

IN THE SUPREME COURT OF NORTH CAROLINA

Order Adopting the North Carolina Canons of  
Ethics for Arbitrators

WHEREAS, section 7A-37.1 of the North Carolina General Statutes authorizes court-ordered nonbinding arbitration as an alternative to civil procedure, and

WHEREAS, N.C.G.S. § 7A-37.1(b) provides for this Court to adopt rules governing this procedure,

NOW, THEREFORE, pursuant to N.C.G.S. § 7A-37.1(b), the North Carolina Canons of Ethics for Arbitrators are hereby adopted, to read as in the following pages, for court-ordered nonbinding arbitration in the State of North Carolina. The supervising Chief District Court Judge or Senior Resident Superior Court Judge shall be the enforcing authority for these Canons. These Canons shall be effective on the 1st day of October, 1999.

Adopted by the Court in conference the 19th day of August, 1999. The Appellate Division Reporter shall publish the North Carolina Canons of Ethics for Arbitrators in their entirety, as amended through this action, at the earliest practicable date.

Wainwright, J.  
For the Court

Witness my hand and the seal of the Supreme Court of North Carolina, this the 9th day of September, 1999.

Christie Speir Cameron  
Clerk, Supreme Court of North Carolina

**NORTH CAROLINA CANONS OF ETHICS FOR ARBITRATORS****I. An arbitrator shall uphold the integrity and fairness of the arbitration process.**

A. Fair and just processes for resolving disputes are indispensable in our society. Arbitration is an important method for deciding many types of disputes. For arbitration to be effective, there must be broad public confidence in and understanding of the integrity and fairness of the process. Therefore, an arbitrator has a responsibility not only to the parties but also to the courts, the public and the process of arbitration itself and must observe high standards of conduct so that the integrity and fairness of the process will be preserved. Accordingly, an arbitrator has a responsibility to the public, parties whose rights will be decided, the courts, and other participants in the proceeding. These Canons shall be construed and applied to further these objectives.

B. It may be inconsistent with the integrity of the arbitration process for persons to solicit appointment for themselves. However, persons may indicate a general willingness to serve as arbitrators, e.g., by listing themselves with institutions that sponsor arbitration, or with courts that have court-annexed arbitration programs. Arbitrators may advertise, consistent with the law.

C. Persons may accept appointment as arbitrators only if they believe that they can be available to conduct the arbitration promptly. They shall exercise judgment whether their skills or expertise are sufficient to support demands of the arbitration and, if these skills or expertise are not sufficient, they shall decline to serve or withdraw from the arbitration, with the court's approval in court-administered arbitration, and notice to the parties.

D. After accepting appointment and while serving as an arbitrator, a person shall avoid entering into any financial, business, professional, family or social relationship, or acquiring any financial or personal interest likely to affect impartiality or which might reasonably create the appearance of partiality or bias. For one year after decision of a case, persons who have served as arbitrators shall avoid entering into any such relationship, or acquiring any such interest, in the circumstances which might reasonably create the appearance that they had been influenced in the arbitration by the anticipation or expectation of the relationship or interest, unless all parties to the arbitration consent to any such relationship or acquiring any such interest.

E. Arbitrators shall conduct themselves in a way that is fair, in word and action, to all parties and must not be swayed by outside pressure, public clamor, fear of criticism or self-interest. If an arbitrator

determines that he or she cannot serve impartially, that arbitrator shall decline appointment or withdraw from serving and shall notify the parties, and the court in court-administered arbitrations.

F. When an arbitrator's authority is derived from the parties' agreement, the arbitrator shall not exceed that authority nor do less than required to exercise that authority completely. Where the parties' agreement sets forth procedures to be followed in conducting the arbitration or refers to rules to be followed, the arbitrator must comply with such procedures or rules.

G. An arbitrator shall make all reasonable efforts to prevent delaying tactics, harassment of parties or other participants, or other abuse or disruption of the arbitration process.

