

What's Inside

Office of Dispute Resolution and FINRA News	3
Mediation Update	7
Questions and Answers	9
Education and Training	11
Arbitrator Tips	12
Arbitrator Disclosure Reminder	15

Mission Statement

We publish *The Neutral Corner* to provide arbitrators and mediators with current updates on important rules and procedures within securities dispute resolution. FINRA's dedicated neutrals better serve parties and other participants in the FINRA forum by taking advantage of this valuable learning tool.

Arbitrator Withdrawals Undermine the Arbitration Process

By Steven B. Caruso*



FINRA's Office of Dispute Resolution (ODR) is committed to providing a fair, efficient and economical forum to resolve securities disputes. This responsibility is shared by parties and arbitrators. Unfortunately, an arbitrator's late withdrawal from a case—often within days or weeks of the scheduled evidentiary hearing—can undermine the integrity of the arbitration process.

Arbitrator withdrawal can be problematic for many reasons. First, parties invest substantial time and financial resources to vet potential arbitrators before submitting their arbitrator ranking forms. When a replacement arbitrator is introduced, parties must conduct additional due diligence into the proposed arbitrator and evaluate how the new arbitrator could impact the composition and balance of the existing panel.

Second, arbitrator withdrawals, especially those that are late in the process, may require postponement of the hearing. This causes undue hardship for the parties and disrupts the schedules of the remaining arbitrators. Rescheduling the hearing often results in additional delays.

Third, a replacement arbitrator will not have the benefit of having been involved in prior discovery motions, conferences or panel rulings. This can impact the ability of the parties to have a fair and efficient hearing on the merits.

Finally, arbitrator withdrawal, absent a genuine emergency¹ or other unanticipated circumstances that would render it impossible or impracticable to continue,² would violate the arbitrator's duty to comply with the [AAA/ABA Code of Ethics for Arbitrators in Commercial Disputes](#) that arbitrators agree to when signing their Oath of Arbitrator.

While there may be some limited circumstances that make an arbitrator's withdrawal understandable—such as a medical or family emergency—arbitrators should be aware that FINRA tracks arbitrator withdrawals and may remove arbitrators from the roster who unjustifiably withdraw from cases in which hearing dates have been set.³ Arbitrator withdrawals continue to be a subject of discussion at meetings of FINRA's National Arbitration and Mediation Committee (NAMC).⁴

The collaborative efforts of parties, counsel and arbitrators to limit arbitrator withdrawals will safeguard the efficiency of the FINRA arbitration process.

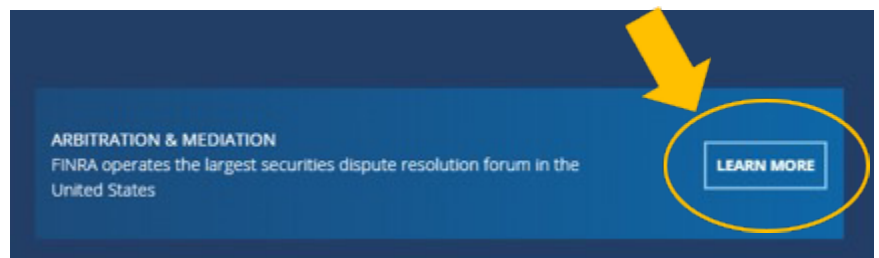
**Steven B. Caruso, the resident partner in the New York City office of Maddox Hargett & Caruso, P.C., concentrates his practice on the representation of individual, high net worth and institutional investors in securities arbitration and litigation proceedings. Mr. Caruso is the current chairperson of the NAMC.*

Endnotes

1. See [FINRA's Initial Prehearing Conference Script](#) (IPHC) ("The arbitrators promise to avoid causing postponements, absent a genuine emergency"). See also [The Neutral Corner, Volume 2–2012](#), [The Neutral Corner, Volume 5–2011](#) and [The Neutral Corner, Volume 1–2010](#).
2. See [AAA/ABA Code of Ethics for Arbitrators in Commercial Disputes](#), Canon I.B. ("One should accept appointment as an arbitrator only if fully satisfied... (4) 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") and Canon I.H. ("Once an arbitrator has accepted an appointment, the arbitrator should not withdraw or abandon the appointment unless compelled to do so by unanticipated circumstances that would render it impossible or impracticable to continue").
3. See [The Neutral Corner, Volume 2–2012](#) and [The Neutral Corner, Volume 1–2017](#).
4. The [NAMC](#) is an advisory group that provides recommendations to FINRA's Board of Governors regarding recruitment, qualification, training and evaluation of arbitrators and mediators. The NAMC also makes recommendations on rules, regulations and procedures that govern the conduct of arbitration, mediation and other dispute resolution matters before FINRA.

