For Members and Guests of the

# NATIONAL ACADEMY OF ARBITRATORS

Monday, September 14, 2026

# Ethics discussion on fees and billing, and current federal sector issues

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# Fees and Billing

Ethical issues regarding labor arbitrator fees primarily revolve around the risk of perceived bias, the financial barrier to accessing a fair hearing, and fee transparency.

Arbitrators are paid by the disputing parties, so adherence to a code of conduct is required to maintain the neutrality of the arbitration process, as well as the perceived neutrality and overall integrity of the process.

# How to File a Complaint with the NAA Committee on Professional Responsibility and Grievances (CPRG)

The CPRG exists primarily for the purpose of enforcing the Code of Professional Responsibility for Labor-Management Arbitrators. The Committee has jurisdiction only over members of the National Academy of Arbitrators, not over employers, unions, lawyers, or arbitrators who are not members of the NAA. The Committee is not a forum for reviewing the merits of any decisions or for appealing them.

If you believe that an arbitrator has violated the Code, you can make a complaint to the CPRG at: ChairCPRG@GMail.com.

# Federal Trade Commission announcement

## January 17, 2003

"To settle charges that its rules unreasonably restrict competition among its members, the National Academy of Arbitrators is prohibited from adopting policies that restrict its members from advertising truthful information about their services, including prices and conditions of services, under terms of a consent order. The association is required to remove all provisions that do not conform to the provisions in the consent order from: (1) its Code of Professional Responsibility for Arbitrators of Labor-Management Disputes; (2) its Formal Advisory Opinions; (3) any Statements of Policy; and (4) its Web site."

Relevant portions on billing of the

Code of Professional Responsibility for Arbitrators of Labor-Management Disputes

## Professional Responsibilities for Arbitrators of Labor-Management Disputes

1. ARBITRATOR'S QUALIFICATIONS AND RESPONSIBILITIES TO THE PROFESSION

2. RESPONSIBILITIES TO THE PARTIES

3. RESPONSIBILITIES TO ADMINISTRATIVE AGENCIES

4. PREHEARING CONDUCT

5. HEARING CONDUCT

6. POST HEARING CONDUCT

# 1. ARBITRATOR'S QUALIFICATIONS AND RESPONSIBILITIES TO THE PROFESSION

## A. General Qualifications

1. Essential personal qualifications of an arbitrator include honesty, integrity, impartiality and general competence in labor relations matters.

   An arbitrator must demonstrate ability to exercise these personal qualities faithfully and with good judgment, both in procedural matters and in substantive decisions.

# 1. ARBITRATOR'S QUALIFICATIONS AND RESPONSIBILITIES TO THE PROFESSION

## C. Responsibilities to the Profession

1. An arbitrator must uphold the dignity and integrity of the office and endeavor to provide effective service to the parties.

    a. To this end, an arbitrator should keep current with principles, practices and developments that are relevant to the arbitrator's field of practice.

2. An arbitrator shall not make false or deceptive representations in the advertising and/or solicitation of arbitration work.
3. An arbitrator shall not engage in conduct that would compromise or appear to compromise the arbitrator's impartiality.

    a. Arbitrators may disseminate or transmit truthful information about themselves through brochures or letters, among other means, provided that such material and information is disclosed, disseminated or transmitted in good faith to representatives of both management and labor.

# 2. RESPONSIBILITIES TO THE PARTIES

K. Fees and Expenses

1. An arbitrator occupies a position of trust in respect to the parties and the administrative agencies. In charging for services and expenses, the arbitrator must be governed by the same high standards of honor and integrity that apply to all other phases of arbitration work.

An arbitrator must endeavor to keep total charges for services and expenses reasonable and consistent with the nature of the case or cases decided.

Prior to appointment, the parties should be aware of or be able readily to determine all significant aspects of an arbitrator's bases for charges for fees and expenses.\

a. Services Not Primarily Chargeable on a Per Diem Basis

By agreement with the parties, the financial aspects of many "permanent" arbitration assignments, of some interest disputes, and of some "ad hoc" grievance assignments do not include a per diem fee for services as a primary part of the total understanding. In such situations, the arbitrator must adhere faithfully to all agreed-upon arrangements governing fees and expenses.

# 2. RESPONSIBILITIES TO THE PARTIES

**K. Fees and Expenses**

b. Per Diem Basis for Charges for Services

(1) When an arbitrator's charges for services are determined primarily by a stipulated per diem fee, the arbitrator should establish in advance the bases for application of such per diem fee and for determination of reimbursable expenses.