H. An arbitrator's ethical obligations begin upon acceptance of appointment and continue throughout all stages of the proceeding. In addition, wherever specifically set forth in these Canons, certain ethical obligations begin as soon as a person is asked to serve as an arbitrator and continue for one year after the decision in the case has been given to the parties.

I. An experienced arbitrator should participate in development of new practitioners in the field and should engage in efforts to educate the public about the value and use of arbitration procedures. An arbitrator should provide pro bono services, as appropriate.

#### Comment

References to "commercial" in American Bar Association & American Arbitration Association, Code of Ethics for Arbitrators in Commercial Disputes, Canon I(1977) (Code), 33 Bus. Law. 311(1977), from which these Canons have been adapted, have been deleted. Excess verbiage has been deleted. The catchline has been changed from "should" to "shall" to underscore the mandatory nature of the principle; "should" has been omitted in Canon I.A in the penultimate sentence, and the language amended, to underscore this. "Should" in the last sentence has been changed to "shall." "Should" has been changed to "shall" or "must" in other parts of the Canon.

Other additions in Canon I.A follow the Preamble to North Carolina Dispute Resolution Commission, Standards of Conduct for Mediators, 344 N.C. 753 (Standards). The addition in Canon I.B gives examples of circumstances in which persons may offer services as arbitrators. It is consistent with N.C. Ct-Ord. Arb. R. 2(a). Unlike the Code, Canon I.B says it "may be" inconsistent with the integrity of the arbitration process to solicit appointment as an arbitrator. This is because of the difficulty, e.g., in drawing a line between advertisement permitted by law and solicitation that

is condemned in some professional standards, e.g., those for lawyers. Arbitrators must be mindful of fairness, neutrality, disclosure and conflict of interest principles stated in these Canons. The last sentence in Canon I.B makes it clear that the Canons should not be read to forbid arbitrator advertising where, e.g., commercial free speech principles under the Constitution allow it. The addition in Canon I.C is taken from Standards I.B-I.C and covers situations of court-appointed arbitrators under, e.g., the Uniform Arbitration Act, N.C. Gen. Stat. § 1-567.4, or in court-annexed arbitrations; these arbitrators are subject to court order appointing them, and the court is the final arbiter of these issues. The thrust of Canon I.C is consistent with Revised North Carolina Rules of Professional Conduct 1.1 (Rule), although the latter deals with competence of a lawyer, and the Canon governs competence to serve as an arbitrator. Canon I.D states a one-year rule instead of the "reasonable time" principle of the Code. The one-year rule has been substituted to coincide with the time in the Federal Arbitration Act, 9 U.S.C. §§ 9-11, during which a party can move to set aside an award. The Uniform Act, N.C. Gen. Stat. §§ 1-567.13-1-567.14, requires set-aside applications to be made within 90 days of an award. Fed. R. Civ. P. 60(b) and N.C.R. Civ. P. 60(b) limit certain judgment set-aside motions to one year. One year has been chosen as the time when nearly all conflict issues would arise and be resolved. The addition to Canon I.D, penultimate sentence, follows the consent rule in Rule 1.12(a). Additions in Canon II.E follow Standard 11.C, with additions to cover court-annexed arbitration or arbitrations where a court has appointed an arbitrator under, e.g., the Uniform Act. "Asked" replaces "requested" in Canon I.H. The phrase "continues for one year" has been added to coincide with the one-year rule for Canon I.D.

