, but it is not alone determinative of
the answer to the question of whether disclosure should be made.

**Confidentiality Considerations**

The Subcommittee notes that at the outset of the disclosure process arbitrators
must consider confidentiality issues—that is, arbitrators have potentially conflicting
obligations of confidentiality and disclosure. Parties to arbitration proceedings are often
concerned that the proceedings, and even the fact that an arbitration is underway, be
kept confidential. Most arbitrators are mindful of the parties’ confidentiality concerns and
comply with the Code of Ethics for Commercial Arbitrators Canon VI obligation to keep
confidential all matters relating to the arbitration proceedings.26 Often, by agreement of
the parties or because of circumstances surrounding the arbitration, information about

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26 *Supra*, note 2.
the proceedings is limited to the parties and the immediate participants in the arbitration process.27

In order to make “reasonable inquiry” about potential disclosure issues, however, the arbitrator may need to provide other persons with enough information to identify the issues, the parties, the witnesses, and other matters in the arbitration to ensure that proper disclosures are made. This situation can create a “Catch 22,” in that giving insufficient information about the arbitration and the parties may result in inadequate disclosures, while giving too much information may violate the confidentiality that participants expect in the arbitration process. Although there is no easy solution to this problem, the Subcommittee suggests the following: First, consider the confidentiality contours of the particular matter, such as whether the arbitration agreement mandates confidentiality; second, consider limiting what information is provided in making inquiries to third parties; third, if in doubt, raise the issue of what may be disclosed with the arbitration administrator if there is one, or with the parties directly if there is not; and fourth, disclose to the parties the extent of your inquiry.

Another confidentiality concern in making disclosures for lawyer-arbitrators arises under Rule of Professional Conduct (“RPC”) 1.6 Confidentiality of Information:

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, …

Under RPC 1.6, lawyer-arbitrators must be careful in disclosing relationships such that they do not violate their confidentiality obligations to their clients and former clients under the Rule. If in doubt as to how to address a required disclosure, it may be necessary to obtain the consent of the client about whom the disclosure is to be made. Similar business or professionally-imposed restrictions on disclosure may apply to some non-lawyer arbitrators. An arbitrator may, and sometimes must, decline the appointment if confidentiality concerns and disclosure obligations cannot be reconciled.

Several comments received by the Subcommittee in response to an earlier draft expressed that business and professional relationship disclosures should be limited to “current” relationships and not past ones, in part because of RPC 1.6 concerns. The difficulty with this suggestion, however, is that the Code of Ethics for Commercial Arbitrators, Canon II, specifically requires disclosure of “…any known existing or past financial, business, professional or personal relationships …” (emphasis added).

A not-uncommon but difficult confidentiality/disclosure conundrum occurs when an arbitrator is offered an appointment on a new matter involving a party (or witness or counsel) who is presently before the arbitrator in a pending matter. This situation creates several problems for the arbitrator. First, the arbitrator must disclose, in the

27 Arbitrators in California should note Standard 7(b)(2)(B) of the Ethical Standards for Arbitrators in California, which requires arbitrators to disclose information about arbitrations within the previous five years. The information to be disclosed includes the date of the decision, the identity of the prevailing party, the names of the parties’ attorneys, and the amount of monetary damages awarded.
pending arbitration, the offer of the appointment as part of the arbitrator’s continuing duty to disclose. But, can the arbitrator even consider taking the new appointment?

The Code of Ethics for Commercial Arbitrators, Canon I, Part C, urges the arbitrator to avoid accepting the new appointment:

… [W]hile serving as an arbitrator, a person should avoid entering into any business, professional, or personal relationship or acquiring any financial or personal interest, which is likely to affect impartiality or which might reasonably create the appearance of partiality.

Part C continues, however, to provide that it is not unethical to accept such an appointment where the parties have consented following full disclosure.

Thus, the arbitrator has two distinct disclosure obligations: (1) the obligation to disclose, in the pending arbitration, the offer of the new appointment (the disclosure of which cannot be avoided), and (2) the obligation to disclose the pending arbitration to the parties, counsel, and other arbitrators in the new matter (the disclosure of which the arbitrator may avoid by simply turning-down the new appointment). And, in making these disclosures, the arbitrator must be mindful of the duty of confidentiality in both arbitrations.

