

**§ 251.31**

conscientious performance of their service.

(3) Arbitrators shall not engage in financial transactions using nonpublic information or allow the improper use of such information to further any private interest.

(4) Selected arbitrators shall not solicit or accept any gift or other item of monetary value from any person or entity whose interests may be affected by the arbitrators' decisions. Listed arbitrators may accept gifts of nominal value or gifts from friends and family as specified in § 251.34(b).

(5) Arbitrators shall put forth their honest efforts in the performance of their service.

(6) Arbitrators shall act impartially and not give preferential treatment to any individual, organization, or entity whose interests may be affected by the arbitrators' decisions.

(7) Arbitrators shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflicts with the performance of their service.

(8) Arbitrators shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this subpart.

(9) Arbitrators shall maintain order and decorum in the proceedings, be patient, dignified, and courteous to the parties, witnesses, and their representatives, and dispose promptly the business before them.

[59 FR 23981, May 9, 1994, as amended at 63 FR 30635, June 5, 1998]

**§ 251.31 Financial interests.**

(a) No selected arbitrator shall have a direct or indirect financial interest—

(1) In the case of a distribution proceeding, in any claimant to the proceeding whether or not in a voluntary settlement agreement, or any copyright owner who receives royalties from such claimants because of their representation;

(2) In the case of a rate adjustment proceeding, in any individual, organization or entity that would be affected by the outcome of the proceeding.

(b) "Direct or indirect financial interest" shall include: Being employed by, being a consultant to, being a rep-

resentative or agent for, being a member or affiliate of, being a partner of, holding any office in, owning any stocks, bonds, or other securities, or deriving any income from the prohibited entity.

(c) "Direct or indirect financial interest" shall not include—

(1) Owning shares in any stock or bond mutual fund or blind trust which might have an interest in a prohibited entity but whose decisions to invest or sell is not under the control of the selected arbitrator, or

(2) Receiving any post-employment benefit such as health insurance or a pension so long as the benefit would not be affected by the outcome of the proceeding.

(d) For the purposes of this section, the financial interests of the following persons will serve to disqualify the selected arbitrator to the same extent as if they were the arbitrator's own interests:

- (1) The arbitrator's spouse;
- (2) The arbitrator's minor child;

(3) The arbitrator's general partner, except that the personal financial holdings, including stock and bond investments, of such partner will not serve to disqualify the selected arbitrator; or

(4) An organization or entity for which the arbitrator serves as officer, director, trustee, general partner or employee.

[59 FR 23981, May 9, 1994, as amended at 59 FR 63040, Dec. 7, 1994]

**§ 251.32 Financial disclosure statement.**

(a) Within 45 days of their nomination, each nominated arbitrator shall file with the Librarian of Congress a confidential financial disclosure statement as provided by the Library of Congress, which statement shall be reviewed by the Librarian and designated Library staff to determine what conflicts of interest, if any, exist according to § 251.31.

(b) If any conflicts do exist, the Librarian shall not choose that person for the proceeding for which he or she has the financial conflict, except—

(1) The listed arbitrator may divest himself or herself of the interest that caused the disqualification, and become qualified to serve; or

(2) The listed arbitrator may offer to disclose on the record the conflict of interest causing disqualification. In such instances:

(i) The Librarian shall publish a list detailing the conflicts of interest the listed arbitrators have offered to disclose, and any other matters which, although outside of the scope of the restrictions of §251.31, nevertheless, in the view of the Librarian, raise sufficient concerns to warrant disclosure to the affected parties;

(ii) Such list shall be included in an order issued no later than the commencement of the 45-day precontroversy discovery period;

(iii) Such list shall contain the matters of concern, but shall not contain the names of the listed arbitrators.

(iv) Any party to the proceeding for which the listed arbitrator is being considered may interpose within the 45-day period described in §251.45(b) an objection to that arbitrator being selected. If the objection is raised to a matter found to be within the scope of §251.31, the objection will serve automatically to disqualify the arbitrator. If the objection is raised to a matter found to be outside the scope of §251.31, the objection will be taken into account when the Librarian makes his or her selection, but will not serve automatically to disqualify the arbitrator.

(c) At such time as the two selected arbitrators choose a third arbitrator, they shall consult with the Librarian to determine if any conflicts of interest exist for the third arbitrator. If, in the opinion of the Librarian of Congress, any conflicts of interest do exist, the two selected arbitrators shall be asked to choose another arbitrator who has no conflict of interest.

(d) Within one week of the selection of the CARP, the three selected arbitrators shall file with the Librarian an updated confidential financial disclosure form or, if there are no changes in the arbitrator's financial interests, a statement to that effect. If any conflicts of interest are revealed on the updated form, the Librarian will suspend the proceeding and replace the selected arbitrator with another arbitrator from the arbitrator list in accordance with the provision of §251.6.

(e) During the following periods of time, the selected arbitrators shall be obliged to inform the Librarian immediately of any change in their financial interests that would reasonably raise a conflict of interest—

(1) During the period beginning with the filing of the updated disclosure form or statement required by paragraph (d) of this section and ending with the submission of the panel's report to the Librarian, and

(2) If the same arbitrator or arbitrators are recalled to serve following a court-ordered remand, during the time the panel is reconvened.

(f) If the Librarian determines that an arbitrator has failed to give timely notice of a financial interest constituting a conflict of interest, or that the arbitrator in fact has a conflict of interest, the Librarian shall remove that arbitrator from the proceeding.

[59 FR 23981, May 9, 1994, as amended at 59 FR 63040, Dec. 7, 1994; 60 FR 8197, Feb. 13, 1995; 61 FR 63717, Dec. 2, 1996; 63 FR 30635, June 5, 1998]

### § 251.33 Ex parte communications.

(a) *Communications with Librarian or Register.* No person outside the Library of Congress shall engage in ex parte communication with the Librarian of Congress or the Register of Copyrights on the merit or status of any matter, procedural or substantive, relating to the distribution of royalty fees, the adjustment of royalty rates or the status of digital audio recording devices, at any time whatsoever. This prohibition shall not apply to statements concerning public policies related to royalty fee distribution and rate adjustment so long as they are unrelated to the merits of any particular proceeding.

(b) *Selected arbitrators.* No interested person shall engage in, or cause someone else to engage in, ex parte communications with the selected arbitrators in a proceeding for any reason whatsoever from the time of their selection to the time of the submission of their report to the Librarian, and, in the case of a remand, from the time of their reconvening to the time of their submission of their report to the Librarian. Incidental communications unrelated to any proceeding, such as an exchange