



Recently, the California Court of Appeal, Second Appellate District, ruled that an arbitrator in a legal malpractice/attorneys fee dispute did not violate the disclosure requirements in the California Arbitration Act when his disclosure statement did not disclose the following:

- That he [the arbitrator] was a member of the Los Angeles County Bar Association Appellate Executive Committee with a member of the defendant law firm;
- That he [the arbitrator] and the law firm's expert witness had appeared together as panelists in continuing education programs and were members of the Board of Governors of the ABTL;
- That he [the arbitrator] had once practiced at a law firm that had defended lawyers in legal malpractice actions; and
- That members of the defendant law firm had appeared before him when he was a judge.

Disclosure of the foregoing items was not called for in the disclosure statement completed by the arbitrator. The Court of Appeal found that none of the so called "non-disclosures" provided a credible basis for inferring an impression of bias and as such did not violate the disclosure requirements of the California Arbitration Act. The Court affirmed the denial of the petition to set aside the arbitration award for non-disclosure. *Nemecek & Cole v. Steven J. Horn*, California Court of Appeal, 2nd Appellate District, July 23, 2012, 2012 DJDAR 11353.

This is a very narrow reading of the Arbitration Act and the Judicial Council rules and it is very protective of the arbitrator. The ethics standard adopted by the Judicial Council requires disclosure of anything that could cause a person aware of the facts to reasonably entertain a doubt that the arbitrator would be able to be impartial. The arbitrator's early professional affiliation with a law firm that did legal malpractice defense and the fact that lawyers from the defendant law firm appeared in front of him when he was a judge clearly fall outside the statutory disclosure requirements and the rules. It is a closer call, however, with respect to the affiliations with a partner in the defendant law firm and the expert witness on the boards of professional associations.

-- Bruce A. Friedman