If the arbitrator chooses to follow the prickly path of attempting to accept the new appointment—at the risk of being challenged in both arbitrations—then the arbitrator, when offered an appointment involving a party, witness, or counsel who is also in a pending matter before the arbitrator, should consider first obtaining the consent of the parties in the pending matter to disclose pertinent information about the pending matter to the parties, counsel, and other arbitrators in the new matter. If the parties do not consent, the arbitrator should consider declining the new appointment. If the parties do consent to disclosure, the arbitrator may then proceed to make appropriate disclosures in the new matter, recognizing that the existence of the pending matter may well lead to a challenge.28

28 Another approach is for the arbitrator to make simultaneous disclosures in both the pending and the new matters. For example:

In the pending matter:
I have been asked to serve as arbitrator in another matter involving Brown Company, the claimant in this matter. Janet Johnson, counsel for Brown in this matter, is also counsel for Brown in the new matter. The subject matter is not related to that of this case. I have also reviewed the parties proposed witness lists submitted to date and do not find any common names.

In the new matter:
I am currently serving on another matter involving Brown Company and Janet Johnson is counsel for Brown in that matter. The subject matter is not related to the subject of this matter. I have also reviewed the parties proposed witness lists submitted to date and do not find any common names. Special care must be followed in using this approach to avoid disclosure of confidential information as no consents to disclose will have been obtained.
Keep in mind that some jurisdictions now have legislation or court rules governing or even prohibiting simultaneous service on multiple arbitration matters involving common parties or counsel, and it is the obligation of the arbitrator to be aware of these.

**Standardized and “Boilerplate” Disclosures**

For many arbitrators, the disclosure process includes providing “standard” disclosures such as a resume, curriculum vitae, or something similar. An up-to-date resume is very helpful for disclosing general categories of information, such as bar or other professional memberships, former positions, and similar matters. Some standard disclosures about family or social relationships may also be very useful, such as that a spouse is a judge or that the arbitrator is a member of a particular social group. To be useful, however, the resume must be current and should be the beginning of the disclosure process, not the sum. For example, the arbitrator’s resume may state that he or she is a member of an ABA subcommittee, but this disclosure would be inadequate if counsel for one of the parties was also on the 5-person subcommittee and the arbitrator failed to mention this as well. The resume or curriculum vitae should be provided in addition to, not as a substitute for, the Checklist information.

Some arbitrators attempt to use “boilerplate disclosures” such as: “I’m a retired judge here in Metropolis and I have served as an arbitrator for most of the litigators in town on commercial cases. I do not keep a list of all of these, but everyone knows me so I will leave it to the parties and their lawyers to disclose anything that needs to be disclosed.” Another variation is: “I’ve been a member of the same 600 person national law firm for 30 years and cannot possibly check all potential conflicts. Besides, everyone in town knows me, I’m fair and impartial, and disclosure is not really necessary. If the parties or their lawyers are aware of anything that should be disclosed, I’ll rely on them for disclosure.” Such boilerplate disclosures are inadequate and cannot replace the analysis discussed in this Commentary and the Checklist.

**Party Disclosures**

While the parties and counsel in an arbitration may not have disclosure obligations *per se*, the Subcommittee suggests that the arbitrator’s disclosures be accompanied by a request to the parties and counsel that they promptly advise the arbitrator of any information or relationships of which they are aware that may give rise to any concerns about the arbitrator’s impartiality. Any information so disclosed should then be passed-on to the other side or, in a circumstance where the information cannot be fully disclosed, the arbitrator may need to consider declining the appointment.

**CATEGORY-SPECIFIC GUIDELINES**

I. **SELF.**

A. **Business or Professional Relationships**
One of the most common relationships that the arbitrator must disclose is a business or professional relationship with one of the parties to the arbitration. This is particularly a concern with lawyer-arbitrators, who may work within national or international law firms that have hundreds or thousands of lawyers and many thousands of clients whose relationships potentially impact the arbitrator’s partiality and selection. Clearly, all such known attorney-client relationships must be disclosed, and the challenge for the arbitrator is using reasonable “due diligence” or inquiry to identify and assess them.

