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Direct Communication Rule Training and Exam

Dear Arbitrator:

The following is a print version of the Direct Communication Rule 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, 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:

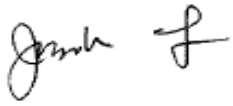
By Fax: FINRA Department of Neutral Management – FAX # 646-625-6028.

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 Direct Communication Rule Training. **Nothing further is required of you with regard to this course**.

We hope you enjoy the course.

Very truly yours,



Jisook Lee

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Course Objectives

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

- Give you an overview of the forum's direct communication rule.
- Discuss the benefits of proceeding under the direct communication rule.
- Outline the types of direct communication that are not permitted.
- Provide practical guidance in using the direct communication rule.

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 on FINRA and its services, see FINRA’s Web site.

FINRA’s Web site:- 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.

Understanding Direct Communication Rule

Benefits of Direct Communication Rule

Ex parte Communication Is Prohibited

Practical Application of the Direct Communication Rule

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Section 1: Understanding Direct Communication Rule

Background of Rule

Generally, parties must address all communication intended for the arbitrators to FINRA staff, who then forward the communications to the arbitrators. If the communication includes a motion or similar request, staff members customarily wait for a response from the other parties before forwarding the motion or request to the arbitrators. Similarly, the arbitrators transmit their orders and any other communications through the staff.

In June 2001, FINRA's Midwest Regional Office conducted a pilot project to determine whether direct communication among the parties and arbitrators would enhance the arbitration process. The pilot was initiated in response to a recommendation of FINRA's National Arbitration and Mediation Committee (NAMC). The NAMC is a board-level advisory group composed of investor representatives, industry representatives, and arbitrators and mediators; a majority of the Committee is composed of nonindustry members.

Parties and arbitrators in 255 cases participated in the pilot project. At the end of the pilot period, staff surveyed the arbitrators and party representatives who participated in the pilot project. Overall, 73 percent of the party representatives and 69 percent of the arbitrators who responded to the survey favored continuing direct communication with the arbitrators. Participants found that direct communication expedited the arbitration process and was a more convenient method of communication.

Rule Overview

In light of the success of the pilot project, FINRA developed Rule 12211 direct communication with the arbitrators when all parties and arbitrators agree. The rule also establishes specific guidelines for direct communication:

- Only parties that are represented by counsel may use the rule. If, during the proceeding, a party chooses to appear pro se, for example, without counsel, the rule will no longer apply.
- All arbitrators and parties must agree to use the rule during the Initial Prehearing Conference (IPHC) or at a later hearing.
- Parties may send to arbitrators only those categories of documents that are listed in the IPHC Order, or subsequent arbitration panel order.
- Parties may send items by regular mail, overnight courier, facsimile, or email. All arbitrators and parties must have facsimile or email capability before either delivery method may be used.

Rule 12211:-
http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=4096

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Rule Overview (Continued)

Copies of all materials sent to the arbitrators must also be sent at the same time and in the same manner to all parties and to FINRA, with one exception: although arbitrators and parties may agree to transmit and/or receive large documents by facsimile and email, documents over 15 pages can only be sent to FINRA by regular mail or overnight courier. Arbitrators or parties concerned with tying up facsimile machines and printers may include a similar provision in the direct communication order.

- FINRA staff must be sent copies of any orders and decisions made as a result of direct communications among the parties and the arbitrators.
- Parties may not communicate orally with the arbitrators outside the presence of all parties.
- Any party or arbitrator may terminate the direct communication order at any time, after giving written notice to the other arbitrators, parties, and FINRA staff.

Arbitrator Tip

FINRA strongly encourages arbitrators who agree to accept materials directly from parties via facsimile, to do so only if the following conditions are met:

- Your fax machine operates on a dedicated telephone line, so that use of your telephone does not interfere with the parties' ability to fax time-sensitive materials to the panel, and vice versa.
- You are the primary user in control of your fax machine. We are concerned with maintaining confidentiality, therefore, only offer your fax machine if you are the primary person who has access to it and can assure the parties that privacy will be maintained.
- Your fax machine is ready at all times to accept faxes. Therefore, the machine should be stocked with paper and be kept in the ready position.

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Section 2: Benefits of Direct Communication Rule

Benefits of Direct Communication Rule

As the pilot demonstrated, the majority of the participants who used direct communication favored continuing direct communication among the arbitrators and parties. Direct communication provides these benefits:

- Arbitrators receive documents quickly by having the parties send them directly rather than relying on
  staff to forward the materials to the panel.
- Arbitrators may review and rule on motions and similar requests in a more expeditious manner.
- Quicker rulings help to avoid delays to the hearing and reduce the number of postponement requests.

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Section 3: Ex parte Communication Is Prohibited

Ex parte Communication Is Prohibited

Ex parte communication remains prohibited as outlined in Rule 12210 of the Code. Ex parte communication includes any discussion between an arbitrator and a party, party representative, or witness when the other parties are not present. Even an arbitrator's presence in the hearing room with only one of the parties present could cause the other parties to presume that ex parte communication occurred. All such communication is strictly prohibited.