FINRA's Website Has a New Look

FINRA updated its [website](#) recently, and we invite you to take a tour. You can find a link to the Dispute Resolution page under the “For Investors” tab at the top of the homepage. You can also find a link at the bottom of the homepage—see below. As we continue to enhance the website, we welcome your feedback. You can submit your comments by using the yellow feedback button at the top of the page or emailing our [webmaster](#) directly.



Office of Dispute Resolution and FINRA News



Arbitration Case Filings and Trends

Arbitration case filings from January through August 2019 reflect a 12 percent decrease compared to cases filed during the same eight-month period in 2018 (from 2,958 cases in 2018 to 2,592 cases in 2019). Customer-initiated claims decreased by nine percent through August 2019, as compared to the same time period in 2018.

New Portal Form: Award Information Sheet

ODR recently added the Award Information Sheet (AIS) to the [DR Portal](#) (portal). The AIS can be completed directly on the portal from the “Drafts & Submissions” tab rather than using the PDF form.

As part of the award process, arbitrators are able to review award drafts and sign awards electronically in the portal under the “Award Review” tab for a case:

- On the “Award Review” tab, there is a “View Award Draft” button that opens the award draft PDF in the browser.
- The “Award Review” tab has two additional buttons: “Sign Award” and “Return for Correction.”
- If the award draft is complete and accurate, arbitrators can check the box to affirm the award draft as written, type their name and click the “Sign Award” button. This allows arbitrators to sign awards using an electronic signature.
- Alternatively, arbitrators can click the “Return for Correction” button. Arbitrators will need to contact staff to discuss any issues with the award draft.

Removal of Oath of Arbitrator and Disclosure Checklist PDF From FINRA’s Website

Last year, FINRA added the Oath of Arbitrator and Disclosure Checklist (Oath and Checklist) to the portal. This allows arbitrators to complete the Oath and Checklist in the portal using fewer steps and without having to download a PDF form to their personal computer. The Oath and Checklist in the portal provide additional ease through pre-populated case numbers, party names and arbitrator names. Arbitrators can find the Oath and

Checklist under the “Drafts & Submissions” tab in the portal by selecting “Oath of Arbitrator” as the submission type. The system alerts arbitrators if required information is missing.

On September 3, 2019, FINRA removed the PDF version of the Oath and Checklist from the ODR website. The PDF will remain available to arbitrators upon request.

Since 2017, FINRA rules have required all parties, except customers representing themselves, to use the portal. Although the portal is not yet mandatory for arbitrators, FINRA encourages all arbitrators to use the portal because it is the most efficient and secure way to communicate with parties and ODR. To encourage arbitrators to use the portal and to create an easier way to complete and submit forms, FINRA integrated the Oath and Checklist, as well as the Initial Prehearing Conference (IPHC), general, postponement and dismissal orders into the portal.

If you have any questions about using the portal forms, please review the [User Guide](#) or contact a FINRA employee for assistance at (800) 700-7065.

Register For the Portal Today

If you have not already done so, we strongly encourage arbitrators and mediators to register for the portal. The portal allows users to:

- file case documents including the electronic Oath and Checklist, the IPHC, general, dismissal and postponement orders and the AIS;
- access information about assigned cases, including case documents, upcoming hearings and arbitrator payment information;
- schedule hearings;
- update profile information;
- view and print the disclosure report;
- update the last affirmation date on the disclosure report; and
- review list selection statistics to see how often an arbitrator’s name has appeared on arbitrator ranking lists sent to parties and how often an arbitrator has been ranked or struck on those lists.