At a minimum, the lawyer-arbitrator should check the names of parties, legal counsel and known experts and other witnesses against the law firm’s conflicts database. In addition, if the firm has a new business committee or general counsel to review such matters, they should be consulted as well. A prudent practice is also to send an e-mail to partners and associates with the a listing of parties, counsel, and witnesses in order to solicit responses as to whether anyone knows of a connection with the persons, entities, or matter identified. If a positive response is received, it is then incumbent upon the arbitrator to follow-up, assess the information obtained, and determine whether disclosure is required.

Non-lawyer arbitrators also should look for business and professional ties the arbitrator or the arbitrator’s employer may have had with any of the parties, counsel, experts and other witnesses. This inquiry may require a search of customer lists, accounting ledgers, marketing files, and similar materials. The arbitrator should also inquire of co-employees as to whether they are aware whether the employer has or had a business or professional relationship with any of the parties, counsel or witnesses. Consider the following example:

Mr. Williams, a non-lawyer, has been contacted to arbitrate a dispute. Mr. Williams is employed by a construction materials supply business. General contractors and subcontractors regularly purchase construction materials from his employer. Mr. Williams should determine what customer lists the company maintains and should search the lists to determine whether any of the parties, counsel, or witnesses are customers

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29 Arbitrators in California should be mindful of California’s unique disclosure requirements and note Standard 2(m) of the Ethical Standards for Arbitrators in California, which defines “lawyer for a party” inter alia as “any lawyer currently associated in the private practice of law with a lawyer representing a party...” (emphasis added). This standard would require the arbitrator to check whether a lawyer with whom the arbitrator has had a prior relationship unrelated to the matter at issue has since joined a law firm that is now appearing before the arbitrator.

30 Some comments received by the Subcommittee expressed the difficulty, indeed the impracticality, of a lawyer in a large law firm sending emails throughout the firm asking, for example, whether anyone has had dealings with a “Mr. Paul Smith,” who is a witness in the arbitration, and then of following up on potentially dozens of positive responses. The Subcommittee notes that there are no express exceptions in the Code of Ethics for Commercial Arbitrators or in other standards, codes or statutes exempting lawyers in large law firms from compliance. On the other hand, the size of the firm and the remoteness of the contacts may certainly be a factor a court would consider in determining whether a particular relationship or circumstance should prompt a vacatur. The safest practice is to follow the Checklist and Commentary, but arbitrators are free to draw their own lines based upon their own assessments of risk.
of his employer. If so, he should decide whether he can serve impartially and, if so, he should disclose the relationship.

Expert witnesses require special attention, as expert witness roles have been the subject of several vacatur proceedings. If an expert has served as an arbitrator with you in other matters, you have served as an expert for parties or counsel in other matters, or the expert has testified in previous arbitrations in which you were an arbitrator, this information should be disclosed. Another area of specific concern is insurance. If a party is insured and the arbitrator or the arbitrator’s law firm represents the insurer or is retained by the insurer to defend parties, this relationship should be disclosed.31

Several Comments received by the Subcommittee expressed concern with the concept of disclosing participation or membership in the same business or professional groups. Prudence suggests disclosure, as evidenced by a recent case in the international arena. An arbitration award was recently vacated by the Moscow Arbitrazh Court because the arbitrators failed to disclose that they had been speakers at two seminars organized by, among others, the law firm representing a party in the arbitration. This failure was deemed to have deprived the other party of the opportunity to challenge the arbitrators’ appointment. The vacatur was upheld on appeal, on grounds that the arbitration procedures had been breached.32 While this case may not have resulted in vacatur in many jurisdictions, the decision highlights, yet again, the unpredictability of courts in reviewing “failure to disclose” issues and the need for arbitrators to err in favor of disclosure.33

Arbitrators, both lawyer and non-lawyer, are urged to maintain adequate data bases so that the types of financial, business, professional, and personal relationships that should be disclosed may be adequately investigated and disclosed. Given the considerable array of disclosure obligations facing arbitrators, it is not unreasonable to expect that arbitrators should be keeping records such that full and timely disclosures can be made.

