

USAGE NOTES:

I use this form to make disclosures in AAA-administered arbitrations and mediations. I use a substantially similar form in private or court-annexed mediations and arbitrations and arbitrations administered by FINRA DR.

Phil Cutler March 2013

Arbitrator [Mediator] Disclosures of Philip E. Cutler

Consistent with the [CODE OF ETHICS FOR ARBITRATORS IN COMMERCIAL DISPUTES (AAA and ABA), the Disclosure Guidelines for Neutrals serving on AAA cases, the AAA Rules applicable to this case and, to the extent applicable, the Federal Arbitration Act (9 U.S.C. Chapter 1) and the Washington Uniform Arbitration Act (RCW Chapter 7.04A)] [MODEL STANDARDS FOR MEDIATORS (AAA, ABA and ACR), any rules applicable to this case and, to the extent applicable, the Washington Mediation Act (RCW Chapter 7.07)], I make the following disclosures. By making any general or specific disclosure below I do not ascribe, or intend to ascribe, any level of significance to the fact disclosed, or to suggest that the disclosure might conceivably affect my, or any other [arbitrator's] [mediator's], neutrality or impartiality. Rather, the following disclosures are made to apprise the parties and their representatives of facts which in my judgment it is appropriate to disclose. (See Section V below, confirming that none of the disclosures in this document constitute, in my judgment, a conflict of interest or raise an appearance of fairness issue, and that I can carry out my duties as a neutral and impartial [arbitrator] [mediator] and give each party to this case a fair hearing.) Any concerns relating to these disclosures, or any subsequent disclosures I may make, should be handled as provided below in Section IV.

I. General Disclosures and Limitations

- A. Our law firm consists of three lawyers (me, Bob Nylander and Tom Hayton). We have a paralegal (Amylyn Riedling) who assists us. I rely on our paralegal to organize the case papers and assist in administrative matters relating to arbitrations in which I am involved as a neutral. While Messrs. Nylander and Hayton are aware of my arbitration cases, they are not involved in my work as an arbitrator.
- B. As disclosed on my profile, since 1973 I have practiced law with three firms in Seattle prior to my association with my present firm in 1990 – Perkins Coie, Sax and MacIver, and Karr Tuttle Campbell. My present firm has been known as Cutler Nylander & Hayton since 2002; prior to that time it was known as Talmadge Friedman & Cutler (1990-91), Talmadge and Cutler (1991-94) and Cutler & Nylander (1995-2002). I do not, however, have access to client records from firms with which I was previously associated (Perkins Coie, Sax and MacIver and Karr Tuttle Campbell), and thus will not be disclosing any matters relating to my work at those firms unless they occur to me; if they

do, they will be disclosed below; if recollected later, I will make a supplemental disclosure.

- C. My colleague **Bob Nylander** practiced with Karr Tuttle Campbell from 1987-1990. He joined our firm in 1990. Although he retired as a shareholder and director of the firm in September 2011, he still practices with us under contract.
- D. Prior to joining our firm in the mid-1990s my colleague **Tom Hayton** practiced with the Washington State Attorney General and with three other Seattle-area law firms (Ferguson & Burdell, Schwabe Williamson & Wyatt and, for a short period, Tousley Brain Stephens).
- E. Our firm employs one senior paralegal: **Amylyn Riedling** has been with us since 1998. She is active in the Washington, Seattle and Pierce County chapters of NALS (the Association for Legal Professionals) and in that capacity has frequent contact with paralegals from other law firms, principally in the Northwest.
- F. If I or any of the employees in our firm are aware of a potential conflict of interest or appearance of fairness issue related to any client work I or another member of our firm has performed, I will disclose it below. I do not, however, have access to client records from firms with which I was previously associated (Perkins Coie, Sax and MacIver and Karr Tuttle Campbell). Similarly, none of my law firm colleagues has access to client records from firms with which they were previously associated. Accordingly, I will not be disclosing any matters relating to my or their work at those firms unless they occur to me or to them; if they do, they will be disclosed below; if recollected later, I will make a supplemental disclosure.
- G. My practice has always focused on resolution of commercial and business disputes through trial, arbitration, appeal, mediation, and private settlement. Since the early 1990s a significant portion of my professional time has been spent as a neutral arbitrator or mediator both privately and under the auspices of the American Arbitration Association, the National Association of Securities Dealers (now FINRA), the U.S. District Court for the Western District of Washington's Rule 39.1 ADR program, and the King County Superior Court's mandatory arbitration program. I speak frequently at continuing legal education programs on mediation, arbitration and negotiation sponsored by state and local bar associations, the AAA and the University of Washington Law School. I do not have records reflecting other lawyers' attendance at any of the continuing education programs at which I have spoken.
- H. Both as a result of the foregoing and my active involvement over the years in activities of the American Bar Association [Sections on Antitrust (Civil Practice & Procedure Committee (mid-1980s)); Litigation; and Dispute Resolution (Membership Chair (2002-2008))], the Washington State Bar Association [Sections on Antitrust, Consumer Protection and Unfair Business Practices; Litigation; and Dispute Resolution (Chair, 1998-99)], the King County Bar Association [Section on Alternative Dispute Resolution (Chair, 2001-2002)], the Federal Bar Association of the Western District of Washington

