No. 20-4

In The

Supreme Court of the United States

ROSANNE L. WOODROOF,

Petitioner,

v.

JOSEPH F. CUNNINGHAM;
CUNNINGHAM & ASSOCIATES, PLC,

Respondents.

On Petition For A Writ Of Certiorari
To The District Of Columbia Court Of Appeals

REPLY BRIEF

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JURISDICTION

This Honorable Court has jurisdiction over this matter under 28 U.S.C. 1257.

Petitioner Woodroof's original petition was submitted timely and in good faith. After its submission, certain clerical issues within the petition were identified. Therefore, with the consent of the Clerk of this Honorable court, pursuant to Supreme Court Rules 14.5 and 29.2, Petitioner timely submitted a corrected petition, which was accepted by the Clerk of this Honorable Court for filing. Respondent Cunningham's contention that the submission of the corrected petition is untimely is thus without merit.

INTRODUCTION/STATEMENT OF CASE

The Motion to Dismiss with Prejudice underlying this appeal argued to the trial court that arbitration was impossible because the arbitrator resigned. Now Respondent Cunningham (Cunningham) admits this is false, but does not admit to refusing to cooperate on a replacement, forcing Woodroof to seek court intervention under FAA Section 5. (Opp. 13-14)

The Order dismissing Woodroof's case described a specific point in time between the hiring of the party arbitrators on July 28, 2017 and the resignation of the arbitrator on October 2, 2017. (App. 8-9) On October 9, 2017, despite the effort underway to hire a replacement arbitrator, Respondent Cunningham

(Cunningham) sought a dismissal with prejudice. (App. 138-140) Cunningham's Opposition distorts and expands the timeline and reasons for the dismissal. (See Summary Timeline App. 162-168)

Woodroof filed her fiduciary malpractice on September 24, 2013, while continuing to battle Cunningham on fees that should have been arbitrated in 2011. (App. 162-163) In response, Cunningham filed a Motion to Dismiss with prejudice. (App. 114-130) Only when his motion to dismiss Woodroof's claims in court failed on May 29, 2014, did Cunningham demand arbitration. After requesting a delay, Cunningham filed Answers on July 1, 2014. Woodroof appealed arbitration because of Cunningham's years of acts inconsistent with the right to arbitrate which deprived Woodroof of the benefits of her arbitration contract, causing Woodroof substantial prejudice.

The Appeal confirmed the Order to arbitrate, but stipulated that Woodroof's waiver/default challenge was a matter for an arbitrator to decide. The Mandate was issued January 4, 2017. Woodroof, in financial distress and under threat of foreclosure on her home, was forced to timely file a Motion for Prohibitive Cost based on this Court's decision in *Randolph*.[1] That motion was summarily denied without a hearing. When Woodroof's Motion was denied, she sought to update the name of Cunningham's arbitrator and to cooperate on rules and decisions to commence arbitration. (App.

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[1] *Green Tree Financial Corp.-Ala. v. Randolph*, 531 U.S. 79, 121 S.Ct. 513, 148 L.Ed.2d 373 (2000)

131-133) Cunningham refused to reveal the name of his arbitrator or cooperate with Woodroof, instead filing a Motion to Dismiss with Prejudice claiming Woodroof excessively delayed hiring an arbitrator and failed to obtain the proper stay for her appeal, both false. Woodroof does not believe that this Court intended for good faith filings based on its decisions to result in retaliatory accusations of dilatory delay, or, even worse, rationalization for dismissal.

At the Status Hearing on June 30, 2017, the trial court refused arguments. Instead it launched into a tirade against Woodroof, stating her financial problems were no excuse for not arbitrating. The court demonstrated a visceral dislike for Woodroof, a former legal client trying to combat excessive fees and fiduciary abuse, as well as her case against an attorney. Cunningham's recent death greatly increased sympathy for Cunningham. The court angrily ordered Woodroof to hire a party arbitrator of have her case dismissed, oblivious to the fact that Cunningham's arbitrator, who was never eligible to serve in the first place, had retired months earlier on January 10, 2017. Woodroof complied with the order fraudulently induced by Cunningham, only to have Cunningham name a new party arbitrator two minutes later. (App. 137) Further, Cunningham did not disclose his party arbitrator was intended to be non-neutral nor had he made such a disclosure when naming the original party arbitrator on July 14, 2014.

The non-neutral joined the panel and was highly successful in pushing for advantageous terms for his

client. On October 9, about two months after the parties hired their party arbitrators, when Woodroof resisted coerced consent to unfavorable terms not even in her contract, Cunningham filed another Motion to Dismiss with prejudice. Cunningham forced Woodroof out of her arbitration and any merit-based adjudication of her case.

The arbitration contract between Woodroof and her lawyer/fiduciary was ***not*** negotiated. It was a standard contract drafted by Cunningham and presented to the firm's clients for years.

REASONS PETITION SHOULD BE REVIEWED

Resolution of Circuit Split on Evident Partiality and Related Disclosures is Long Overdue

The U.S. federal circuit courts are split on the correct standard for "evident partiality." The Fifth, Eighth, Tenth and Eleventh circuits find evident partiality where there is a "reasonable impression" of bias, similar to the Ninth Circuit. However, the First, Third, Fourth, Sixth and Seventh circuits use a standard similar to the Second Circuit, that a "reasonable person would have to conclude" there was bias. The D.C. Circuit has yet to adopt a specific standard.

Cunningham argues that evident partiality does not apply in this appeal because Woodroof's primary complaint is about a party arbitrator and party arbitrators are presumed non-neutral. (Since the Panel

Chair failed to collect even minimal disclosures before proposing, then attempting to coerce Woodroof into a non-neutral framework contrary to the industry's default standard of neutrality, there is a case for bias on the part of that arbitrator. Because he resigned, he has not been the focus of Woodroof's evident partiality arguments)

Contrary to Cunningham's arguments to every court, including this Court, the current ethical standards for commercial arbitration in the United States emphatically embrace the presumption of neutrality for all arbitrators, including party arbitrators directly appointed. In 2004, the arbitration industry implemented a major shift regarding the presumption of neutrality. (App. 144-146) This was spearheaded by the American Bar Association in concert with the American Arbitration Association, the world's largest nonprofit arbitration entity. JAMS, the largest private arbitration entity globally followed suit by requiring neutrality for all arbitrators, absent express written provisions otherwise. (App. 147-154) This overhaul was intended to promote greater integrity, foundational to arbitration as an alternative form of adjudication, and also finality, a primary goal of arbitration.

The Cunningham contract does not expressly call for non-neutral party arbitrators. Nor did Cunningham stipulate non-neutrality for the original arbitrator presumably hired in July 2014 or the more recent selection in July 2017. Suddenly Woodroof was confronted with an obviously non-neutral party arbitrator advocate on her arbitration panel, although she had

hired a neutral party arbitrator based on current industry standards and her contract.

The Panel Chair, who once taught a course in negotiation at American University (AU), was not, as Cunningham asserts, a professor of law or arbitration at AU. He had little experience or expertise in the sort of commercial tripartite arbitration he was expected to manage and did not collect the required disclosures. Thus, the panel proceeded permeated with bias and evident partiality caused by a non-neutral, a major problem in this case. It sought to convince Woodroof she would benefit from consenting to the non-neutral schematic favorable to Cunningham, instead of the default standard for the industry. (App. 39-41)

The cases Cunningham cites are mostly out of date, reflecting the prior industry presumption of non-neutrality for party arbitrators, the exact opposite of today's standards.[2] At the dismissal hearing, Cunningham similarly argued the outdated presumption of non-neutrality for all arbitrators and the court ignored Woodroof's efforts to set the record straight. (App. 157-160) The court summarily dismissed Woodroof as "obstructive" when she tried to ferret out bias and evident partiality by seeking disclosures Cunningham was avoiding.

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[2] In *Winfrey v. Simmons Foods, Inc.*, 495 F.3d 549, 552 (8th Cir. 2007) the parties signed an addendum agreeing to non-neutral party arbitrators.

Certain state courts have emphatically embraced the 2004 ABA/AAA ethical standards for arbitrators in commercial disputes. In *Tenaska Energy, Inc*, the Supreme Court of Texas discusses the importance of disclosure to evident partiality, setting forth its linkage to this Court's decision in *Commonwealth Coatings*, 393 U.S. at 149, 151. That case applied the standard that an arbitrator is evidently partial and an award may be vacated, if the arbitrator fails to disclose facts which might, to an objective observer, create a reasonable impression of the arbitrator's partiality. That court considered a duty to disclose and failure to do so as a basis for evident partiality. (*Tenaska Energy, Inc. v. Ponderosa Pine Energy, LLC*. 437 S.W. 3d 518 (Tex. 2014)

The Supreme Court of Wisconsin also adheres to the new default standard presuming neutrality for all arbitrators, including party arbitrators. In *Borst v. Allstate Ins.*[3] the court explains the importance of aligning with and respecting the parties' contract on neutrality. That court looked to *Commonwealth Coatings*, 393 U.S. 145, 89 S Ct. 337, 21 L. Ed. 2d 301. for guidance and adopted the standard that "evident partiality" exists only when a reasonable person knowing the previously undisclosed information would have had "such doubts" regarding the impartiality of the arbitrator that the person would have taken action on the information. The standard is whether the

[3] *Borst v. Allstate Ins. Co.*, 717 N.W.2d 42 (Wis. 2006)

reasonable person, after further investigation, would conclude that "partiality is so likely that action was required."

The Arbitrators Clearly Exceeded Their Authority

Cunningham's opposition brief argues that whenever an arbitration panel exceeds its authority and fundamentally changes the nature of the arbitration, that decision is unreviewable prior to the final award. Not so.

As this Court recently cautioned, "The first principle that underscores all of our arbitration decisions is that arbitration is strictly a matter of consent." *Lamps Plus, Inc. v. Varela*, 139 S. Ct. 1407, 1415 (2019) (quotation marks, brackets, and citation omitted). This court elaborates,

> Consent is essential under the FAA because arbitrators wield only the authority they are given. That is, they derive their powers from the parties' agreement to forgo the legal process and submit their disputes to private dispute resolution. Parties may generally shape such agreements to their liking by specifying with whom they will arbitrate, the issues subject to arbitration, [and] the rules by which they will arbitrate . . . Whatever they settle on, the task for courts and arbitrators at bottom remains the same: to give effect to the intent of the parties.

Id. Here, the arbitrators exceeded their authority when they sought to fundamentally change the nature of the parties' arbitration agreement. Among other things, they construed contractual silence to permit the arbitration to proceed with non-neutral arbitrators, in violation of this Court's precedents and the ABA Code of Ethics for Arbitrators. As this Court cautions, "Silence is not enough; the FAA requires more." *Id.* at 1416 (quotation marks and citation omitted).

Yet when Woodroof objected to this fundamental change to the nature of her arbitration, Cunningham used that objection to run to court and have the case dismissed for, allegedly, refusing to participate in a dispute resolution process to which she had not consented.

Dismissing a case because a party disagrees with fundamental changes to a contract is unconscionable. Arguing that this dismissal is also unreviewable because the fundamentally changed arbitration process was subverted before a final award is nonsensical. And Cunningham arguments to the contrary should be firmly and explicitly rejected by this Court.

DC Superior Court Should Have Appointed a Replacement Arbitrator under the Federal Arbitration Act Section 5 To Promote Arbitration Not Defeat It

1. Cunningham Erroneously States The Parties Had a Panel in Place and that the Court Correctly Circumvented Woodroof's FAA Section 5 Motion

The Panel Chair resigned after a couple of hours work, before the Arbitration proceeding commenced. Woodroof immediately obtained agreement from the two remaining party arbitrators to proceed to select a replacement Panel Chair using the same methodology and list of qualified candidates. (App. 138-140) Woodroof sought a mutually agreeable candidate rather than wait for court intervention for an appointment unknown to either party. However, Cunningham abruptly filed a Motion to Dismiss on October 9, 2017, arguing that it was "impossible" to continue the arbitration because the Panel Chair had resigned.

As per the twenty-four emails Woodroof sent Kaplan, her Party Arbitrator, between October 10 and November 27, 2017, Woodroof vigorously pursued the arbitrator replacement for weeks. She used the contractually mandated procedures for the initial selection, paying Kaplan an additional $5,473 for his efforts during that time. (App. 138-140) However, Cunningham would not cooperate on an offer to the mutually agreed upon candidate, a retired DC Judge. Woodroof needed to replace the Panel Chair to continue arbitration, and address any grievances or concerns of the

parties such as the pending Motion to Dismiss or the interim ruling Woodroof sought on her threshold right to arbitrate issue from her prior appeal. She engaged counsel at the cost of tens of thousands of dollars to assist in continuing the arbitration and defending herself against Cunningham's efforts to end the arbitration and his liability to Woodroof.