B. Social Relationships

In addition to disclosure of business and professional relationships, Canon II of the Code of Ethics for Commercial Arbitrators requires disclosure of personal, or social, relationships. Disclosure of such relationships begins with a careful review of information provided about the case (names of parties, counsel, witnesses, etc.). If a possible relationship is identified, further inquiry may be needed:

It is noted that James Jones is listed as a witness for the claimant. I note that a James Jones is president of the Cleveland Chamber or Commerce, of which I am a member. If the parties know whether the witness is the

32 A discussion of the case can be found at: http://www.internationallawoffice.com/Newsletters. At the website, go to the 19 June 2008 Newsletter article contributed by Herbert Smith CIS LLP.
33 The IBA Guidelines, discussed at footnote 2, supra, suggest that such relationships would fall in the “green” category and thus not need to be disclosed at all—and that failure to disclose should create no risk whatsoever of vacatur.
same James Jones, please confirm so I may make appropriate disclosures.

Whether a particular social relationship requires disclosure, however, may depend upon whether it is close or casual, recent or remote, a one-time introduction or an ongoing contact. How the arbitrator would personally characterize the relationship—friend, acquaintance, member of same club or mosque, etc.—should be helpful in deciding whether to disclose.

**Friends.** The first social connection that the arbitrator must consider in the Checklist is “friend.” A friendship implies a close relationship. Webster’s defines friend as “a person whom one knows well and is fond of; intimate associate; close acquaintance.” A reasonable person could assume that an award against a friend would alter the relationship and by extension an arbitrator may be predisposed to rule in favor of the party who is a friend. Credibility of witnesses and attorneys is also a consideration. A party might reasonably assume that there is an unequal playing field if the arbitrator already has a basis for establishing credibility of a witness or attorney due to a friendship relationship. The arbitrator should certainly disclose friendships with parties, counsel, witnesses, or other arbitrators on the panel, and should consider declining the appointment if the friendship is a close one.

This concept of “friendship” is discussed in *Locabail (UK) Ltd. V. Bayfield Properties LTD & Anor* [1999] EWCA Civ 3004 (17 November 1999) in comparing what factors may constitute bias of a decision maker:

[A] real danger of bias might well be thought to arise if there were personal friendship or animosity between a judge and any member of the public involved in the case; or if the judge were closely acquainted with any members of the public involved in the case, particularly if the credibility of that individual could be significant in the decision of the case.

The rationale of the *Locabail* case is applicable in arbitrations as well. Personal relationships can indeed sway both the parties’ decisions in selecting the arbitrator and the arbitrator’s decisions in making the award.

**Acquaintances/Neighbors.** “Acquaintance” or “neighbor” relationships are less intimate than those of friends. Here, the key is to describe the relationship sufficiently so that those selecting the arbitrator have a reasonable understanding of the relationship. When writing the disclosure, an arbitrator should include the context of the relationship and the duration. If able, inclusion of the frequency of meetings may be helpful. For example:

Jane Jones, counsel for claimant, and I both have children in the same school system. We have seen each other and spoken briefly two or three times a year at school functions for the past six years. I serve on no school related committees or other activities. To the best of my recollection, other than knowledge of her as an attorney who practices real estate law in this city, I have no other contacts with Ms. Jones or her law
April 2009

firm, Jones and Jones, LLC. I am unaware that I and either she or any attorney in her firm have ever been involved in the same legal matter, either as opposing counsel, co-counsel nor have I served as an ADR practitioner for her or her firm.

The disclosure statement above provides enough information about the relationship to enable parties reasonably to evaluate it, and avoids “surprise” when a party enters the hearing and discerns familiarity between the opposing party’s lawyer and the arbitrator. It also highlights that, while the relationship exists, it would not impact the arbitrator’s impartiality in the matter.