[ADR Committee (1982-1998); Trustee (1998-2000)], and the ADR Roundtable (an informal association of Seattle lawyers and law teachers with an active interest in arbitration and mediation, *see* www.adrroundtable.com,¹ of which I have been a member since 1997), I am professionally and personally acquainted with hundreds of lawyers both in Western Washington and nationally. Although I will separately disclose significant personal and/or professional associations with counsel in this matter (and/or their law firms) during the last 5 years, you should assume that over the years I have had, or may have had – as advocate or as neutral mediator or arbitrator – cases in which counsel or other lawyers in their respective law firms have been involved. A c.v. highlighting my professional activities since 1973, my ADR profile, and more information about my ADR practice, and articles I have written on ADR and other materials concerning ADR are available on our law firm’s website – www.cnhlaw.com.

I. Social Media and Related Issues:

- (1) I currently have a profile on LinkedIn and have links with people on that profile. I typically accept a request from most professional acquaintances who request to be “linked.” I also have a profile on AVVO. These profiles are publically available for viewing. I do not consider these “links” to be a disclosable matter, in and of itself, and have not addressed such issues here. I will, however, disclose, where appropriate, other connections with such persons in Section III below.
- (2) I am also a member of several listservs (*e.g.*, WSBA’s Litigation and Dispute Resolution sections and the ABA Dispute Resolution Section, the College of Commercial Arbitrators’ listserv and the Mediate-and-Arbitrate listserv coordinated by Paul Lurie of Schiff Hardin in Chicago). I review postings on these listservs and periodically respond either directly to the poster or to the listserv as a whole. I do not know who all the members of these listservs are. If I am aware of a substantial connection between any participant in any of these listservs and any of the parties, counsel, law firms or witnesses in this arbitration, I will disclose it below in Section III.
- (3) Counsel and the parties are encouraged to utilize search engines and portals to acquire further information about me, my law firm, and my and the firm’s practice. If, after doing so, any party or counsel has a concern I ask that they communicate with the AAA case manager – not with me – regarding that concern or to seek further information from me. The AAA will deal with such matters and advise me if appropriate.

J. I am a member of: the American Arbitration Association’s national roster of arbitrators and the AAA’s Large Complex Case Panel as well as the AAA’s Northwest Mediation

¹ The Roundtable meets monthly from September to June (excluding December) to discuss developments in mediation and arbitration training, law, practice and procedure. Members do not discuss individual cases in which they or members of their firms are involved.

Panel; FINRA DR's public arbitrator panel; King County Superior Court's Mandatory Arbitration Panel; the U.S. District Court/Western District of Washington's Local Rule 39.1 panel of neutrals; and Mediation Works Incorporated's (www.mwi.org) mediation panel. I have profiles available from those organizations; I also have a profile available on the websites of the ADR Roundtable (www.adrroundtable.com) and the College of Commercial Arbitrators (www.thecca.net).

