Dispute Resolution

Version: June 2012

© 2012 Financial Industry Regulatory Authority, Inc. All rights reserved.

Civility in Arbitration Training and Exam

Dear Arbitrator:

The following is a print version of the Civility in Arbitration Training. You can elect to 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, you must 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 fax or mail:

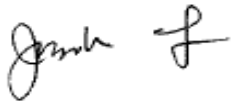
By Fax: FINRA Department of Neutral Management – FAX # 646-625-6028.

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 Civility in Arbitration Training. **Nothing further is required of you with regard to this course**.

We hope you enjoy the course.

Very truly yours,



Jisook Lee

© 2012 Financial Industry Regulatory Authority, Inc. All rights reserved.

Copyright

The "FINRA Dispute Resolution Civility in Arbitration" training is reproduced by permission of the Financial Industry Regulatory Authority, Inc. (FINRA) under a non-exclusive license. FINRA is not responsible for any errors in or omissions from the information contained in the "FINRA Dispute Resolution Civility in Arbitration" training. All such information is provided "as is" without warranty of any kind. FINRA makes no representations and disclaims all express, implied and statutory warranties of any kind to the user and/or any third party, including any warranties of accuracy, timeliness, completeness, merchantability and fitness for any particular purpose. FINRA reserves the right to amend the "FINRA Dispute Resolution Civility in Arbitration" training at its discretion.

FINRA shall not have any tort, contract or any other liability to any user and/or any third party. Under no circumstance will FINRA be liable for any lost profits or lost opportunity, direct, indirect, special, consequential, incidental or punitive damages whatsoever, even if FINRA has been advised of the possibility of such damages. The terms of this disclaimer may only be amended in a writing signed by FINRA.

Course Objectives

FINRA Dispute Resolution developed this course as part of its comprehensive Arbitrator Training Program.

This training has been loosely adapted from the video titled, "Civility in Arbitration," produced by a committee of the Securities Industry Conference on Arbitration (SICA). SICA was formed to develop uniform rules governing arbitration disputes between broker-dealers and customers at securities industry self-regulatory organization (SROs).

An important component of a successful arbitration hearing is the arbitrators' ability to maintain a civil and professional atmosphere in the face of contentious situations during the proceeding.

This course will provide guidance to arbitrators on how to maintain civility during an arbitration proceeding. Specifically, arbitrators will gain insight on how to:

- Evaluate their obligations as arbitrators before and during service on a case.
- Set a proper tone for conducting fair and efficient hearings.

Mission Statement

FINRA Dispute Resolution's mission is to have all its constituents–the investing public, brokerage firms and their employees and neutrals (arbitrators and mediators)–view FINRA 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 on FINRA and its services, see FINRA's Web site.

FINRA's Web site. - http://www.finra.org/index.htm

How This Course Works

In this course, you will review concepts and strategies to help you address issues that come up during a particular stage of an arbitration proceeding. You will then apply your skills by moving through six scenarios. In each scenario, you will be asked to advise on how to deal with arbitration issues; you will then receive feedback on your decisions.

Scenarios

Each scenario in this mini-course involves a panel of three arbitrators; a public arbitrator chairperson, a public arbitrator and non-public arbitrator. Each scenario also involves two parties; one customer claimant and one registered representative respondent, each of whom is represented by counsel.

Names of Arbitrators, Parties and Parties' Counsel:

- Chairperson Charles, public arbitrator
- Arbitrator Adams, public arbitrator
- Arbitrator Bonds, non-public arbitrator
- Claimant Cox
- Respondent Reilly
- Counsel Carlson, attorney for the claimant
- Counsel Richardson, attorney for the respondent

The scenarios depicted in this training course are hypothetical and have been developed for the sole purpose of training arbitrators. All names and titles are fictitious and any resemblance to real persons or entities is strictly coincidental.

© 2012 Financial Industry Regulatory Authority, Inc. All rights reserved.

