

§ 251.34

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of pleasantries, shall not be deemed to constitute an *ex parte* communication.

(c) *Listed arbitrators.* No interested person shall engage in, or cause someone else to engage in, *ex parte* communications with any person listed by the Librarian of Congress as qualified to serve as an arbitrator about the merits of any past, pending, or future proceeding relating to the distribution of royalty fees or the adjustment of royalty rates. This prohibition applies during any period when the individual appears on a current arbitrator list.

(d) *Library and Copyright Office personnel.* No person outside the Library of Congress (including the Copyright Office staff) shall engage in *ex parte* communications with any employee of the Library of Congress about the substantive merits of any past, pending, or future proceeding relating to the distribution of royalty fees or the adjustment of royalty rates. This prohibition does not apply to procedural inquiries such as scheduling, filing requirements, status requests, or requests for public information.

(e) *Outside contacts.* The Librarian of Congress, the Register of Copyrights, the selected arbitrators, the listed arbitrators, and the employees of the Library of Congress described in paragraphs (a) through (d) of this section, shall not initiate or continue the prohibited communications that apply to them.

(f) *Responsibilities of recipients of communication.* (1) Whoever receives a prohibited communication shall immediately end it and place on the public record of the applicable proceeding:

(i) All such written or recorded communications;

(ii) Memoranda stating the substance of all such oral communications; and

(iii) All written responses, and memoranda stating the substance of all oral responses, to the materials described in paragraphs (f)(1) (i) and (ii) of this section.

(2) The materials described in this paragraph (f) shall not be considered part of the record for the purposes of decision unless introduced into evidence by one of the parties.

(g) *Action by Librarian.* When notice of a prohibited communication described in paragraphs (a) through (d) of

this section has been placed in the record of a proceeding, either the Librarian of Congress or the CARP may require the party causing the prohibited communication to show cause why his or her claim or interest in the proceeding should not be dismissed, denied, or otherwise adversely affected.

[59 FR 23981, May 9, 1994, as amended at 59 FR 63040, 63041, Dec. 7, 1994; 60 FR 8197, Feb. 13, 1995]

§ 251.34 Gifts and other things of monetary value.

(a) *Selected arbitrators.* From the time of selection to the time of the submission of the arbitration panel's report, whether during the initial proceeding or during a court-ordered remand, no selected arbitrator shall solicit or accept, directly or indirectly, any gift, gratuity, favor, travel, entertainment, service, loan, or any other thing of monetary value from a person or organization that has an interest that would be affected by the outcome of the proceeding, regardless of whether the offer was intended to affect the outcome of the proceeding.

(b) *Listed arbitrators.* No listed arbitrator shall solicit or accept, directly or indirectly, any gift, gratuity, favor, travel, entertainment, service, loan, or any other thing of monetary value from a person or organization that has an interest in any proceeding for which the arbitrator might be selected, regardless of whether the offer was intended to affect the outcome of the proceeding, except—

(1) A listed arbitrator may accept unsolicited gifts having an aggregate market value of \$20 or less per occasion, as long as the aggregate market value of individual gifts received from any one source does not exceed \$50 in a calendar year, or

(2) A listed arbitrator may accept a gift given under circumstances in which it is clear that the gift is motivated by a family relationship or personal friendship rather than the potential of the listed arbitrator to decide a future proceeding.

(c) A gift that is solicited or accepted indirectly includes a gift—

(1) Given with the arbitrator's knowledge and acquiescence to the arbitrator's parent, sibling, spouse, child, or

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dependent relative because of that person's relationship to the arbitrator, or

(2) Given to any other person, including any charitable organization, on the basis of designation, recommendation, or other specification by the arbitrator.

§ 251.35 Outside employment and other activities.

(a) From the time of selection to the time when all possibility of being selected to serve on a court-ordered remand is ended, no arbitrator shall—

(1) Engage in any outside business or other activity that would cause a reasonable person to question the arbitrator's ability to render an impartial decision;

(2) Accept any speaking engagement, whether paid or unpaid, related to the proceeding or sponsored by a party that would be affected by the outcome of the proceeding; or

(3) Accept any honorarium, whether directly or indirectly paid, for any appearance, speech, or article related to the proceeding or offered by a party who would be affected by the outcome of the proceeding.

(b) Honoraria indirectly paid include payments—

(1) Given with the arbitrator's knowledge and acquiescence to the arbitrator's parent, sibling, spouse, child, or dependent relative because of that person's relationship to the arbitrator, or

(2) Given to any other person, including any charitable organization, on the basis of designation, recommendation, or other specification by the arbitrator.

§ 251.36 Pre-arbitration and post-arbitration employment restrictions.

(a) The Librarian of Congress will not select any arbitrator who was employed at any time during the period of five years immediately preceding the date of that arbitrator's selection by any party to, or any person, organization or entity with a financial interest in, the proceeding for which he or she is being considered. However, a listed arbitrator may disclose on the record the past employment causing disqualification and may ask the parties to consider whether to allow him or her to serve in the proceeding, in which

case any agreement by the parties to allow the listed arbitrator to serve shall be unanimous and shall be incorporated into the record of the proceeding.

(b) No arbitrator may arrange for future employment with any party to, or any person, organization, or entity with a financial interest in, the proceeding in which he or she is serving.

(c) For a period of three years from the date of submission of the arbitration panel's report to the Librarian, no arbitrator may enter into employment with any party to, or any person, organization, or entity with a financial interest in, the particular proceeding in which he or she served.

(d) For purposes of this section, "employed" or "employment" means any business relationship involving the provision of personal services including, but not limited to, personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner or trustee, but does not include serving as an arbitrator, mediator, or neutral engaged in alternative dispute resolution.

§ 251.37 Use of nonpublic information.

(a) Unless required by law, no arbitrator shall disclose in any manner any information contained in filings, pleadings, or evidence that the arbitration panel has ruled to be confidential in nature.

(b) Unless required by law, no arbitrator shall disclose in any manner—

(1) Intra-panel communications or communications between the Library of Congress and the panel intended to be confidential;

(2) Draft interlocutory rulings or draft decisions; or

(3) The CARP report before its submission to the Librarian of Congress.

(c) No arbitrator shall engage in a financial transaction using nonpublic information, or allow the improper use of nonpublic information, to further his or her private interest or that of another, whether through advice or recommendation, or by knowing unauthorized disclosure.