Woodroof's Section 5 Motion could not have been motivated to obtain a panel or process more "to her liking" as Cunningham accuses, because Woodroof would lose control of the selection process if the court appointed an arbitrator. It was not foreseeable that a new Panel Chair appointed by the court, particularly a court which displayed a visceral dislike for Woodroof and her case against her former attorney, would be "more to her liking" than one selected by the parties.

Cunningham errs in citing *Cargill Rice, Inc. v. Empresa Nicaraguense Dealimentos Basicos*, 25 F 3d 223 (4th Cir. 1994) which involves the initial formation of a panel, not replacement of a resigned arbitrator already selected according to the contract. (And also ignores Cunningham's efforts to block Woodroof's replacement using the exact contractual formula originally used). In this case, the contract is *silent* on replacement of a resigned arbitrator. "As correctly noted by the district court, the 1990 agreements do not stipulate a method to replace an arbitrator in the event of a vacancy on the arbitration panel. Because the agreements are silent on this issue, this dispute is governed by 9 U.S.C. Section 5, which provides . . . " (See 9 U.S.C. Section 5 per Opposition page 11.) *National*

American Insurance Company v. Transamerica Occidental Life Insurance Company, 328 F. 3d 462 (2003) (Eighth Circuit)

Nonetheless, courts have gone to great lengths to respect arbitration contracts, but ultimately the FAA not only authorizes, but mandates court intervention in the circumstances here. (See *Stop & Shop Supermarket Co. LLC v. UFCW Local 342 and BP Exploration Libya Ltd v. Exxonmobil Libya Ltd.)*

2. Cunningham Admits The Arbitrator's Resignation Did Not Trigger the "Integral Exception" And That the Appointment Process Is Not Impossible to Perform

The trial court and DC Court of Appeals acted as if the resignation of the arbitrator actually ended the arbitration, creating an odd contribution to the already existing circuit split on integral forums/arbitrators.

Cunningham admits it sought court intervention to end Woodroof's arbitration. The excuse is that Woodroof would not agree to the panel's coercion of substantive changes to the parties contract which completely changed the expected bargain in Cunningham's favor. At the dismissal "Status Hearing, " Cunningham admitted Woodroof was absolutely correct – that after the resignation of the arbitrator, he "simply refused to go through this charade again . . . You know, pick another arbitrator, start all over again, only to have Ms. Woodroof decide there's something wrong with that panel." (App. 157-160) Woodroof argued that the

problem with the arbitration was the required disclosures, Defense Counsel's relationship with his party arbitrator and Cunningham's interpretation of the contract regarding neutrality. The trial court went for the charade rationale. Section 5 of the Federal Arbitration Act is designed to avoid disruptions to arbitration as well as efforts by litigants to prematurely exit or end arbitration if an arbitrator becomes unavailable.

There was no "impossibility" as Cunningham argued in the Motion to Dismiss, only a ruse to get out of the arbitration Cunningham had demanded. If there is any frustration of purpose, it is the frustration of the purpose of arbitration to decide Woodroof's case on the merits.

The Superior Court was mandated by the Federal Arbitration Act to appoint a replacement arbitrator. Compliance with the Federal Arbitration Act was not discretionary or optional. The lower court defied the FAA. The DC Court of Appeals should have reviewed this circumvention of the Federal Arbitration Act de novo.

3. Cunningham Errs. The Superior Court Has Authority To Intervene Under General Contract Principles as "Exist at Law or In Equity" (quoting 9 U.S.C. Section 2)

Particularly, there is an exception "where, prior to the commencement of any arbitration proceedings, the plaintiff alleged specific instances of actual misconduct on the part of an arbitrator." *Vestax*, 919 F. Supp. At

1075 (citing *Metro. Prop. & Gas. V. J.C. Penney Cas.* 780 F. Supp. 885, 893-94 (D. Conn. 1991)

The "touchstone" determination in deciding a court's authority to remove an arbitrator during the arbitration is where "the arbitrator's relationship to one party is undisclosed, or unanticipated and unintended, thereby invalidating the contract." *Aviall.* 110 F. 3d at 896. (App. 142-143 *Porter, et al. v. City of Flint*) This case points out that to delay removal would cause the arbitration to proceed under a cloud. It would also severely threaten one of the primary goals of arbitration – finality.

Similarly, other courts have recognized the importance of pre-arbitration removal to reduce the likelihood of potentially wasteful post arbitration challenges. The court in *Borst v. Allstate Ins. Co.*, 717 N.W. 2d 42, 48 (Wis. 2006) reasoned that pre-arbitration disclosures would allow the parties to gauge arbitrator bias, echoing the importance of disclosures described in *Commonwealth Coatings v. Continental Casualty Co.*, 393 U.S. 145, 151, 89 S.Ct. 337, 21 L. Ed. 2d 301 (1968).

CONCLUSION

For the reasons stated in this brief, and those in the opening brief, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
CIVIL DIVISION

ROSANNE L. WOODROOF **Plaintiff,** **v.** **JOSEPH F. CUNNINGHAM, *ET AL.*,** **Defendants.**	**Case No. 2013 CA 006474 M** **Hon. Brian F. Holeman** **Next Event: Scheduling Conference;** **February 7, 2014, 11:00 AM**

DEFENDANTS' MOTION TO DISMISS

Defendants, Joseph F. Cunningham and Cunningham & Associates, PLC, through counsel, and pursuant to Rule 12(b)(6) of the Superior Court Rules of Civil Procedure, submit this Motion respectfully requesting that the Court dismiss the Plaintiff's Amended Complaint with prejudice. The grounds for this motion are set forth more fully in the attached memorandum of points and authorities in support hereof. A proposed order consistent with this motion is attached hereto as well.

Dated: February 6, 2014

CUNNINGHAM & ASSOCIATES, PLC
AND JOSEPH F. CUNNINGHAM

/s/ Joseph F. Cunningham
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Counsel for Defendants

RULE 12-I CERTIFICATION

I CERTIFY that, pursuant to District of Columbia Superior Court Rule 12-I, I contacted Plaintiff to determine whether she would consent to the relief requested m this Motion, and Plaintiff refused to consent to said relief.

\s\
Robert Gastner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of February, 2014, a true copy of the foregoing Defendants' Motion to Dismiss was served via Electronic Mail and First Class Mail to the following *pro se* party:

Rosanne Woodroof
P.O. Box 3050
Warrenton, Virginia 20188
Email: ROSANNE.WOODROOF@comcast.net
Pro Se Plaintiff

\s\
Robert J. Gastner

SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
CIVIL DIVISION

ROSANNE L. WOODROOF **Plaintiff,** **v.** **JOSEPH F. CUNNINGHAM, *ET AL.*,** **Defendants.**	**Case No. 2013 CA 006474 M** **Hon. Brian F. Holeman** **Next Event: Scheduling Conference;** **February 7, 2014, 11:00 AM**

DEFENDANTS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THEIR MOTION TO DISMISS

Defendants, Joseph F. Cunningham and Cunningham & Associates, PLC, through counsel, and pursuant to Rule 12(b)(6) of the Superior Court Rules of Civil Procedure, submit this Motion respectfully requesting that the Court dismiss the Plaintiff's Amended Complaint with prejudice. In support of this Motion, Defendants state as follows:

FACTUAL BACKGROUND

Rosanne L. Woodroof (hereinafter "Plaintiff") filed this breach of fiduciary duty action on September 24, 2013, against her former lawyers, Cunningham & Associates, PLC (the "Firm"), and the Firm's principal Joseph F. Cunningham (collectively referred to hereafter as "Defendants"). As alleged in the Complaint, in December of 2008, the Plaintiff retained the Firm to represent her in a dispute between herself and the condominium board of the Saint George Condominium (located at 1280 21st Street, NW, Washington, DC 20036)(*See* Complaint, 6 & 15). Despite the fact that the Firm was able to successfully secure a settlement on the Plaintiff's behalf, the Plaintiff now alleges breaches of fiduciary duty on the part of the

Defendants (*See* Complaint, 55 & 56). The Defendants vigorously deny any breach of fiduciary duty on their parts.

On January 3, 2014, counsel for the Defendants, Robert Gastner, and Ms. Woodroof, appearing pro se, attended a scheduling conference in this matter. At that hearing, the Court granted the Defendants' Motion for a More Definite Statement, and gave Ms. Woodroof thirty (30) days in which to file an Amended Complaint. On February 3, 2014, the Defendant filed an Amended Complaint which the Defendants now ask the Court to dismiss with prejudice.

ARGUMENT

I. Applicable Legal Standard

Rule 12(b)(6) of the Rules of Civil Procedure for the Superior Court of the District of Columbia permits the Court to dismiss a matter for failure to state a claim upon which relief can be granted. DC-SCR 12(b)(6). "In reviewing the Complaint, the court must accept its factual allegations and construe them in a light most favorable to the non-moving party." *Chamberlain v. American Honda Finance Corp.*, 931 A.2d 1018, 1023 (D.C. 2007) (citing *Jordan Keys & Jessamy, LLP v. St. Paul Fire & Marine Ins. Co.*, 870 A.2d 58, 62 (D.C. 2005). However, "[f]actual allegations must be enough to raise a right to relief above the speculative level..." *Bell Atlantic Corp. v. Twombly,* 127 S. Ct. 1955, 1965 (2007); *see also Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009); *Potomac Dev. Corp. v. District of Columbia*, 28 A.3d 531, 544 & n.4 (D.C. 2011) (adopting the plausibility standard articulated in *Twombly* and *Iqbal.*). Thus, "dismissal under Rule 12(b)(6) is appropriate where the Complaint fails to allege the elements of a legally viable claim." *Chamberlain,* 931 A.2d at 1023.

While a complaint need not plead "detailed factual allegations," the factual allegations it does include "must be enough to raise a right to relief above the speculative level" and to

"nudge[][] claims across the line from conceivable to plausible." *Twombly,* at 1965, 1974. In ruling upon a motion to dismiss, a court may ordinarily consider the facts alleged in the complaint, documents attached as exhibits or incorporated by reference in the complaint, and matters about which the court may take judicial notice. *Gustave-Schmidt v. Chao*, 226 F. Supp. 2d 191, 196 (D.D.C. 2002). In addition, the court may, in its discretion consider matters outside the pleadings and thereby convert a Rule 12(b)(6) motion into a motion for summary judgment under Rule 56. *See* Fed.R.Civ.P. 12(b); *Yates* v. *District of Columbia,* 324 F.3d 724, 725 (D.C.Cir.2003).[1]

Conclusory allegations or legal conclusions masquerading as factual allegations will not suffice to prevent a motion to dismiss. *Warren* v. *District of Columbia,* 353 F.3d 36, 39 (D.C. Cir. 2004); *Bender* v. *Suburban Hosp., Inc.,* 159 F.3d 186, 192 (4th Cir. 1998). Moreover, the court does not need to accept as "true the complaint's factual allegations insofar as they contradict exhibits to the complaint or matters subject to judicial notice." *Kaempe v. Myers,* 367 F.3d 958, 963 (D.C. Cir. 2004). Even as to a *pro se* plaintiff, the Court may dismiss the complaint if it does not cite any basis in support of its conclusions. *See Crisafi v. Holland*, 655 F.2d 1305, 1308 (D.C. Cir. 1981) ("A *pro se* complaint, like any other, must present a claim upon which relief can be granted by the court."). As set forth below, Plaintiff has failed to allege facts sufficient to support any cause of action against Defendants. Accordingly, this Motion to Dismiss should be granted and judgment should be entered in favor of Defendants.

[1] The D.C. Court of Appeals has noted that D.C. Superior Court Rule 12(b)(6) is "substantially the same" as Rule 12(b)(6) of the Federal Rules of Civil Procedure, and that this Court can therefore look to federal precedent in the interpretation of the D.C. Superior Court Rule. *See McBryde v. Amoco Oil Co.*, 404 A.2d 200, 202 (D.C. 1979).