Section 1: Obligations Upon Appointment to a Case

Determine Whether You Have Time to Serve on a Case

In accordance with the concept of "Civility in Arbitration," arbitrators should agree to serve only on cases that they can properly conduct within the anticipated time limits. It is not fair to the parties to accept a case if you cannot give it the proper time and attention it requires.

Depending on the nature of the case, FINRA will contact arbitrators from the public and/or from the industry sector based on the parties' rankings. For a typical customer case requiring a public panel, FINRA sends the parties three arbitrator lists (one public list, one public chair qualified list and one non-public list), from which to rank and strike the arbitrators. Each list contains eight names, and the parties may strike up to four arbitrators on each list. The panel will be chosen from the non-struck arbitrators.

FINRA staff will provide you with information about the case and the date and time of the hearing. First and foremost, you should decide whether your schedule allows you to participate in the case.

Determine Whether You Can Be Impartial

Once you confirm your availability to serve, you must determine whether you can be impartial. You must disclose not only known conflicts, but also make a reasonable attempt to uncover potential ones. You must closely examine prior and current relationships with parties, parties' representatives, witnesses and other arbitrators serving on the same panel, and disclose any possible circumstances that may affect your judgment. This evaluation is an ongoing obligation that you **must** perform at every stage of the arbitration.

You should accept a case only if you are confident that you can act fairly and impartially.

Review the Case Documentation

After appointing arbitrators, FINRA will send each arbitrator a case packet with the parties' pleadings. You should read through the documents to determine again if you have conflicts that require disclosure, in addition to ascertaining the parties' arguments. You should read the pleadings carefully prior to any prehearing conference or hearing to refresh your recollection of the facts and issues of the case. A good arbitrator is well-acquainted with the case assigned **before** participating in any type of hearing with the parties. At the conclusion of the proceeding, arbitrators must affirm that they have each read the pleadings and other materials filed by the parties.

© 2012 Financial Industry Regulatory Authority, Inc. All rights reserved.

1st Scenario: Preparing for the Hearing

During the Initial Prehearing Conference (IPHC), the arbitrators and the parties' counsel meet telephonically to schedule hearing dates and set discovery and motion schedules. One of the panelists, Arbitrator Adams, does not have his calendar with him, but assumes that because the hearing dates are several months in the future, his schedule will be clear. Everyone agrees to schedule three full-day hearing sessions during each of the upcoming four consecutive months: August, September, October, and November. Additionally, everyone agrees to stay past 5:00 pm at the hearings to ensure the arbitration concludes within the time allocated.

With the dates and deadlines set, Chairperson Charles advises the parties' counsel to double check the availability of their witnesses.

Arbitrator Adams: Sorry that I'm late. I forgot that we agreed to start at 9:00 am, and not 9:30 am. It has been a crazy morning! Before we get underway, I would like to call an executive session with my co-arbitrators to discuss a few issues.

With the parties out of the room, Arbitrator Adams discusses his issues with his co-arbitrators:

Arbitrator Adams: Thanks for asking the parties to step out so we arbitrators can talk alone. I have a few problems. As I was going through the arbitration papers on my way over here, I realized that the claimant's expert witness has appeared before me in a previous arbitration.

Oh, and by the way, I won't be able to stay past 5:00 p.m. today. I forgot about a conflict I have. Also, I have a court appearance tomorrow morning and won't be able to get to the arbitration hearing until 1:00 p.m.

© 2012 Financial Industry Regulatory Authority, Inc. All rights reserved.

Test Yourself

Evaluate Arbitrator Adams' conduct at the beginning of the first hearing day. **Select an answer and review the feedback.**

1. Arbitrator Adams should have been more diligent about getting to the hearing on time, but once he arrived, he conducted himself satisfactorily.

   ### Why wasn't this the best choice?

   Clearly Arbitrator Adams should have made a better effort to arrive at the hearing on time; however, his mistakes do not stop there. He should have read the materials much earlier to review them for potential conflicts, which would have prompted him to communicate the information to FINRA and address the issue before the hearing. He also should have respected the previous agreement of the parties and the arbitrators regarding start and end times for the hearings.

