

APPENDIX E
ETHICS OPINION *

The committee has been asked to give its opinion on the ethics of an arbitrator's proposed course of conduct. The circumstances were as follows:

An arbitrator was about to go overseas in August on a sabbatical leave from his university. He intended to write to those parties for whom he had heard cases earlier in the year and advise them he would be out of the country and hence unavailable as an arbitrator from August to January. Before writing such a letter, however, he sought the Committee's opinion as to whether his proposed conduct was in any way unethical.

Part I, Section 9, of the Code of Ethics states:

"Advertising and Solicitation. Advertising by an arbitrator and soliciting of cases is improper and not in accordance with the dignity of the office. No arbitrator should suggest to any party that future cases be referred to him."

Whether an "unavailability" letter violates the prohibition against advertising and solicitation depends upon the relationship of the arbitrator to the parties and the content of the letter itself. For example, when the parties request the services of an arbitrator, he may advise them he will be unavailable for hearings between certain dates. Or if one has a continuing relationship with parties, either as a permanent arbitrator or as a member of a panel of arbitrators, he may advise them of his unavailability during a certain period of time. In these situations, the unavailability letter merely provides the parties with information they request or need in scheduling disputes to be heard. Such a letter cannot be construed as advertising or solicitation.

However, the unavailability letter proposed here is quite different. The arbitrator planned to write the parties for whom he'd

* Members of the Committee on Ethics are Richard Mittenthal, chairman; Benjamin Aaron, Leo C. Brown, S.J., Alex Elson, Patrick J. Fisher, Sylvester Garrett, Eli Rock, Ralph T. Seward, Russell A. Smith, Abram H. Stockman, and Seymour Strongin.

heard cases earlier in the year. He apparently had no continuing relationship with these parties. And his letter would not have been in response to a specific request to hear a case. Under these circumstances, the committee's opinion is that the unavailability letter would serve to suggest to the parties that future cases be referred to the arbitrator upon his return from his overseas trip. This is precisely the kind of solicitation which Part I, Section 9, of the Code meant to prevent. This would be true no matter how well-intentioned the arbitrator may have been. For the purpose of the prohibition in Part I, Section 9, is to avoid the appearance of advertising or solicitation.

There would, of course, be nothing improper about notifying the appointing agencies of one's unavailability.