Practices established by an arbitrator should include the basis for charges, if any, for:

(a) hearing time, including the application of the stipulated basic per diem hearing fee to hearing days of varying lengths;

(b) study time;

(c) necessary travel time when not included in charges for hearing time;

(d) postponement or cancellation of hearings by the parties and the circumstances in which such charges will normally be assessed or waived;

(e) office overhead expenses (secretarial, telephone, postage, etc.);

(f) the work of paid assistants or associates.

# 2. RESPONSIBILITIES TO THE PARTIES

**K. Fees and Expenses**

b. Per Diem Basis for Charges for Services

(2) Each arbitrator should be guided by the following general principles:

(a) Per diem charges for a hearing should not be in excess of actual time spent or allocated for the hearing.

(b) Per diem charges for study time should not be in excess of actual time spent.

(c) Any fixed ratio of study days to hearing days, not agreed to specifically by the parties, is inconsistent with the per diem method of charges for services.

(d) Charges for expenses must not be in excess of actual expenses normally reimbursable and incurred in connection with the case or cases involved.

(e) When time or expense are involved for two or more sets of parties on the same day or trip, such time or expense charges should be appropriately prorated.

(f) An arbitrator may stipulate in advance a minimum charge for a hearing without violation of(a) or (e) above.

# 2. RESPONSIBILITIES TO THE PARTIES

**K. Fees and Expenses**

(3) An arbitrator on the active roster of an administrative agency must file with the agency the individual bases for determination of fees and expenses if the agency so requires. Thereafter, it is the responsibility of each such arbitrator to advise the agency promptly of any change in any basis for charges.

Such filing may be in the form of answers to a questionnaire devised by an agency or by any other method adopted by or approved by an agency.

Having supplied an administrative agency with the information noted above, an arbitrator's professional responsibility of disclosure under this Code with respect to fees and expenses has been satisfied for cases referred by that agency.

# 2. RESPONSIBILITIES TO THE PARTIES

### K. Fees and Expenses

(4) If an administrative agency promulgates specific standards with respect to any of these matters which are in addition to or more restrictive than an individual arbitrator's standards, an arbitrator on its active roster must observe the agency standards for cases handled under the auspices of that agency, or decline to serve.

(5) When an arbitrator is contacted directly by the parties for a case or cases, the arbitrator has a professional responsibility to respond to questions by submitting the bases for charges for fees and expenses.

# 2. RESPONSIBILITIES TO THE PARTIES

**K. Fees and Expenses**

(6) When it is known to the arbitrator that one or both of the parties cannot afford normal charges, it is consistent with professional responsibility to charge lesser amounts to both parties or to one of the parties if the other party is made aware of the difference and agrees.

(7) If an arbitrator concludes that the total of charges derived from the normal basis of calculation is not compatible with the case decided, it is consistent with professional responsibility to charge lesser amounts to both parties.

# 2. RESPONSIBILITIES TO THE PARTIES

## K. Fees and Expenses

2. An arbitrator must maintain adequate records to support charges for services and expenses and must make an accounting to the parties or to an involved administrative agency on request.

# Sample language on interim billing and charges for payment processing

I reserve the right to interim bill for any hearing expenses between the time of hearing and the final invoice in the case, as well as for any bifurcated hearings. I also reserve the right to charge for the time involved in any party's payment processing and approval system if the time involved becomes more than ordinary and reasonable. I have sole discretion in determining whether the time involved is more than ordinary and reasonable.

# Sample language on joint and severable liability

The parties are jointly and severally liable for any fees and expenses. Continuation of the arbitration process means that the party or parties have consented to this schedule of arbitration charges.

# Scenarios on Billing

# Scenario I on Billing

After completing an award, an NAA arbitrator was not paid by the Employer's outside law firm.

The arbitrator submitted his invoice, stating it was due in 30 days. After it was still unpaid at 60 days, she followed up by calling the Employer's law firm. The firm informed her of an accounting error that would be corrected, immediately.

At 90 days, the arbitrator still has not received payment.

# Questions on Billing

1. If this was an FMCS hearing, should the arbitrator call FMCS to seek help? What if FMCS does not respond?

2. What else can an arbitrator do? Can she tell the Union? Should she tell the Union?

3. "The Arbitrator has an award due in another case involving the same parties. Can she say, "I'm not going to write the Award for the second case until I get paid for the first case?"

# Scenario II on Billing

Arbitrator C, admitted to the NAA this year, was selected for a grievance that required a two-day hearing. After the hearing, she worked hard to analyze the case as it was one of her first cases as an Academy member. She charged 13 days.

Compared with similar Federal sector cases, she charged twice the time for a two-day grievance.

