

The Code of Ethics for Arbitrators in Intellectual Property Disputes under the auspices of the South African Institute of Intellectual Property Law

This Code of Ethics is applicable to every person whose name appears on the list of accredited arbitrators for the South African Institute of Intellectual Property Law from the time that his or her name appears thereon. The consent of any person to his or her name appearing on that list shall be taken as an undertaking by that person to abide by such Code of Ethics.

This Code of Ethics may be added to or otherwise amended in any way by resolution of the South African Institute of Intellectual Property Law and, as amended and after due notice of the amendment has been given to all those persons on the list of accredited arbitrators for that Institute, shall become binding upon those persons in its amended form.

1. A person applying or invited to have his or her name placed on the list of accredited arbitrators for the South African Institute of Intellectual Property Law is deemed to have undertaken to ensure that he or she remains in good standing with that Institute and to observe the policy and procedures of the Institute and its Arbitration Rules (the “Rules”).
2. An arbitrator shall not attempt to ingratiate himself or herself in any way with any member or office bearer of the Institute or its staff with the intention of securing or attempting to secure for himself or herself an appointment as arbitrator in any dispute or in any other way to attempt to seek or secure an advantage for himself or herself over other arbitrators or other members of the Institute.
3. An arbitrator shall, at all times, act honestly, impartially and independently and shall observe the highest standards of integrity.
4. An arbitrator shall ensure that all parties are treated equally and fairly, that each party is given a fair opportunity to present its case and, having regard to the character of the representatives for each side and their possession or lack of forensic skill, he or she shall act with due consideration to such parties.
5. An arbitrator shall conduct himself or herself at all times towards the parties in dispute with courtesy and shall avoid any appearance of frivolity, familiarity, bias, lack of interest or slackness and shall, to the best of his or her ability, conduct himself or herself in a professional manner.
6. An arbitrator, whether chosen by the parties or appointed by the Institute, shall, before accepting an appointment, disclose to the parties and to the Institute any circumstances which could give rise to a justifiable doubt as to his or her impartiality or independence.
7. If at any stage during the arbitration, new circumstances arise that might give

rise to a justifiable doubt as to the arbitrator's impartiality or independence, the arbitrator shall immediately disclose the circumstances to the parties and to the Institute.

8. An arbitrator must ensure that he or she keeps up to date with developments in the field of arbitration in particular and alternative dispute resolution in general and shall take all reasonable steps to attend the ongoing skills training courses in those fields offered by the Institute and seminars arranged under the aegis of the Institute.
9. An arbitrator shall not accept a request to act as arbitrator between parties in dispute if he or she is not confident that he or she is qualified and competent to deal with the issues which arise in the dispute.
10. An arbitrator, in accepting appointment as arbitrator, is deemed to have undertaken to make available sufficient time for the arbitration to be conducted and completed expeditiously in terms of the Rules, as amended from time to time, and shall ensure that the arbitration proceedings over which he or she presides are so conducted and concluded.
11. An arbitrator shall not commence proceedings in a matter in which he or she is asked to arbitrate, unless and until the parties in dispute have presented to him or her a written and signed agreement setting out the questions to be determined, identifying him or her as arbitrator and the powers that are to be vested in him or her as arbitrator.
12. An arbitrator shall fix the fees and the manner and timing of the payment of those fees with the parties to the dispute after consultation with and with the agreement of the Institute. He or she shall not unnecessarily incur any additional costs by way of disbursements that are to be for the account of the parties.
13. An arbitrator should not as a general rule give any advice to any party in a dispute as to the drawing up of the terms of the agreement appointing him or her as arbitrator and shall not involve himself or herself in any debate concerning the powers which should be vested in him or her.
14. For the duration of the arbitration proceedings, up to and including the time when the award is rendered, an arbitrator shall avoid any meaningful social or other contact with the parties in dispute, or any of them, and shall, insofar as the representative of the parties in dispute may be professional colleagues, not engage in any meaningful discussion with them about the matter.
15. Unless the parties agree otherwise, an arbitrator shall maintain the confidentiality of the arbitration, the award and, to the extent that they may describe information not in the public domain, any documentary or other evidence disclosed during the arbitration, except to the extent necessary in connection with a court action relating to the award, or as otherwise required by law.
16. An arbitrator shall apply himself or herself diligently and properly to the evidence and argument before him or her and, in making his or her award, shall not consciously allow himself or herself to be influenced by or take into account any matter outside that evidence.

