

A woman with long dark hair, wearing a dark blazer over a light-colored top, is shown from the chest up. She is looking slightly to the right of the camera with a neutral expression. The background is a soft-focus outdoor scene with trees and a building.

THE NEUTRAL CORNER

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Our Mission

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

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Pro Se Parties: Tips for an Effective Hearing

By Khoi Dang-Vu, Associate Regional Director, FINRA Midwest Regional Office and Dontay Phillips, Former FINRA Intern

Parties who come to FINRA Dispute Resolution Services (DRS) to resolve their securities dispute may choose to appear with or without counsel. Parties who represent themselves, also known as "pro se" parties, do so for various reasons. They may want to lower legal costs and maintain greater control over their case. Sometimes, pro se parties may simply be unable to find an attorney to take their case.

General Tips

Often, the arbitration may be the pro se party's first and only experience with a formal legal proceeding. Arbitrators should be mindful of the party's level of understanding of the proceedings and provide necessary guidance, such as:

- ▶ explaining each procedural stage of the case to pro se parties as it occurs;
- ▶ referring to specific rules and procedures; and
- ▶ giving pro se parties wide latitude to present their case.

By explaining each procedural stage as it occurs, arbitrators can do their part to ensure that hearings are fair and efficient. Focusing on procedural guidance can also avoid the appearance of providing legal advice. For example, a pro se party unfamiliar with hearing procedures may try to present their evidence during opening statements. Referring to the hearing script, reminding all parties of the purpose of the opening statement (*i.e.*, to tell the panel what they plan to prove during the hearing) and letting them know that the introduction of evidence comes later will help pro se parties understand how the case will proceed.¹

Telling Their Story

People want to feel heard, and pro se parties are no different. Parties who believe they did not have an opportunity to adequately tell their story may find it hard to accept the results of an arbitration. While attorneys might value efficient procedures, best practices and reasonable outcomes, parties may find it more important to have their day in court and to be treated with respect. Studies have shown that litigants are often less concerned with outcome favorability than procedural favorability.²

To address this, arbitrators can give pro se parties leeway in how they present their case. For example, arbitrators may allow pro se parties to use scripted testimony and slide presentations.³ While arbitrators are cautioned not to put on the case for pro se parties, asking open-ended, non-leading questions can help fill in the gaps.

Pro se parties will know the facts and details of their case. However, they may not have the same level of experience as an attorney telling their story in an adversarial setting. As they would in any other case, arbitrators should review all pleadings and prehearing briefs in a timely manner to understand the facts of the case. They should also maintain decorum in the hearing room and address overly aggressive attorneys who may try to intimidate pro se parties with frequent objections and interruptions during their testimony.

Arbitrators should keep in mind that any accommodations provided to pro se parties may raise concerns about bias against parties who are represented by counsel and take steps to directly address any concerns. For example, if counsel objects to testimony by a pro se party, arbitrators should let the parties know that they will give the appropriate weight to any testimony.

When possible, arbitrators should try to cite to the applicable provision of the [Code of Arbitration Procedure for Customer Disputes](#) (Customer Code) or [Code of Arbitration Procedure for Industry Disputes](#) (Industry Code) as the basis for any rulings—including rulings related to discovery, evidence or testimony—to help all parties understand their decisions. Additionally, any prehearing rulings or decisions should be memorialized in a written order to avoid misunderstandings. For clarity, the order should include details of what was discussed and any related submissions and deadlines.

Resources

Arbitrators should be familiar with the resources available on the FINRA website, including the [Arbitrator's Guide](#)—a resource that provides insight into handling cases involving pro se parties. The Arbitrator's Guide can also assist arbitrators with communicating the level of decorum expected of the participants during a hearing.

Other resources that can help arbitrators provide guidance to pro se parties include [“Resources for Individuals Representing Themselves,”](#) [“FINRA’s Arbitration Process”](#) and the [Customer Code](#) or [Industry Code](#). Arbitrators may also want to let pro se parties know that the website includes resources on [finding an attorney](#).

While managing cases involving pro se parties can require additional patience, taking a proactive approach to ensure that all parties understand the process will create a more efficient arbitration and increase the likelihood that all parties will feel they had a fair chance to be heard.

1. Ohashi, John. “Managing the Pro Se Hearing: A Suggested Approach.” [The Neutral Corner](#), Volume 3 – 2015, pp. 1-6.

2. Juhas, Hon. Mark (2017), [Working with Pro-Se Litigants: A Guide for Family Court Bench Officers](#). Association of Family and Conciliation Courts.

3. American Bar Association (2020), [2020 Model Code of Judicial Conduct](#). Rule 2.2 provides that: “A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.” Comment 4 to that Rule states: “It is not a violation of this Rule for a judge to make reasonable accommodations to ensure pro se litigants the opportunity to have their matters

DRS and FINRA News

Arbitration Case Filings and Trends

[Arbitration case filings](#) from January through August 2024 reflect a 24 percent decrease compared to cases filed during the same eight-month period in 2023 (from 2,181 cases in 2023 to 1,706 cases in 2024). Customer-initiated claims decreased by 10 percent through August 2024, as compared to the same time period in 2023.