# Questions on Billing

1. Did Arbitrator C charge excessive fees if she charged for her learning curve as she was new to this type of grievance?
2. Arbitrator C charged for travel from her Hawaii residence, but she listed her office location as New York, and the hearing was held in Washington, DC.
3. Was her travel fee ethical, or did she breach the Code?
4. What key elements should be in a fee schedule?
5. Can an arbitrator charge her time for learning a new subject?
6. How does an arbitrator ethically charge for travel time?

# Scenario III on Billing

You serve on a permanent panel for which you hear about one case per month. The Union has not paid three recent invoices. You have sent monthly reminders, and your standard dunning letter, which references possible legal action, but no response. You have three more cases scheduled with these parties, in the next three months.

(a) Do you disclose to the parties that the Union is in arrears?

(b) Can you continue to hear cases while ramping up collection activity against the Union?

(c) What other actions can you take consistent with the Code to collect your fees, short of resigning from the panel?

# Scenario IV on Billing

Sandra, a newly established arbitrator, attended a LERA event. Rob, a Teamsters Union pension specialist, asked Sandra if she would agree to hear an arbitration case involving complex ERISA (Employee Retirement Income Security Act) issues, which covers employee pensions and insurance.

Sandra was interested in ERISA, but she really didn't know a lot about it. However, her AAA resume claimed she was highly experienced in ERISA. She accepted the offer, and Rob informed her that the parties agreed to appoint her to hear the case. After she submitted her award, however, the parties were disappointed because they believed that Sandra did not adequately understand ERISA.

1. What recourse and remedy does Rob have when he discovers that Sandra has inadequate knowledge of ERISA issues as evidenced in her award? Was she merely inadequate in her knowledge of ERISA? What if the parties believe she was dishonest?

2. Can Rob report Sandra to NAA for violation of the Ethics Code due to her dishonesty?

3. Can he report her dishonesty to AAA where she is listed on the roster as having experience with ERISA issues?

# Scenario V on Billing

Social Security Administration (SSA) and American Federation of Government Employees (AFGE) jointly select Doris, an NAA Arbitrator, to hear their dispute. Subsequently, Doris, submits an invoice for her fee, but only receives payment by the Union. Subsequently, Doris sends a confirmation letter to the parties which contained the following language:

The parties are jointly and severally liable for any fees or expenses. Continuation of the arbitration process means that the party or parties have consented to this schedule of arbitration charges.

1. What recourse does Arbitrator Doris have if one party fails to pay? What if the other party refuses to accept responsibility for joint liability, notwithstanding its acceptance of the fee schedule and its continuance of the dispute?

2. Can Doris seek a judicial remedy in small claims court?

3. What if Doris did not include joint and several liability language in her confirmation letter, which indicates that both parties are liable for payment if the other party does not comply?

4. Does Arbitrator Doris have a recourse through FMCS, the source of her panel selection?

**Key concept in billing is NAA Advisory Opinion No. 1:**

"An arbitrator occupies a position of trust in respect to the parties and the administrative agencies." NAA Code (2)(K)

# Current Federal Sector Issues

## Preface

This is a brief overview of the major players and events. First is President Trump's Executive Order 14251, which prohibits collective bargaining in the federal sector.

Second, there are several pending lawsuits. The most important is American Federation of Government Employees (AFGE) v. Trump. This is where the Plaintiffs Union joined together to sue the federal government to stop the implementation of this Executive Order.

Third, are the changes to Federal Mediation and Conciliation Service (FMCS). Today, I will discuss changes to the administrative body that facilitates federal sector disputes, FMCS, whose operations and rules have changed substantially. It is the interplay between these three elements that adversely impact arbitrators' ability to hear arbitrations in the federal sector.

After all, those of us who live and arbitrate in DC, Maryland, and Virginia, our industry is the government. That is, our labor cases essentially come from forty-two (42) government agencies that I will delineate in my presentation. Correspondingly, we as arbitrators are directly affected economically by these decisions and events.

**National Academy of Arbitrators (NAA) 2026**

**FEDERAL SECTOR COMMITTEE REPORT**

**American Federation of Government Employees (AFGE) v. Trump**

**Currently Prevails**

This case reinforced and functioned to implement President Trump's Executive Order 14251 on March 27, 2025 by essentially prohibiting collective bargaining, the right to be represented and to file grievances and seek arbitration for federal employees. This analysis was based on the Executive Order's view that labor organizations' "primary function" involved "National Security, intelligence, counterintelligence, or investigative work" (see 5 USC §7103(b)(1)). The federal agencies that were primarily affected included: Department of Justice (DOJ), Department of State (DOS), Department of Defense (DOD), Department of Veterans Affairs (DVA), Department of Energy (DOE), Department of Treasury (USDT), as well as many others, such as: Department of Agriculture, Homeland Security, and Health and Human Services.