**Social Memberships.** "Membership” or activity in social organizations is the next relationship to be considered. Social memberships can be significant. Membership in the same small group, especially an extended joint membership with extensive contacts such as a board member for a club or nonprofit, clearly requires disclosure. On the other hand, membership in the same church, synagogue, mosque, or other group may be insignificant if the membership is large and there are few or no direct contacts. Disclosure of membership in a social organization is necessary, however, when there is a nexus through the organization to the parties or other arbitration participants. Disclosure requirements do not dictate that an arbitrator must list each and every organization to which he or she belongs just because a possibility exists that another participant in the arbitration may also be a member. (Keep in mind that activities in connection with social organizations may cross the line to business or professional relationships.34)

**C. Other**

The “Other” section under the “Self” category is mostly self-explanatory and is for disclosure of matters not covered in the “Business or Professional” and “Social” relationship sections above, such as whether you have served before on arbitration panels with other arbitrators in the matter at hand, whether you have personal knowledge of the facts in the matter, and similar matters. If the “Yes” box is checked, the nature of the relationship should be described using the same criteria, to the extent possible, offered in the above categories. As an example, when serving on a multi-arbitrator panel, arbitrators should include disclosure of social relationships with other arbitrators.35 Parties may perceive shared experiences or contacts among the panel as significant in selecting the arbitrators. The prudent course of action is to disclose known

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34 See, e.g., RDC Golf of Florida, Inc. et al v. George P. Apostolicas, 925 So.2d 1082 (Fla 5th DCA 2006).
35 A related question is what to do if you become aware that one of the other arbitrators who has been offered an appointment to serve on a panel with you has not made a disclosure that you believe should be made, thus jeopardizing a future award. While the Subcommittee does not advocate that you make the disclosure for him or her, you may wish to contact the arbitrator in question and urge that the disclosure be made. If the arbitrator refuses, you should consider whether to proceed or to decline the appointment.
relationships with fellow arbitrators, providing the same degree of contextual clarity as with other disclosures.\footnote{See, e.g., Lucent Technologies Inc and Lucent Technologies GRL LLC v. Tatung Co., 379 F.3d 24 (2004), where the court rejected arguments of partiality in the circumstances of the neutral arbitrator and one of the party appointed arbitrators having co-owned a plane together at one time.}

II. Relatives

While the arbitrator’s own business, professional, social and other relationships with an arbitration participant are the most important to disclose, next in order of importance may be any such relationships with the arbitrator’s relatives. Requiring a potential arbitrator to inquire about relationships that any of his or her family may have had, however, could be cumbersome. For example, checking the arbitrator’s own conflict database is relatively straightforward, but asking other attorney-relatives to check their conflict databases is much more problematic and may not even be permitted by the relative’s firm. Similarly, contacting all relatives to see whether they have any social relationships with any arbitration participants would not ordinarily be needed.

The first question the arbitrator may have is, “What is a relative?” for purposes of making disclosures. The Checklist contemplates disclosure of relationships between an arbitration participant (party, counsel, witness) and the arbitrator’s spouse or significant other (including partner), sister, brother, parent and children. Special circumstances may exist where disclosure or relationships of relatives outside this definition would be prudent because close relationships may exist outside of the Checklist’s definition of “Relative” that could rise to a level requiring disclosure. For example, there may be a situation where the arbitrator grew up with, is close with, and socializes with a cousin. A disclosure along these lines might look like this:

Although not a “relative” as defined in the Checklist, my cousin, Tim Smith, used to work for Major Company, one of the parties. Tim was a sales representative for Major for two or three years ending approximately five years ago, before Tim went to business school.

The first level of inquiry regarding the relationships of relatives to parties, counsel, or witnesses is, “to the best of your knowledge.” If upon reflection, for example, the arbitrator recalls that a brother is a friend of the claimant’s lawyer, disclosure should be made. If the arbitrator realizes that his or her father’s company does business with one of the parties, disclosure should be made. In general, the Checklist does not contemplate extensive or cumbersome inquiries of relatives, but only requires that arbitrators disclose relative’s relationships “to the best of the arbitrator’s knowledge.”

