

NATIONAL ASSOCIATION OF ARBITRATORS  
FALL EDUCATION MEETING  
AUSTIN, TEXAS

---

SUNDAY, OCTOBER 28, 2018

*What to do when? An ethics primer*

Panel Members: Sarah Kerr Garraty  
Andrew M. Strongin  
Jasbir O. Parmar

Moderator: James S. Cooper

**Case Scenarios for Discussion<sup>1</sup>**

Case No. 1:

You sit on a ballet's Board of Governor where you declined to become a member of the Board's Human Resources Sub-Committee and to not directly participate in human resources issues. However, any recommendations regarding personnel issues such as hiring and firing are brought to the full Board for discussion, and you fully participate in those discussions.

1. Does this constitute advocacy?
2. Would your answer depend upon whether you are being paid for your activities?
3. Are you required to disclose these activities in all or some of your arbitration cases?
4. Can you serve as an arbitrator in arbitration cases involving other arts organizations?

Case No. 2:

One advocate tells you outside the hearing room that he will be asking for an adjournment because he is not prepared, has failed to arrange appropriate witnesses and would be embarrassed to proceed. He tells you that if forced to proceed, they will spin the day out so that no damage will done to the client and that nothing will be accomplished. In the hearing itself, the advocate says that the adjournment is needed because a crucial witness is unavailable and he needs further production of documents.

---

<sup>1</sup> Case number 1 was developed by NAA Arbitrator Susan L. Stewart, currently the chair of the NAA CPRG. Cases numbered 2 through 9 were prepared by NAA Arbitrator Paula Knopf as part of Ontario Ministry of Labor's ARBITRATOR DEVELOPMENT PROGRAM, 2007-2008; Cases numbered 10 and 11 were prepared by NAA Arbitrator James Cooper from experience.

NATIONAL ASSOCIATION OF ARBITRATORS  
FALL EDUCATION MEETING  
AUSTIN, TEXAS

---

SUNDAY, OCTOBER 28, 2018

Opposing advocate objects saying that productions could have been requested earlier and that the absence of the witness should not result in the loss of the day. *What should you do?*

Case No. 3:

In a discharge case, as you are walking to the hearing room with the experienced Union and Employer counsel, when the Union lawyer turns to you and says, “You should know that no one wants this jerk of a grievor/grievant back in the workplace. We are just going through the motions today to avoid a DFR complaint. So just put yourself on auto-pilot and we’ll get ourselves out of here before 3 o’clock.” *What should you do?*

Case No. 4:

Imagine the same facts as set forth in Case No. 2, however, you soon begin to suspect that there is a racial antagonism toward the grievor/grievant that might support a case of discrimination, although that word has not been uttered at the hearing. *What should you do?*

Case No. 5:

After opening statement from the Union, the Grievor/Grievant angrily starts berating the Union advocate, making it clear that s/he is not happy with the Union’s characterizations of the forthcoming evidence or the framing of the issues. The Grievor/Grievant addresses you directly and says that she wants more issues to be addressed and that the Union is trying to cover up its own mistakes and misdeeds. *What should you do?*

NATIONAL ASSOCIATION OF ARBITRATORS  
FALL EDUCATION MEETING  
AUSTIN, TEXAS

---

SUNDAY, OCTOBER 28, 2018

Case No. 6

You have just issued an important interim ruling at the hearing in a contentious case. You then break for half an hour to allow the parties to consider the implications of your ruling on the presentation of the rest of their evidence. Over the break you mention the issue to your colleagues in the Arbitrators' Lounge of the neutral agency. A discussion ensues that reveals to you that you have made a huge mistake in ruling as you did. *What should you do?*

Case No. 7:

You are hearing a job posting grievance. The clause reads, "where skill, ability and experience are relatively equal, seniority shall govern." The Grievor/Grievant was the senior candidate, but was not considered to be as skilled or capable of the work as the incumbent. At the hearing, the Union wants to put in evidence of a series of harassment grievances filed by the Grievor/Grievant against his supervisor over the past 5 years to bolster the argument that there was "bad faith" by management in the evaluation of the Grievor/Grievant's capacity to do the job. The Employer objects, arguing that the harassment grievances were all settled on a "without prejudice" basis and that delving into the past history will convert the job posting grievance into a complex, long and inappropriate line of inquiry. *What should you do?*

NATIONAL ASSOCIATION OF ARBITRATORS  
FALL EDUCATION MEETING  
AUSTIN, TEXAS

---

SUNDAY, OCTOBER 28, 2018

Case No. 8:

You have been appointed by a neutral government labor relations agency to hear a grievance that involves allegations of racism and discrimination. During the Grievor's/Grievant's testimony you are having a great deal of trouble understanding the evidence because she is speaking very quickly, has a thick accent and uses a great many words from a dialect that is unfamiliar to you. You find yourself having to interrupt frequently, asking for clarification and asking her to "please slow down." After several of these interruptions, she throws her hands up in frustration and asks why she has not been provided with an arbitrator that understands her culture and language. *What should you do?*

Would it make a difference if you had been appointed consensually?

Case No. 9:

You are hearing a discharge case where the allegation is that the Grievor/Grievant committed a serious sexual assault on a bargaining unit member and subsequently threatened several potential witnesses. The advocates for both sides convene a conference call with you to determine "security" issues for the hearing and to determine the arrangements for before, during and after the hearing. The Employer counsel makes it clear that no one is willing to testify unless they can be protected from the Grievor/Grievant. The Employer wants security personnel present in the hearing room, special arrangements made to ensure that the Grievor/Grievant is never in contact with witnesses and to have the Grievor/Grievant excluded from the hearing during the complainant's testimony. Union counsel expresses concern that the request for such drastic arrangements will irreparably prejudice you. *What should you do?*

NATIONAL ASSOCIATION OF ARBITRATORS  
FALL EDUCATION MEETING  
AUSTIN, TEXAS

---

SUNDAY, OCTOBER 28, 2018

Case No. 10:

You are sitting in a hearing room chit chatting with the parties before the start of the hearing. Both counsel are in the room and they are waiting for one of the clients to appear. You tell them that you are going to the major league baseball game that night with your family but that your child wants to bring a guest and you need one more ticket.

One of the clients, whom you have known for many years, pipes up that he has an extra ticket. You say great and you purchase the ticket at face value. Both counsel are in the room during this entire exchange. The case does not finish and you schedule a second day some months into the future.

At the second day of the hearing, counsel for one party asks to speak to you in the hallway with the other side's attorney. You go out into the hallway and the attorney says, I am going to ask you to recuse yourself from further hearing of this case because of your action of purchasing that baseball ticket at the prior hearing. *What do you do?*

Case No. 11:

You show up for a hearing and the parties are sitting at the table ready to go. The parties present their case and waive the filing of briefs.

You start to write the case and for the first time look at the arbitration provisions of the Agreement and discover that the arbitration clause requires a three-member panel with one member appointed by either side and the third selected by both. You assume that the parties waived the three-member panel requirement and issue an award.

After you issue the award, the parties contact you and say that the case requires a decision by a three-member panel. *What do you do?*

The parties that you come back for a reconvened hearing. You show up and only the Company's attorney and HR Manager are there along with the Union's attorney and Business Agent. You sit there while they discuss your award. During this discussion, the winning side based on your award, says to the other side, okay we will give this one to you. *What do you do?*

NATIONAL ASSOCIATION OF ARBITRATORS  
FALL EDUCATION MEETING  
AUSTIN, TEXAS

---

SUNDAY, OCTOBER 28, 2018

The parties insist that you issue an award, going opposite of your award. The attorney for the victorious side based on your award and who is giving the decision to the other side states they do not want a stipulated or agreed upon award, they want you to write an award that goes opposite of your original award and they are going to dissent. *What do you do?*