Participating in the direct communication rule does not grant permission to the parties and arbitrators to engage in ex parte communication. A party and arbitrator may not communicate with each other except when in the presence of all parties: all written communication directed to the panel must be copied to all parties at the same time and in the same manner, and no oral communication may occur outside the presence of all parties.

Rule 12210:-
http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=4096

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Section 4: Practical Application of the Direct Communication Rule

Initial Prehearing Conference

Prior to the Initial Prehearing Conference (IPHC), FINRA will send a letter to all parties and arbitrators introducing the direct communication rule and providing guidance on the process.

During the IPHC, the chairperson will explain the rule to the parties. The text of the explanation is included in the IPHC Script. The parties and arbitrators will decide if the case is eligible and whether to proceed under the direct communication rule.

IPHC Script.:-
http://www.finra.org/web/groups/med_arb/documents/mediation_arbitration/p009470.pdf

If all parties and arbitrators agree to communicate directly with each other, the chairperson will memorialize the agreement in the IPHC Order. In the Order, the chairperson will also specify those categories of documents that may be sent directly to the arbitrators. Any and all correspondence, motions, briefs, etc., not identified in the Order must be forwarded to FINRA staff with the appropriate number of copies for FINRA to distribute to the arbitration panel.

Arbitrators may communicate their decisions on motions and other requests to the parties using the agreed upon method of communication. The arbitrators must also send a copy of their decisions to FINRA staff at the same time and in the same manner that the arbitrators communicate their decisions to the parties.

IPHC Order:-
http://www.finra.org/web/groups/med_arb/documents/mediation_arbitration/p009471.pdf

Method of Delivery of Parties' Documents to the Arbitrators

The chairperson will include in the Order the method by which all identified documents must be sent to the arbitrators. The chairperson will be responsible for obtaining the parties' and arbitrators' addresses, facsimile numbers, and/or email addresses to be used for the purposes of direct communication. If all parties and arbitrators agree to use email as the method of delivery, FINRA recommends that a confidentiality message be included in all outgoing email messages.

Here is a sample message:

This message contains confidential information and is intended for the recipient. If you are not the intended recipient, you are notified that disclosing, copying, distributing or taking any action in reliance on the contents of this information is strictly prohibited. If you have received this email in error, please notify the sender by replying to this message and delete this email immediately.

Agreement after Initial Prehearing Conference

If the parties make a written request to communicate directly with the arbitrators after the IPHC, FINRA staff will arrange a conference among the parties and arbitrators to discuss the matter. The Code provides that the parties and arbitrators must agree to proceed under the rule during the IPHC or at a later conference.

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Arbitrator Tip

When using email, arbitrators must be careful to send correspondence only to the intended recipients. Specifically, arbitrators must be sure not to click "reply all" and disseminate to the parties confidential communication meant only for the panel.

Discontinuing Direct Communication

At any point in the arbitration process, a party or arbitrator may unilaterally decide not to continue to proceed under this rule by providing written notice to the other arbitrators, parties, and FINRA staff.

FINRA recommends that arbitrators discuss the idea of terminating the agreement with their co-panelists before doing so. FINRA also recommends that arbitrators request FINRA staff to advise the parties of any arbitrator's decision to terminate the Order allowing direct communication.

All parties and arbitrators also must discontinue direct communication if a party chooses to proceed without counsel at any time during the arbitration process.

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Summary

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

- Give an overview of the forum's direct communication rule.
- Discuss the benefits of proceeding under the direct communication rule, such as: receiving documents quickly, reviewing and ruling on motions in a more expeditious manner, and avoiding potential delays to the hearing.
- Outline the types of direct communication that are not permitted.
- Apply the direct communication rule to cases on which you serve.

Next Steps

To test your understanding of the course material, please complete the attached Direct Communication Rule 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.

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FINRA Dispute Resolution Direct Communication Rule 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 test, 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.

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1. If all claimants and respondents agree to communicate directly with the arbitrators, the arbitrators must accept documents directly from the parties.

   TRUE FALSE

2. The case may continue under direct communication even though a party's attorney has withdrawn from the case, and the party intends to proceed *pro se*.

   TRUE FALSE

3. The arbitrators must accept all documents directly from the parties even if they are not listed on the IPHC Order.

   TRUE FALSE

4. Although all parties and arbitrators have agreed to direct communication, a party is still prohibited from calling an arbitrator and discussing case-related issues absent the presence of the other parties.

   TRUE FALSE

5. After the arbitrators receive documents from the parties, they may rule on any request and send the ruling directly to the parties and send a copy of the ruling to FINRA.
   TRUE FALSE

6. If, after the IPHC, the parties decide that they would like to proceed under the direct communication rule, they may send the request directly to the arbitrators for approval.

   TRUE FALSE

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Name: _____ Arbitrator ID#: A_____

7. Arbitrators must accept all documents, regardless of length, via facsimile or email transmission.

   TRUE FALSE

8. Any arbitrator or party may discontinue the use of direct communication at any time during the arbitration process.

   TRUE FALSE

9. Arbitrators and parties are expected to determine if a case is eligible to proceed under the direct communication rule.

   TRUE FALSE

10. By using direct communication, the case may proceed more efficiently and conveniently.

    TRUE FALSE

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