If an arbitrator is aware of a relative’s relationship, the standard questions of “who, what, when, and where” should guide the disclosure. For example:
My brother Joseph Smith is an attorney from the same city as claimant’s counsel, and I am aware that they are friends since we both attended and were introduced at my brother’s birthday party a couple years ago. Other than that, I have no relationship with plaintiff’s counsel, and other than being introduced I have never discussed with my brother his relationship with claimant’s counsel.

Special circumstances might also dictate some affirmative inquiry. For example, if the arbitrator’s sister is a partner in a major law firm, which the arbitrator knows represents several large insurance companies, and the dispute to be arbitrated has an insurance company as a party or carrier for a party, a disclosure after a reasonable inquiry might look like this:

My sister Mary Smith is a partner at Big Law Firm, so I contacted her to see if Big Law Firm currently represents XYZ Insurance, one of the parties. She informed me that Big Law Firm formerly represented XYZ in matters she had no involvement with, but hasn’t represented XYZ in over a year.

Or, in slightly different circumstances:

She informed me that Big Law Firm, for confidentiality reasons, does not allow access to its conflicts database for dissemination outside the firm. She further informed me that to the best of her knowledge that XYZ is not a current client of the firm, and that she has never personally represented XYZ.

III. BUSINESS OR PROFESSIONAL ASSOCIATES.

The arbitrator’s disclosure his or her business and professional associates’ relationships to parties, counsel, witnesses, and other arbitrators on the panel is the next category in the Checklist. The business or financial relationships of the arbitrator’s business and professional associates require inquiry and disclosure, and the duty of inquiry here is high because the arbitrator may have received direct or indirect financial benefits as a result of the relationship. Canon II requires disclosure of “existing or past financial … relationships,” and if the arbitrator has shared in revenues received by his or her law firm or business from a party in the case, the arbitrator has a financial relationship to disclose. The inquiry level is discussed under I. Self, A. Business or Professional Relationships, above.

Canon II, Part A (2), also requires disclosure of social or personal relationships of the arbitrator’s current “employers, partners, or professional or business associates that can be ascertained by reasonable efforts.” In addition, Canon II, Part B requires a reasonable inquiry by the arbitrator to inform him or herself as to such relationships. Because a standard “conflicts check” in most law firms would not reveal social relationships of other lawyers in the firm, the Subcommittee suggests that this inquiry may be covered by an email inquiry as suggested under I. Self, A. Business or
Professional Relationships, above. The Subcommittee also acknowledges, however, that such relationships generally may not risk vacatur of an award if not disclosed, so the arbitrator must make the analysis of what level of inquiry to make and what to disclose in the context of the particular case and the circumstances at hand.

IV. OTHER.

The last category, “Other,” is a catch-all for disclosure of matters that may have come to mind in completing the disclosure checklist but that do not neatly fit elsewhere.

SUMMARY

In summary, an arbitrator may accept appointment to a case only if he or she can serve impartially and independently (Canon I, Code of Ethics for Commercial Arbitrators). If in using the recommended Checklist to assess relationships with the parties, counsel, witnesses, or other arbitrators a potential arbitrator checks “Yes” to any category, the arbitrator should consider whether the nature of the relationship is such that the appointment should be declined. If the arbitrator determines that the appointment may be accepted, the relationship should nevertheless be disclosed (Canon II, Code of Ethics for Commercial Arbitrators).

In deciding what to disclose, arbitrators should recite three mantras:

1. If in doubt, disclose.
2. Disclose early, often, and in writing.
3. The duty to disclose is ongoing.

As stated by Justice White, “It is far better that the relationship be disclosed at the outset, when the parties are free to reject the Arbitrator or accept him… than to have the relationship come to light after the arbitration, when a suspicious or disgruntled party can seize on it as a pretext for invalidating the award.”37

Bear in mind also that, although Canon II says to disclose “known” relationships and circumstances, you have a duty of inquiry to learn of disclosable matters, and a failure to disclose because of a lack of knowledge that is due to a failure to investigate will not protect either the arbitrator or the award from challenge.