Proposed Rule Change to Amend FINRA Rule 12800 (Simplified Arbitration) to Clarify and Amend the Applicability of the Document Production Lists

On May 13, 2024, FINRA filed with the Securities and Exchange Commission (SEC) a proposed rule change to the FINRA Code of Arbitration Procedure for Customer Disputes to clarify and, in some instances, amend the applicability of the Document Production Lists to simplified customer arbitrations administered under FINRA Rule 12800. On May 28, 2024, the SEC published a notice in the *Federal Register* to solicit comments. The comment period expired on June 18, 2024. FINRA filed a response to the comments and Partial Amendment No. 1 on August 7, 2024.

On August 21, 2024, the SEC issued an order instituting proceedings to determine whether to approve or disapprove the proposed rule change as subsequently modified by Partial Amendment No. 1. The comment period expired on September 17, 2024. The SEC has until January 23, 2025, to approve or disapprove the proposed rule change, which is the statutory final action deadline (*i.e.*, 240 days from publication in the *Federal Register*).

Please see [SR-FINRA-2024-008](#) for more information.

2024 Demographic Survey

In November, DRS will conduct its annual demographic survey of the arbitrator and mediator rosters. As in previous years, a third-party consultant will administer the survey. Participation in the survey is voluntary and all responses will be anonymous and confidential.

As part of an ongoing recruitment campaign, DRS continues to seek 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 guides 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. Please look for an email from DataStar ([surveystar.com](#)) in November with instructions to complete the 2024 survey.

Register for the DR Portal Today

DRS strongly encourages arbitrators and mediators to register for the [DR Portal](#). It allows neutrals to:

- ▶ file case documents, including the electronic Oath of Arbitrator and Arbitrator Disclosure Checklist, the Initial Prehearing Conference Scheduling Order, general orders, dismissal and postponement orders, the Award Information Sheet, the Arbitrator Experience Survey;
- ▶ access information about assigned cases, including case documents, upcoming hearings and arbitrator payment information;
- ▶ schedule hearings;
- ▶ update profile information;
- ▶ view and print the Arbitrator Disclosure Report (ADR);
- ▶ update the last affirmation date on the ADR;
- ▶ submit expense reports (see below more details); and
- ▶ review list selection statistics to see how often their name has appeared on arbitrator ranking lists sent to parties and how often they have been ranked or struck on those lists.

DR Portal registration is reflected on the ADRs that parties review when selecting arbitrators and mediators.

DR Portal Help

If you have any questions about logging into the DR Portal, please contact the FINRA Support Center at (301) 590-6500. If you have any technical difficulties using the DR Portal other than issues logging in, please contact the DR Portal Help Desk at (800) 700-7065.

Did You Know? DRS Has a New Expense Report in the DR Portal

On July 22, 2024, DRS launched a new expense reporting tool in the DR Portal. Arbitrators no longer need to complete the expense spreadsheet and send it to staff. Now, expenses and receipts can be submitted through the DR Portal.

Like other forms in the DR Portal (e.g., Oath of Arbitrator and Arbitrator Disclosure Checklist, the Initial Prehearing Conference Scheduling Order, Award Information Sheet), the expense report can be accessed by clicking on "Submit Documents" and selecting "Arbitrator Expense Report" from the dropdown menu.

After clicking "Start," arbitrators can choose the type of expenses (e.g., transportation, mileage, lodging, meals) and enter the amount. Arbitrators can add additional expenses by clicking on the blue bar. The tool automatically tallies expenses for each type as well as the overall total. Arbitrators can add receipts in the "Attachments" band at the bottom of the form, either by uploading individually for each expense or in one attachment for all expenses. They can save a draft to complete later.

If staff has any questions about the submission, they will return the expense report through the DR Portal and send an email. Like other returned forms in the DR Portal, arbitrators should correct the expense report and re-submit it through the DR Portal.

a conflict that prevents arbitrators from serving on a case involving the firm. If the firm is affiliated with other firms (e.g., Morgan Stanley and E*Trade), the relationship with the other firm is considered a related conflict that prevents arbitrators from appearing on lists involving the related firm. Related conflicts appear automatically in the Conflict Information section of the ADR and are not provided by arbitrators or mediators. This enhancement may result in additional related conflicts appearing on an arbitrator's ADR.

Additionally, the "Disclosure/Conflict Information" section is now split into two separate sections, "Conflict Information" and "Disclosure Information," making it easier to review the information on the ADR.

Arbitrator Disclosure Reports: Related Conflicts

The "Related Conflicts" feature of the Arbitrator Disclosure Report (ADR) has been enhanced to use data in the Central Registration Depository (CRD®). A current relationship with a FINRA member firm is

Mediation Update

Mediation Case Filings and Trends

From January through August 2024, parties initiated 341 [mediation cases](#), a decrease of 24 percent from the same period in 2023. FINRA closed 350 cases during this time. Approximately 88 percent of these cases concluded with successful settlements.

October is Mediation Settlement Month

DRS' Mediation Department is offering its annual reduced fee program during [Mediation Settlement Month](#). The program encourages parties to experience the benefits of mediation and raises visibility for participating mediators.