II. The Assertions in Plaintiff's Amended Complaint are Consistently Contradicted by the Attached Exhibits.

The Amended Complaint contains numerous assertions which should be disregarded by the Court as they directly contradict the Complaint's attached exhibits. As noted above, the court does not need to accept any of the Amended Complaint's factual allegations as true to the extent that they contradict its attached exhibits. *Kaempe,* 367 F.3d at 963. These contradictions are enumerated as follows:

- The Amended Complaint alleges that the Defendants made numerous guarantees regarding the outcome of the Plaintiff's case. Amended Complaint ¶ 3. However, the Plaintiff's Retainer Agreement with the Firm, which the Plaintiff signed, states "I acknowledge that the Firm has made no promises or guarantees regarding the outcome of this case." Exhibit 1 to the Amended Complaint.

- The Amended Complaint asserts that Defendants did not keep the Plaintiff reasonably informed regarding her representation. Amended Complaint ¶¶ 2, 8, 9. However, the exhibits attached to the Amended Complaint reference an overwhelming number of emails sent to the Plaintiff regarding her representation and monthly invoices that she received which detailed the work done on her behalf. Exhibit 12 to the Amended Complaint.

- The Amended Complaint asserts that the Defendants failed to properly instruct the Plaintiff with respect the mitigation of her damages. Amended Complaint ¶ 3. However, the correspondence attached to the Complaint by the client notes that the concept of

mitigation of damages had been repeatedly explained to the Plaintiff and that the Plaintiff had ignored the Defendants' instructions. Exhibit 2 to the Amended Complaint.

- With respect to the Confessed Judgments that the Defendants requested that the Plaintiff sign, the Plaintiff repeatedly asserts that the Firm did not advise her to seek independent counsel. Amended Complaint ¶¶ 5, 13. However, the Defendants sent the Plaintiff a letter advising just that. Exhibit 12 to the Amended Complaint.

- The Plaintiff characterizes the Defendants' requests for her to satisfy an outstanding invoice from a mediation service as a breach of their fiduciary duties. Amended Complaint ¶ 9. However, the only communication that the Plaintiff provides between the Defendants and the mediation service quite clearly demonstrates that the Defendants were attempting to negotiate a reduced fee on the Plaintiff's behalf and not acting in anyway contrary to their fiduciary duties. Exhibit 10 to the Amended Complaint.

III. Plaintiff has failed to Sufficiently Allege Cognizable Damages

In a recent case, the District of Columbia Court of Appeals declined to find proximate cause where a law firm's former client's complaint required it to speculate about a legal result. *Pietrangelo v. Wilmer Cutler Pickering Hale & Dorr, LLP*, 68 A.3d 697, 710 (D.C. 2013).[2] The Court specifically held that such compound speculation is insufficient as a matter of law to support a claim for breach of fiduciary duty against an attorney. *Id.* This has long been the

[2] Defendants note that federal courts in the District had previously allowed clients suing their attorney for breach of the fiduciary duty of loyalty and seeking disgorgement of legal fees as their sole remedy needed to prove only that their attorney breached that duty, not that the breach caused them injury. *Hendry v. Pelland*, 73 F.3d 397, 402 (D.C. Cir. 1996). However, this line of case law only applies to an alleged breach of the duty of loyalty. *Id.* However, additionally as noted below, the Plaintiff has failed to allege sufficient factual allegations to support such a breach by Defendants.

standard for recovery of such claims in the District of Columbia. Previous courts have similarly held that the mere breach of a professional duty, causing only nominal damages, speculative harm, or the threat of future harm—not yet realized—does not suffice to create a cause of action. *Hillbroom v. PricewaterhouseCoopers LLP*, 17 A.3d 566 (D.C. 2011). In the instant matter, the Plaintiff repeatedly asserts that a case, which she ultimately successfully settled, was allegedly prejudiced somehow by the Defendants. *See e.g.*, Amended Complaint ¶ 8. However, the Plaintiff's assertions constitute the exact type of speculation upon which the Court in the *Pietrangelo* case refused to award any recovery.

Moreover, a plaintiff must show that an attorney's alleged breach caused a legally cognizable injury. *See McCord v. Bailey*, 636 F.2d 606, 611 (D.C. Cir 1980). The plaintiff must also show, among other things, that the attorney's breach resulted in and was the proximate cause of any asserted loss. *Niosi v. Aiello*, 69 A.2d 57, 60 (D.C. 1949). The Amended Complaint's request for relief alleges a litany of grievances including, but not limited to:

> Plaintiff's grossly deteriorated credit rating and financial position, continuing financial strife, disruptions to professional duties, derogatory, private, confidential and secret information made public, hence available on the internet, including humiliating and damaging judgments, liens and foreclosures on real property, sharply elevated, harmful anxiety and stress associated with revelations of humiliating information, foreclosure threats on property, including home established after years of displacement caused by the other primary fiduciary in Plaintiff's life, the purpose of Defendants' hiring.

None of these alleged damages constitute legally cognizable injuries that would result from a purported breach of fiduciary duty nor are they supported by factual allegations from which one could infer that they were proximately caused any alleged fiduciary breach on the part of the Defendants.

IV. Plaintiff's Amended Complaint Fails to Allege any Actual Breach of Duty on the Part of the Defendant

With respect to the Plaintiff's allegations that the Defendants' breached their duty of loyalty to the Plaintiff, all that the Plaintiff has alleged is that the Defendants continually sought to be paid for their services and sought for the Plaintiff to satisfy invoices to third-parties assisting the litigation as she was obligated to pay for under the parties' Retainer Agreement. *See* Amended Complaint ¶¶ 5, 7, 9, 13 & Exhibit 1 to the Amended Complaint. None of the Plaintiff's allegations assert that the Defendants attempted to act in a representative capacity for any adverse party as is the focus of the prohibitions imposed by Rule 1.7 of the Rules of Professional Conduct. Rather, all of the Plaintiff's assertions relate to attempts to recover costs and fees owed to the Defendants. However, the collection of accounts receivables from clients is part of the operation of a law practice and has never been considered by courts to be a breach of an attorney's duty of loyalty. "Clearly, in a situation where an attorney is seeking to recover fees from a client who has not paid the attorney for his services, the client cannot argue that the duty of undivided loyalty prevents his own attorney from pursuing his own claims if the client fails to pay the attorney monies owed." *Pierce & Weiss, LLP v. Subrogation Ptnrs. LLC*, 701 F. Supp. 2d 245, 252 (E.D.N.Y. 2010)(citing *Petition of Rosenman & Colin,* 850 F.2d 57 (2d Cir. 1988)).

With respect to the Defendants' Motion for Leave to Withdraw as Counsel, "A lawyer *may* withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interests of the client, or if: ... (3) The client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled." D.C. R. Prof. Cond. 1.16(b).

The Plaintiff has alleged that the Defendants' motion's references to monies owed to the firm constituted a breach of their fiduciary duty to her.[3] However, communications relating solely to the payment of attorneys' fees are not covered by the attorney-client privilege unless they reveal confidences about the nature of legal services rendered. *See e.g.*, *Berliner Corcorn & Rowe LLP v. Orian*, 662 F. Supp. 2d 130, 134 (D.D.C. 2009); *see also Montgomery County v. MicroVote Corp.*, 175 F.3d 296, 304 (3d Cir. 1999) (holding that attorney fee agreement letter is not privileged); *Chaudhry v. Gallerizzo*, 174 F.3d 394, 402 (4th Cir. 1999) ("Typically, the attorney-client privilege does not extend to billing records and expense reports."); *Lefcourt v. United States*, 125 F.3d 79, 86 (2d Cir. 1997) ("As a general rule, a client's identity and fee information are not privileged."); *Clarke v. Am. Commerce Nat'l Bank*, 974 F.2d 127, 129 (9th Cir. 1992) (holding that billing correspondence is not protected unless it "also reveal[s] the motive of the client in seeking representation, litigation strategy, or the specific nature of the services provided, such as researching particular areas of law"). Additionally, to the extent that the statements at issue pertain solely to the timing of payments and promises to pay and do not implicate the nature of services provided or other confidential information, they are not subject to the attorney-client privilege. *Berliner Corcorn & Rowe LLP*, 662 F. Supp. 2d at 134 (D.D.C. 2009). Because the communications that Plaintiff claims were privileged were in fact only

[3] The Amended Complaint also notes that the Defendants' motion referenced the Plaintiff's intention to proceed *pro se*. However, as this information is required to be disclosed and filed with the Clerk by D.C. SCR 101(c)(2), it is hard to follow the Plaintiff's argument that this information could be privileged or that its disclosure prejudiced her case somehow.

relating to the payment attorneys' of fees, this claim should be dismissed.[4] *See Amended Complaint* ¶ 8.

With respect to the Plaintiff's allegations that the Defendants were required to use the third-party administrative services provider, "Clicks," to perform additional discovery processing, the Defendants know of no ethical obligation that would require them to contract with third-parties to perform legal work on behalf of the Plaintiff. Amended Complaint ¶ 6. Plaintiff's allegations are purely speculative and conclusory. Just because "Clicks" was able to provide some low-level clerical assistance by "bates stamping" various documents does not mean that "Clicks" could have or should have handled all of the tasks involved with the preparation of the Plaintiff's discovery responses.[5] See Exhibit 6 to the Amended Complaint.

Regarding the Court's dismissal of the St. George as a Defendant, it should be noted that said dismissal was without prejudice. As detailed in Exhibit 11 to the Amended Complaint, the Defendants reached out to the St. George to perform a mediation prior to the filing of the Plaintiff's lawsuit against the St. George but did not receive any response. *Id.* The Court found that mediation was a required condition precedent to the filing of any lawsuit between the parties pursuant to a previous agreement that they had entered into, and the Court dismissed the St. George as a defendant without prejudice until the parties could participate in a mediation. Thus, all that the Plaintiff has alleged is a shift in the order of events that occurred. The referenced

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[4] In any event, a lawyer may use or reveal client confidences or secrets to the minimum extent necessary in an action instituted by the lawyer to establish or collect the lawyer's fees. *See* D.C. R. Prof. Cond. 1.6(e)(5).

[5] Moreover, as outlined in detail below, these claims are now barred by *res judicata*.

mediation would have had to have been scheduled in any event, and the St. George was incorporated back to the Plaintiff's lawsuit as a defendant after the mediation was completed. Thus, the Plaintiff cannot point to any prejudice on her part as a result of alleged failing on the Defendants' part.

Finally, the Plaintiff's Amended Complaint contains new allegations that are so vague once again as to preclude a proper response by the Defendants. Paragraph 7 of the Amended Complaint now alleges that the Plaintiff has found a document outlining the thoughts of opposing counsel which the Plaintiff asserts is relevant to the parties' dispute. However, the Plaintiff has not attached said document to the Amended Complaint and only provides her own vague characterizations of its contents. Similarly, Paragraph 11 now alleges that the Defendants failed to disclose an expert witness and that this somehow prejudiced the Plaintiff in later litigation. However, the Plaintiff fails to identify how these subsequent proceedings were prejudiced given that she also alleges that she was once again able to achieve a settlement of her additional claims. These are the exact type of vague assertions that the Defendants sought to rectify with their Motion for a More Definite Statement and the type of vague assertion that caused the Court to admonish the Plaintiff that she would need to provide greater specificity to avoid a dismissal of her case. The Plaintiff has already been given chance to clarify her pleadings and failed to do so adequately, thus, they should now be dismissed with prejudice.

V. Plaintiff's Claims are Barred by the Doctrine of *Res Judicata*

A plaintiff generally must "present in one suit all the claims for relief that he may have arising out of the same transaction or occurrence." *United States Indus., Inc. v. Blake Constr. Co.*, 765 F.2d 195, 205 (D.C. Cir. 1985). Under the doctrine of *res judicata*, a plaintiff may not

assert claims that were actually litigated or claims that could have been litigated in a previous action. *Allen v. McCurry*, 449 U.S. 90, 94 (1980); *see also I.A.M. National Pension Fund v. Indus. Gear Mfg.*, 723 F.2d 944, 949 (D.C. Cir. 1983) (noting that *res judicata* "forecloses all that which might have been litigated previously."). *Res judicata* acts to "conserve judicial resources, avoid inconsistent results, engender respect for judgments of predictable and certain effect, and to prevent serial forum-shopping and piecemeal litigation." *Hardison v. Alexander*, 655 F.2d 1281, 1288 (D.C. Cir. 1981).

The doctrine of *res judicata* applies where: (1) the same parties are involved in both suits; (2) the present claim is the same as an issue that was raised or might have been raised in the first proceeding; (3) a judgment was issued in the first action by a court of competent jurisdiction; and (4) the earlier decision was a final judgment on the merits. *See Palev v. Estate of Ogus*, 20 F.Supp. 2d 83, 87 (D.D.C.1998).