17. An arbitrator shall faithfully apply the law according to his or her understanding of the law and shall exercise care not to exceed the jurisdiction conferred on him or her in terms of the agreement between the parties in dispute as to his or her powers in regard to the application of the relevant law.
18. An arbitrator shall not permit the conduct of the arbitration to become more costly than reasonably necessary, and shall, to the best of his or her ability, avoid non-functional or unnecessary delays.
19. An arbitrator may defer to the wishes of the parties in dispute as to the procedure to be followed provided that the arbitrator is satisfied that all the parties to the dispute have consented thereto and such procedure does not inhibit the fair and adequate hearing of the dispute.
20. An arbitrator shall defer to the wishes of the parties as to whether or not the proceedings are to be mechanically recorded or otherwise, and should not, as a general rule, insist that a mechanical recording be made, unless he or she is satisfied that without such recording and having regard, inter alia, to the duration of the hearing or the complexities of the issues to be traversed, he or she will not be in a position to evaluate competently the evidence put before him or her competently. The arbitrator may permit one party to record the proceedings mechanically provided that if that party uses the record in the arbitration proceedings, or in any other proceedings, it must make a copy of such record available, at its cost, to the arbitrator and any other party or parties.
21. It is not improper for an arbitrator to suggest to the parties in dispute that they give consideration to referring their dispute to mediation rather than arbitration.
22. If the parties in dispute request an arbitrator, who is seized with their dispute, to assume the role of mediator he or she shall not do so unless he or she is satisfied that he or she is qualified and competent to do so.
23. If an arbitrator, who is arbitrating a dispute between the parties, assumes the role of mediator between the parties, then the arbitrator shall not meet with the parties separately but shall mediate the dispute in the presence of all of the parties or their representatives.
24. Where appropriate, an arbitrator should be prepared to travel to a place outside of the usual area where he or she is in professional practice, whether for the purpose of conducting the hearing or inspecting any locality or thing.
25. An arbitrator shall set out his or her award in reasoned form and, whether or not the parties were represented, so expressed that it is intelligible to the intended reader.
26. An arbitrator shall render his or her award timeously and in enforceable form.
27. An arbitrator shall send his or her award to the Institute together with sufficient signed copies for each party to be supplied with one such copy and the Institute shall formally send a signed copy to each party.
28. An arbitrator is required to keep a copy of the award rendered by him or her and to make it available to the parties, if requested to do so by them, in the future.

29. **An arbitrator shall keep all the records and documentation which came into his or her possession during and in respect of the arbitration proceedings for a period of not less than six months after having rendered his or her award, whereupon, and after notice to the parties and unless specifically requested by party to retain such records and documentation, he or she is at liberty to destroy them.**
30. **An arbitrator, having rendered an award, shall not express any opinion or comment or offer advice or clarification to any party to a dispute unless expressly requested to do so in writing by the parties to the dispute.**
31. **An arbitrator shall not disclose the outcome or contents of any award made by him or her to any party without simultaneously disclosing the same information to all the parties in the dispute.**
32. **An arbitrator shall not receive from or have any ex parte communication with any party to an arbitration, except with the consent of all of the parties.**
33. **An arbitrator, who is requested to make an order ex parte, should not do so lightly and shall take due care that there are circumstances present which make it both lawful and within the powers vested in him or her by the agreement between the parties in dispute. An arbitrator may only make an order ex parte after giving each party a reasonable opportunity to be heard.**
34. **An arbitrator, who is requested to make an order in terms of a consent paper presented to him or her by the parties, shall not do so unless he or she is satisfied that the order framed is one that it is competent for him or her to make in terms of the powers vested in him or her by the agreement between the parties.**
35. **An arbitrator shall not offer professional legal advice to any party in dispute.**
36. **An arbitrator shall not under any circumstances delegate or share his or her responsibility with any other person without the express written consent, in advance, of the parties in dispute.**