2. Arbitrator Adams should have been more prepared for the hearing and kept his commitments to the parties and other arbitrators.

   ### Why was this the best choice?

   You are on target because you recognized that Arbitrator Adams failed on several fronts to adequately prepare for the hearing and keep his commitments to the parties and arbitrators. Specifically, Arbitrator Adams failed to do the following:

   - Read well in advance of the hearing all of the materials forwarded by FINRA.
   - Promptly recognize the expert witness named in the papers and make an immediate disclosure—BEFORE the morning of the hearing.
   - Respect the previous agreement of the parties and the arbitrators regarding the start and end times for the hearings.
   - Most importantly, Arbitrator Adams did not take seriously his commitment to hear the case promptly, and he put his own interests ahead of the parties.

3. Arbitrator Adams performed well under the circumstances by disclosing his conflicts on the first day of the hearing.

   ### Why wasn't this the best choice?

   It's true that Arbitrator Adams ultimately disclosed his potential conflict. However, he should have read the materials much earlier to review them for potential conflicts, which would have prompted him to communicate the information to FINRA and address the issue before the morning of the hearing. He also should have respected the previous agreement of the parties and the arbitrators regarding the start and end times for the hearings.

© 2012 Financial Industry Regulatory Authority, Inc. All rights reserved.

Additional Tips

You must make sure that you have the time to serve on a case and have no conflicts with any of the parties, representatives, witnesses, or co-arbitrators. You also must be prepared for the hearing and act professionally at all times.

Please follow these guidelines when serving on a case:

- Carefully read what the arbitration staff sends you. **Read it all.**
- Take seriously the language in Canon I B of the Code of Ethics for Arbitrators in Commercial Disputes, which states that one should accept appointment as an arbitrator only if fully satisfied:
  - that he or she can serve impartially;
  - that he or she can serve independently from the parties, potential witnesses, and the other arbitrators;
  - that he or she is competent to serve; and
  - that he or she can be available to commence the arbitration in accordance with the requirements of the proceeding and thereafter to devote the time and attention to its completion that the parties are reasonably entitled to expect.
- Decline to serve on a case if you are not available to conduct the case promptly. A major goal of arbitration is the prompt resolution of disputes. At the time of appointment, you should be certain that you have the time required to hear and decide the controversy in a timely manner.
- Before participating in the prehearing conference, you should make sure that you have checked your calendar for availability at least several months ahead.
- Make sure your calendar is up-to-date and bring it to the prehearing conference. Refer to it often.
- If you are serving on another FINRA case and are uncertain that the case is going forward, check with staff for that case before the prehearing conference. This may free up potential hearing dates.
- At the prehearing conference, exchange your home and office phone numbers, fax numbers and email addresses with your fellow arbitrators. This information should also be provided to FINRA.
- If a last-minute court appearance (or similar event) interferes with scheduled arbitration dates, see if someone else can cover for you at the other event. Try to get that event-and not the arbitration-adjourned.
- If you are traditionally away for an extended period of time each year, inform the staff representative when called to serve.
- Be sure to consider and disclose any possible conflicts with any of the participants in the case. For example, prior experience with a party's expert witness is not necessarily grounds for removal from a case; however, intentional failure to disclose *may* be grounds to remove you entirely from FINRA's roster. If you believe your experience with someone involved in the case (e.g., a witness) may prejudice you, withdraw from the case and give your reasons to the staff only.
- Before agreeing to stay after 5:00 p.m., consider whether you are able-physically and mentally-to keep this schedule. Remember that a person's mental acuity may decline later in the day.

Code of Ethics for Arbitrators in Commercial Disputes: -
http://www.finra.org/ArbitrationMediation/Rules/RuleGuidance/P009525

© 2012 Financial Industry Regulatory Authority, Inc. All rights reserved.

2nd Scenario: Argumentative Parties

Once the chairperson has called the hearing to order and set the tone for the arbitration proceeding, the next task is to maintain that tone as the parties present their cases.

After the introductory statements by Chairperson Charles, the parties begin their opening statements with Claimant's Counsel Carlson making the first statement.