Portal registration is reflected on the disclosure reports that parties review when selecting arbitrators and mediators. If you are not registered in the portal or need to reactivate a dormant account, please send an email to the Department of Neutral Management to request an invitation.

Portal How-to Videos

If you need assistance updating your profile or submitting the Oath of Arbitrator or other order forms in the [portal](#), the [how-to videos](#) are here to help. These videos are quick tutorials for arbitrators on navigating to the Update Form and Oath of Arbitrator. They also include information on how to disable pop-up blockers in different Internet browsers.

Eleventh Annual Securities Dispute Resolution Triathlon

The [Eleventh Annual Securities Dispute Resolution Triathlon](#) (DR Triathlon) will take place October 19 – 20, 2019, at the St. John's University School of Law, Manhattan Campus. The DR Triathlon provides student teams from participating law schools an opportunity to demonstrate their advocacy skills in negotiation, mediation and arbitration of a securities dispute. Judges for these rounds observe the students and score their performances. While we have enough arbitrator volunteers, we are still looking for mediator volunteers. Please email drtriathlon@finra.org if you are interested in volunteering. CLE credit is available for participation.

2019 Demographic Survey

In November, FINRA will once again conduct a demographic survey of FINRA's arbitrator and mediator rosters. As in previous years, the survey will be administered by a third-party consultant, Alight Solutions. Participation in the survey is voluntary and all responses will be anonymous and confidential.

FINRA has embarked on a campaign to recruit individuals from varied backgrounds to serve as arbitrators. The data from this annual survey helps us track our progress toward enhancing the diversity of the roster and helps to determine future recruitment events.

The results of past demographic surveys are published on our [website](#). Thank you to those who have previously participated in the survey. In 2018, nearly 40 percent of the roster participated in the survey. We are hoping to meet or surpass this participation rate with your help!

Please look out for an email from Alight Solutions in November with instructions to complete the 2019 survey.

Mediation Update



Mediation Statistics

From January through August 2019, parties initiated 372 mediation cases, an increase of six percent for the same period in 2018. FINRA also closed 402 cases during this time. Approximately 86 percent of these cases concluded with successful settlements.

Mediation Settlement Month

October is [Mediation Settlement Month](#). FINRA invites all active mediators on the roster to participate in this event to help promote mediation. During this annual event, mediators reduce their rates to encourage parties to explore FINRA's mediation program. At the same time, parties who are familiar with FINRA's mediation services may be encouraged to try new mediators on our roster.

Amount of claim	Length of Mediation	Mediation Session Fee
\$25,000 and under	4 hours	\$100/party
\$25,000.01 – \$100,000	4 hours	\$1200/party
Over \$100,000	8 hours	\$500/party

Here are some additional guidelines for participating in Mediation Settlement Month:

- Parties can mediate telephonically or in-person.
- Unspecified claim amounts will be assessed the \$25,000.01 – \$100,000 mediation session fee.
- Parties pay mediators at their regular hourly rates for any time spent beyond the above listed hours.

Mediation Program for Small Arbitration Claims

FINRA's [Telephonic Mediation Program for Small Arbitration Claims](#) continues to receive positive feedback from parties and mediators. Active FINRA arbitration cases with initial claims of \$50,000 or less are eligible for the program. Claims for \$25,000 or less are eligible for mediation at no

cost. Claims for more than \$25,000 through \$50,000 are eligible for a reduced fee of \$50 per hour (divided by the parties). FINRA collects no mediation filing fees for these cases.

To date, more than 90 percent of the cases mediated through this program have reached a settlement. While conducting mediations, FINRA mediators emphasize the value of telephonic mediation and help parties understand the strengths and weaknesses of their cases and help them shape their own outcomes.

Telephonic mediation offers seniors, or those with difficulty traveling, the option to participate in a mediation from the comfort of their own homes. Telephonic mediation also offers mediators, in areas of the country with fewer opportunities to mediate, the ability to mediate with parties in any location.

We encourage parties and counsel in small cases to consider using the telephonic mediation program.

Keep It Current

Keeping your mediator disclosure report up-to-date—including the number of times you have mediated cases, your success rate and types of cases mediated—matters to parties when selecting a mediator. Parties have also requested references from mediators who do not list them on their disclosure report. Please add references to your disclosure report, so parties may consider them when selecting a mediator. Lastly, if you have a cancellation policy, please include it in your disclosure report. You can update your mediator profile anytime through the [portal](#).