Canon I.I has been adapted from Society of Professionals in Dispute Resolution, Ethical Standards of Professional Conduct, Support of the Profession (1987) (SPIDR Standards), reprinted in Rena A. Gorlin, Codes of Professional Responsibility 327 (2d ed. 1990); unlike standards applicable to arbitrators in proceedings, Canon I.I is hortatory, not mandatory. The Rules do not include the equivalent of ABA, Model Rules of Professional Conduct, Rule 6.1, which says a lawyer should aspire to provide 50 hours of public service a year. See Alice Neece Moseley et al., An Overview of the Revised North Carolina Rules of Professional Conduct: An Examination of the Interests Promoted and Subordinated, 32 Wake Forest L. Rev. 939, 990-91 (1997). Since these Canons would apply to all arbitrators, including non-lawyers, and Canon I.I states aspirations to provide continuing education, there is no inconsistency with the Rules. Canon I.I is consistent with North Carolina attorneys' obligations to take 12 hours of continuing legal education a year. Other lawyers teach this CLE, and these lawyers have the same role as Canon I.I would contemplate for experienced arbitrators.

The Canon's language has been tightened.

Canon I generally parallels North Carolina Code of Judicial Conduct, Canons 1-3 (Code of Judicial Conduct), See also National Academy of Arbitrators et al., Code of Professional Responsibility for Arbitrators of Labor-Management Disputes, ¶¶ 1.A-1.C.2, III.A (May 30, 1996) (Academy Code); International Bar Association, Ethics for International Arbitrators, Arts. 1-2 (1986) (IBA Ethics), 26 Int'l Legal Mat'ls 584 (1987), 6A Benedict on Admiralty, Doc. No. 7-12D (Frank L. Wiswall, Jr. ed., 7th rev. ed. 1999), SPIDR Standards, General Responsibilities & Responsibilities to the Parties § 1, Background and Qualifications.

**II. An arbitrator shall disclose any interest or relationship likely to affect impartiality or which might create an appearance of partiality or bias.**

A. Persons asked to serve as arbitrators shall, before accepting, disclose:

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

(2) any existing or past financial, business, professional, family or social relationships which are likely to affect impartiality or which might reasonably create an appearance of partiality or bias. Persons asked to serve as arbitrators shall disclose any such relationships which they personally have with any party or its lawyer, or with any individual whom they have been told will be a witness. They shall also disclose any such relationships involving their spouses or minor children residing in the household or their current employers, partners or business associates; and

(3) any information required by a court in the case of court-administered arbitrations.

B. Persons asked to accept appointment as arbitrators shall make a reasonable effort to inform themselves of any interests or relationships described in Canon II.A.

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

D. Disclosure shall be made to all parties unless other

disclosure procedures are provided in the rules or practices of an institution or court administering the arbitration. Where more than one arbitrator has been appointed, the other arbitrators shall be informed of interests and relationships which have been disclosed.

E. If an arbitrator is asked by all parties to withdraw, the arbitrator shall do so, provided however, if a court is administering the arbitration, the arbitrator shall inform the court of the request and shall comply with court orders. If an arbitrator is asked to withdraw by less than all of the parties because of alleged partiality or bias, the arbitrator shall withdraw unless any of these circumstances exists:

(1) If the parties' agreement, or arbitration rules to which the parties have agreed, establish procedures for determining challenges to arbitrators, those procedures shall be followed;

(2) If the arbitrator, after carefully considering the matter, determines that the reason for the challenge is not substantial, and that he or she can nevertheless act and decide the case impartially and fairly, and that withdrawal would cause unfair delay or expense to another party or would be contrary to the interest of justice; or

(3) The court administering the arbitration decides otherwise.

F. The parties may waive disqualification of an arbitrator upon full disclosure of any basis for disqualification, and upon approval of the court in court-administered arbitrations.

#### Comment

Excess verbiage has been deleted. "Asked" has been substituted for "requested." "Shall" has been substituted for "should" throughout the Canon; see Comment for Canon I.

