

MINUTES

COMMITTEE: Ethics Committee

DATE: April 4, 2002

6. CHAPTER 8, RULE 1(f): WHETHER LAWYER MUST DRAW DECISION TO THE ATTENTION OF ARBITRATOR

A lawyer asked the Ethics Committee whether he is obliged to bring a case to the attention of an arbitrator after evidence and submissions are closed, but before the arbitrator has rendered a decision. In his submission to the arbitrator the lawyer cited cases from various jurisdictions, including Australia, on the various legal issues that arose in the case. The lawyer has now seen another Australian decision in which a state Court of Appeal rejected exactly the same argument the lawyer advanced in the arbitration.

The Ethics Committee was of the view that Chapter 8, Rule 1(f) places an obligation on the lawyer to bring the decision in question to the attention of the arbitrator. In the Committee's view, Rule 1(f) refers to any relevant decision, not simply to decisions which are binding on the court or tribunal. The obligation placed on lawyers by Rule 1(f) is not affected by the fact that the decision maker in this case is an arbitrator, nor by the fact that argument in the matter may be closed.

In the Committee's opinion, when the lawyer refers the arbitrator to the decision in question it would not be inappropriate for the lawyer to request an opportunity to present argument about it.

JO/
04-02