

## Scenarios and questions

### **Scenario 1: Can an arbitrator discuss an award with the press?**

After an Arbitrator delivered an Award, a journalist contacted her to ask about the Award and her reasoning.

#### **Questions:**

- 1) Can the Arbitrator speak with the journalist? Should she speak with the journalist?
- 2) The journalist informs the Arbitrator that the Union and the Employer both gave on-the-record comments for a news story regarding the Award. Should participation by the parties influence the Arbitrator's decision to participate?
- 3) What, if anything, should the Arbitrator do before she speaks with the journalist?
- 4) Should the type of media outlet, e.g., The New York Times compared with an Internet blogger who posts about local issues, influence the Arbitrator's decision to speak with the journalist?
- 5) The journalist informs the Arbitrator that the losing advocate made shocking comments, and questioned her impartiality. Can she respond? Should she respond?

### **Scenario 2: An Employer invites an Arbitrator to discuss its performance in hearings.**

Six months after an Arbitrator was terminated from a permanent panel, on which he had served for several years, the Employer invites him to a meeting to discuss its performance in arbitration cases. The Employer explains that it would like an Arbitrator's perspective to improve its performance at hearings. The Employer assures the Arbitrator that it would not discuss specific cases or past Awards, and it offers to pay the Arbitrator's per diem for the meeting.

#### **Questions:**

- 1) Can the Arbitrator accept the Employer's invitation?
- 2) Can the Arbitrator accept the invitation if he will not be paid for his participation?
- 3) Can the Arbitrator's accept the invitation if both parties extend an invitation asking for feedback on their arbitration process and agree to share payment of the fee?

**Scenario 3: An arbitrator would like to resign after scheduling a hearing date.**

In June, the parties selected an Arbitrator to hear a discipline case. After a few months of email exchanges, the hearing was scheduled for January. Three months before the hearing, the Union filed a motion to dismiss the charges, and the Arbitrator conducted a Zoom meeting to hear arguments on the motion. During the meeting, the Arbitrator stopped the parties at times to ask them to avoid personal attacks, unnecessary comments, and other such behavior. The argument should have taken 30 minutes; it took one hour. Following the meeting, the arbitrator dismissed one of the charges, and the case moved forward with the other charges.

Just 10 days before the hearing, both parties ask to postpone the hearing until 8 months later, and neither party is seeking to toll the monetary remedies. The Arbitrator decides that she wants to resign because—

- a) she is concerned that rescheduling would disrupt her calendar;
- b) she is concerned that the hearing will be unpleasant even if the parties commit to civility rules;
- c) the parties have not paid the Arbitrator's interim bill for time spent on the motion and argument;
- d) based on their conduct, she does not like the representatives and feels animus toward them.

**Question:**

Can the Arbitrator resign? Should she resign? If she resigns, which Code provisions apply?

**Scenario 4: A new arbitrator drafts an Award for an experienced NAA member.**

Mary Smith, a new arbitrator, was asked by Arbitrator Joe Thompson, a 30-year NAA member, to draft an Award for one of his cases. Mary did not disclose to Joe that she had recently been selected to join the same panel. She drafted the Award after reading numerous relevant documents and listening to a recording of the hearing. Joe offered to pay her \$500 for the Award, provided it was done within 30 days. Mary drafted the Award as requested, and Joe paid her fee immediately.

One year later, Mary hears a new case on the same panel as the award she drafted for Joe, and the parties submitted relevant cases for her to review. One of the cases was the Award she drafted for Joe, with his name and signature and without any changes to her draft.

**Questions:**

- 1) Should Mary discuss this with Joe?
- 2) Was Joe's conduct unethical? Should Mary report this to the NAA?
- 3) Can Mary continue to draft Awards for Joe? Should she? Can she seek Joe's approval when she applies to NAA for membership?

**Scenario 5: A religious exception in scheduling a hearing.**

In January, parties to a collective bargaining agreement selected an arbitrator to hear a grievance and requested dates. The arbitrator identified several dates in March, and the Union quickly agreed on the dates offered. The Employer's advocate states that she observes Ramadan and objects to any dates during the 30 days of Ramadan, and requests dates in May.

The Union insists on a prompt hearing date because the case involves the discharge of its chief shop steward and Executive Board member, which occurred at the same time as the parties were negotiating a successor collective bargaining agreement. It states that it will agree to a religious exception for specific days, but not for 30 days, and it wants to hold the hearing in March.

**Question:** What can you do? What should you do? What would you do?

**Scenario 6: Delayed payment to an Arbitrator.**

NAA Arbitrator Jones completed a Federal sector case, but he was not paid by a well-respected Employer law firm. Jones submitted an invoice, stating it was due in 30 days, and he followed up by calling the Employer's law firm in 60 days. Jones was informed of an accounting error that would be corrected, but after 90 days Jones has not received payment.

Jones has another case with the agency scheduled next month for 5 days of hearing. Jones learns from the parties that it will be a complex contract interpretation case, which the parties have been disputing for several years. Jones has two additional cases scheduled with the same law firm.

**Questions:**

- 1) What can Jones do to recoup payment without crossing ethical lines?
- 2) Can Jones disclose the non-payment to the Union? Should she?
- 3) Can Jones withdraw from the contract interpretation case based on non-payment of his fees from the completed case? Can Jones withdraw from the two other cases with the law firm?