37 Commonwealth Coatings, 393 U.S. at 151.
## DISCLOSURE CHECKLIST

### I. SELF

#### A. Business or Professional:

1. Have you ever been in any of the following business or professional relationships with: a Party\(^{38}\) or a Party Representative\(^{39}\)?

<table>
<thead>
<tr>
<th>Relationship</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arbitrator/mediator/other ADR neutral(^{40})</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Owner/officer/director/trustee</td>
<td>☐</td>
<td>☐</td>
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<tr>
<td>Employer/employee</td>
<td>☐</td>
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<tr>
<td>Principal/agent</td>
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<tr>
<td>Attorney/client</td>
<td>☐</td>
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<tr>
<td>Partner or member of same firm/organization</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Consultant or expert</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Member of same professional group, committee, board, etc.</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Other business or professional relationship</td>
<td>☐</td>
<td>☐</td>
</tr>
</tbody>
</table>

If yes to any of the above, describe the “Who,” “What,” “When,” and “Where” of the relationship:

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

2. Have you been in any of the following business or professional relationships with: a Lawyer for a Party\(^{41}\) or a Witness\(^{42}\)?

<table>
<thead>
<tr>
<th>Relationship</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arbitrator/mediator/other ADR neutral</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Employer/employee</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Principal/agent</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Attorney/client</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Partner or member of same firm/organization</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Consultant or expert</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Member of same professional group, committee, board, etc.</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Other</td>
<td>☐</td>
<td>☐</td>
</tr>
</tbody>
</table>

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\(^{38}\) “Party” means one of the disputants in the matter to be arbitrated, whether an individual or an entity.  
\(^{39}\) “Party Representative” means an individual who is participating in the arbitration as the representative of an entity and does not mean a Party’s lawyer, witness, expert, or person present on behalf of a Party in some other capacity.  
\(^{40}\) “ADR neutral” means a neutral in any form of alternative dispute resolution, including but not limited to neutral fact finder, private judge, facilitator, or special master.  
\(^{41}\) A “Lawyer for a Party” includes the lawyer or lawyers representing the Party in the arbitration and any lawyer who is in the same firm with or otherwise professionally associated with such lawyer.  
\(^{42}\) “Witness” means anyone appearing or providing a written statement on behalf of a Party, including an expert.
If yes to any of the above, describe the “Who,” “What,” “When,” and “Where” of the relationship:

___________________________________________________________
___________________________________________________________
___________________________________________________________.

B. Social:

1. Are you a Relative\(^\text{43}\) of a Party, of a Lawyer for a Party, of a Party Representative, of a Witness, or of a family member of any of these? If yes, describe the “Who,” “What,” “When,” and “Where” of the relationship:

___________________________________________________________
___________________________________________________________
___________________________________________________________.

2. Have you had one of the following social relationships with: a Party, a Lawyer for a Party, a Party Representative, a Witness, or a Co-Arbitrator? 

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Friend</td>
<td>☐</td>
</tr>
<tr>
<td>Acquaintance</td>
<td>☐</td>
</tr>
<tr>
<td>Neighbor</td>
<td>☐</td>
</tr>
<tr>
<td>Member of same social group, church, country club, etc.</td>
<td>☐</td>
</tr>
<tr>
<td>Attended college or graduate school with</td>
<td>☐</td>
</tr>
<tr>
<td>Other social relationship</td>
<td>☐</td>
</tr>
</tbody>
</table>

If yes to any of the above, describe the “Who,” “What,” “When,” and “Where” of the relationship:

___________________________________________________________
___________________________________________________________
___________________________________________________________.

C. Other:

1. Have you served on an arbitration panel, or have you had a personal, business, or professional relationship, with one of the other arbitrators in the matter being arbitrated?  ☐  ☐

2. Do you have personal knowledge of the facts in the matter being arbitrated?  ☐  ☐

3. Have you been involved, as a party or otherwise, in a dispute (lawsuit, arbitration, etc.) with a Party Representative or Witness? ☐  ☐

4. Do you have an ownership or other financial interest in a Party or in the subject matter of the dispute being arbitrated? ☐  ☐

\(^{43}\) “Relative” means spouse or significant other (including partner), sister, brother, parent, or child (whether by blood, adoption or marriage).
5. Have you had a business, professional, or social relationship with:
   a Relative of a Party, a Party Representative, a Witness, or
   a Lawyer for a Party?