Although a plethora of Federal District lawsuits by American Federation of Government Employees (AFGE) and National Treasury Employees Union (NTEU) have filed injunctions which were granted by many Federal District judges, this three-judge panel of the United States Court of Appeals, AFGE v. Trump (No. 25-4014) on February 26, 2026 now prevails as it vacated them. It was the Union's contention which challenged the legality of Trump's Executive Order on the grounds that it violates the First Amendment retaliation claims as set forth by way of the Administrative Procedure Act (APA) that was argued. Specifically, this Court of Appeals case ruled that the Union's First Amendment claim of retaliation not to be viable. It further concluded that the Plaintiff Unions had not demonstrated a likelihood of success or serious questions on the merits of the Plaintiffs' retaliation claim.

Although this case did not decide whether or not the Plaintiff Unions made out a prima facie case of retaliation, it did hold that the government "has shown that the President could have taken the same action even if [in the] absence of protected conduct." Thus, it further reasoned that "Executive Order 14251 discloses no retaliatory animus on its face and instead expresses that the President's primary concern with union activity was its interference with National Security." The Court of Appeals did not analyze the remaining factors such as: whether or not there was "irreparable harm, [or] the balance of inequities, [or] the public interest" arguments. This Court further reasoned that "the Plaintiff Unions failed to show a likelihood of success on the merits" on the retaliation claim for its omission for further analysis. The US Court of Appeals, Opinion by Judge Bress and concurring by Judge Owens, further held that "if the panel were to consider [the arguments] that the government [had] the edge". Accordingly, the Unions requested that emergency relief by way of preliminary injunctions until the courts could decide on the merits, but did not prevail.

It is the Plaintiff Unions' substantive argument, the reason the Federal District Courts enjoined the Executive Order, was that President Trump issued his Executive Order to retaliate against federal employees Unions, in violation of the First Amendment. This analysis, the Unions assert, is based on the Civil Service Reform Act of 1978 (CSRA) which Congress enacted the Federal Service Labor-Management Relations Statute (FSLMRS), which governs labor relations, "the executive branch and its employees." Accordingly, Congress maintains and asserts that "labor organizations and collective bargaining in the Civil Service are in the public interest (see 5 USC §7101(a))." In sum, FSLMRS, the Unions further assert, expressly protects the rights of federal employees to "'form, join, or assist any labor organization, or to refrain from any such activity,' and imposes on federal agencies and labor organizations a duty to bargain collectively in good faith" (see 5 USC §7102 and 5 USC §7116 (a)(5), (b)(5)). Specifically, the Federal Service Labor-Management Relations Statute (FSLMRS) exempts federal agencies from coverage by 5 USC §7103(a)(3) and 5 USC §7103(b)(1). However, the Court of Appeals, in AFGE v. Trump, rejected that argument by vacating those former injunctions.

As to the jurisdictional dispute in the Ninth Circuit decision of AFGE v. Trump, this Court did agree with the Union very narrowly that the appropriate forum for this dispute is within the jurisdiction of the federal courts, not the Federal Labor Relations Authority (FLRA). It is important to note that this Court of Appeals case did not decide the merits of this dispute. Thus, the ultimate decision is quite likely to be decided by the Supreme Court in the near future.

# Recent Developments of the Federal Sector

## <u>II. Recent Developments of the Federal Sector</u>

### Executive Order 14251

It is important to note that the arbitrator has jurisdiction over the grievance from the time it was initially invoked. That is, the Executive Order 14251 issued on March 27, 2026, is only prospective, as such, this order cannot remove an arbitrator's jurisdiction. Since the funding and procurement have already taken place, before the arbitrator is selected to hear the grievance, one's authority cannot be now revoked or divested.

Thus, if one party refuses to attend the arbitration, the legitimate inquiry should be: whether or not this grievance is properly before me? And whether or not the grievance is viable for the arbitrator to rule on its merits? If so, then the arbitrator has the jurisdiction to hear an ex parte hearing and make a ruling on the issue. Case Law supports this conclusion. If one party repudiates terms of the Collective Bargaining Agreement during its duration, this is viewed as a violation under USC §7116 (a)(1) and (5) and commits an unfair labor practice (see Panama Canal Commission, Balboa, Republic of Panama, 43 FLRA 1483, 1507-09 (1992). This is also termed a "unilateral termination," a violation of the Statute (see 24th Combat Support Group Howard AFB Republic of Panama, 55 FLRA 273, 281 (1991)). Still further, Cornelius v. Nutt, 472 US 648, 664 (1985) held that an unfair labor charge may be filed where a contract violation is a clear and patent breach of the contract terms.

