

My comments regarding the questions asked in Regulatory Notice 17-34 are as follows:

- 1. What experiences have you had with a NAR firm in the forum? Do you believe the party received competent representation by the NAR firm? What was the economic impact to you or your firm of the experience?**

**Answer**

I have only had one such experience in my approximately 20 years as an arbitrator for FINRA/NASD. Approximately 5 years ago, as a panel chair I was presented with a Statement of Claim which struck me as being unusually poorly drafted. It was heavy on legal jargon, but it fell significantly short of the factual allegations needed to state a claim. Furthermore, the allegations were self-contradictory, and not in the accepted manner of pleading in the alternative. I assumed this was prepared by a singularly incompetent lawyer.

During the Initial Pre-Hearing Conference, the NAR disclosed that he was not a lawyer. I responded with a statement that I would investigate whether the representation was the unauthorized practice of law and would act accordingly.

Later, I complained to FINRA staff. They indicated that the representation was authorized under FINRA rules. Again, I said I would investigate whether the representation was the unauthorized practice of law and would act accordingly.

I then inquired of the Illinois State Bar Association whether this was the unauthorized practice of law and what were my legal obligations if it was. Several months later, the ISBA responded with a lengthy and thoroughly researched written opinion that the NAR was illegally practicing law. They said that if I was unable to resolve this problem with FINRA staff, I should contact the Illinois Attorney General.

I shared the opinion with FINRA staff, but they said they disagreed and would not require the NAR to withdraw. I then contacted the Illinois Attorney General, which advised the NAR that it was investigating whether the NAR was practicing law illegally. At that point, the NAR withdrew. I do not recall whether the claimant obtained a licensed attorney or simply represented himself. At any rate, shortly thereafter the case settled.

I do not believe the party received competent representation from the NAR. Other than an expenditure of time, the NAR representation had no economic impact on me or on my employer.

- 5. Do you believe that FINRA should amend the Codes to restrict NAR firm activities in some way, or to prohibit entirely NAR firms from representing clients at the forum? If so, what are the appropriate restrictions?**

**Answer**

I believe FINRA should amend the Codes to prohibit NAR firms entirely.

- 7. Are there other relevant benefits and costs associated with the further restriction on NAR firms that were not discussed in the economic impact analysis? What are the effects of these benefits and costs, and what are the magnitudes of the effects?**

**Answer**

Yes.

*For one thing*, FINRA attorney-arbitrators should not be placed in the uncomfortable position of having to report FINRA or the NAR firms to law enforcement as aiding the unauthorized practice of law. Likewise, FINRA attorney-arbitrators should not be placed in the position of withdrawing as arbitrators because of a concern about aiding such an unauthorized practice.

It is no answer to point to Code of Arbitration Procedure Rule 12208(c), which forbids NAR representation when “state law prohibits such representation.” As demonstrated from my experience, the requirements of state law may be unclear. These disputes should be avoided altogether.

*For another thing*, the only reason I personally became aware of this issue was because the quality of legal draftsmanship of the NAR firm was so markedly below the standards of even a modestly qualified lawyer. I was trying to visualize how I could chair a hearing with such inept representation. Should I hold the NAR firm to the same standards as a lawyer? Or should I accommodate inexperience or even incompetence, as I would with a *pro se* party? There is no good answer.

NAR firms should be prohibited in FINRA proceedings.

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