Counsel Carlson: Before I make my opening statements, I want to first state for the record that Respondent's Counsel Richardson continues to deny my client a fair hearing by refusing to produce discovery. It has been months, and still, I have not received the commission runs and...

Counsel Richardson: I object to your accusations of inadequate discovery. If anyone is guilty of inadequate discovery production it is you. I have asked for months for tax returns with no response, which is in clear violation of the Discovery Guide!!

Before too long, the parties' attorneys are screaming at each other.

Discovery Guide: -
http://www.finra.org/ArbitrationMediation/Rules/RuleGuidance/DiscoveryGuide/index.htm

© 2012 Financial Industry Regulatory Authority, Inc. All rights reserved.

Test Yourself

How should the panel maintain control of the hearing? **Select an answer and review the feedback.**

1. The panel should remain quiet and allow the parties the opportunity to vent their frustration on the record.

   ### Why wasn't this the best choice?

   While the hearing is the parties' process, and they should be allowed some leeway to express their concerns, Chairperson Charles should not allow the parties to argue with each other in a non-constructive manner. He should remind the parties to be civil and professional during the proceeding. He should also remind them to limit their opening statements to a brief, non-argumentative outline of what they intend to prove at the hearing and to address any comments/objections to the panel and not to each other.

2. Chairperson Charles should admonish the parties on the record and talk to each party separately about their outstanding issues.

   ### Why wasn't this the best choice?

   Chairperson Charles may politely and firmly remind the parties on the record to remain civil and professional during the hearing at all times. However, it is never appropriate for an arbitrator to speak to parties separately outside the presence of all parties. This is *ex parte* communication and may create a perception of bias. Because the arbitrator and party are speaking separately away from the other parties, one is not sure of what they discussed.

3. Chairperson Charles should remind the parties to limit their opening statements to a brief, non-argumentative outline of what they intend to prove at the hearing and not to interrupt each other during the opening statements. He should also remind the parties to direct comments/objections to the panel and not to each other.

   ### Why was this the best choice?

   Chairperson Charles should step in and regain control of the hearing, reminding the parties to behave appropriately, before their behavior escalates.

© 2012 Financial Industry Regulatory Authority, Inc. All rights reserved.

Additional Tips

The chairperson should maintain control by:

- Holding professional, fair, and neutral proceedings, both in fact and in appearance.
- Reminding parties that they should limit their opening and closing statements to a brief, non-argumentative outline of what they intend to prove at the hearing.
- Encourage parties not to interrupt opening and closing statements. Objections, if any, should be made after the statement at issue concludes.
- Reminding parties to direct comments/objections to the panel and not to each other.
- Insisting that the parties act in a civil manner.
- Reminding the parties to follow the rules of common courtesy and etiquette and refer them to the "Top Ten Standards of Good Practice at Arbitration Hearings."
- Calling for a break to let everyone collect themselves.
- Considering sanctioning the parties, such as imposing interim costs.
- Adjourning the hearing, if necessary.

"Top Ten Standards of Good Practice at Arbitration Hearings."-
http://www.finra.org/web/idcplg?IdcService=GET_PROBLEM_PAGE&siteId=www.finra.org&siteRelativeUrl=/ArbitrationMediation/ResourcesforParties/p009563

© 2012 Financial Industry Regulatory Authority, Inc. All rights reserved.

3rd Scenario: To Proceed or to Adjourn?

After opening statements, Respondent's Counsel Richardson advises the arbitrators that Respondent's primary witness is not available to attend the hearing.

Counsel Richardson: Unfortunately due to a personal conflict our primary witness is not available to provide live testimony at today's hearing, but he will be available by teleconference. Or, we could adjourn for the day and resume when the witness will be available.

Counsel Carlson: I object to the witness testifying via teleconference. I won't be able to cross-examine the witness effectively, the witness won't be able to review the documents during examination, and the panel won't be able to accurately judge the witness's veracity over the phone. I can't agree to adjournment either! My client went to great lengths and expense to be here today.