- K. I do not have the time or the resources to peruse the rosters of any mediation or arbitration provider organization of which I am a member to see if any of the lawyers in this case or their law firm colleagues, or any of the potential witnesses [or client representatives] identified to date, are also a member of that provider organization, or to make inquiry of those provider organizations, and hereby disclaim any responsibility to do so. You should thus assume that any of the lawyers, their law firm colleagues and potential witnesses, may, like me, be a member of one or more of those organizations. I encourage you to conduct your own research. If you bring to my attention that one or more of these people are also on such a roster, I will promptly advise you what if any contact I recall that I have had with them.
- L. I will disclose (see Section III below) counsel and other members of counsel's law firms with whom I have had significant professional or social contact over the years, to the extent that information is revealed by my conflicts check, or I recall. However, I do not have the time or the resources to peruse law firm websites or other media in which law firms post the names of the lawyers associated with them. You should thus assume that I may have had professional or social contact with other lawyers in counsel's law firms. If you supply me with a list of names, I will promptly respond with such information as I recall about any professional or social contact with those person.
- M. I am asked frequently to serve as an arbitrator or mediator, both in connection with matters assigned by or through a service provider (*e.g.*, AAA, FINRA) or privately. If I am subsequently appointed (and confirmed) as a mediator or arbitrator in a matter involving any of the parties to this case, or their lawyers or law firms, I will make an appropriate disclosure in that case – and, if this matter is still active, to the parties and counsel in this case.
- N. I am a member of the Washington Athletic Club (since 1973). I am a former member of the Rainier Club (1990-2007), College Club of Seattle (1999-2010) and Columbia Tower Club (2008-2010). I do not have the time or resources to investigate whether any of the persons involved in this case are (or were) members of any of those clubs.
- O. The disclosures made in this document are based on my review of the papers or other information provided to me as of this date, and such review of my and my law firm's client records and files – and discussions with my law firm colleagues – as to me seemed necessary and appropriate. If, following the distribution of these disclosures, I become aware of any additional matters that should be disclosed, I will do so by way of a supplemental disclosure.

II. Disclosures Related to Family

- A. My family² consists of my wife, our three adult children, our grandchildren and my sister:

In this section I identify the members of my immediate family, their city and state of residence, and their education and employment.

- B. I have apprised my wife of my appointment in this case and either (1) make any appropriate disclosure below in Section III or (2) she has advised that she has no business or social relationship with any of the parties or their counsel. *Unless* requested by a party prior to my setting of the Hearing [the mediation conference] in this matter, I do not intend to make any inquiry of our sons, their spouses or my sister concerning my appointment in this case as I do not discuss any of my arbitration or mediation assignments with them.
- C. *Unless* requested by a party prior to my setting of the Hearing in this matter, to the extent any member of my family changes employment or state of residence during the pendency of this case I do not intend to make any additional disclosures related to that change, or make any further inquiry of the parties or their counsel, unless the change appears to me to be relevant, based on my knowledge of the case, parties and counsel.

III. Specific Disclosures

To the best of my knowledge, formed after reasonable inquiry and subject to the foregoing limitations:

In this section I will identify any disclosures related to the parties; their principals, lawyers and law firms; and any witnesses that have been identified in papers made available to me. If these disclosures are made in an arbitration handled by a three-arbitrator panel, I will also make any appropriate disclosures related to my social or business relationship with any of my fellow arbitrators, including whether I have served with them in prior arbitrations.

IV. Request to Counsel and Parties Regarding These Disclosures; Dealing With Concerns Over Disclosures; Limitations on Disclosures

Counsel are asked to share these disclosures with their clients and with the [principal witnesses expected to testify at the Hearing] [client representatives attending the mediation]. Counsel and the parties are also encouraged to utilize search engines and portals to acquire further information about me, my law firm, and my and the firm's practice. If any party or counsel desires that I provide further information concerning any of the disclosures made above, general or specific, I

² My father and mother resided in the Chicago area. Both are deceased.

will do my best to do so. The parties and their counsel are asked to share with each other and promptly bring to the attention of the AAA Case Manager – ***not*** to me – any relationships of which they are aware that I have not disclosed above and any concerns they may have regarding any of the disclosures made, either in this document or subsequently. The AAA will deal with them.

V. Conclusion

I do not regard any of the foregoing disclosures as constituting either a conflict of interest or raising an appearance of fairness issue requiring me to decline my appointment in this case. I am confident that I can carry out my duties as a neutral and impartial [arbitrator] [mediator] and give each party to this case a fair hearing.

Dated: _____

PHILIP E. CUTLER