Here, Plaintiff has noted that the Defendants previously secured a judgment in a case filed in Arlington County Circuit Court with respect the entirety of the legal fees whose validity she is now disputing (Arlington County Circuit Court Case No. CL 11-56). Amended Complaint ¶ 15. Said case plainly involved the same parties, and the case involved the same core factual allegations that Plaintiff is asserting here (*i.e.,* the Defendants' legal representation of the Plaintiff). The Arlington County Circuit Court, clearly a court of competent jurisdiction, has already necessarily found the fees charged by the Defendants to be reasonable. Moreover, the Plaintiff's assertions with respect to the need to arbitrate the parties' dispute and her various allegations of breaches of fiduciary duty were raised or might have been raised as defenses in the parties' previous litigation. Therefore, all of these claims should be barred by the doctrine of *res judicata.*

CONCLUSION

The Plaintiff's Amended Complaint contains numerous deficiencies as enumerated above. It does not allege with sufficient particularity any damage that the Plaintiff suffered, nor does its factual allegations support any breach of fiduciary duty on the Defendant's part. Instead, it relies on series of conclusory statements. Moreover, to the extent that the allegations in the Amended Complaint are compared with its attached exhibits, they consistently conflict said exhibits. As noted previously, the Plaintiff has already been ordered by the Court to clarify her Complaint. However, many of the Plaintiff's amendments continued with the same ambiguities which the Court exhorted her to avoid at the parties' last hearing. Finally, the claims and issues that the Plaintiff has raised are barred by the doctrine of *res judicata*. As such, it is highly unlikely that the Plaintiff will be able to assert any cognizable set of facts which will allow her to recover. Thus, the Plaintiff's Complaint should be dismissed with prejudice.

WHEREFORE, Plaintiff respectfully requests that this Court dismiss the Plaintiff's Amended Complaint with prejudice and impose any other remedies as the Court sees fit.

Dated: February 6, 2014

Oral Argument is Hereby Requested.

CUNNINGHAM & ASSOCIATES, PLC
AND JOSEPH F. CUNNINGHAM

By Counsel:

/s/ Joseph F. Cunningham
Joseph F. Cunningham (DC BAR #65532)
CUNNINGHAM & ASSOCIATES, PLC
1600 Wilson Boulevard, Suite 1008
Arlington, Virginia 22209
Telephone: (703) 294-6500
Facsimile: (703) 294-4885
Email: info@cunninghamlawyers.com
Counsel for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of February, 2014, a true copy of the foregoing Defendants' Memorandum of Points and Authorities in Support of Their Motion to Dismiss was served via Electronic Mail and First Class Mail to the following *pro se* party:

Rosanne Woodroof
P.O. Box 3050
Warrenton, Virginia 20188
Email: ROSANNE.WOODROOF@comcast.net
Pro Se Plaintiff

\s\
Robert J. Gastner

SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
CIVIL DIVISION

ROSANNE L. WOODROOF	
Plaintiff,	**Case No. 2013 CA 006474 M** **Hon. Brian F. Holeman**
v.	
JOSEPH F. CUNNINGHAM, *ET AL.*,	
Defendants.	

ORDER

UPON CONSIDERATION of the Defendants' Motion to Dismiss, it is this day _____of _____, 2014, by the Superior Court of the District of Columbia;

ORDERED that the Defendants' Motion to Dismiss pursuant to Rule 12(b)(6) be, and hereby is, granted;

AND IT IS FURTHER;

ORDERED, that the Plaintiff's Amended Complaint be dismissed with prejudice.

_____
JUDGE - SUPERIOR COURT OF D.C.

Copies to:

Joseph F. Cunningham, D.C. Bar # 65532
info@cunninghamlawyers.com
Robert J. Gastner, D.C. Bar # 987759
rgastner@cunninghamlawyers.com
Cunningham & Associates, PLC
1600 Wilson Blvd., Suite 1008
Arlington, VA 22209
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Facsimile: (703) 294-4885
Attorneys for Defendants

Rosanne Woodroof
P.O. Box 3050
Warrenton, Virginia 20188
Email: ROSANNE.WOODROOF@comcast.net
Pro Se Plaintiff

ROSANNE L WOODROOF <rosanne.woodroof@comcast.net> 4/11/2017 7:29 AM

Arrange Meeting RE: Arbitration Case No. 2013 CA 6474 M

To jjschraub@sandsanderson.com

Good Morning, Mr. Schraub,

Please contact me as soon as possible to arrange a meeting to discuss arbitration of the above-referenced case.

Thank you,

Regards,

Rosanne L Woodroof
Rosanne.Woodroof@comcast.net
(540) 359-6045 home
(202) 262-0140 cell
FAX (540) 301-2101

- Woodroof Arbitraion Meeting Request 4.11.17.pdf (2 MB)

April 11, 2017

J. Jonathan Schraub, Esquire
SANDS ANDERSON PC
1497 Chain Bridge Road, Suite 202
McLean, VA 22101

RE: Meeting to Discuss Arbitration D.C. Superior Court Case No. 2013 6474.

Dear Mr. Schraub,

Pursuant to the OMNIBUS ORDER filed by the D.C. Superior Court on April 6, 2017, I am contacting you to arrange a meeting to discuss proceeding immediately with arbitration of the above-referenced case. I propose this discussion to include arbitrator selection, the claims of each party, the Rules that will apply, the timing and cost of the arbitration and/or other pertinent items the parties must agree upon to commence arbitration.

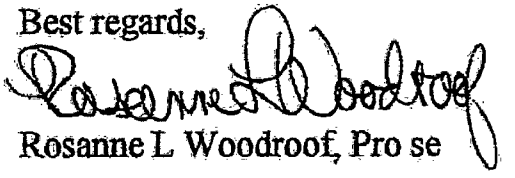
I will continue to represent myself Pro-Se, with legal consults as available, because of my financial condition, which has only deteriorated since you first sought arbitration on June 26, 2014.

At our meeting, I will look forward to an update on your selection of an arbitrator. I have not received any communication from you concerning your arbitrator selection since an email notice on July 14, 2014.

As you are well aware, my home was recently scheduled to be sold in foreclosure in March 2017, with my eviction from my home in Virginia to follow. During January, February and into March 2017, I was under considerable duress to save my home and prevent eviction and that was, understandably, my primary focus during that time. My discussions with my mortgage company about future payments are on-going.

Please contact me as soon as possible to arrange a meeting to discuss commencing arbitration.

Best regards,



Rosanne L Woodroof, Pro se

PO Box 3050
Warrenton, VA 20188
Rosanne.Woodroof@comcast.net
(540) 359-6045
(202) 262-0140 cell
FAX (540) 301-2101

ROSANNE L WOODROOF <rosanne.woodroof@comcast.net> 8/1/2017 5:12 PM

Agreement & Rules, etc.

To jjschraub@sandsanderson.com • mkramer@sandsanderson.com

Good Afternoon, Mr. Schraub,

Per your earlier email today, I would appreciate knowing where in the Arbitration Agreement it specifies that the Rules should/will/shall be decided by the arbitrators?

Similarly, where does the Arbitration Agreement state, imply and/or disclose in any way that there will be no discovery?

Thanks for clarifying this,

Rosanne L Woodroof, Pro Se
Rosanne.Woodroof@comcast.net
(540) 359-6045 home
(202) 262-0140 cell

Schraub, J. Jonathan <jjschraub@sandsanderson.com> 8/1/2017 3:20 PM

RE: Basic Framework and Rules for Arbitration

To ROSANNE L WOODROOF <rosanne.woodroof@comcast.net> •
Kramer, Madelaine A. <mkramer@sandsanderson.com>

Ms. Woodroof – the issues you raise are within the province of the arbitrators. It is not my intention to engage in a back and forth with you over any issue as that has proven to be spectacularly unproductive. I will tell you that I am opposed to any form of formal discovery – which is not usually a part of any arbitration process. Administrative matters can be handled by the arbitrators in any manner they might agree on. Once a third arbitrator is picked and the parties have provided adequate security for our respective portion of the fees, I am sure the panel will move the matter forward.

Finally, we did not agree to have the hearing continued as that is the decision of the Court and unless otherwise advised by the Court, we will be present at the time the hearing is scheduled.

J. Jonathan Schraub
Attorney
Sands Anderson PC
1497 Chain Bridge Road, Suite 202 McLean, VA 22101
(703) 893-3600 Main | (703) 893-8484 Fax
www.SandsAnderson.com | JJSchraub@sandsanderson.com | Bio | vCard

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From: ROSANNE L WOODROOF [mailto:rosanne.woodroof@comcast.net]
Sent: Tuesday, August 01, 2017 2:57 PM
To: Schraub, J. Jonathan; Kramer, Madelaine A.
Subject: Basic Framework and Rules for Arbitration

Good Afternoon,

I would like to work with you to determine a reasonable administrative framework and some basic Rules, similar to the manner in which arbitration entities operate, but customized to the matter at hand and administratively streamlined in some administrative areas that do not compromise the substance of the case.

One of the reasons for this to avoid administrative "clutter" hampering and diverting the work of a panel of relatively high paid experts. I think it best to keep the panel focused on the substantive matters they are being hired to decide. They will have plenty of work undertaking that task.

Another reason is the difficulty we have coming to agreement. There is no reason for our disagreements to disrupt the Panel and richochet around the panel, back to us, and around again, etc. This would be ridiculously costly, even for an insurance company, counterproductive and quite frustrating for the Panel members who should be devoted to more important matters, as I have said.

I want to put together the best panel possible and create a positive working environment for them where they can operate in a positive, cohesive, productive manner. If all goes well, there will be good, maybe even great dynamics amongst panel members which would facilitate a much better, more efficient job for us both of us, whatever they decide.

I am willing to work hard, as always, and undertake a lot of the administrative chores which cost a lot of money when handled by an arbitration entity.

If you have other thoughts, ideas, please let me know. You may, for example, plan to offer some of your admin people to help out with administrative matters or provide office space, assuming your office is convenient for the panel. You may have ideas/preferences about locations, space, court reporting, etc. After all, you have almost 30 years of experience with AAA, a major arbitration entity, not that we should copy them, but certainly we can learn from them and your expertise and experience, while formulating and adopting our own policies and procedures that work best for us in this case.

For example, I prefer to conduct interviews, here called "depositions," with fewer parties present as I can work better with that formula. However, I am willing to consider depositions before you, me and the entire panel so that everyone is involved "real time" and can process everything without undue back and forth and review, meetings and multiple court reporters. (If it is customary for a Panel to have time with deponents by themselves, that could be done after the initial interview. I am not saying the Panel should be denied time to depose witnesses apart from us.)

I would appreciate your agreeing to reset the upcoming August 4 hearing, which may happen anyway. We should have more to report at a later status hearing. Please let me know your schedule as I think you plan to go out of town on August 4 and maybe will be away from the office until after the 11th, a date you told the court you would not be available.

Regards,

Rosanne L Woodroof, Pro se
Rosanne.Woodroof@comcast.net
(540) 359-6045 home
(202) 262-0140 cell

ROSANNE L WOODROOF <rosanne.woodroof@comcast.net> 7/28/2017 5:00 PM

RE: Appointment of Party Arbitrator Today July 28, 2017

To Schraub, J. Jonathan <jjschraub@sandsanderson.com>

Thanks for the update.

I am committed to putting together the best Panel possible in the circumstances and also managing the process in the most efficient, effective and economical manner possible.

Regards,

Rosanne L Woodroof
Rosanne.Woodroof@comcast.net
(540) 359-6045 home
(202) 262-0140 cell

On July 28, 2017 at 4:50 PM Schraub, J. Jonathan wrote:.

Thank you. Our original arbitrator, Judge Paul Sheridan, has retired and we will be proceeding with Mikhael Charnoff an attorney in Arlington.

J. Jonathan Schraub
SandsAnderson PC
1497 Chain Bridge Rd.
Ste. 202
Mclean, Va. 22101
793-893-3600

From: ROSANNE L WOODROOF < rosanne.woodroof@comcast.net>
Date: Friday, Jul 28, 2017, 4:48 PM
To: Schraub, J. Jonathan < JJSchraub@sandsanderson.com>, Kramer, Madelaine A. < MKramer@sandsanderson.com>
Subject: Appointment of Party Arbitrator Today July 28, 2017

Good Afternoon,

This is to inform you that I have appointed Mr. Matthew B. Kaplan of The Kaplan Law Firm as my arbitrator for the arbitration of my malpractice claim, in compliance with the Order by Judge Holeman of the D.C. Superior Court on June 30, 2017.