Chairperson Charles: Why is this the first time the parties are raising this issue? Why didn't Counsel Richardson bring this to our attention earlier?

© 2012 Financial Industry Regulatory Authority, Inc. All rights reserved.

Test Yourself

Which BEST reflects what the arbitrators should do? **Select an answer and review the feedback.**

1. The arbitrators should not adjourn the case. An adjournment would interfere with Claimant Cox's right to a fair and expeditious hearing.

   ### Why wasn't this the best choice?

   While denying the motion would allow Claimant Cox to proceed expeditiously with her case, disallowing the testimony of Respondent Reilly's key witness may prejudice him in presenting the best case. The panel should examine both sides before issuing a ruling.

2. Before the panel rules on the postponement request, it should balance the equities of potential prejudice against a speedy resolution of the matter. The panel should also consider possible alternatives to accommodate the interests of both parties.

   ### Why was this the best choice?

   Before the panel rules on any motion, it should weigh the probative value of granting the motion against possible prejudice. In this case, the panel should also encourage cooperation between the parties to come up with a compromise that would satisfy both parties.

3. The arbitrators should adjourn the case. The witness is crucial to Respondent Reilly's case, and he will not receive a fair hearing without the live testimony of the witness.

   ### Why wasn't this the best choice?

   While granting the motion may allow Respondent Reilly to present an optimum case by having his key witness testify live at the hearing, the delay may disadvantage Claimant Cox's case. The panel should examine both sides before issuing a ruling.

Additional Tips

Before ruling on the motion, the panel must:

- Balance the equities of potential prejudice against a speedy resolution of the matter.
- Consider the relevance of the missing witness.
- Weigh the probative value against possible prejudice.
- See if there are ways to proceed while still avoiding potential prejudice.
- Consider taking witnesses out of turn.
- Consider staying later in the evening or working on a weekend.
- Consider assessing an interim fee.
- Be consistent in similar rulings of this nature.

Remind the parties to act cooperatively. This includes having witnesses available when hearings are scheduled and promptly notifying each other if an event arises which might prevent the hearing from taking place.

© 2012 Financial Industry Regulatory Authority, Inc. All rights reserved.

4th Scenario: Communicating with Your Fellow Arbitrators

During cross-examination of one of the Claimant's witnesses, Chairperson Charles and Arbitrator Bonds have a private conversation.

In a very quiet tone, Chairperson Charles tells Arbitrator Bonds the following:

Chairperson Charles: Let's be sure to ask the witness whether he remembers document X.

Arbitrator Bonds responds to Chairperson Charles:

Arbitrator Bonds: Yes, let's ask about document X. And don't forget to ask about the attachments to document X.

Arbitrator Adams: (loudly and visibly agitated) "Hey, what am I missing? I'd like to be part of this discussion too!"

© 2012 Financial Industry Regulatory Authority, Inc. All rights reserved.

Test Yourself

Evaluate the arbitrators' conduct during the hearing. **Select an answer and review the feedback.**

1. Arbitrators should not have private conversations during the hearing and disrupt the proceedings. Therefore, Arbitrator Adams was justified in voicing his protest against the private communication between Chairperson Charles and Arbitrator Bonds.

Why wasn't this the best choice?

While it is not appropriate for arbitrators to have a private conversation in front of the parties during the hearing, an arbitrator should not have an outburst during a hearing in front of the parties. Additionally, an outburst may indicate to the parties that there is discord among the panelists. Arbitrators should always present a united front and work out any differences in an executive session.

2. Arbitrators may discuss issues privately during the hearing to avoid interrupting the process to call an executive session. However, Arbitrator Adams should not have disrupted the hearing by shouting out loud that he wanted to be included in the conversation.

Why wasn't this the best choice?

Arbitrators should not delay the hearing with unnecessary executive sessions, however, it is not appropriate to conduct a private conversation in front of the parties during a hearing or shout out loud that you would like to be included in the conversation.

