

**ANALYSIS OF PROPOSED CONSENT ORDER  
TO AID PUBLIC COMMENT  
In the Matter of National Academy of Arbitrators, File No. 011-0242**

The Federal Trade Commission has accepted an agreement to a proposed consent order from the National Academy of Arbitrators (“NAA”). NAA has its principal place of business in Pittsburgh, Pennsylvania.

The proposed consent order has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and decide whether it should withdraw from the agreement or make final the agreement's proposed order.

NAA is an honorary association for labor-management arbitrators. Labor-management arbitrators hear and decide disputes between labor unions and employers. The complaint alleges that NAA engages in substantial activities for the economic benefit of its members. The complaint further alleges that NAA has approximately 600 members, many of whom arbitrate labor-management disputes for a fee.

The complaint charges that NAA has violated Section 5 of the Federal Trade Commission Act by acting as a combination of its members and in agreement with some of its members to restrain competition by restricting advertising and solicitation by its members. The complaint alleges that in furtherance of the combination and agreement NAA has adopted and maintained a *Code of Professional Responsibility for Arbitrators of Labor-Management Disputes* and *Formal Advisory Opinions* that restrain arbitrators from engaging in truthful, non-deceptive advertising and solicitation, regardless of whether such advertising or solicitation compromises or appears to compromise the impartiality of Arbitrators. The *Code of Professional Responsibility* states:

An arbitrator must not solicit arbitration assignments.

. . . . Solicitation, as prohibited by this section, includes the making of requests for arbitration work through personal contacts with individual parties, orally or in writing.

In addition to prohibiting solicitation, the previous version of the *Code* prohibited virtually all advertising. The advertising restriction was recently amended to restrict only false and misleading advertising. However, NAA’s *Formal Advisory Opinions*, which serve as official interpretations of the *Code*, often do not draw a distinction between advertising and solicitation and continue to restrict members from distributing truthful information. For example, Opinion 14 deems an arbitrator’s unsolicited mailing to *both* labor and management representatives that contains truthful biographical

information to be a violation of NAA's ethics provisions on advertising and solicitation. Opinion 16 concludes that it is unethical solicitation and advertising for an arbitrator to send out announcements of the change of address of his office, which include his resume (including the fact that he is a lawyer) and state his fee schedule. Opinion 18 declares it unethical for an arbitrator to "distribute his business cards, except on request, to potential clients." And Opinion 19 holds that an arbitrator who gives potential clients ball point pens to inform them of his change of address runs afoul of the proscriptions on advertising and solicitation. Given these *Formal Advisory Opinions*, the narrowing of the advertising restrictions in the *Code* to false and misleading advertising does not eliminate competitive concerns.

The complaint alleges that the above acts and practices constitute unfair methods of competition which have restrained competition unreasonably. It further alleges that the effects of the acts and practices are to injure consumers by depriving consumers of the services of labor-management arbitrators of the benefits of truthful, non-deceptive information and of free and open competition among arbitrators.

NAA has signed a consent agreement containing the proposed consent order. The proposed consent order would prohibit NAA from maintaining or enforcing any policy, ethics rule, interpretation or guideline that impedes or restricts arbitrators from engaging in advertising truthful information about their services, including the prices, terms and conditions of sale of their services. The proposed consent order would also prohibit NAA from maintaining or enforcing any policy, ethics rule, interpretation or guideline against solicitation of arbitration work. The order permits NAA to adopt and promulgate reasonable ethics guidelines governing the conduct of its members with respect to representations that NAA reasonably believes would be false or deceptive or governing conduct that NAA reasonably believes would compromise or appear to compromise the impartiality of arbitrators.

To ensure and monitor compliance, the consent order provides, among other things, that within certain time frames NAA shall remove the provisions that are inconsistent with the order from NAA's Code of Professional Responsibility for Arbitrators of Labor-Management Disputes, NAA's Advisory Opinions, any NAA policy statement or guideline and NAA's website. The order requires NAA to publish a copy of the order and complaint in its newsletter. It further provides that the order and complaint shall be published on the NAA web site, with a link placed in a prominent position on the web site's home page. The proposed consent order also contains other provisions to monitor compliance.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.