Canon II.A's provisions have been stated clearly in the conjunctive ("and"). Canon II.A(2) has been amended to follow Code of Judicial Conduct, Canon 3(C)(2) as to spouses and minor children. Canon II.A(3) has been added for court-annexed arbitration or arbitration administered by a court under, e.g., the Uniform Act. Although Canon VIII.B generally provides that these Canons state principles paramount to institutional (e.g., the Code ethics standards, Canon VIII.B states an exception for Canon II.D's disclosure principles. Canon II.E has been modified to account for situations where a court administers arbitration, e.g., court-annexed arbitration, but also where a court appoints an arbitrator, e.g., pursuant to the Uniform Act, N.C. Gen. Stat. § 1-567.4. Canon II.F has been added; it is taken from N.C. Ct. -Ord. Arb. R. 2(e); however, court approval is

required only if a court has appointed an arbitrator in a court-annexed arbitration or pursuant to, e.g., the Uniform Act.

Canon II generally follows Code of Judicial Conduct, Canon 3(C), although Canon II does not specify degrees of kinship as the Code of Judicial Conduct does. See also Academy Code, ¶¶ 2.B, 3.A; IBA Ethics, Arts. 1, 3-4; SPIDR Standards, Responsibilities to the Parties § 4.

**III. An arbitrator, in communicating with parties, shall avoid impropriety or the appearance of impropriety.**

A. If the parties' agreement or arbitration rules referred to in that agreement establish the manner or content of communications between the arbitrator and the parties, the arbitrator shall follow those procedures notwithstanding any contrary provision in Canons III.B and III.C.

B. Unless otherwise provided in applicable arbitration rules or in the parties' agreement, arbitrators shall not discuss a case with any party in the absence of other parties, except in these circumstances:

(1) Discussions may be had with a party concerning such matters as setting the time and place of hearings or making other arrangements for conducting proceedings. The arbitrator shall promptly inform other parties of the discussion and shall not make any final determination concerning the matter discussed before giving each absent party an opportunity to express its views.

(2) If all parties request or consent to it, such discussion may take place.

C. Unless otherwise provided in applicable arbitration rules or in the parties' agreement, whenever an arbitrator communicates in writing with one party, the arbitrator shall send a copy of the communication to other parties at the same time. whenever the arbitrator receives a written communication concerning the case from a party which has not already been sent to other parties, the arbitrator shall send that communication to other parties.

Comment

"Shall" has been substituted for "should" throughout Canon III; see Comment to Canon I. Code III.B(2), stating "If a party fails to be present at a hearing after having been given due notice, the arbitrator may discuss the case with any party present," has been deleted as redundant with Canon

IV.F. Revisions have also tightened the text; the last phrase clarifies "to do so." See also Code of Judicial Conduct, Canon 2, for which Canon III is a rough parallel in some respects; Academy Code. ¶ 2.D; IBA Ethics, Art. 5.

**IV. An arbitrator shall conduct proceedings fairly and diligently.**

A. An arbitrator shall conduct proceedings in an evenhanded manner and treat all parties with equality and fairness at all stages of the proceedings.

B. An arbitrator shall perform duties diligently and conclude the case as promptly as circumstances reasonably permit.

C. An arbitrator shall be patient, dignified and courteous to parties, their lawyers, witnesses, and all others with whom the arbitrator deals in that capacity and shall encourage similar conduct by all participants in the proceedings. This does not preclude an arbitrator's imposing sanctions if permitted by law or by the parties' agreement.

D. Unless otherwise agreed by the parties or provided in arbitration rules to which the parties have agreed, an arbitrator shall accord to all parties the right to appear in person and to be heard after due notice of the time and place of hearing.

E. An arbitrator shall not deny a party the opportunity to be represented by counsel.

F. If a party fails to appear after due notice, an arbitrator may proceed with the arbitration when authorized to do so by the parties or by law. An arbitrator may do so only after receiving assurance that notice has been given to the absent party.

G. When an arbitrator determines that more information than has been presented by the parties is required to decide a case, it is not improper for the arbitrator to ask questions, call witnesses, and request documents or other evidence.

H. It is not improper for an arbitrator to suggest to the parties that they discuss settling the case. An arbitrator may not be present or otherwise participate in settlement discussions unless asked to do so by all parties. An arbitrator may not pressure a party to settle.