3. Chairperson Charles and Arbitrator Bonds should not have had a private conversation during the hearing. However, Arbitrator Bonds should not have shouted out loud that he wanted to be included in the conversation. Instead, the arbitrators should have called an executive session to discuss issues privately.

Why was this the best choice?

The arbitrators should not have engaged in a private conversation during the hearing in front of the parties. The arbitrator also should not have announced out loud that he wanted to be included in the conversation. If an issue requires discussion among the panelists, the chairperson or panelist should call for an executive session.

© 2012 Financial Industry Regulatory Authority, Inc. All rights reserved.

Additional Tips

The chairperson is responsible for maintaining the decorum of the proceeding. By doing so, the chairperson preserves the integrity of the arbitration process and allows the hearing to continue in a fair and efficient manner.

In all instances, arbitrators should manage their own behavior as well as the parties' behavior. In the current scenario, the arbitrators should not have had a private conversation during the hearing in front of the parties. The arbitrator also should not have announced out loud that he wanted to be included in the conversation. If an issue requires discussion among the panelists, the chairperson or panelist should call for an executive session.

Here are some additional tips on how to act professionally at all times:

- Preside with an even hand.
- Be fair and impartial -- both in appearance and in fact -- when addressing parties and their counsel.
- Do not act overly friendly or hostile to one party.
- Treat the parties, representatives, witnesses, fellow arbitrators and FINRA staff with respect and courtesy.
- Give all parties an equal opportunity to be heard.
- Always avoid *ex parte* communications. Avoid being alone with one party. This includes remaining in the hearing room with one party, sharing an elevator, standing in the hallway or visiting the restroom, etc.
- Avoid withdrawing from a case due to scheduling conflicts.
- Do not "double-book" hearings for the same day.
- Be flexible, especially with regard to mutual requests from parties.
- Do not create repeated and routine scheduling problems.
- Be prepared for conferences and hearings.
- Abide by the Code of Arbitration Procedure and the Code of Ethics for Arbitrators in Commercial Disputes.

Code of Arbitration Procedure: -
http://www.finra.org/ArbitrationMediation/Rules/CodeofArbitrationProcedure/index.htm

Code of Ethics for Arbitrators in Commercial Disputes: -
http://www.finra.org/ArbitrationMediation/Rules/RuleGuidance/P009525

© 2012 Financial Industry Regulatory Authority, Inc. All rights reserved.

5th Scenario: Maintaining Confidentiality

During a break in the hearing, Arbitrator Adams and Arbitrator Bonds have a discussion in the hallway.

Arbitrator Adams: Sure glad the chairperson called a break. I need to stretch my legs. I know the hearing isn't over, but it doesn't seem to be going well for Claimant, does it? I don't have much sympathy for her. Did you hear the testimony about how careless she was in managing her investments? No wonder she lost money in her account.

Arbitrator Bonds: Ssshhh! We shouldn't talk about the case in the open. Claimant Clara is standing a few feet away. She probably can't hear us, but just in case...

© 2012 Financial Industry Regulatory Authority, Inc. All rights reserved.

Test Yourself

Evaluate the arbitrators' behavior during the recess. **Select an answer and review the feedback.**

1. Arbitrators may make comments about the case; however, they should make sure that a party or representative is not able to overhear the conversation.

   ### Why wasn't this the best choice?

   This choice only addresses one of the problems with the scenario. Arbitrators should definitely not make comments about the case where they may be overheard by a party or a representative. Arbitrators should also refrain from making judgments about a case before they have heard all the evidence.

2. Arbitrators should not come to any conclusions about the case before all the evidence and testimony are presented. Arbitrators should also beware of discussing the case in an open space where parties and representatives may overhear their conversation.

   ### Why was this the best choice?

   This choice hits on both errors that the arbitrators committed. They should not make premature judgments about the case before all the evidence is heard and reviewed, and they should not discuss the case aloud where parties or representatives may overhear.

3. Comments made by arbitrators outside of the hearing room are off the record, so they are free to discuss their opinions.

   ### Why wasn't this the best choice?

   While it is true that private conversations among arbitrators outside of the hearing room are off the record, arbitrators still have an obligation to be discreet with their comments and not make judgments before all evidence is heard and reviewed.