Mediator Training Opportunities

Occasionally, FINRA receives information about mediator training that we think our mediators would be interested in. We will post information and links to these training opportunities on the [Resources for Mediators](#) page of our website.

Become a FINRA Mediator

Do you have mediator experience? Consider joining the FINRA mediator roster. Please email the [Mediation Department](#) for more information.



Questions and Answers

Arbitrator Disciplinary Referrals

Question What is a disciplinary referral?

Answer FINRA Rule [12104\(e\)](#) of the Code of Arbitration Procedure for Customer Disputes (Customer Code) and FINRA Rule [13104\(e\)](#) of the Code of Arbitration Procedure for Industry Disputes (Industry Code, together, the Codes) provide that at the conclusion of an arbitration (or under rare circumstances, during an arbitration), any arbitrator may refer to the Director of the Office of Dispute Resolution for investigation any matter or conduct that has come to the arbitrator's attention during the hearing.

The matter or conduct may be from the record of the proceeding or from the material or communications related to the arbitration, which the arbitrator has reason to believe may constitute a violation of FINRA rules, federal securities laws or other applicable rules or laws. In general, arbitrators should refer matters that are of regulatory interest.

Arbitrators may make a disciplinary referral by completing the [Arbitrator Disciplinary Referral Form](#). The disciplinary referral should be specific and identify documents, exhibits or testimony that give rise to the referral.

Question Where does a disciplinary referral go once an arbitrator submits it?

Answer The Director of the Office of Dispute Resolution will evaluate the referral to determine whether to send it to FINRA's Office of Fraud Detection and Market Intelligence (OFDMI). OFDMI centralizes FINRA's review of allegations of serious fraud and significant investor harm. It coordinates with other FINRA departments to aggressively pursue matters under FINRA's jurisdiction, and refers matters involving potential fraud and misconduct outside of FINRA's jurisdiction to the US Securities and Exchange Commission (SEC) or other regulators or law enforcement agencies for further investigation.

For more information about disciplinary referrals, please see the article "FINRA Arbitration and Arbitrator Disciplinary Referrals" in [Volume 1, 2017](#) and [Regulatory Notice 14-42](#).

Related Conflicts on Arbitrator Disclosure Reports

Question My arbitrator disclosure report reflects that I have a current “Related Conflict With” a brokerage firm and includes a description of this conflict as “Conflict Due to a Merger/Acquisition.” I do not have an account with that firm and did not make that disclosure. Why does it appear on my arbitrator disclosure report?

Answer Under FINRA Rules [12405](#) and [13405](#), arbitrators have an ongoing obligation to disclose any direct or indirect financial or personal interests in the outcome of the arbitration. However, many arbitrators may be unaware of the need to identify and disclose the names of the firms that are affiliated with firms with which they do business.

To address this situation, ODR uses the “Related Conflict With” disclosure in the Disclosures/Conflict Information section of the arbitrator disclosure report to alert parties to the indirect interest that an arbitrator may have with a firm. Using the information provided by the arbitrators, ODR’s computer system automatically adds related conflicts on the disclosure reports. Related conflicts often appear when one brokerage firm merges with, or acquires, another firm. This information cannot be modified by staff.

The corresponding description of a related conflict will appear as “Conflict Due to a Merger/Acquisition.” For example, if an arbitrator has an account with ABC Securities and ABC Securities merges with XYZ Brokerage, parties should be aware that XYZ Brokerage will appear on the disclosure report as a firm with a “Conflict Due to a Merger/Acquisition” with ABC Securities. If the underlying conflict (*i.e.*, ABC Securities) becomes outdated, the arbitrator should notify ODR of this change. ODR will update its records, and any related conflicts will no longer appear on the disclosure report.

Education and Training

Spring 2019 Neutral Workshop: Expungement of Customer Dispute Information



This [workshop](#) focuses on the particular challenges of expungement hearings and provides practical tips for arbitrators when considering requests for expungement of customer dispute information. Requests can be part of an evidentiary hearing, after a case has settled or in a case filed for the sole purpose of expungement. Associate Regional Directors Karinya Verghese and William Cassidy, Associate General Counsel John Nachmann and arbitrator Mary Woytek delve into expungement and provide guidance to arbitrators as they navigate expungement hearings.

