

Institutional Guidelines for Arbitrator Disclosure v. Evident Partiality

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Arbitral institutions strive to provide the parties they serve with a fair and impartial dispute resolution process that results in an unassailable final award. Since “evident partiality” in the arbitrators is one of the limited means to attack an award, the selection of unbiased arbitrators is fundamental to that goal, and most arbitral institutions have some requirement or guidance on arbitrator disclosures. Recently, the International Chamber of Commerce's International Court of Arbitration (ICC) produced issued guidelines outlining circumstances arbitrators should consider in making disclosures.

While disclosure requirements manifest the intent to provide a fair and impartial process, they are of little use to a party that finds itself in that rare circumstance where an award has been entered and it is believed that there is “evident partiality.” Institutional guidelines do not alter the U.S. Federal Arbitration Act’s test for “evident partiality.”

The test for “evident partiality” is elusive and disputed, which may explain why some arbitral institutions have felt the need to develop detailed disclosure guidelines. The disunity regarding “evident partiality” is rooted in *Commonwealth Coatings Corp. v. Continental Casualty Co.* The court’s opinion was delivered by Justice Hugo Black with three justices dissenting. Justice Byron White (joined by Justice Thurgood Marshall) concurred stating he was “glad to join my Brother Black’s opinion” but desired “to make ... additional comments.”

Reconciling Justice Black and Justice White’s opinions, however, has proven difficult. Indeed, courts even disagree on whether Justice Black wrote for a majority or a plurality of the court.

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