



Dispute Resolution



Version: September 2015

FINRA Dispute Resolution Understanding the Prehearing

Understanding the Prehearing Stage Training and Exam

Dear Arbitrator:

The following is a print version of the Understanding the Prehearing Stage Training. You may complete this course and exam either through this printable version (instructions below) or online, depending on your individual preference and/or computing environment. Most arbitrators will be able to review the material, and complete the enclosed exam in one hour.

Please review the course material and complete the exam. After you complete the exam, please send it to FINRA's Department of Neutral Management for grading. There is no minimum score required for the exam; **however, you must complete and return the exam to receive credit for the course.** We strongly recommend that you maintain a copy of the exam for your own records.

You may submit your exam to FINRA by email, fax or mail:

By Email: luis.cruz@finra.org

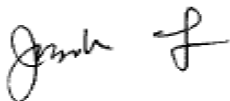
By Fax: FINRA Department of Neutral Management – FAX # 646-625-6020.

By Mail: FINRA
Attn: Luis Cruz – Neutral Management
One Liberty Plaza
165 Broadway, 27th Floor
New York, NY 10006

Because there is no minimum score required on the test, please do not expect a pass/fail letter from FINRA. After grading your exam, you can be assured that FINRA will update your arbitrator disclosure report to reflect your completion of the Understanding the Prehearing Stage Training. **Nothing further is required of you with regard to this course.**

We hope you enjoy the course.

Very truly yours,



Jisook Lee

FINRA Dispute Resolution Understanding the Prehearing

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Additional Notice

FINRA Dispute Resolution attempts to present information to readers in a format that is easily understandable. However, please be aware that, in case of any misunderstanding concerning a rule in the Customer or Industry Code of Arbitration Procedure, the rule language prevails.

Course Objectives

The Financial Industry Regulatory Authority, Inc. (FINRA) developed a series of courses as part of its comprehensive Arbitrator Training Program. This course will:

- Assist you in organizing and managing the Initial Prehearing Conference.
- Discuss the scheduling of hearing dates.
- Provide practical guidance on other preliminary issues that may arise during the Initial Prehearing Conference.

For information on prehearing discovery conferences, review FINRA's arbitrator online training course titled, "Discovery: Abuses & Sanctions."

Dispute Resolution's Mission Statement

FINRA Dispute Resolution's mission is to have all of its constituents -- the investing public, brokerage firms, and their employees and neutrals (arbitrators and mediators) - view FINRA's forum as the preeminent provider of dispute resolution services. To accomplish this goal, it is our standing pledge to provide impartial arbitrators who are dedicated to delivering fair, effective dispute resolution services.

For more information on FINRA and its services, see [FINRA's Web site](#).

[FINRA's Web site:-](http://www.finra.org/index.htm) <http://www.finra.org/index.htm>

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Course Home

You must review each section, in the order presented, to complete the course.

How to Prepare for the Initial Prehearing Conference

How to Conduct the Initial Prehearing Conference

How to Conclude an Initial Prehearing Conference

Conclusion

Section 1: How to Prepare for the Initial Prehearing Conference

How to Prepare for the Initial Prehearing Conference

Under [Rule 12500](#) of the Code, the Director of Arbitration (Director) will schedule an Initial Prehearing Conference (IPHC or Conference) after the panel is appointed. Users of the forum consider the IPHC to be a valuable tool in managing the administration of arbitrations because it gives the panel and the parties the opportunity to:

- Organize the management of the case.
- Set briefing deadlines.
- Set discovery cut-off dates.
- Identify and establish a schedule for potential motions.
- Schedule hearing dates.
- Determine whether mediation is desirable.
- Resolve any other preliminary issues.

Before the IPHC, the panel members must read:

- All filed pleadings (for example, claims, answers, counterclaims, cross claims, third party claims, and any replies).
- [Initial Prehearing Conference Script](#) and [Scheduling Order](#).
- [AAA/ABA Code of Ethics for Arbitrators in Commercial Disputes](#).
- Case Information Sheet.