Arbitrator Tips

Traveling for FINRA? Your First Stop is ADTRAV



Experience shows that complying with [FINRA's Arbitrator Travel Policy](#) leads to a rewarding trip.

FINRA has negotiated corporate rates with several travel providers. Arbitrators are strongly encouraged to call FINRA's travel provider [ADTRAV](#) at 855-764-2777 when making travel arrangements. ADTRAV will book arrangements that comply with FINRA's Arbitrator Travel Policy.

Using ADTRAV offers benefits for arbitrators:

- FINRA's Travel Department can track travel, notify arbitrators of changes or delays, and revise itineraries, if needed.
- Air and rail tickets are billed directly to FINRA, so arbitrators do not have to submit expense for air or rail tickets.*
- Arbitrators have no out-of-pocket costs for air or rail travel.
- ADTRAV can book arbitrators' preferred carriers.
- Arbitrators may still earn airline/rail reward points.
- For emergencies, ADTRAV is available 24 hours a day, 7 days a week at 855-764-2777.

Once a hearing location has been confirmed, FINRA staff will complete a Non-Employee Travel Request Form for an arbitrator and email it to ADTRAV. This normally occurs up to six weeks prior to a hearing date. The information will be loaded into the travel system within 48 hours of receipt. For new reservations, arbitrators should contact ADTRAV directly at (855) 764-2777 or (205) 949-4200 during regular business hours: Monday – Friday, 8 a.m. – 8 p.m. Eastern Time.

When they call, arbitrators (or their travel arrangers) must provide the case name and date of the hearing. This will enable the agent to locate the arbitrator's name and hearing information and provide more detailed service.

If arbitrators choose not to use ADTRAV to book their air or rail travel, they should book refundable airfare/rail tickets directly through the airline/Amtrak rather than through third-party booking sites (*e.g.*, Expedia,

Travelocity, Orbitz). Reserving directly with the provider allows arbitrators to book a reservation that is fully refundable.

These tips can further assist arbitrators:

- Remember to submit receipts for taxis and ride shares services (*e.g.*, Uber, Lyft, etc.).
- In unexpected situations such as severe weather, stay in close touch with ADTRAV and your case administrator. Let them know about travel changes or problems. ADTRAV agents are available 24 hours a day, 7 days a week at 855-764-2777.

*An arbitrator may use his or her personal credit card when booking travel with ADTRAV. Please note use of a personal card will require an arbitrator to submit expenses for air or rail travel.

Google Yourself

To get ahead of any surprises, we urge arbitrators to search their names online and ensure that the information is consistent with the information they provide to ODR and ultimately to the parties. ODR conducts Internet searches of all arbitrators before appointing them to a case. This allows ODR to determine if there are additional disclosures that need to be added to the arbitrator's disclosure report. ODR verifies any new information with arbitrators before adding it to their disclosure reports. The following are examples of information staff looks for online and information arbitrators should disclose:

- disciplinary findings by a professional or regulatory organization;
- malpractice suits;
- current and past legal actions (both investment and non-investment related) in which the arbitrator was personally involved;
- current and past legal actions in which the arbitrator served as counsel in an investment-related case;
- professional licenses;
- memberships in professional organizations;

- publications such as books, articles, blogs and videos; and
- social media accounts, including Twitter and LinkedIn. For LinkedIn accounts, arbitrators should confirm that their LinkedIn information is consistent with the information they provide to FINRA.

Arbitrators should be aware that parties conduct in-depth research on FINRA arbitrators. They use online search engines (*e.g.*, Google); review websites associated with an arbitrator or an arbitrator's employer; look up arbitrators on LinkedIn and other social media sites; and use legal search engines such as Pacer, Westlaw and Lexis Nexis. To avoid any surprises, arbitrators should Google themselves and see what they uncover before the parties do.

Arbitrators should regularly review their disclosure reports and make any updates through the [portal](#). If you need to think about whether a disclosure is necessary, you should err on the side of disclosing the information. When in doubt, disclose.

