[**Ethical Issues**](http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&case=/data2/circs/1st/981246a.html) **Exercise**

* The Materials map to the:
  + FINRA Code of Arbitration Procedure
  + The AAA/ABA *Code of Ethics for Commercial Arbitrators*
  + The AAA Rules (for comparison)
  + The FINRA Arbitrators’ Manual

Procedure for today:

* We are not doing all questions.
* Not all answers are clear-cut; they require application of various rules and such.
* We will split into three groups:
  + I: do problem # 3 - “Disclosures at Hearings”
  + II: do problem # 4 - “Independent Outside Research”
  + III: do problem # 6 - “Newly-retained Counsel”
  + ALL: do problem # 2 – “Stipulated or Consent Award”
* Spend 15 minutes in your group discussing and resolving your assigned problem.
* Discuss amongst yourselves
  + See the fact pattern for rules and materials of interest.
  + Figure out issues to address.
  + Pick a spokesperson to report when we reconvene.
* We will reconvene and discuss each problem [total of 20-25 minutes]
* We will do the last problem (#2) together
* Hint: “Don’t worry about it and hope for the best” is ***never*** the right answer.

**Problem 3: Disclosures at the Hearing [Group I]**

a) You are one member of a three-arbitrator panel. The first hearing is about to begin. You and your fellow arbitrators are in the hearing room when the parties enter. Immediately you recognize the expert witness for the claimant. However, you can't place her. What should you do at this point?

(b) Suppose that during the course of the arbitration you learn that a close friend of yours was an investor in the stock that is the subject of the arbitration. Should you disclose this?

**Problem 4: Independent Outside Research [Group II]**

You are a member of a three-arbitrator panel. During your deliberations between the close of the hearings and issuing the award, the panel becomes hung up over the interpretation and applicability of a legal issue. The public chair of the panel, who is a senior partner in a large law firm, volunteers to have her staff do some research on the issue. The other public arbitrator on the panel, who is a CPA and who is CFO of his corporation, says he will have his corporate legal staff review the question and provide him with an opinion. The panel will then discuss the issue and decide it among themselves.

What are the problems, if any, with the arbitrators conducting this type of independent investigation?

**Problem 6: Newly-Retained Counsel [Group III]**

(a) The first hearings are about to start in a relatively modest, single-arbitrator case between an investor and a brokerage firm. As far as you knew, neither side was to be represented by counsel. The respondent firm, however, shows up with an attorney. What should you do?

(b) Suppose the claimant has no problem with proceeding without counsel. Should this impact your conduct of the case? If so, how?

**Problem 2: Stipulated or Consent Awards [ALL]**

**(**a) After five days of hearings, the parties announce that they have reached a mutually acceptable settlement of their dispute. They would like the terms of their settlement to be reduced to a stipulated award and signed by you, the arbitrator. Can this be done? If so, how?

(b) Suppose you are not satisfied with the propriety of the award or question whether all pertinent facts or circumstances have been disclosed? Are you obligated to sign it? What should you do?