

***Outline of Important Points in The Revised Code of Ethics for  
Commercial Arbitrators (effective March 1, 2004)***

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- I. There is now a presumption of neutrality for all arbitrators, whether or not party-appointed. That is, if the arbitration agreement is silent as to the status of party-appointed arbitrators (or if the parties cannot otherwise agree), the “default position” is that the party-appointed arbitrators are neutral and cannot be predisposed. (Canon IX of the Revised Code).
- II. Parties may still opt for predisposed party-appointed arbitrators, but now such arbitrators must either be defined as such in the arbitration agreement, or the parties must mutually agree to that status after the dispute arises. (Canon X). Predisposed party-appointed arbitrators are called “Canon X arbitrators”.
- III. A Canon X arbitrator cannot be challenged by the non-appointing party, but all party-appointed arbitrators must now make the same disclosures. All arbitrators must now disclose “[a]ny known direct or indirect financial or personal interest in the outcome of the arbitration” and “[a]ny known existing or past financial, business, professional or personal relationships which might reasonably affect impartiality or lack of independence in the eyes of any of the parties.” (Canon II(A)).
- IV. If the party-appointed arbitrators are not Canon X arbitrators—or if it is unknown at the time of the first interview whether or not the arbitrators will be predisposed—they are assumed to be neutral and the interview can only touch upon a limited number of subjects. Canon III. Among other things, counsel may disclose the general nature of the dispute, but the arbitrator should not permit counsel to discuss the merits of the case. Canon III(B)(1)(b).
- V. A Canon X arbitrator may communicate with the party that appointed him or her, but only if the intention to communicate is disclosed to all parties. In no event can a party-appointed arbitrator disclose arbitrator deliberations, or communicate after the record is closed or after the matter has been submitted for decision. No arbitrator can disclose a final award or decision until it is disclosed to all parties. Canon X(C).
- VI. All arbitrators—whether or not predisposed—must conduct the proceedings fairly, diligently and in an even-handed manner. Canon IV. An arbitrator should also decide all matters justly, exercising independent judgment unaffected by “outside pressure”. Canon V.
- VII. Practice tips:

- A. Ascertain the status of your party-appointed arbitrator *before* you appoint and *before* the initial interview;
- B. Select an arbitrator whose disclosures will not cause problems or concerns with the Chair of the panel.
- C. If you might want a traditional (pre-disposed) party-appointed arbitrator, then state in the arbitration clause that the party-appointed arbitrators may be predisposed. You can always waive that (if there is agreement) after a dispute arises, but in the absence of a post-dispute agreement, all arbitrators will be neutral.