Regards,

Rosanne L Woodroof, Pro Se
Rosanne.Woodroof@comcast.net

ROSANNE L WOODROOF <rosanne.woodroof@comcast.net> 10/10/2017 6:24 AM

Reconfirm Friday October 6 Telephone Call Re: Moving Forward and Payment

To Matthew B Kaplan <mbkaplan@thekaplanlawfirm.com>

Good Morning, Matt,

When we talked this past Friday, it was my understanding that the plan was to move forward with another arbitrator selection to replace David Clark, who recently quit. You indicated that you spoke with Mr. Charnoff the prior day (Thursday) and that he was also agreeable in moving forward with a new selection, especially since he is being paid by an insurance company and payment is not an issue.

You indicated to me that you would update your invoices so that I will know the exact amount owed in order to make a payment this week. If you are unable to complete your invoice for September, please indicate an approximate amount for me to pay into your IOLTA.

Please let me know when you will again have time to revisit the arbitrator selection issue. It is my understanding that you were experiencing a relatively heavy schedule and/or deadlines last week, but you did not indicate when your schedule would ease enough to resume work on my case.

Thank you,

Rosanne L Woodroof
Rosanne.Woodroof@comcast.net
(540) 359-6045 home
(202) 262-0140

ROSANNE L WOODROOF <rosanne.woodroof@comcast.net> 10/14/2017 8:39 PM

Deposit Update and Date of Next Conversation

To Matthew B Kaplan <mbkaplan@thekaplanlawfirm.com>

Matt,

Deposit into your IOLTA should be made on Monday or Tuesday of this coming week.

You told me that you would be available on Tuesday, October 17, for our next conversation about the direction of the arbitration, search for neutral panel chair, etc. However, I will have an initial consult that day with an attorney who may help me manage the case and also provide a name or two you can interview for the role of panel chair. I'll need to prepare and conduct that meeting, so would like to push our next conversation to Wednesday afternoon or Thursday of this coming week.

Please let me know a good time for us to update each other next week.

Regards,

Rosanne
Rosanne.Woodroof@comcast.net
(540) 359-6045 home
(202) 262-0140 cell

Matthew B Kaplan	Last Night Filed Motion for Court Appointed Neutral and Dis...	6.0 KB	Sent	11/27/2017
Matthew B Kaplan	Re: Judge Mize and Other Potential Candidates	5.3 KB	Sent	11/14/2017
Matthew B Kaplan	Re: 10/31/17 Invoice	11.9 KB	Sent	11/13/2017
Matthew B Kaplan	Follow-Up...I think you should try to "size up" more than one c...	3.5 KB	Sent	11/13/2017
Matthew B Kaplan	Re: Mize	15.7 KB	Sent	11/13/2017
Matthew B Kaplan	Status of Arbitrator Search & Mike's Input	10.3 KB	Sent	11/11/2017
Matthew B Kaplan	Re: 10/31/17 Invoice	1.1 MB	Sent	11/11/2017
Matthew B Kaplan	My Efforts to Arbitrate During 2011 and 2012 Rejected at Gre...	6.7 KB	Sent	11/10/2017
Matthew B Kaplan	Re: Candidates...	383.1 KB	Sent	11/10/2017
Matthew B Kaplan	Re: Candidates...	3.9 KB	Sent	11/9/2017
Matthew B Kaplan	Re: Waugh & Judge M	4.2 KB	Sent	11/9/2017
Matthew B Kaplan	Master List of M-D Arbitrators	4.2 KB	Sent	11/3/2017
Matthew B Kaplan	Roster of M-D Arbitrators	3.6 KB	Sent	11/2/2017
Matthew B Kaplan	Brenda Waugh Available another 20 minutes...otherwise em...	3.4 KB	Sent	10/27/2017
Matthew B Kaplan	Selected M-D Arbitrators	432.9 KB	Sent	10/27/2017
Matthew B Kaplan	Re: Please Advise Good Time to Talk Today	11.0 KB	Sent	10/27/2017
Matthew B Kaplan	Re: Please Advise Good Time to Talk Today	5.3 KB	Sent	10/27/2017
Matthew B Kaplan	Please Advise Good Time to Talk Today	2.1 KB	Sent	10/26/2017
Matthew B Kaplan	Re: $5,457.84 deposited in your Eagle Bank IOLTA today	8.2 KB	Sent	10/25/2017
Matthew B Kaplan	$5,457.84 deposited in your Eagle Bank IOLTA today	2.2 KB	Sent	10/24/2017
Matthew B Kaplan	Following Up on Our Agreement to Talk This Week	2.7 KB	Sent	10/18/2017
Matthew B Kaplan	Have $$$ to Deposit but Could Not Get to Eagle Bank Yester...	1.9 KB	Sent	10/18/2017
Matthew B Kaplan	Deposit Update and Date of Next Conversation	2.8 KB	Sent	10/14/2017
Matthew B Kaplan	Next Tuesday OK - $$$ to IOLTA	2.9 KB	Sent	10/10/2017
Matthew B Kaplan	Reconfirm Friday October 6 Telephone Call Re: Moving Forw...	3.5 KB	Sent	10/10/2017
David Clark, mike@perryc...	Re: Arbitration involving Rosanne Woodroof and Cunningh...	28.0 KB	Sent	10/2/2017

736 F.Supp.2d 1095 (2010)

David PORTER et al., Plaintiffs,

v.

CITY OF FLINT and Donald Williamson, Defendants.

Case No. 07-14507.

United States District Court, E.D. Michigan, Southern Division.

September 8, 2010.

1096 *1096 Glen N. Lenhoff, Law Office of Glen N. Lenhoff, Michael E. Freifeld, Glen N. Lenhoff, Cristine Wasserman Rathe, Law Offices of Dean T. Yeotis, Flint, MI, for Plaintiffs.

H. William Reising, Plunkett & Cooney, Peter M. Bade, City of Flint Legal Department, Flint, MI, Susan D. Koval, Frederic E. Champnella, II, Joseph R. Furton Jr., Peter N. Camps, Susan D. Koval, Nemeth Burwell, P.C., Detroit, MI, for Defendants.

1097 *1097 ***MEMORANDUM AND ORDER GRANTING DEFENDANT'S MOTION TO DISQUALIFY ARBITRATOR THOMAS WAUN***

AVERN COHN, District Judge.

I. INTRODUCTION

This is a racial discrimination case under Michigan's Elliott-Larsen Civil Rights Act, M.C.L. § 37.2202, and the Civil Rights Act, 42 U.S.C. § 1983. Forty-five white police officers complain that the City of Flint and Mayor Donald Williamson (Williamson) unlawfully discriminated against them when Williamson personally selected officers on the basis of race to serve on a newly formed Citizens' Service Bureau (CSB). At the time of the events in question, 16 plaintiffs held the rank of Patrol Officer, 19 the rank of Sergeant, seven the rank of Lieutenant, and three the rank of Captain.

The Court denied defendants' joint motion for summary judgment (Doc. 44) and defendants' joint motion for partial reconsideration. (Doc. 54). On May 11, 2009, the parties agreed to consolidated arbitration. (Doc. 77). The Court entered an order staying the consolidated civil actions during arbitration. (Doc. 71). Pursuant to the order, during the stay the Court retained jurisdiction for the limited purpose of enforcing orders or subpoenas, and to enforce the panel's award, if any, with respect to these consolidated civil actions. The arbitration is governed by the Federal Arbitration Act, 9 U.S.C. § 1, et seq (FAA).

Now before the Court is Defendant Williamson's Motion to Disqualify Arbitrator Thomas Waun. Plaintiffs have responded and defendant has replied. For the reasons that follow, the motion is GRANTED.

II. FACTS

The facts are taken from the parties' pleadings and exhibits.

A.

This case arises out of a reverse discrimination claim, alleging that Williamson discriminated based on race when

he created the CSB. Alleged victims filed claims in both state and federal court. After a state court plaintiff was awarded a $131,000 jury verdict, the parties reached an arbitration agreement. (Doc. 77). The consolidated actions before this Court are stayed pending arbitration. (Doc. 71). The selected arbitration panel consists of Former Oakland County Circuit Court Judge Barry Howard and Attorneys Tom Cranmer and Tom Waun.

B.

The Arbitration Agreement was signed on December 11, 2009, by all parties. Pertinent provisions include:

> The arbitrators shall be requested to disclose in writing to all Parties or their representatives all connections or relationships they may have or have had with any Party and any representative or attorney of a Party and all other facts or matters that might bear or appear to a reasonable person to bear on his/her ability to decide impartially the matters to be submitted to him/her.
>
> The arbitrators shall sign an oath confirming that he or she knows of no matter that would prevent him or her from deciding the submitted matters impartially.

(Doc. 77 p. 5).

C.

On May 12, 2010, Waun, as plaintiff's counsel, filed a lawsuit against Patsy Lou Buick-GMC-Chevrolet in Genesee County (the Manley case), alleging unlawful sales practices at the dealership. (Doc. 77-3). Particularly, the complaint alleges that defendants targeted elderly and African American customers in a "packing the payment"
1098 *1098 scheme, designed to allow the dealership to make a larger profit on each deal. Williamson, the husband of the dealership's owner, is a named defendant in the lawsuit. He is described in the complaint as serving the dealership in a "high management position," and as being involved in the complained of activities to the extent that he was advised of the unlawful behavior and took no action.

On May 20, 2010, the Flint News quoted Waun commenting on Williamson's involvement in the case. (Doc. 77-4). Waun stated that "[Williamson] was the 'Buck stops here' guy."

III. LEGAL STANDARD

This dispute is governed by the FAA, under which:

> [a] written provision in any ... contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction ... shall be valid, irrevocable, and enforceable, *save upon such grounds as exist at law or in equity for the revocation of any contract*.

9 U.S.C. § 2 (emphasis added).

To invalidate an arbitrator's award on the grounds of bias, the Sixth Circuit has held that "the challenging party must show that a reasonable person would have to conclude that an arbitrator was partial." *Apperson v. Fleet Carrier Corp.*, 879 F.2d 1344, 1358 (6th Cir.1989) (internal citations omitted).

Related to pre-award disputes, "[a] district court does not have jurisdiction over disputes involving allegations of bias until after the arbitration proceedings have come to a close and the party claiming bias has received an award." *Vestax Sec. Corp. v. Desmond*, 919 F.Supp. 1061, 1075 (E.D.Mich.1995); *see also Aviall, Inc. v. Ryder Sys., Inc.*, 110 F.3d 892, 895 (2d Cir.1997). In other words, "an agreement to arbitrate before a particular arbitrator may not be disturbed." *Aviall*, 110 F.3d at 895.

However, a court may intervene if the agreement is "subject to attack under general contract principles as exist at law or in equity." *Id.* (*quoting* 9 U.S.C. § 2). Particularly, there is an exception "where, prior to the commencement of any arbitration proceedings, the plaintiff alleged specific instances of actual misconduct on the part of an arbitrator." *Vestax*, 919 F.Supp. at 1075 (*citing Metro. Prop. & Cas. v. J.C. Penney Cas.*, 780 F.Supp. 885, 893-94 (D.Conn.1991) (court found exception where allegations of bias concerned *ex parte* discussions on the merits of the claim prior to being selected on the arbitration panel)).

Particularly, the "touchstone" determination in deciding whether a court has authority to remove an arbitrator before arbitration proceedings have ended is where "the arbitrator's relationship to one party [is] undisclosed, or unanticipated and unintended, thereby invalidating the contract." *Aviall*, 110 F.3d at 896 (discussing cases where arbitration agreement not enforceable because agreement's "neutral expert" provision was frustrated and where arbitrators were removed because they concealed business and attorney-client relationships).

IV. ANALYSIS

In essence, this matter comes down to whether Waun violated the terms of the Arbitration Agreement by representing Manley in the case against Williamson and speaking to the press about his views on Williamson's involvement.

Williamson says that this case falls under the exception recognized in *Vestax* and *Aviall* because, by representing
1099 Manley and speaking to the press, Waun breached *1099 the Arbitration Agreement's provision that Waun must disclose any relationship that "might bear or appear to a reasonable person to bear on his/her ability to decide impartially the matters to be submitted to him/her."

Waun says that this Court, under *Vestax, Aviall,* and the FAA, does not have authority to disqualify an arbitrator, not recognizing an exception. Waun further states that even if the Court has authority, Waun's conduct does not warrant removal because this case and the Manley case are unrelated on the merits. Thus, Waun says that under the Sixth Circuit's post-award standard, a reasonable person would not find an appearance of bias here.

