

## § 1404.6

unfair labor practices, equal employment opportunity, and other areas generally recognized as constituting labor or employment relations. The definition includes representatives of employers or employees in individual cases or controversies involving worker's compensation, occupational health or safety, minimum wage, or other labor standards matters.

(2) This definition of advocate also includes a person who is directly or indirectly associated with an advocate in a business or professional relationship as, for example, partners or employees of a law firm. Individuals engaged only in joint education or training or other non-adversarial activities will not be deemed as advocates.

(d) Listing on Roster, Removal. Listing on the Roster shall be by decision of the Director of FMCS based upon the recommendations of the Board or upon the Director's own initiative. The Board may recommend for removal, and the Director may remove, any person listed on the Roster, for violation of this Part and/or the Code. The reasons for removal include whenever a member of the Roster:

(1) No longer meets the criteria for admission;

(2) Has become an advocate as defined in paragraph (c) of this section;

(3) Has been repeatedly or flagrantly delinquent in submitting awards;

(4) Has refused to make reasonable and periodic reports in a timely manner to FMCS, as required in subpart C of this part, concerning activities pertaining to arbitration;

(5) Has been the subject of a complaint by parties who use FMCS services and the Board, after appropriate inquiry, concludes that cause for removal has been shown;

(6) Is determined to be unacceptable to the parties who use FMCS arbitration services. Such a determination of unacceptability may be based on FMCS records which show the number of times the arbitrator's name has been proposed to the parties and the number of times he or she has been selected. Such cases will be reviewed for extenuating circumstances, such as length of time on the Roster or prior history;

(7) Has been in an inactive status pursuant to §1404.6 for longer than two

## 29 CFR Ch. XII (7-1-06 Edition)

years and has not paid the annual listing fee.

(e) Procedure for Removal. Prior to any recommendation by the Board to remove an arbitrator from the Roster, the Board shall conduct an inquiry into the facts of any such recommended removal. When the Board recommends removal of an arbitrator, it shall send the arbitrator a written notice. This notice shall inform the arbitrator of the Board's recommendation and the basis for it, and that he or she has 60 days from the date of such notice to submit a written response or information showing why the arbitrator should not be removed. When the Director removes an arbitrator from the Roster, he or she shall inform the arbitrator of this in writing, stating the effective date of the removal and the length of time of the removal if it is not indefinite. An arbitrator so removed may seek reinstatement to the Roster by making written application to the Director no earlier than two years after the effective date of his or her removal.

(f) Suspension. The director of OAS may suspend for a period not to exceed 180 days any person listed on the Roster who has violated any of the criteria in paragraph (d) of this section. Arbitrators shall be promptly notified of a suspension. The arbitrator may appeal a suspension to the Board, which shall make a recommendation to the Director of FMCS. The decision of the Director of FMCS shall constitute the final action of the agency.

[62 FR 34171, June 25, 1997, as amended at 70 FR 76397, Dec. 27, 2005]

### § 1404.6 Inactive status.

A member of the Roster who continues to meet the criteria for listing on the Roster may request that he or she be put in an inactive status on a temporary basis because of ill health, vacation, schedule, or other reasons. If the inactive status lasts longer than two (2) years and the arbitrator has not paid the annual listing fee, the arbitrator will then be removed from the Roster.

[70 FR 76398, Dec. 27, 2005]