I. Nothing in these Canons is intended to prevent a person from acting as a mediator, conciliator or other neutral in a dispute in which he or she has been appointed as an arbitrator, if asked to do so by all parties or where authorized or required to do so by applicable law or rules.



J. Where there is more than one arbitrator, the arbitrators shall afford each other full opportunity to participate in all aspects of the proceedings.

K. In court-annexed arbitrations where one or more of the parties is proceeding without counsel, at the hearing the arbitrator shall discuss the nature of the arbitration process with all parties and counsel present, including the arbitrator's role, time allotted for each party's case, order of proceedings, and the right to trial de novo (if applicable) if a party not in default is dissatisfied with the arbitrator's award, unless parties waive these explanations.

#### Comment

Language has been tightened, and excess verbiage has been deleted. "Shall" or "may" has been substituted for "should" throughout Canon IV; see Comment to Canon I.

Canon IV.C has been amended to follow Code of Judicial Conduct, Canon 3(A)(3). The final sentence recognizes that arbitrators may be empowered to impose sanctions in, e.g., court-annexed arbitration or by the parties' agreement, in addition to the arbitrator's ethical obligation to encourage proper conduct. Canon IV.H is consistent with Standard IV.B. Canon IV.I has been modified to take into account procedures other than mediation or conciliation, e.g., early neutral evaluation, etc. Canon IV.K has been added; it only applies to court-annexed arbitration. Where there has been an agreement to arbitrate governed by, e.g., the Uniform Act, but parties have not appointed an arbitrator pursuant to the Act and the court does so under, e.g., N.C. Gen. Stat. § 1-567.4, there is no reason to require that arbitrator to explain the nature of arbitration. Many court-annexed arbitrations involve small claims where parties may appear without counsel; fairness and efficiency suggest that an explanation at the beginning of the hearing, unless waived, will expedite the proceeding. Parties in court-annexed arbitration may agree to binding arbitration with no trial de novo; if this is the case, there is no need to explain a right to trial de novo. Canon IV.K was suggested by Standard IV.A

See also Academy Code, ¶¶ 1.A, 2.J, 4-5; IRA Ethics Arts. 7-8, SPIDR Standards, Responsibilities to the Parties §§ 2, 5-6. The Uniform Act and the International Commercial Arbitration and Conciliation Act provide for representation by counsel. N.C. Gen. Stat. §§ 1-567.7, 1-567.48(b).

**V. An arbitrator shall make decisions in a just, independent and deliberate manner.**

A. An arbitrator shall, after careful deliberation, decide all issues submitted for determination. An arbitrator may decide no other issues.

B. An arbitrator shall decide all issues justly, exercising independent judgment, and shall not permit outside pressure to affect the decision.

C. An arbitrator shall not delegate the duty to decide to any other person, unless the parties agree to such delegation.

D. If all parties agree to settle issues in dispute and ask an arbitrator to embody that agreement in an award, an arbitrator may do so but is not required to do so unless satisfied with the propriety of the settlement terms. Whenever an arbitrator embodies the parties' settlement in an award, the arbitrator shall state in the award that it is based on the parties' agreement.

#### Comment

Revisions tighten the text and omit excess verbiage. "Shall" has been substituted for "should" throughout Canon V; see Comment to Canon I. The new material in Canon V.C makes it clear that parties can agree that an arbitrator may delegate decisionmaking in whole or in part, e.g., to conciliators as provided in the North Carolina International Commercial Arbitration and Conciliation Act. See also Academy Code, §§ 2.G-2.I, 6.

### **VI. An arbitrator shall be faithful to the relationship of trust and confidentiality inherent in that office.**

A. An arbitrator is in a relationship of trust to the parties and shall not at any time use confidential information acquired during the arbitration proceeding to gain personal advantage or advantage for others or to affect adversely the interest of another.

B. Unless the parties agree otherwise, or the law or applicable rules require, an arbitrator shall keep confidential all matters relating to the arbitration proceedings and decision.