   If yes to any of the above, describe the “Who,” “What,” “Where,” and
   “When” of the relationship:

   ___________________________________________________________
   ___________________________________________________________
   ___________________________________________________________

II. RELATIVES

A. Business or Professional:

1. Have any of your Relatives been in one of the following business or
   professional relationships with: a Party, a Party Representative, or a Lawyer
   for a Party?

   Yes  No

   Arbitrator/mediator/other ADR neutral   ☐  ☐
   Owner/officer/director/trustee           ☐  ☐
   Employer/employee                      ☐  ☐
   Principal/agent                         ☐  ☐
   Attorney/client                         ☐  ☐
   Partner or member of same firm/organization ☐  ☐
   Consultant or expert                    ☐  ☐
   Member of same professional group, committee,
   board, etc.                             ☐  ☐
   Other                                   ☐  ☐

   If yes to any of the above, describe the “Who,” “What,” “Where,” and
   “When” of the relationship:

   ___________________________________________________________
   ___________________________________________________________
   ___________________________________________________________

B. Social:

1. Are any of your Relatives: a Relative of a Party, a Lawyer for a Party, a
   Party Representative, or a Witness? If yes, describe the “Who,” “What,”
   “Where,” and “When” of the relationship:

   ___________________________________________________________
   ___________________________________________________________
   ___________________________________________________________

2. To the best of your knowledge are any of your Relatives: a friend of a Party,
   a Lawyer for a Party, a Party Representative, or a Witness? If yes,
   describe the “Who,” “What,” “When,” and “Where” of the relationship:
3. To the best of your knowledge is there any other relationship between any of your Relatives: a Party, a Lawyer for a Party, a Party Representative, or a Witness that you believe should be disclosed? If yes, describe the “Who,” “What,” “When” and “Where” of the relationship:

C. Other:

1. Do any of your Relatives have personal knowledge of the facts in the matter being arbitrated? If yes, describe the “Who,” “What,” “When,” and “Where” of such knowledge:

2. Do any of your Relatives have an ownership or other financial interest in a Party or in the subject matter of the dispute being arbitrated? If yes, describe the “Who,” “What,” “Where,” and “When” of such interest:

III. BUSINESS OR PROFESSIONAL ASSOCIATE

1. Have any of your Business or Professional Associates⁴⁴ been in any of the following business or professional relationships with a Party or Party Representative?

<table>
<thead>
<tr>
<th>Relationship</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arbitrator/mediator/other ADR neutral</td>
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<td>Partner or member of same firm/organization</td>
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<tr>
<td>Consultant or expert</td>
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<td></td>
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<tr>
<td>Member of same professional group, committee</td>
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</tbody>
</table>

⁴⁴ “Business or Professional Associate” means a person who is, or was, associated with you in a business or professionally including but not limited to your partner, principal/agent, co-owner, co-investor, co-trustee, co-venturer, employer, employee or co-member or co-owner (depending upon the nature of the entity).
board, etc. ☐ ☐
Other ☐ ☐

If yes, describe the “Who,” “What,” “Where,” and “When” of the relationship:
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________.

2. To the best of your knowledge do any of your Business or Professional Associates have a social relationship or friendship with a Party, a Lawyer for a Party, a Party Representative, or a Witness? If yes, describe the “Who,” “What,” “When,” and “Where” of the relationship:
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________.

3. Do any of your Business or Professional Associates have personal knowledge of the facts in the matter being arbitrated? If yes, describe the “Who,” “What,” “When,” and “Where” of such knowledge:
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________.

IV. OTHER

1. Are you aware of any other relationship, fact or circumstance that might cause a reasonable person to question your impartiality in this matter? If yes, describe the “Who,” “What,” “When,” and “Where” of such relationship, fact, or circumstance:
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________.