The Court agrees with Williamson that Waun breached the terms of the Arbitration Agreement. Waun filed a case that involved Williamson as a named party and then proceeded to talk about it to the press. This was after Waun signed an Arbitration Agreement requiring that he disclose in writing any connections or relationships that may give an appearance of impartiality to a reasonable person. Implicit in this obligation is the fact that if there is appearance of partiality he is not eligible to continue as an arbitrator. Waun did not make this disclosure. Waun violated the Arbitration Agreement. Further, the Court disagrees with Waun's assertion that the two matters are unrelated. Both cases allege discriminatory acts by Williamson and, thus, bear on Waun's ability to be impartial as an arbitrator, particularly, on a matter that has not yet reached the evidentiary phase.

Waun should not have undertaken the Manley case and, at the least, should have disclosed the representation to allow the parties the opportunity to object. Because a reasonable person could conclude that Waun was partial based on his involvement and conduct in the Manley case, Waun must be disqualified.

Accordingly, under the limited exception recognized in *Vestax* and *Aviall,* which is consistent with the language of the FAA, the Court disqualifies Waun as an arbitrator on the consolidated actions. To delay consideration of removal until arbitration is complete would exalt form over substance. Moreover, with Waun as an arbitrator the arbitration is proceeding under a cloud.

SO ORDERED.

AMERICAN BAR ASSOCIATION/COLLEGE OF COMMERCIAL ARBITRATORS ANNOTATIONS TO THE CODE OF ETHICS FOR ARBITRATORS IN COMMERCIAL DISPUTES

Text of the Code of Ethics for Arbitrators in Commercial Disputes Effective March 1, 2004 and Annotations

Preamble

The use of arbitration to resolve a wide variety of disputes has grown extensively and forms a significant part of the system of justice on which our society relies for a fair determination of legal rights. Persons who act as arbitrators therefore undertake serious responsibilities to the public, as well as to the parties. Those responsibilities include important ethical obligations.

Few cases of unethical behavior by commercial arbitrators have arisen. Nevertheless, this Code sets forth generally accepted standards of ethical conduct for the guidance of arbitrators and parties in commercial disputes, in the hope of contributing to the maintenance of high standards and continued confidence in the process of arbitration.

This Code provides ethical guidelines for many types of arbitration but does not apply to labor arbitration, which is generally conducted under the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes.

There are many different types of commercial arbitration. Some proceedings are conducted under arbitration rules established by various organizations and trade associations, while others are conducted without such rules. Although most proceedings are arbitrated pursuant to voluntary agreement of the parties, certain types of disputes are submitted to arbitration by reason of particular laws. This Code is intended to apply to all

such proceedings in which disputes or claims are submitted for decision to one or more arbitrators appointed in a manner provided by an agreement of the parties, by applicable arbitration rules, or by law. In all such cases, the persons who have the power to decide should observe fundamental standards of ethical conduct. In this Code, all such persons are called "arbitrators," although in some types of proceeding they might be called "umpires," "referees," "neutrals," or have some other title.

Arbitrators, like judges, have the power to decide cases. However, unlike full-time judges, arbitrators are usually engaged in other occupations before, during, and after the time that they serve as arbitrators. Often, arbitrators are purposely chosen from the same trade or industry as the parties in order to bring special knowledge to the task of deciding. This Code recognizes these fundamental differences between arbitrators and judges.

In those instances where this Code has been approved and recommended by organizations that provide, coordinate, or administer services of arbitrators, it provides ethical standards for the members of their respective panels of arbitrators. However, this Code does not form a part of the arbitration rules of any such organization unless its rules so provide.

Note on Neutrality

In some types of commercial arbitration, the parties or the administering institution provide for three or more arbitrators. In some such proceedings, it is the practice for each party, acting alone, to appoint one arbitrator (a "party-appointed arbitrator") and for one additional arbitrator to be designated by the party-appointed arbitrators, or by the parties, or by an independent institution or individual. The sponsors of this Code believe that it is preferable for all arbitrators – including any party-appointed arbitrators – to be neutral, that is, independent and impartial, and to comply with the same ethical standards. This expectation generally is essential in arbitrations where the parties, the nature of the dispute, or the enforcement of any resulting award may have international aspects. However, parties in certain domestic arbitrations in the United States may prefer that party-appointed arbitrators be non-neutral and governed by special ethical considerations. These special ethical considerations appear in Canon X of this Code.

This Code establishes a presumption of neutrality for all arbitrators, including party-appointed arbitrators, which applies unless the parties' agreement, the arbitration rules agreed to by the parties or applicable laws provide otherwise. This Code requires all party-appointed arbitrators, whether neutral or not, to make pre-appointment disclosures of any facts which might affect their neutrality, independence, or impartiality. This Code also requires all party-appointed arbitrators to ascertain and disclose as soon as practicable whether the parties intended for them to serve as neutral or not. If any doubt or uncertainty exists, the party-appointed arbitrators should serve as neutrals unless and until such doubt or uncertainty is resolved in accordance with Canon IX. This Code expects all arbitrators, including those serving under Canon X, to preserve the integrity and fairness of the process.

Note on Construction

Various aspects of the conduct of arbitrators, including some matters covered by this Code, may also be governed by agreements of the parties, arbitration rules to which the parties have agreed, applicable law, or other applicable ethics rules, all of which should be consulted by the arbitrators. This Code does not take the place of or supersede such laws, agreements, or arbitration rules to which the parties have agreed and should be read in conjunction with other rules of ethics. It does not establish new or additional grounds for judicial review of arbitration awards.

All provisions of this Code should therefore be read as subject to contrary provisions of applicable law and arbitration rules. They should also be read as subject to contrary agreements of the parties. Nevertheless, this Code imposes no obligation on any arbitrator to act in a manner inconsistent with the arbitrator's fundamental duty to preserve the integrity and fairness of the arbitral process.

Canons I through VIII of this Code apply to all arbitrators. Canon IX applies to all party-appointed arbitrators, except that certain party-appointed arbitrators are exempted by Canon X from compliance with certain provisions of Canons I-IX related to impartiality and independence, as specified in Canon X.

Annotation to Preamble

2012 – 13 Supplement

H&R Block Tax Services LLC v. Wild, 2011 U.S. Dist. LEXIS 124693

Although two of three arbitrators were party-appointed, all served as neutrals pursuant to the Code's establishment, as noted in the Preamble, of "a presumption of neutrality for all arbitrators, including party-appointed arbitrators."

R-13. Direct Appointment by a Party

(a) If the agreement of the parties names an arbitrator or specifies a method of appointing an arbitrator, that designation or method shall be followed. The notice of appointment, with the name and address of the arbitrator, shall be filed with the AAA by the appointing party. Upon the request of any appointing party, the AAA shall submit a list of members of the National Roster from which the party may, if it so desires, make the appointment.

(b) Where the parties have agreed that each party is to name one arbitrator, the arbitrators so named must meet the standards of Section R-18 with respect to impartiality and independence unless the parties have specifically agreed pursuant to Section R-18(b) that the party-appointed arbitrators are to be non-neutral and need not meet those standards.

(c) If the agreement specifies a period of time within which an arbitrator shall be appointed and any party fails to make the appointment within that period, the AAA shall make the appointment.

(d) If no period of time is specified in the agreement, the AAA shall notify the party to make the appointment. If within 14 calendar days after such notice has been sent, an arbitrator has not been appointed by a party, the AAA shall make the appointment.

R-14. Appointment of Chairperson by Party-Appointed Arbitrators or Parties

(a) If, pursuant to Section R-13, either the parties have directly appointed arbitrators, or the arbitrators have been appointed by the AAA, and the parties have authorized them to appoint a chairperson within a specified time and no appointment is made within that time or any agreed extension, the AAA may appoint the chairperson.

(b) If no period of time is specified for appointment of the chairperson, and the party-appointed arbitrators or the parties do not make the appointment within 14 calendar days from the date of the appointment of the last party-appointed arbitrator, the AAA may appoint the chairperson.

(c) If the parties have agreed that their party-appointed arbitrators shall appoint the chairperson from the National Roster, the AAA shall furnish to the party-appointed arbitrators, in the manner provided in Section R-12, a list selected from the National Roster, and the appointment of the chairperson shall be made as provided in that Section.

R-18. Disqualification of Arbitrator

(a) Any arbitrator shall be impartial and independent and shall perform his or her duties with diligence and in good faith, and shall be subject to disqualification for:

- **i.** partiality or lack of independence,
- **ii.** inability or refusal to perform his or her duties with diligence and in good faith, and
- **iii.** any grounds for disqualification provided by applicable law.

(b) The parties may agree in writing, however, that arbitrators directly appointed by a party pursuant to Section R-13 shall be non-neutral, in which case such arbitrators need not be impartial or independent and shall not be subject to disqualification for partiality or lack of independence.

(c) Upon objection of a party to the continued service of an arbitrator, or on its own initiative, the AAA shall determine whether the arbitrator should be disqualified under the grounds set out above, and shall inform the parties of its decision, which decision shall be conclusive.

R-19. Communication with Arbitrator

(a) No party and no one acting on behalf of any party shall communicate *ex parte* with an arbitrator or a candidate for arbitrator concerning the arbitration, except that a party, or someone acting on behalf of a party, may communicate *ex parte* with a candidate for direct appointment pursuant to R-13 in order to advise the candidate of the general nature of the controversy and of the anticipated proceedings and to discuss the candidate's qualifications, availability, or independence in relation to the parties or to discuss the suitability of candidates for selection as a third arbitrator where the parties or party-designated arbitrators are to participate in that selection.

(b) Section R-19(a) does not apply to arbitrators directly appointed by the parties who, pursuant to Section R-18(b), the parties have agreed in writing are non-neutral. Where the parties have so agreed under Section R-18(b), the AAA shall as an administrative practice suggest to the parties that they agree further that Section R-19(a) should nonetheless apply prospectively.

(c) In the course of administering an arbitration, the AAA may initiate communications with each party or anyone acting on behalf of the parties either jointly or individually.

(d) As set forth in R-43, unless otherwise instructed by the AAA or by the arbitrator, any documents submitted by any party or to the arbitrator shall simultaneously be provided to the other party or parties to the arbitration.

Parties in the existing Arbitration or Arbitrations, JAMS may decide that the new case or cases shall be consolidated into one or more of the pending proceedings and referred to one of the Arbitrators or panels of Arbitrators already appointed.

When rendering its decision, JAMS will take into account all circumstances, including the links between the cases and the progress already made in the existing Arbitrations.

Unless applicable law provides otherwise, where JAMS decides to consolidate a proceeding into a pending Arbitration, the Parties to the consolidated case or cases will be deemed to have waived their right to designate an Arbitrator as well as any contractual provision with respect to the site of the Arbitration.

(f) Where a third party seeks to participate in an Arbitration already pending under these Rules or where a Party to an Arbitration under these Rules seeks to compel a third party to participate in a pending Arbitration, the Arbitrator shall determine such request, taking into account all circumstances he or she deems relevant and applicable.

Rule 7. Number and Neutrality of Arbitrators; Appointment and Authority of Chairperson

(a) The Arbitration shall be conducted by one neutral Arbitrator, unless all Parties agree otherwise. In these Rules, the term "Arbitrator" shall mean, as the context requires, the Arbitrator or the panel of Arbitrators in a tripartite Arbitration.

(b) In cases involving more than one Arbitrator, the Parties shall agree on, or, in the absence of agreement, JAMS shall designate, the Chairperson of the Arbitration Panel. If the Parties and the Arbitrators agree, a single member of the Arbitration Panel may, acting alone, decide discovery and procedural matters, including the conduct of hearings to receive documents and testimony from third parties who have been subpoenaed to produce documents.

(c) Where the Parties have agreed that each Party is to name one Arbitrator, the Arbitrators so named shall be neutral and independent of the appointing Party, unless the Parties have agreed that they shall be non-neutral.

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Comment to Canon VIII

This Canon does not preclude an arbitrator from printing, publishing, or disseminating advertisements conforming to these standards in any electronic or print medium, from making personal presentations to prospective users of arbitral services conforming to such standards or from responding to inquiries concerning the arbitrator's availability, qualifications, experience, or fee arrangements.

CANON IX: Arbitrators appointed by one party have a duty to determine and disclose their status and to comply with this code, except as exempted by Canon X.

A. In some types of arbitration in which there are three arbitrators, it is customary for each party, acting alone, to appoint one arbitrator. The third arbitrator is then appointed by agreement either of the parties or of the two arbitrators, or failing such agreement, by an independent institution or individual. In tripartite arbitrations to which this Code applies, all three arbitrators are presumed to be neutral and are expected to observe the same standards as the third arbitrator.

