

Mrs. Asquith,

I write to oppose compensated non-attorney representation in arbitration.

Participating as a representative for an aggrieved investor in a securities arbitration requires not only substantive knowledge of the securities laws and regulations, but also a firm understanding of the theories and principals of investing. One must carefully determine whether, in fact, an aggrieved investor has a proper claim, and if so, determine the proper measure of damages. Moreover, as the arbitration process has become more and more like formal court litigation, a knowledge of procedural and evidentiary rules is critical. Non-attorneys simply do not have such broad skill and knowledge sets.

Moreover, as attorneys, we are bound by the ethical rules of the states in which we are members of the Bar. Non-attorneys are obviously not subject to any such ethical obligations. Moreover, many of us carry malpractice insurance should we inadvertently default in executing a professional obligation owed to our clients. Non-attorneys do not provide such protections.

Many of the cases presented in arbitration involve conduct that has decimated an investor's lifetime of savings. Investors run the risk of again being harmed when represented by non-attorneys who do not know the procedural strategies to be employed offensively or defensively; who may not know how to properly assess the claims presented or the damages suffered; who are not bound by any ethical rules; and who likely cannot provide a meaningful remedy should they default in their presentation of cases. Since arbitration is generally final, the investor usually has only one opportunity to present their claim. Ineffective assistance by a non-attorneys is not a basis for setting aside an arbitration award. There are substantial risks in allowing a non-attorney to undertake the singular chance an investor has to recover their hard earned money, and FINRA ought not allow investors to be exposed to that risk.

The legislatures of the various States have prohibited the unauthorized practice of law because there is great danger when members of the public rely on non-attorneys to give them legal advice as to their rights and remedies. FINRA should similarly draw a clear line prohibiting non-attorneys from representing parties in the FINRA arbitration process.

Please note that I do not oppose law students, supervised by lawyers and/or professors, from representing investors in the FINRA forum.

Robert C. Port



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