C. It is not proper at any time for an arbitrator to inform anyone of the decision before it is given to all parties. Where there is more than one arbitrator, it is not proper at any time for an arbitrator to inform anyone concerning the arbitrators' deliberations. After an arbitration award has been made, it is not proper for an arbitrator to assist in post-arbitral proceedings, except as required by law, or as agreed by the parties.

D. In many types of arbitrations it is customary for arbitrators to serve without pay. In some types of cases it is customary for arbitrators to receive compensation for services and reimbursement for expenses. Where such payments are to be made, all persons asked to serve, or who serve as arbitrators, shall be governed by the same high standards of integrity and fairness as apply to their other activities in the case. Accordingly, such persons shall scrupulously avoid bargaining with parties over the amount of payments, or engaging in communications concerning payments, which would create an appearance of coercion or other impropriety. Absent provisions in the parties' agreement, in rules to which the parties have agreed, or in applicable law, certain practices relating to payments are generally recognized as preferable to preserve the integrity and fairness of the arbitration process. These practices include:

(1) It is preferable that before the arbitrator finally accepts appointment, the basis of payment be established and that all parties be informed in writing.

(2) In cases conducted under the rules or administration of an institution that is available to assist in making arrangements for payments, payments shall be arranged by the institution to avoid the necessity for arbitrators communicating directly with parties concerning the subject.

(3) Where no institution is available to assist in making arrangements for payments, it is preferable that any discussions with arbitrators concerning payments take place in the presence of all parties.

(4) In cases where arbitration is court-administered, court rules, orders and practices shall be followed.

#### Comment

Excess verbiage has been deleted, and language has been tightened. "Shall" replaces "should" throughout Canon VI, except in Canon VI.D(3), where "should" has been omitted. Canon VI.C has been modified to allow parties to agree to use the arbitrator in other neutral roles, e.g., as a post-award mediator. Although Canon VIII.B generally provides that these Canons state principles paramount to institutional (e.g., the Code) ethics standards, Canon VIII.B states an exception for Canon VI.D(2)'s payment principles. Canon VI.D(4) has been added to take into account, e.g., court annexed arbitration. See also Academy Code, ¶¶ 2.C, 2.K, 3.A; IBA Ethics, Arts. 6, 9, SPIDR Standards, Responsibilities to the Parties § 3, Disclosure of Fees.

**VII. Ethical considerations relating to arbitrators appointed by one party.**

A. *Obligations under Canon I.* Non-neutral party-appointed arbitrators shall observe Canon I obligations to uphold the integrity and fairness of the arbitration process, subject to these provisions:

(1) Non-neutral arbitrators may be predisposed to the party appointing them but in all other respects are obligated to act in good faith and with integrity and fairness. For example, non-neutral arbitrators shall not engage in delaying tactics or harassment of a party or witness and shall not knowingly make untrue or misleading statements to other arbitrators.

(2) Provisions of Canon I.D relating to relationships and interests do not apply to non-neutral arbitrators.

B. *Obligations under Canon II.* Non-neutral party-appointed arbitrators shall disclose to all parties, and to other arbitrators, interests and relationships which Canon II requires to be disclosed. Disclosure required by Canon II is for the benefit of the party appointing the non-neutral arbitrator and for the benefit of other parties and arbitrators so that they may know of bias which may exist or appear to exist. This obligation is subject to these provisions:

(1) Disclosure by non-neutral arbitrators must be sufficient to describe the general nature and scope of any interest or relationship, but need not include as detailed information as is expected from persons appointed as neutral arbitrators.

(2) Non-neutral arbitrators are not obliged to withdraw if asked to do so by a party who did not appoint them, notwithstanding Canon II.E.

C. *Obligations under Canon III.* Non-neutral party-appointed arbitrators shall observe Canon III's obligations concerning communications with parties, subject to these provisions:

(1) In an arbitration in which two party-appointed arbitrators are expected to appoint the third arbitrator, non-neutral arbitrators may consult with the party who appointed them concerning acceptability of persons under consideration for appointment as the third arbitrator.