[Rule 12500:-](#)

<http://www.finra.org/finramanual/rules/r12500>

[Initial Prehearing Conference Script:-](#)

<http://www.finra.org/file/initial-pre-hearing-conference-arbitrators-script>

[Scheduling Order:-](#)

<http://www.finra.org/file/iphc-scheduling-order>

[AAA/ABA Code of Ethics for Arbitrators in Commercial Disputes:-](#)

<http://www.finra.org/ArbitrationMediation/Rules/RuleGuidance/P009525>

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How to Prepare for the Initial Prehearing Conference (Continued)

In some cases, however, parties may wish to opt out of the IPHC. Rule 12500(c) codifies existing practice, which allows parties to forego the IPHC if they jointly provide the Director with the following information:

- A statement that the parties accept the panel.
- Whether any other prehearing conferences will be held, and if so, for each prehearing conference a minimum of four mutually agreeable dates and times, and whether the chairperson or the full panel will preside.
- A minimum of four sets of mutually agreeable hearing dates.
- A discovery schedule.
- A list of all anticipated motions, with filing and response due dates.
- A determination regarding whether briefs will be submitted, and if so, the due date for the briefs and any reply briefs.

Reading the Filed Pleadings

The entire panel is required to read all filed pleadings prior to the IPHC. The pleadings provide the framework for party agreements or panel decisions on significant IPHC issues such as scheduling evidentiary hearing dates and resolving discovery disputes. When reviewing the pleadings, the panel should consider the following items:

- Did the claimant file a Submission Agreement (SA) listing all named parties? The Code requires all parties to FINRA arbitrations to submit an executed SA agreeing to arbitrate under the Code. Please review [Rules 12302-12306](#) for more information about the SA requirement.
- Did any party with a third party claim file a SA appropriately naming the additional parties?
- Was service of the initial claim effected by FINRA?
- Have amendments and/or subsequent pleadings been properly served by the parties?
- Do the items checked off on the Certificate of Arbitrator Exhibits correspond to the pleadings received?
- Are there any questions concerning the pleadings or their service that should be raised with FINRA staff?

In reviewing the pleadings, the panel may discover the absence of an answer from a named respondent. In this situation, the arbitrators should contact staff to determine whether there was a problem with the service of the claim or with that particular respondent.

[Rules 12302-12306:-](#)

<http://www.finra.org/finramanual/rules/r12302>

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Initial Prehearing Conference Script and Scheduling Order

The panel should carefully review the [Initial Prehearing Conference Script](#) (IPHC Script or Script) and the [Scheduling Order](#) to prepare properly for the IPHC. The Script encourages arbitrators to schedule sufficient evidentiary hearings at the earliest available time consistent with the parties' need to prepare for the hearing.

Both the Script and the Scheduling Order were created to help the panel manage an effective IPHC, one that provides all the parties with a clear idea as to how the case will proceed. The Script contains required prehearing functions or activities, and suggests procedures for accomplishing these functions or activities during the IPHC. The Scheduling Order helps the panel accurately record the parties' agreements, or panel decisions, on such activities.

[Initial Prehearing Conference Script:-](#)

<http://www.finra.org/file/initial-pre-hearing-conference-arbitrators-script>

[Scheduling Order:-](#)

<http://www.finra.org/file/iphc-scheduling-order>

Staff will provide the panel members with the Script and Scheduling Order along with the case materials. If these two documents do not arrive with the case materials, arbitrators should contact staff immediately.

If after reading the IPHC Script and Scheduling Order any panel member has questions or concerns, he or she should contact staff immediately.

Section 2: How to Conduct the Prehearing Conference

How to Conduct the Prehearing Conference

When conducting an IPHC, the panel should be mindful of the following:

- The Conference, conducted by telephone, is not recorded unless the panel determines otherwise, either on its own initiative or upon motion of a party. Please refer to [Rule 12502](#) of the Code for information about recording prehearing conferences.
- Scheduling evidentiary hearings is a primary goal of the IPHC.
- The parties were advised by the staff to be prepared at the IPHC to schedule future hearing dates.
- Arbitrators need to be prepared with their calendars to schedule future hearing dates.

[Rule 12502:-](#)

<http://www.finra.org/finramanual/rules/r12502>

Initial Prehearing Conference Script

The panel should use the Script and the Scheduling Order to facilitate management of the conference. At the outset of the IPHC, advise the participants that the IPHC Script and the Scheduling Order will be used throughout the Conference to accomplish several important tasks, including the following:

- To keep all Conference participants focused on IPHC activities.
- To ensure fair and complete participant discussion of all IPHC issues.
- To facilitate the recording of all party agreements or panel decisions relating to the IPHC activities in the Scheduling Order.

The chairperson may occasionally need to remind the parties or their representatives that arguments on the substance or merits of a dispute will not be entertained during the IPHC, unless the panel agreed otherwise, and the parties were notified, prior to the Conference.

