



## Arbitrators are already regulated for impartiality and disclosures at several levels

- *HB1261 and HB1262 add more layers of unnecessary regulations - and pre-emptive challenges - permitting parties to grind down arbitrations*

The premise of HB1261 and HB1262 is that consumers have no way to know if arbitrators are biased and little recourse should they be. The fact is that arbitration is a well-developed and evolved form of dispute resolution with no shortage of oversight.

**Most arbitrators are attorneys subject to the Rules of Professional Conduct. Below are some of the rules that might impact an arbitrator's appointment.**

Rule 1.6: confidentiality of information

Rules 1.7 and 1.8: conflicts of interest

Rule 1.12(a): future engagements by arbitrators

Rule 2.4: lawyer serving as third-party neutral (i.e., arbitrator)

Rule 3.3: candor to the tribunal

Rule 3.5: impartiality and decorum of the tribunal

**Under both the Federal Arbitration Act (FAA) and Colorado's Uniform Arbitration Act (CUAA), the partiality of an arbitrator is grounds for vacating an arbitration award.**

FAA: "(a) In any of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration. . . .

(2) where there was evident partiality or corruption in the arbitrators, or either of them . . . ."

*9 U.S.C. § 10(a)(2)*

CUAA: "(1) Upon motion to the court by a party to an arbitration proceeding, the court shall vacate an award made in the arbitration proceeding if the court finds that:

(a) The award was procured by corruption, fraud, or other undue means;

(b) There was:

(I) Evident partiality by an arbitrator appointed as a neutral arbitrator;

(II) Corruption by an arbitrator; or

(III) Misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding . . . ."

*Colo. Rev. Stat. § 13-22-223(1)(a)-(b)*

**Courts have the discretion to police arbitrator impartiality by vacating arbitration awards that are tainted by biased arbitrators, including in cases of pecuniary**

**interest, familial relationship, and the existence of an adversarial or sympathetic relationship.**

Colorado courts have said that “evident partiality” exists when “when a reasonable person would have to conclude that an arbitrator would be predisposed to favor one party to the arbitration. Some facts indicating bias include pecuniary interest, familial relationship, and the existence of an adversarial or sympathetic relationship.” *McNaughton* (Colo. App. 1996).

**Colorado law already requires disclosure of potential partiality. No party wants to spend the money and go through the arbitration process only to have the award vacated. Hence the disclosure requirements—and other affirmative measures—to ensure that arbitrators are unbiased and capable of adjudicating the dispute fairly.**

CUAA’s Disclosure Requirement: “Before accepting an appointment, an individual who is requested to serve as an arbitrator, after making a reasonable inquiry, shall disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators any known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator in the arbitration proceeding, including:  
(a) A financial or personal interest in the outcome of the arbitration proceeding; and  
(b) A current or previous relationship with any of the parties to the agreement to arbitrate or the arbitration proceeding, their counsel or representatives, a witness, or another arbitrator.”

**Colo. Rev. Stat. § 13-22-212(1)(a)–(b)**

**Arbitral institutions have an incentive to provide a fair and neutral forum. Most every arbitral institution provides heightened standards, rules, or guidelines to govern the partiality of their arbitrators. These standards are often more stringent than the standards for judges.**

AAA/ABA: [The Code of Ethics for Arbitrators](#)

JAMS: [Arbitrators Ethics Guidelines](#)

IBA: [IBA Guidelines on Conflicts of Interest in International Arbitration](#)

*Jeff Weist (303-884-0727) for the Colorado Civil Justice League*