Arbitrator Disclosure Reminder



As a reminder, arbitrators should review their disclosure reports regularly to ensure that all information is accurate and current. Even if arbitrators are not currently assigned to cases, their disclosure reports may be sent to parties during the arbitrator selection process. Parties should have the most current and complete information about an arbitrator to make an informed decision when selecting arbitrators. Arbitrators should log into the [portal](#) to update their disclosure reports.

Last Affirmation Dates on Arbitrator Disclosure Reports

In 2017, FINRA enhanced arbitrator disclosure reports by publishing the date that arbitrators last affirmed the accuracy of their disclosure reports. The affirmation date appears prominently at the top of the disclosure report that parties review during the arbitrator selection process. Parties may consider the affirmation date when making decisions about ranking and striking arbitrators.

In order to provide parties with the most current arbitrator information, we are asking arbitrators to review their disclosure reports regularly and affirm the information in the disclosure report. Arbitrators can affirm their disclosures and refresh the affirmation date by submitting an update through the [portal](#) or by submitting an Oath of Arbitrator when assigned to a case. Even if you have no changes, you can update the affirmation date by affirming the information on your disclosure report and submitting an update form through the portal. If you have not registered in the portal or need to reactivate a dormant account, please send an email to the [Department of Neutral Management](#) to request an invitation. Please include “request portal invitation” in the subject line.

Directory

Richard W. Berry
Executive Vice President and
Director of Dispute Resolution

Todd Saltzman
Vice President of Dispute Resolution

James Schroder
Associate Vice President
DR Product Management

Katherine M. Bayer
Regional Director
Northeast Region

Carolann Gemski
Regional Director
Midwest Region

Laura D. McNamire
Regional Director
West Region

Manly Ray
Regional Director
Southeast Region

Jisook Lee
Associate Director of
Neutral Management and Editor of
The Neutral Corner

FINRA Dispute Resolution Offices

Northeast Region
FINRA Dispute Resolution
One Liberty Plaza, 27th Floor
165 Broadway
New York, NY 10006
Phone: (212) 858-4200
Fax: (301) 527-4873
neprocessingcenter@finra.org

West Region
FINRA Dispute Resolution
300 S. Grand Avenue, Suite 1700
Los Angeles, CA 90071
Phone: (213) 613-2680
Fax: (301) 527-4766
westernprocessingcenter@finra.org

Southeast Region
FINRA Dispute Resolution
Boca Center Tower 1
5200 Town Center Circle, Suite 200
Boca Raton, FL 33486
Phone: (561) 416-0277
Fax: (301) 527-4868
fl-main@finra.org

Midwest Region
FINRA Dispute Resolution
55 West Monroe Street, Suite 2600
Chicago, IL 60603-1002
Phone: (312) 899-4440
Fax: (312) 236-9239
midwestprocessingcenter@finra.org

Editorial Board

Georgette David Northeast Region

David Carey Case
Administration

Daniel Zailskas Southeast Region

Michele Collins West Region

Manly Ray Mediation

Felicia Fox Midwest Region

Kristine Vo Office of General
Counsel

© Volume 3 – 2019 FINRA.
All rights reserved.

FINRA is a registered trademark of
Financial Industry Regulatory Authority.
MediaSource is a service mark of FINRA.

The Neutral Corner is published by
FINRA Dispute Resolution in conjunction
with FINRA Corporate Communications.
Send all correspondence to Jisook
Lee, Associate Director of Neutral
Management and Editor of *The Neutral
Corner*:

FINRA Dispute Resolution
One Liberty Plaza
165 Broadway, 27th Floor
New York, NY 10006

Or call (212) 858-4400.

No part of this publication may be copied,
photocopied or duplicated in any form
or by any means without prior written
consent from FINRA. Unauthorized
copying of this publication is a violation
of the federal copyright law.

FINRA®

Investor protection. Market integrity.

FINRA
One Liberty Plaza
165 Broadway
New York, NY 10006

www.finra.org
© 2019 FINRA. All rights reserved.
FINRA and other trademarks of the
Financial Industry Regulatory Authority, Inc.
may not be used without permission.
19_0278.1-10/19