(2) Non-neutral arbitrators may communicate with the party who appointed them concerning any other aspect of the case, provided they first inform the other arbitrators and the parties that

they intend to do so. If such communication occurred before the person was appointed as arbitrator, or before the first hearing or other meeting of parties with the arbitrators, the non-neutral arbitrator shall, at the first hearing or meeting, disclose that such communication has taken place. In complying with Canon VII.C(2), it is sufficient that there be disclosure that such communication has occurred without disclosing the content of the communication. It is also sufficient to disclose at any time the intention to follow the procedure of having such communications in the future, and there is no requirement thereafter that there be disclosure before each separate occasion when such a communication occurs.

(3)When non-neutral arbitrators communicate in writing with a party that appointed them concerning any matter as to which communication is permitted under these Canons, they are not required to send copies of such writing to other parties or arbitrators.

D. *Obligations under Canon IV.* Non-neutral party-appointed arbitrators shall observe Canon IV's obligations to conduct proceedings fairly and diligently.

E. *Obligations under Canon V.* Non-neutral party-appointed arbitrators shall observe Canon V's obligations concerning making decisions, but such arbitrators may be predisposed toward deciding in favor of the party who appointed them.

F. *Obligations under Canon VI.* Non-neutral party-appointed arbitrators shall observe Canon VI's obligations to be faithful to the relationship of trust inherent in the office of arbitrator, but such arbitrators are not subject to Canon VI.D's provisions with respect to payments by the party appointing them.

#### Comment

"Shall" or "must" has been substituted for "should" in Canon VII; see Comment to Canon I. Excess verbiage has been deleted; sentences have been tightened; Canons VII.E and VII.F have been rewritten to convey the same sense as the Code. Nothing in Rule 1.12(d) conflicts with Canon VII.

### **VIII. Canons are subject to laws and professional responsibility principles; choice or law.**

A. These Canons are subject to applicable constitutional, statutory, decisional or administrative rules, State or federal, and when these

conflict with these Canons, the Canon provision shall be deemed superseded if it is not possible to give effect to the rule and these Canons.

B. These Canons and other ethics or similar rules which may apply to an arbitrator in any other capacity e.g., as a professional, shall be read in pari materia, giving effect to these Canons and the ethics rules if possible. If an arbitrator is subject to other arbitrator ethics rules, e.g., the ABA-AAA Code of Ethics for Arbitrators in Commercial Disputes, and these Canons, these Canons shall govern if there is a conflict of standards; provided however, that the principle of primacy in Canon VIII.B shall not apply to disclosure principles in Canon II.D and payment principles in Canon VI.D(2).

C. These Canons apply to arbitrations in North Carolina, or arbitrations administered by a court in North Carolina, to arbitrations where the parties choose North Carolina law exclusive of conflict of laws principles in the contract or other agreement, or where it is determined that North Carolina law exclusive of conflict of laws principles applies, regardless of where the arbitration is conducted.

#### Comment

Canon VIII is not part of the Code. However, given the possibility of conflicting rules of court, professional responsibility rules, legislation or constitutional principles, statement of the obvious in Canon VIII.A-B seems appropriate. Canon VIII.B provides that if an arbitrator is subject to professional or other ethics rules because of that arbitrator's status as, e.g., a lawyer, these Canons and the professional ethics rules shall be read in pari materia, giving effect to both if possible.

Rule 8.5 suggested Canon VIII.C, which is intended to cover court-annexed arbitrations, arbitrations where a court has appointed an arbitrator pursuant to, e.g., the Uniform Act, N.C. Gen. Stat. § 1-567.4, and arbitrations where parties have chosen North Carolina law or where North Carolina law, exclusive of conflict of laws principles, applies. This means that parties and the arbitrator cannot step across a state line and escape these principles.