B. Notwithstanding this presumption, there are certain types of tripartite arbitration in which it is expected by all parties that the two arbitrators appointed by the parties may be predisposed toward the party appointing them. Those arbitrators, referred to in this Code as "Canon X arbitrators," are not to be held to the standards of neutrality and independence applicable to other arbitrators. Canon X describes the special ethical obligations of party-appointed arbitrators who are not expected to meet the standard of neutrality.

C. A party-appointed arbitrator has an obligation to ascertain, as early as possible but not later than the first meeting of the arbitrators and parties, whether the parties have agreed that the party-appointed arbitrators will serve as neutrals or whether they shall be subject to Canon X, and to provide a timely report of their conclusions to the parties and other arbitrators:

   (1) Party-appointed arbitrators should review the agreement of the parties, the applicable rules and any applicable law bearing upon arbitrator neutrality. In reviewing the agreement of the parties, party-appointed arbitrators should consult any relevant express terms of the written or oral arbitration agreement. It may also be appropriate for them to inquire into agreements that have not been expressly set forth, but which may be implied from an established course of dealings of the parties or well-recognized custom and usage in their trade or profession;

   (2) Where party-appointed arbitrators conclude that the parties intended for the party-appointed arbitrators not to serve as neutrals, they should so inform the parties and the other arbitrators. The arbitrators may then act as provided in Canon X unless or until a different determination of their status is made by the parties, any administering institution or the arbitral panel; and

   (3) Until party-appointed arbitrators conclude that the party-appointed arbitrators were not intended by the parties to serve as neutrals, or if the party-appointed arbitrators are unable to form a reasonable belief of their status from the foregoing sources and no decision in this regard has yet been made by the parties, any administering institution, or the arbitral panel, they should observe all of the obligations of neutral arbitrators set forth in this Code.

D. Party-appointed arbitrators not governed by Canon X shall observe all of the obligations of Canons I through VIII unless otherwise required by agreement of the parties, any applicable rules, or applicable law.

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CANON X: Exemptions for arbitrators appointed by one party who are not subject to rules of neutrality

Canon X arbitrators are expected to observe all of the ethical obligations prescribed by this Code except those from which they are specifically excused by Canon X.

A. *Obligations Under Canon I*

Canon X arbitrators should observe all of the obligations of Canon I subject only to the following provisions:

(1) Canon X arbitrators may be predisposed toward the party who appointed them but in all other respects are obligated to act in good faith and with integrity and fairness. For example, Canon X arbitrators should not engage in delaying tactics or harassment of any party or witness and should not knowingly make untrue or misleading statements to the other arbitrators; and

(2) The provisions of subparagraphs B(1), B(2), and paragraphs C and D of Canon I, insofar as they relate to partiality, relationships, and interests are not applicable to Canon X arbitrators.

B. *Obligations Under Canon II*

(1) Canon X arbitrators should disclose to all parties, and to the other arbitrators, all interests and relationships which Canon II requires be disclosed. Disclosure as required by Canon II is for the benefit not only of the party who appointed the arbitrator, but also for the benefit of the other parties and arbitrators so that they may know of any partiality which may exist or appear to exist; and

(2) Canon X arbitrators are not obliged to withdraw under paragraph G of Canon II if requested to do so only by the party who did not appoint them.

C. *Obligations Under Canon III*

Canon X arbitrators should observe all of the obligations of Canon III subject only to the following provisions:

(1) Like neutral party-appointed arbitrators, Canon X arbitrators may consult with the party who appointed them to the extent permitted in paragraph B of Canon III;

(2) Canon X arbitrators shall, at the earliest practicable time, disclose to the other arbitrators and to the parties whether or not they intend to communicate with their appointing parties. If they have disclosed the intention to engage in such communications, they may thereafter communicate with their appointing parties concerning any other aspect of the case, except as provided in paragraph (3);

(3) If such communication occurred prior to the time they were appointed as arbitrators, or prior to the first hearing or other meeting of the parties with the arbitrators, the Canon X arbitrator should, at or before the first hearing or meeting of the arbitrators with the parties, disclose the fact that such communication has taken place. In complying with the provisions of this subparagraph, it is sufficient that there be disclosure of the fact that such communication has occurred without disclosing the content of the communication. A single timely disclosure of the Canon X arbitrator's intention to participate in such communications in the future is sufficient;

(4) Canon X arbitrators may not at any time during the arbitration:

(a) disclose any deliberations by the arbitrators on any matter or issue submitted to them for decision;

(b) communicate with the parties that appointed them concerning any matter or issue taken under consideration by the panel after the record is closed or such matter or issue has been submitted for decision; or

(c) disclose any final decision or interim decision in advance of the time that it is disclosed to all parties.

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American Arbitration Association® Administrative Review Council

Review Standards

This document is intended to outline the Review Standards utilized by the AAA's Administrative Review Council (ARC) in making certain administrative decisions arising in the AAA's large, complex domestic caseload. The decisions made by the ARC resolve administrative issues including objections to arbitrators, locale determinations, and whether the filing requirements contained in the AAA Rules have been met. In conjunction with the ARC Guidelines and these ARC Review Standards, the ARC reviews and resolves issues in a time and cost effective manner after careful consideration of the parties' contentions, while upholding the integrity of the arbitration process and reinforcing the parties' confidence in the process.

ARBITRATOR OBJECTION AND RESPONSE STANDARDS

The AAA Rules allow for any party to object to an appointed arbitrator (See Commercial Arbitration Rule R-18, Construction Industry Arbitration Rule R-20, Employment Arbitration Rule 16). This guide will assist parties in understanding the standards and process to be used in making an arbitrator objection.

Grounds for Disqualification

The AAA Rules require that any arbitrator shall be impartial and independent and shall perform his or her duties with diligence and in good faith. Under the AAA's various rules, an arbitrator may be subject to disqualification for:

1. Partiality or lack of independence
2. Inability or refusal to perform his or her duties with diligence and in good faith, and
3. Any grounds for disqualification provided by applicable law.

Upon objection of a party to the continued service of an arbitrator, or on its own initiative, the AAA shall determine whether the arbitrator should be disqualified under the grounds set out in the rules, and shall inform the parties of its decision, which decision shall be conclusive.

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Standard for Disqualification

Partiality or Lack of Independence

As part of its consideration, the ARC utilizes a four-part test in determining whether an arbitrator(s) disclosure rises to the level of removing an arbitrator from a case. The four-part test is whether the conflict is:

- Direct.
- Continuing
- Substantial
- Recent

Weighing these factors together serves as a guide as to whether the conflict is disqualifying. Ultimately, the ARC's administrative determination is based upon whether the disclosure creates, to a reasonable person, the appearance that an award would not be fairly rendered.

Inability or Refusal to Perform His or Her Duties With Diligence and in Good Faith

The ARC's administrative determination is based upon whether the circumstances create, to a reasonable person, the appearance that the arbitrator is unable or has refused to perform his or her duties with diligence and in good faith.

Method for Disqualification

- Objections must be made in writing and should be submitted to the AAA with a copy of the objections shared with all parties to the arbitration. The arbitrator should not be copied on any objection.
- Any opposing party will be given the opportunity to respond. The AAA will establish the schedule for the response at the time the objection is received.
- Replies or sur-replies are not provided for and should not be submitted without the prior approval of the AAA.
- Parties should limit each individual submission to no more than five pages, excluding attachments. Where replies or sur-replies are approved by the AAA, the page limit for each party's total submission may not exceed 10 pages.

Best Practice Tips

Objections should be raised at the first available opportunity.

Any party may make an objection to an arbitrator at any time in the arbitration, up to the issuance of the Award or other terminating order.

While a party may file multiple objections to an arbitrator, additional objections should not be made unless there are new grounds for making the objection. The ARC's decision on whether to remove or reaffirm an arbitrator is conclusive.

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If a party raises a potential conflict not previously disclosed by the arbitrator, before considering the objection, the AAA will ask the arbitrator to make a supplemental disclosure to the parties regarding the new potential conflict. Once the supplemental disclosure is submitted, the AAA will then provide the parties with the opportunity to file an objection.

Pursuant to the AAA Rules, party-appointed arbitrators are considered neutral unless the parties have specifically agreed that these arbitrators should be non-neutral. Absent this agreement, party-appointed arbitrators are subject to the same disclosure and challenge standards contained in the Rules.

FILING REQUIREMENT DETERMINATIONS

Pursuant to the ARC Guidelines, the AAA Vice President or Director in charge of the AAA's office where the case is being administered has the discretion whether or not to request that the ARC decide if the filing requirements contained in the AAA Rules have been met in a particular case. Any issue not submitted to the ARC will be decided by the appropriate AAA Vice President with case management responsibility for that case. The AAA's Rules provide information regarding the filing requirements necessary for the AAA to administer a case (see Commercial Arbitration Rules R-1, 2, 4 & R-5, Construction Industry Arbitration Rules R-1, 2, 4 & R-5, Employment Arbitration Rules 1, 3 & 4). Should a party challenge whether a Claimant has met the AAA's filing requirements, this guide will assist the parties in understanding the standards and process used by the ARC to make this determination.

Standard for Review

The ARC will review the case file and the parties' contentions when making an administrative determination as to whether the Claimant has met the filing requirements contained in the AAA Rules by filing a demand for arbitration accompanied by an arbitration clause or submission agreement providing for administration by the AAA under its Rules or by naming the AAA as the dispute resolution provider. The AAA is not authorized to make arbitrability determinations, however the ARC will review disputes about whether a matter has been properly filed with the AAA.

Best Practice Tips

If the ARC has determined that the Claimant has met the filing requirements, the AAA will proceed with the administration of the arbitration absent an agreement of the parties or a court order staying the matter.

The filing requirement challenge will be made a part of the AAA's administrative file. The parties may submit their jurisdictional or arbitrability arguments to the arbitrator for determination.

The AAA serves as a neutral administrative agency and does not generally appear or participate in judicial proceedings relating to arbitration. If a party seeks court intervention regarding the arbitrability of a dispute, the AAA should not be named as a party-defendant. The AAA's Rules provide that the AAA is not a "necessary party," and the AAA will abide by an order issued by the courts regarding the continued administration of the arbitration and the parties are requested to keep the AAA informed as to the outcome.

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LOCALE DETERMINATION STANDARDS

The AAA's Rules provide a process for the determination of the locale of the evidentiary hearings (see Commercial Arbitration Rule R-11, Construction Industry Arbitration Rule R-12, Employment Arbitration Rule 10). Should the parties have a dispute about the locale of the arbitration, this guide will assist the parties in understanding the standards and process used by the ARC to make this determination.

Factors for Consideration

The ARC considers the following factors in making a locale determination:

1) Location of parties
2) Location of witnesses and documents
3) Location of site or place or materials
4) Consideration of relative cost to the parties
5) Place of performance of contract
6) Laws applicable to the contract
7) Place of previous court actions
8) Necessity of an on-site inspection of the project
9) Any other reasonable arguments that might affect the locale determination

Best Practice Tips

If the parties' contract contains a designated hearing location, the ARC will set the locale at that hearing location.

The parties should make sure that each of the factors outlined above have been addressed.

Under the Commercial Arbitration Rules, the AAA's decision is final and binding. However, AAA Commercial Rule R-24 provides that the arbitrator has the authority to "set the date, time and place for each hearing" within the locale determined by the AAA.

Under Construction Industry Arbitration Rule R-12, the AAA's decision is subject to the power of the arbitrator to finally determine the locale within 14 calendar days after the date of the preliminary hearing.

Under Employment Arbitration Rule 10, the AAA's decision is subject to the power of the arbitrator(s), after their appointment, to make a final determination on the locale.

Appendix

The following statistics are the result of a study of business-to-business arbitration cases administered by the AAA under the AAA's Commercial Arbitration Rules and awarded in 2003. The findings reflect the number of days cases took to reach certain milestones between filing and the award.

The 25th Percentile indicates the average number of days that the first 25% of the cases studied took to reach a particular milestone. The 75th Percentile indicates the average number of days that the first 75% of the cases studied took to reach a particular milestone. The Median is the mid-point, meaning that half the cases studied took less time and half took more time to reach a particular milestone.