Applying this to most Collective Bargaining Agreements that were in effect prior to the Executive Order, this one (E.O. 14251) does not divest arbitrators of their jurisdiction to arbitrate such grievances on an ex parte basis when one party repudiates.

## New Developments with FMCS after Executive Order 14251

Recently, FMCS promulgated "new" regulations involving controversial policy changes, such as: asking policy question regarding the arbitrability of a grievance before issuing an arbitrator or panel of arbitrators for the parties to choose from. In sum, FMCS would no longer appoint arbitrators for grievances at federal agency prohibited by President Trump's 2025 Executive Order banning collective bargaining on national security grounds. As of now, FMCS retains the authority to make "limited" threshold determination as of this writing, August 2026.

On August 21, 2026, a coalition of federal employees unions comprised of: American Federation of Government Employees, AFL-CIO (AFGE), National Treasury Employees Union (NTEU), National Federation of Federal Employees, IAM, AFL-CIO (NFFE), and International Federation of Professional and Technical Engineers, AFL-CIO (IFPTE) sued the Federal Mediation and Conciliation Service

(FMCS) to essentially block its new, expansive policy which now prevents their "unilateral" requests for the issuance of a panel of arbitrators unless the Agency also consents. This expansion of FMCS's jurisdiction institutes a new "threshold inquiry" to determine viability of a grievance by deciding its arbitrability. In sum, this transforms FMCS from an institution which facilitates the process of arbitration into a "decision-making body" contrary to its Congressional authorization and approval. Specifically, FMCS now has voted the following in its April memorandum:

> FMCS will affirm consent from federal agencies appearing in the Executive Orders before issuing an arbitration panel.

It is FMCS's reasoning for this decision:

> because FMCS cannot provide an arbitration panel in the absence of the parties' mutual consent, if the federal agency does not consent to the arbitration panel, FMCS will hold the request for an arbitration panel in abeyance until further notice.

It is the position of the Unions in this lawsuit that FMCS's position on this issue is in direct contradiction to 29 CFR §1409(b), which states that "[a] panel request, whether joint or unilateral, will be honored."

Most importantly, this same provision also provides neutrality to FMCS. It is as follows:

> Neither issuance of a panel nor appointment of an arbitrator signifies the adoption of any position by FMCS regarding the status of an arbitration agreement, arbitrability of any dispute, or the terms of the parties' contract.

Interestingly, the Code of Federal Regulations at 29 CFR §1404.12 also provides a process or a default method when it comes to the ranking of arbitrators through the selection process. That is, if one party does not submit its rank order within fourteen (14) days, after the other party submits theirs, "the first party's choice will be honored."

Since the Interim Final Rule has been ruled upon, FMCS no longer honors one's unilateral panel request for arbitration panels, this lawsuit now challenges this ruling. This coalition of Unions argues that this analysis and policy expansion violates the Administrative Procedure Act (APA) at 5 USC §706(2)(A) because it adversely affects the Plaintiff-Union's rights with legal consequences. Under the APA, it is important to point out that courts have the power "to hold unlawful and set aside Agency action, findings, and conclusions" which are deemed "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" (5 USC §706(2)(A). As of this writing, the United States District Court for the District of Columbia has not issued its opinion for an injunction or declaratory relief.

# Closing

In essence, under the Trump Administration, the rules of engagement have dramatically changed under Executive Order 14251. The consequences have significantly impacted federal sector arbitration. This is because the industry here is the government, and arbitrators are now precluded from doing business with these agencies.

# AFTERMATH AND EFFECTS OF THE EXECUTIVE ORDER

## Federal Sector Question

Arbitrator Joyce is selected by the Department of Justice and the Bureau of Prisons for a dispute in Florida on April 2025, after the Executive Order was issued. However, before that date, the hearing was scheduled six (6) months prior to April 2025.

1. Should Arbitrator Joyce continue to hear this dispute, when the Department of Justice unilaterally refuses to participate? If not, what are her options?

2. If Arbitrator Joyce decides to hold the arbitration in abeyance until there is a final judicial decision in this matter, can she change her mind later and decide to hear the case ex parte, without the Department of Justice's participation?

3. What if Arbitrator Joyce decides to hear the grievance ex parte and bills only the Union the full amount of the invoice? Is this advisable? If so, why? If it is not advisable, why not?