

APPENDIX C

COMMITTEE ON PROFESSIONAL
RESPONSIBILITY AND GRIEVANCES
RECOMMENDATIONS*

Opinion No. 17

Subject: Arbitrator-Mentor soliciting for his intern-apprentice.

Facts: An arbitrator has an intern who has worked for him for several years. They share office space. The mentor pays all office expenses and the intern reimburses her mentor by paying him 10 percent of the fees she generates from her own arbitration practice. The mentor, in an attempt to help his intern gain acceptability, wishes to send the following letter to parties for whom he had arbitrated in the past:

“I am writing to introduce my intern to you and to advise you that she is interested in expanding her labor arbitration practice in your area. Her experience in this field now spans several years and over one hundred cases as my assistant. She is anxious to communicate her availability to parties in diverse regions of America.

Enclosed for your perusal is her biographical sketch. If she can be of service to you, please contact her immediately.”

The intern’s biographical sketch refers to her mentor’s Academy membership and arbitration experience.

Code Provisions: Part 1-C-3: “An arbitrator must not . . . solicit arbitration assignments.”

Opinion: Can a mentor arbitrator solicit work for his intern without violating the Code’s no-solicitation rule? We believe that the response must depend largely on the facts of the particular case.

The purpose of the rule in Part 1-C-3 is to prohibit any kind of direct solicitation by an arbitrator. However, the Code draftsmen were no doubt focusing on the arbitrator who solicits in his

*Code of Professional Responsibility for Arbitrators of Labor-Management Disputes: Opinions recommended by the Committee and approved by the Board of Governors, National Academy of Arbitrators, May 29, 1988.

own behalf and probably never considered the kind of situation presented here.

Any reading of the no-solicitation rule should be tempered by common sense which would take into consideration the interest of the Academy and the parties in the training of new arbitrators by experienced, well-accepted arbitrators. Any such mentor who works successfully with an intern for several years and who has confidence in the intern's ability is certain to help him/her with their career. That is implicit in their relationship. This help often involves recommending the intern to parties who are familiar with the mentor and who have a current work relationship with him. Under such circumstances there may be nothing improper in the mentor recommendation. One would have to consider such factors as the manner in which the parties were contacted, the mentor's connection to the parties, and the nature of the recommendation. Thus, the no-solicitation rule does not necessarily bar any and all instances of mentor sponsorship.

We find, however, that the letter in this case would be a Code violation (1) because the mentor apparently intended to send a letter to many parties with whom he had no current work relationship, (2) because the intern's biographical sketch referred to the mentor's Academy membership and arbitration experience, and (3) because the mentor had a financial interest, however small, in his intern's arbitration practice.

Opinion No. 18

Subject: Code Provision 1-C-3: "An arbitrator must not advertise or solicit arbitration assignments."

Questions: Would an arbitrator who participates in the actions or activities set forth below be in violation of this Code provision?

Opinion:

<i>Activity</i>	<i>Code Violation</i>
1. Name in NAA Directory, on NAA letterheads when used for official business, on Chronicle mast-head, and on NAA programs.	No
2. Reference on one's own letterhead to membership in the NAA or on panels of AAA, FMCS and other panels. (See Opinion No. 4)	Yes

3. Name and NAA identification on announcements and programs of AAA, state, federal and city agencies, bar associations, and universities and other privately sponsored educational and training conferences concerning the arbitration process. No
4. Participation (as speaker) in management, union, educational, or privately sponsored training conferences concerning the arbitration process. This does not refer to consulting with a labor or management organization with regard to the merit of specific pending cases to be possibly presented to another arbitrator, which is covered by the membership policy. No
5. Name and NAA identification on articles, books, and advertisements of same. No
6. Factual listings in professional association publications, reference books, *Who's Who*. No
7. Attendance at a joint meeting of management and union representatives or attorneys by whom the arbitrator is being expressly considered for arbitration appointments. No
8. In the absence of the parties' initial mutual agreement to such meetings, attendance at separate meetings of employers, unions, or employer or union attorneys by whom the arbitrator is being expressly considered for arbitration assignments. (See also Opinion No. 5) Yes
9. Arbitral identification in purchased ads or tables for testimonial dinners or tributes. Yes
10. Purchased listings in publications such as *Yellow Pages*. Yes
11. Distributing business cards, except upon request, to advocates and potential clients. Yes
12. Sending change of address announcements to persons other than those with whom the arbitrator has worked. Yes
13. Sending a simple announcement that one has retired from a profession (academic, law) and plans to devote full (instead of part) time to arbitration; No

such announcement to go to appointing agencies and to persons with whom the arbitrator has worked.

14. Entertaining parties or advocates in order to advertise or solicit arbitration assignments. Yes