Claim Size

Up to $75,000	Selecting Arbitrator	Information Exchange	Hearing Days	The Award
25th Percentile	33	104	1	126
Median	47	141	1	175
75th Percentile	75	196	2	259

$75,000 – $499,999	Selecting Arbitrator	Information Exchange	Hearing Days	The Award
25th Percentile	43	161	1	216
Median	60	217	2	297
75th Percentile	91	309	4	408

$500,000 – $999,999	Selecting Arbitrator	Information Exchange	Hearing Days	The Award
25th Percentile	46	182	2	273
Median	67	279	4	356
75th Percentile	98	344	6	455

$1,000,000 – $9,999,999	Selecting Arbitrator	Information Exchange	Hearing Days	The Award
25th Percentile	50	215	3	309
Median	71	293	5	414
75th Percentile	114	433	8	563

$10,000,000 & Up	Selecting Arbitrator	Information Exchange	Hearing Days	The Award
25th Percentile	43	217	5	347
Median	63	315	8	474
75th Percentile	90	447	13	597

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

ROSANNE WOODROOF, Plaintiff,	
versus	Civil Action Number 2013 CAM 6474
JOSEPH CUNNINGHAM, et al., Defendants.	

Washington, D.C.
Friday, February 16, 2018

The above-entitled action came on for a hearing, before the Honorable BRIAN HOLEMAN, Associate Judge, in Courtroom Number 516.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL REPORTER, ENGAGED BY THE COURT, WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS TESTIMONY AND PROCEEDINGS OF THE CASE AS RECORDED.

APPEARANCES:

On behalf of the Plaintiff:

ROSANNE WOODROOF, Pro Se
Washington, D.C.

On behalf of the Defendants:

JONATHAN SCHRAUB, Esquire
Washington, D.C.

us whether you agree. We immediately said we agree.

Ms. Woodroof had a whole host of issues. One of them was the retainer issue, another one was whether or not the arbitrator understood that he had to rule on a jurisdictional issue first and all sorts of things.

Eventually the three of them together came back and said, we've come forward on this, unless everybody agrees to these principles, which we think are correct, we can't go forward. Please tell us. We immediately said we agree, Ms. Woodroof immediately said she does not agree, at which point the neutral resigned and said, I can't go forward.

THE COURT: Okay.

MR. SCHRAUB: Right. And then thereafter, I just -- to be -- she's absolutely correct. Thereafter I simply refused to go through this charade yet again.

THE COURT: All right.

MR. SCHRAUB: You know, pick another arbitrator, start all over again, only to have Ms. Woodroof decide there's something wrong with that panel.

THE COURT: All right. Very well.

Ms. Woodroof.

MS. WOODROOF: Yes. First off, let me say under penalty of perjury, I was never asked to pay $3,000. That is false. There was no request whatsoever for $3,000. I

revisited this with my party arbitrator, and he agrees, we never asked you for $3,000. I would have been fine. 3,000, fine. I didn't have a problem with 3,000, but I was never asked for $3,000. And I -- again, I have verified with my party arbitrator. That is false. There was no request.

My problem with the arbitration was the disclosures that were required, because defense counsel and his party arbitrator, the newly-appointed arbitrator, appeared to have some sort of a relationship that could conflict out the entire arbitration.

Then it developed that it was much worse than it first -- than I first thought. It developed that they have a completely different interpretation of the arbitration agreement. They believe that party arbitrators are not neutrals. That is absolutely totally contrary to what his 30-year experience with AAA preaches and teaches.

It is not what our agreement says, it's not what the arbitration industry embraces, it is completely disfavored unless you have it in your agreement or unless I agree in writing. And what we said -- what I've said in my filings is I never agreed in writing. And I think it's Rule 18 that's highly favored by the Courts. You don't go in and just start up with non-neutral party arbitrators.

It creates a completely different arbitration than -- than what I, AAA or JAMS would typically use.

In fact, AAA told me, they will not undertake an arbitration like he's trying to get here. They will not do it. Unless it's absolutely in the agreement or there's an absolute sign-off by me. And I have not signed off on any non-neutral.

And when I realized the degree of corruption that could occur and how it would completely throw the arbitration, I -- you know, I've stated for you, I think in fairly clear terms, this is not what the industry does. This is an aberration. Of course he embraced it. It's hugely beneficial for him. It's a run-away arbitration where he's really taking control, and he already had some sort of a relationship he wasn't disclosing to begin with.

Now, disclose the relationship, let me see if it's a conflict or not. That's the first step. And then let's get straight what the arbitration agreement actually calls for.

Now, I want an ethical, fair arbitration. I have fought for years. Here's my motion to compel in 2011.

THE COURT: Put it away, and let's talk about the arbitration.

MS. WOODROOF: All right. Okay. I want a fair

Matthew B Kaplan <mbkaplan@thekaplanlawfirm.com> 2/28/2018 3:14 PM

your case

To Rosanne L. Woodroof <rosanne.woodroof@comcast.net>

Rosanne:

Not sure whether you plan on appealing the dismissal of your case. I suspect that you have good appellate arguments--don't know how the court could have dismissed without, at a minimum, an evidentiary basis for doing so. And there is probably a good argument that the Superior Court judge should have sought to appoint an arbitrator.

Regards,
Matt

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LAW FIRM

SUMMARY TIMELINE

ARLINGTON COUNTY CIRCUIT COURT

January 7, 2011	Cunningham Files Fee Lawsuit $143,467.97
	(Gets Court to Award Additional $60,000 Fees & Interest For Virginia Lawsuits Later Found Without Subject Matter Jurisdiction - See Related Cases)
February 7, 2011	Woodroof Files Motion To Dismiss Lack of Jurisdiction Seeks DC Bar Rule XIII Mandatory Fee Arbitration Claims $149,000 Excessive Fees (App. G 107-113)
April 15, 2011	Exparte Hearing – Woodroof Had No Notice – Cunningham Defeats Woodroof's Motion/Refuses to Arbitrate
April 29, 2011	Woodroof Motion Reconsideration RE No Due Process – Denied
June 17, 2011	Cunningham and Woodroof Conference with Court – Agree to 5-Day Jury Trial on Fees
August 22, 2011	Cunningham Default Notice Based On Order from Exparte Hearing April 15 2011
September 23, 2011	Woodroof Motion to Compel Arbitration Malpractice (App G. 102-106)
September 26, 2011	Cunningham Granted Default Judgment

SUMMARY TIMELINE (continued)

SUPREME COURT OF VIRGINIA

January 2012	Woodroof Appeal - Default Judgment
September 2012	Woodroof Petition for Appeal Denied

DC SUPERIOR COURT

December 2012	Cunningham Files Virginia Default Judgment (Related Case No. 2012 CA 9591 F) ("9591")
January 2013	Woodroof Opposes Default Judgment-Seeks Hearing

WOODROOF FIDUCIARY MALPRACTICE

September 24, 2013	Woodroof Files Fiduciary Malpractice
November 19, 2013	Cunningham Motion More Definitive Statement (Granted)
February 4, 2014	Woodroof Complies – Files Amended Complaint
February 4, 2014	Cunningham Files Motion to Dismiss with Prejudice
March 18, 2014	Woodroof Opposes Cunningham Motion to Dismiss
May 29, 2014	Hearing on Cunningham Default Judgment Case 9591, Cunningham Motion to Dismiss Woodroof's Fiduciary

SUMMARY TIMELINE (continued)

May 29, 2014	Malpractice Case 006474, Woodroof's Motion for Contempt (Against Cunningham)
May 29, 2014	Oral Ruling denied Cunningham Default Judgment and Motion to Dismiss Woodroof's Fiduciary Malpractice, Woodroof's Motion for Contempt
	Parties Agree to Scheduling Order Track III Litigation
June 18, 2014	Cunningham Motion Extend Time to File Answers to Woodroof's Fiduciary Malpractice Complaint
June 26, 2014	Cunningham Demands Arbitration; Notice of Appearance J. Schraub
July 1, 2014	Cunningham Files Answer to Woodroof's Complaint
July 14, 2014	Cunningham Names Party Arbitrator (Does Not Disclose or Designate Non-Neutral)
July 30, 2014	Woodroof Opposition to Arbitration (primarily waiver/default argument) Denied
	<u>DC COURT OF APPEALS</u>
August 22, 2014	Woodroof Appeals (Cunningham Waiver/Default on Arbitration) 14-CV-939

SUMMARY TIMELINE (continued)

December 21, 2016	DC Court of Appeals Grants Jurisdiction; Affirms Order to Arbitrate (with stipulation that threshold decision on waiver/default must be decided by arbitrator)

DC SUPERIOR COURT – POST JANUARY 4, 2017 MANDATE

January 10, 2017	Cunningham Party Arbitrator Retires (Not Replaced Until July 28, 2017)
February 7, 2017	Woodroof Files Prohibitive Cost/Validity Motion *Green Tree Fin. Corporation-Alabama v. Randolph*, 531 U.S. 79 121 S. Ct. 513 148 L.Ed. 2d 373 (2000)
February 10, 2017	Cunningham Opposes Prohibitive Cost/Validity Motion
April 6, 2017	Prohibitive Cost Motion Denied (No Hearing)
April 11, 2017	Woodroof Seeks Name of Cunningham Arbitrator & Meeting to decide Rules (Cunningham – no response) (App. 131-133)
April 14, 2017	Cunningham files Motion to Dismiss with Prejudice Falsely Asserting Retired Arbitrator Still Available
April 24, 2017	Woodroof Files Opposition to Cunningham Motion to Dismiss – Argued False Basis for Motion
May 5, 2017	Cunningham Dies
May 15, 2017	Woodroof Motion for Multidoor (Tripartite) Arbitration

SUMMARY TIMELINE (continued)

June 30, 2017	Status Hearing – Trial Court – No Arguments Allowed Court berates Woodroof for recent financial problems (no excuse for not arbitrating) also chastises Woodroof for owing fees in Virginia, despite ruling Cunningham should have arbitrated fees in 2011. (Related Cases) Court also criticizes Woodroof for timing and motivation for malpractice. (Despite 2011 Fee Arbitration Petition and Motion to Compel Arbitration App. G 102-113)
June 30, 2017	Oral Ruling – Woodroof Ordered to Appoint Party Arbitrator within 30 days or have case dismissed.
July 28, 2017	Woodroof complies with Order, Names Neutral Party Arbitrator (App. 137)
July 28, 2017	Cunningham Then Names Party Arbitrator (App. 137) Does Not Disclose Party Arbitrator Non-Neutral
August 1, 2017	Woodroof Seeks Meeting with Cunningham on Basic Arbitration Rules/Reasonable Administrative Framework – Cunningham Refuses (App. 134-136c)
August 4, 2017	Status Hearing - Woodroof reports compliance, but Motion to Dismiss Not Vacated – left open for "renewal" by Defendant Cunningham
August 27, 2017	Panel Chair Selected
September 8, 2017	Panel Proposals to Woodroof for Consent (App. 39)

SUMMARY TIMELINE (continued)

September 14, 2017	Woodroof Response to Proposals/Request Meeting to Resolve Differences (Exhibit D App. 42-45)
October 2, 2017	Panel Demands Consent to Entirety of Panel Proposals Woodroof denies Consent to Entirety of Panel Proposals Panel Chair Resigns (Exhibit E App. 46-49)
October 6, 2017	Woodroof Confirms/Coordinates Arbitrator Replacement Search with Party Arbitrators Re: Moving Forward (App. 138)
October 9, 2017	Cunningham files Motion to Dismiss with Prejudice – Asserts Arbitration Impossible - Arbitrator Resigned
October 10, 2017	Woodroof Emails to Party Arbitrator Kaplan October 10 to November 27 re: Moving Forward Arbitrator Replacement (App. 138-140)
November 27, 2017	Woodroof Files FAA Section 5 Motion to Appoint Neutral Arbitrator & Disqualify Cunningham Party Arbitrator
November 28, 2017	Cunningham Opposes Section 5 Motion to Appoint Replacement Arbitrator/Disqualification Cunningham Non-Neutral Arbitrator
December 22, 2017	Woodroof Files Amended Complaint; Cunningham Files Opposition

SUMMARY TIMELINE (continued)

February 14, 2018	Woodroof Motion to Use Courtroom Technology – To Ensure Arguments Presented to Court or Entered into Record if Court Refuses to Hear
February 16, 2018	Status Hearing (approx. 30 Minutes) Cunningham Motion to Dismiss with Prejudice Granted (App. B 8-22)
March 16, 2018	Woodroof Appeal 18-CV-309
January 3, 2019	Brief Filed
October 3, 2019	Affirmed by MOJ
November 7, 2019	Petition for Rehearing/Hearing en banc
October 28, 2019	Motion to Publish Opinion
February 4, 2020	Petition Rehearing/Hearing En Banc Denied