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Begin the Conference

To begin the IPHC the chairperson should handle the following housekeeping details:

- Identify Conference participants and resolve any absent party issues.
- Advise all participants that, whenever they speak, they must identify themselves before continuing.
- Announce new arbitrator disclosures before confirming that the parties agree to the composition of the panel. If a party raises a causal challenge during the Conference, note it on the Scheduling Order, and:
 - Tell the parties that the Conference will proceed to schedule hearing and discovery dates.
 - Advise the parties that they need to tell the staff person that a causal challenge exists which needs to be addressed.
- Fulfill the Oath of Arbitrator (Oath) requirement under Rules [12402](#) and [12403](#) of the Code. If an arbitrator fails to complete the Oath, the Script addresses how the chairperson can administer the Oath.
- Remind all parties and counsel to express their views and objections to the panel and not to one another.
- Remind all Conference participants to conduct themselves in a civil manner during all prehearing conferences and evidentiary hearings.
- If necessary, caution the participants to avoid overly contentious or hostile demeanors.

Any arbitrator who has not received and reviewed the Temporary and Permanent [Arbitrator Disqualification Criteria](#), the Arbitrator Disclosure Checklist, and his or her Arbitrator Disclosure Report *cannot* make rulings.

[Rule 12402](#):-

<http://www.finra.org/finramanual/rules/r12402>

[Rule 12403](#):-

<http://www.finra.org/finramanual/rules/r12403>

[Arbitrator Disqualification Criteria](#):-

<http://www.finra.org/ArbitrationMediation/Neutrals/ArbitrationProcess/ArbitrationCaseGuidanceResources/P009512>

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Challenges to Proceeding with the Conference

One or both parties may challenge going forward with an IPHC for any of the following reasons:

- They are in the process of settling.
- They plan to seek a motion to dismiss prior to going further.
- A party has an objection to an arbitrator.

What should the panel do in the above instances?

In situation one, the panel should acknowledge that the parties are working on a settlement, and remind them that the IPHC had been scheduled for some time. The parties are welcome to continue working on settlement; however, the Conference should proceed in the meantime.

In situation two, the panel should advise the parties that the IPHC will go forward as scheduled, and the deadline for the motions will be calendared during the Conference. If the motion to dismiss has already been filed and answered, the panel may schedule a date by which it will issue a ruling or schedule a subsequent prehearing conference to hear the motion.

Finally, in situation three, a party might object to the service of an arbitrator and refuse to proceed with the IPHC. If the challenged arbitrator grants the party's request for refusal, he or she should disconnect from the call, and the IPHC should go forward with the two remaining arbitrators. Because no substantive matters are addressed during an IPHC, the remaining arbitrators should continue the Conference and complete the Scheduling Order.

Maintaining Neutrality

The panel must conduct itself in a manner that encourages and protects the parties' rights to a full and fair hearing. The chairperson will ensure that all arbitrators listen to the diverse viewpoints with calm, unbiased attention and without unnecessary interruption. The panel should also be prepared for the chairperson to call for private executive sessions to consult with the panel during and after the IPHC.

When announcing an executive session, confirm with the conference call operator that only the arbitrators, absent the parties and FINRA staff, remain on the line. Arbitrators should remain silent until the Conference call operator confirms that only the arbitrators are on the line (unless the panel wishes staff to remain on the line to answer questions).

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Steps to Follow

After all housekeeping details have been addressed, the panel should perform the following tasks to ensure that the IPHC will effectively expedite the proceedings:

- Follow the IPHC Script.
- Identify each filed pleading received and read by the arbitrators as required.
- After the call concludes, if any filed pleading is missing, contact FINRA staff immediately. Pleadings do not include discovery requests and/or motions to which responses have not yet been filed. (Remember that the entire case packet should be reviewed before the Conference begins.)
- Schedule any necessary deadlines for discovery. Keep in mind additional scheduling needs that may include: scheduling of motions, prehearing conferences, and briefing of legal issues. (For information on prehearing discovery conferences, review FINRA's arbitrator online training course titled "Discovery: Abuses & Sanctions.")
- Ascertain whether an adequate number of evidentiary hearings have been scheduled. If not, schedule the dates after confirming the definite availability of the parties, their witnesses, and the panel. Make sure that sufficient time is permitted for adequate party preparation and/or resolution of other prehearing issues. It is essential that parties and arbitrators have their calendars up-to-date and available at the IPHC.
- Schedule evidentiary hearings to commence within nine months or less after the IPHC Conference. There may be times when this is not feasible; however, the commencement of hearings more than nine months after the Conference should be the exception.
- If the arbitrators have been advised that there are senior or seriously ill parties or essential witnesses, the panel should strive to select dates that will expedite the process and provide a reasonable amount of time for case preparation.
- While parties may ask the panel to consider motions at the IPHC, the panel is not obligated to do so at that time, even if motions and responses were received and read prior to the IPHC. If the parties serve and file motions and related papers, the panel and the parties should discuss the need for a subsequent prehearing conference. Emphasize that the arbitrators will determine whether such a conference is necessary. If the arbitrators direct a subsequent prehearing conference based on the parties contentions, it should be scheduled during the IPHC and also be noted on the Scheduling Order.
- Discuss with the parties the option to communicate directly pursuant to the Code. (For information on direct communication, review FINRA's arbitrator online training course titled "Direct Communication Rule.")
- Remind the parties that under [Rule 12210](#) of the Code ex parte communication is strictly prohibited, even if everyone agrees to direct communication. (Ex parte communication includes any discussion between an arbitrator and a party, party representative, or witness when the other parties are not present.)
- Ensure that all parties are given an opportunity to state their views completely on all issues. Remember to record all dates in the Scheduling Order or in a separate order.