© 2012 Financial Industry Regulatory Authority, Inc. All rights reserved.

Additional Tips

Arbitrators should keep an open mind and not judge the case until:

- All the testimony and evidence have been presented.
- The parties have stated that they have completed their presentations.

The second arbitrator in the above scenario should have reminded his fellow panelists to keep an open mind until they have evaluated the evidence.

Furthermore, arbitrators should:

- Never discuss the case in a public space where they might be overheard.
- Be certain that they are alone when discussing any aspect of a case.

© 2012 Financial Industry Regulatory Authority, Inc. All rights reserved.

6th Scenario: Remaining Alert Throughout the Hearing

It is late in the afternoon on the second day of the hearing and -- admittedly -- it has been an exhausting day. Respondent's counsel is cross-examining Claimant's witness when he notices that Arbitrator Bonds seems distracted.

Arbitrator Bonds: Which exhibit are we looking at? What page? Didn't we look at this earlier?

Counsel Carlson: It has been a long day. I request that we adjourn for the day and start fresh tomorrow morning.

© 2012 Financial Industry Regulatory Authority, Inc. All rights reserved.

Test Yourself

Should the arbitrators grant Counsel Carlson's request to adjourn the hearing for the day? **Select an answer and review the feedback.**

1. Yes. Arbitrators have a duty to remain alert the hearing and actively listen to the testimony and evidence presented. It is in the best interest of all parties if the arbitrators grant the adjournment.

   ### Why wasn't this the best choice?

   While arbitrators should remain alert and attentive during the hearing, the panel should not automatically grant an adjournment. The panel should call an executive session and discuss the request. In addition, the chairperson should counsel a fellow arbitrator if he/she is behaving inappropriately and clearly not paying attention to the proceedings.

2. No. Chairperson Charles should admonish Arbitrator Bonds on the record for failing to pay attention to the parties' presentations during the hearing. The hearing should then proceed as planned.

   ### Why wasn't this the best choice?

   The chairperson should not admonish another arbitrator on the record in front of the parties. If counseling is required, the chairperson should discuss the issue in private with the arbitrator during an executive session. In this case, the panel should discuss whether they are able to proceed with the hearing before making a ruling on the postponement request.

3. Maybe. Arbitrators should call an executive session and discuss the postponement request. Chairperson Charles should speak with arbitrator Bonds and advise her that she must pay attention during the hearing. The panel should discuss whether they are able to go forward with the hearing and, once they have reached a decision, they should announce their ruling to the parties on the record.

   ### Why was this the best choice?

   Before making any decisions, the panel should meet in an executive session and discuss the merits of the request to determine the best course of action. This choice also emphasizes that the chairperson should counsel a co-arbitrator for errant behavior privately.

© 2012 Financial Industry Regulatory Authority, Inc. All rights reserved.

Additional Tips

As stated previously in this training course, when setting the hearing schedule you should consider whether you -- and the parties -- are able to adhere physically and mentally to the proposed schedule.

While mental acuity tends to decline later in the day, it is not acceptable for arbitrators to give less than 100 percent of their attention to the case being presented to them -- no matter what the conditions. Parties and representatives have worked hard to prepare their cases, and the parties are relying on and expecting dedicated arbitrators to hear their disputes.

In fairness to everyone involved and to the process, arbitrators **MUST**:

- Listen attentatively to all testimony.
- Remain alert by taking notes, ask appropriate and relevant questions and/or review evidence as it is presented.
- Avoid distraction with other matters during the course of a conference or hearing. This includes refraining from using a personal communication device such as a mobile phone or BlackBerry while presiding over the hearing.
- Try to refrain from asking questions that have already been asked and answered, unless the panel requires clarification.

If the arbitrators are too tired to continue with the hearing in an effective manner, they should consider adjourning for the day.

© 2012 Financial Industry Regulatory Authority, Inc. All rights reserved.

Arbitrator Tips (Continued)

If you observe a fellow arbitrator behaving inappropriately, or displaying a demeanor or temperament unsuitable for members of our roster, be sure to report this behavior to a FINRA staff member and/or complete the Arbitrator Experience Survey. After FINRA's careful and confidential review of an evaluation form citing inappropriate arbitrator behavior, the arbitrator may receive counseling or—in egregious instances—may be dismissed from the roster.

Examples of inappropriate behavior include, but are not limited to:

- failing to be impartial, both in appearance and in fact;
- being rude to parties, counsel, and/or staff;
- demonstrating an inability to follow or grasp the issues in dispute;
- being inflexible, especially with regard to mutual requests from parties;
- causing repeated and routine scheduling problems;
- being unprepared for conferences and hearings;
- being unwilling to abide by the Code of Arbitration Procedure; and
- violating the Code of Ethics for Arbitrators in Commercial Disputes.

No one has the "right" to be an arbitrator, and FINRA strives to maintain a roster of arbitrators of the highest quality and integrity. Accordingly, reports citing any one of the above examples may result in an arbitrator's dismissal from our roster without notice or appeal; all such removals from the roster are kept confidential. In doing so, we preserve the integrity of our entire roster, which benefits the parties, the remaining arbitrators and the arbitration process.

Arbitrator Experience Survey: -
http://www.finra.org/web/groups/arbitrationmediation/@arbmed/@arbtors/documents/arbmed/p014776.pdf

Code of Arbitration Procedure: -
http://www.finra.org/ArbitrationMediation/Rules/CodeofArbitrationProcedure/index.htm

Code of Ethics for Arbitrators in Commercial Disputes: -
http://www.finra.org/ArbitrationMediation/Rules/RuleGuidance/P009525

© 2012 Financial Industry Regulatory Authority, Inc. All rights reserved.

Summary

Summary

Having completed this course, you should have a better understanding of how to:

- Prepare for the hearing
- Deal with argumentative parties
- Consider whether to proceed or to adjourn a hearing
- Communicate with your fellow arbitrators
- Maintain confidentiality
- Remain alert throughout the hearing day

Next Steps

To test your understanding of the course material, please complete the attached Civility in Arbitration 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.

© 2012 Financial Industry Regulatory Authority, Inc. All rights reserved.

FINRA Dispute Resolution

Civility in Arbitration Training

Exam

Name: _____ Arbitrator ID#: A_____

Return Fax Number: 646-625-6028

Directions:

After reviewing the course, you must complete and submit the following exam to demonstrate your understanding of the material. **There is no minimum score required for the test; 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 test, please FAX your pages to FINRA – Neutral Management Department at 646-625-6028.

---

1. After the Initial Prehearing Conference concludes, an arbitrator's duty to investigate and disclose possible conflicts with the parties, counsel, witnesses or co-arbitrators continues.

   TRUE FALSE

2. Arbitrators should accept only those cases they can properly conduct within the anticipated time limits.

   TRUE FALSE

3. If the parties raise discovery issues during the hearing, the chairperson should sit back and allow the parties to hash out their issues without interfering in the debate.

   TRUE FALSE

4. Arbitrators should allow parties to raise any outstanding issues during opening statements.

   TRUE FALSE

5. It is never appropriate for arbitrators to have a private conversation in front of the parties during the hearing.

   TRUE FALSE

© 2012 Financial Industry Regulatory Authority, Inc. All rights reserved.

Name: _____ Arbitrator ID#: A_____

6. Arbitrators should always keep an open mind and not judge the case until all evidence and testimony have been presented.

   TRUE FALSE

7. At the arbitrators' discretion, parties and witnesses may remain in the room during an executive session.

   TRUE FALSE

8. Arbitrators should always avoid *ex parte* communication.

   TRUE FALSE

9. Arbitrators must always remain alert and attentive during the hearing.

   TRUE FALSE

10. Arbitrators should always postpone a hearing if a witness is unable to testify in person.

    TRUE FALSE

© 2012 Financial Industry Regulatory Authority, Inc. All rights reserved.