[Rule 12210:-](#)

<http://www.finra.org/finramanual/rules/r12210>

Section 3: How to Conduct an Initial Prehearing Conference

How to Conclude an Initial Prehearing Conference

At the end of the IPHC, the chairperson should read the contents of the Scheduling Order to all the parties and/or representatives. This action verifies the accuracy and completeness of all party agreements or panel decisions during the IPHC and contributes to complete party compliance with the Scheduling Order.

In addition, it is important that the panel submit the completed Scheduling Order to FINRA staff within two business days after the IPHC ends. This action allows staff to serve the Scheduling Order promptly on all parties and/or representatives and contributes to expeditious party compliance with all IPHC agreements or decisions.

Finally, conduct a post-conference executive session with the panel to consider the following:

- Whether the parties should be assessed additional hearing session deposits, if the panel scheduled multiple evidentiary hearing sessions. Refer to Rules [12701](#) and [12902](#) of the Code for information about fee assessments.
- How the parties should be assessed the cost of the conference, if the case settles before the evidentiary hearings commence and the parties fail to allocate such cost in the settlement agreement.

[Rules 12701:](#)

<http://www.finra.org/finramanual/rules/r12701>

[Rules 12902:](#)

<http://www.finra.org/finramanual/rules/r12902>

Section 4: Conclusion

Summary

Having completed this course, you should now be able to:

- Organize and manage the IPHC.
- Schedule hearing dates.
- Use the practical guidance provided to address other preliminary issues that may arise during the IPHC.

Next Steps

To test your understanding of the course material, please complete the attached Understanding the Prehearing Exam and mail or fax it to FINRA for grading. Thereafter, FINRA will update your Arbitrator Disclosure Report to reflect that you have completed this course. You must complete the exam to receive credit for the course.

FINRA Dispute Resolution


Understanding the Prehearing Stage Training Exam

Name: _____ Arbitrator ID#: A_____

After reviewing the course, you must complete and submit the following exam. **There is no minimum score required for the exam; however, you must submit it to receive credit for completing the course.** Upon completion of the course and exam, FINRA will automatically update your disclosure profile to reflect that you completed the course.

CLEARLY mark your answer.

 Include your name and arbitrator ID# on EVERY page.

 When you have completed the exam, please FAX your pages to FINRA – Neutral Management Department at 646-625-6020 or email to luis.cruz@finra.org.

-
1. The panel members must read all filed pleadings prior to the Initial Prehearing Conference (IPHC).

TRUE FALSE

 2. Arbitrators should wait until the commencement of the IPHC, in the presence of all parties and arbitrators, to raise any issues regarding missing pleadings.

TRUE FALSE

 3. Similar to the regular hearing session, the IPHC is recorded.

TRUE FALSE

 4. Scheduling regular hearing dates is a primary goal of the IPHC.

TRUE FALSE

 5. Substantive motions are always addressed during the IPHC.

TRUE FALSE

Name: _____ Arbitrator ID#: A _____

6. The chairperson should advise the parties that the IPHC Script and Scheduling Order will be used throughout the Conference.

TRUE FALSE

7. Panel members should wait until the end of the IPHC to make additional disclosures.

TRUE FALSE

8. The panel should immediately end the IPHC if a party raises a causal challenge against an arbitrator.

TRUE FALSE

9. At the conclusion of the IPHC, the chairperson should read the contents of the Scheduling Order.

TRUE FALSE

10. After the IPHC, the panel has 30 days to submit the Scheduling Order to FINRA staff to disseminate to the parties.

TRUE FALSE