To participate in this program, parties must have entered into a mediation agreement by October 31, 2024, and conducted the mediation by December 31, 2024.

Participating mediators have agreed to offer their services at the following reduced rates, to be assessed equally between the parties unless otherwise agreed upon:

Amount in Controversy	Flat Fee	Mediation Hours
\$.01–\$25,000	\$250	6
\$25,000.01–\$100,000	\$500	8
Over \$100,000 and unspecified	\$1,000	10

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

- ▶ Parties can mediate by telephone, Zoom or in person.
- ▶ Mediation hours are inclusive of two hours of mediator study time.
- ▶ Any time beyond the mediation hours listed above is billed at the mediator's regular hourly rate. Mediators must advise parties before they exceed the included hours and move into regular hourly billing.
- ▶ FINRA's [Mediation Filing Fees](#) are reduced by 50 percent for all cases, and FINRA will not collect an

administrative fee from the mediator's payment.

- ▶ Once parties have agreed to participate, DRS will send a randomized list of participating mediators to the parties and schedule the mediation session.

We look forward to another successful Mediation Settlement Month. Please contact DRS' [Mediation Department](#) with any questions.

FINRA Mediator Summit

Attention DRS Mediators! Please save the date for DRS Mediation's first Mediator Summit on October 15, 2024. This event will take place in person at our New York City office and virtually. The summit will feature a variety of panels and networking opportunities. A formal invitation has been sent to DRS' mediators. Please contact [Mara Weinstein](#) or [Narielle Robinson](#) with any questions.

Mediator Disclosure Updates

Mediators can update their profile anytime through the [DR Portal](#). Keeping mediator disclosure reports up to date—including the number of cases, case success rates and the types of cases mediated—helps parties during the selection process. References who can attest to a mediator's skills and mediation style also help parties choose the most appropriate mediator for their case. Remember to include a cancellation policy if applicable.

Earlier this year, staff contacted all mediators on the roster with the yearly mediator questionnaire. This also gave mediators another opportunity to provide updates.

Become a FINRA Mediator

Do you have experience working as a mediator? Consider joining DRS' mediator roster. Please email the [Mediation Department](#) for more information.

Call for Experienced Mediators

The Queens County Supreme Court – Civil Term is seeking experienced mediators to serve in its Commercial Division Program and Presumptive ADR Program (PAP). Mediator candidates (1) must be an attorney admitted to practice in New York State for

five or more years and (2) have completed at least 24 CLE credits of basic mediation training and 16 CLE credits of advanced mediation training, plus work experience as a mediator. If you are interested, please complete the [Application to Mediate for New York State Trial Courts](#) and indicate that you are applying to the Commercial Division or PAP Program in the 11th Judicial District (Queens County State Supreme Court).

Questions and Answers

Arbitrator Recusals

Question

My schedule is unpredictable, and I have a hard time guaranteeing I can attend hearings. Can I accept the case even though I cannot commit to the final hearing dates?

Answer

An arbitrator should not accept a case if they are unable to ensure attendance at the final hearing. Arbitrators have an obligation to the parties to commit to the agreed-upon dates. Arbitrator recusals are extremely disruptive to the parties, other arbitrators and DRS staff.

To ensure attendance at the final hearing dates, DRS encourages arbitrators to check their personal calendar as well as their hearing calendar in the DR Portal before committing to hearing dates.

One of the most common complaints DRS receives from parties relates to arbitrator recusals. After listening to parties' feedback, in October 2016, DRS began monitoring arbitrators' late recusals. Recusals are considered late if they occur within 45 calendar days of a hearing on the merits. If an arbitrator has three or more late recusals in one year, DRS may refer them to the National Arbitration and Mediation Committee for possible removal from FINRA's roster.

Question

What happens if I need to recuse myself from a scheduled hearing at the last minute?

Answer

DRS understands emergencies happen. If you are unable to attend the hearing, please notify the assigned case administrator right away. This gives the parties time to decide how to proceed. If possible, notify DRS more than 45 days before the hearing to avoid a late recusal.

Virtual Hearings

Question

I have never conducted a prehearing or hearing session by videoconference. How can I familiarize myself with the logistical and technical aspects of the Zoom videoconference beforehand?

Answer

As a first step, you can review the [Resource Guide for Virtual Hearings](#) and watch the [Arbitrator Training Videos for Virtual Hearings](#) on FINRA's website. If you still feel unsure, you can request a Zoom "trial run" with staff before the hearing to test your equipment and help you become familiar with the Zoom platform and its functions, such as:

- ▶ overall display;
- ▶ control panel;
- ▶ participant list;
- ▶ muting/unmuting;
- ▶ sharing your screen;
- ▶ passing control;
- ▶ inviting a participant;
- ▶ waiting rooms and breakout rooms; and
- ▶ locking the hearing.

During a trial run, DRS will help you resolve any technical issues. Staff will also check your background and lighting conditions to ensure they are appropriate and discuss the responsibilities for hosting/co-hosting and recording the hearing.

Question

What steps should I take prior to my videoconference to ensure a smooth Zoom conference experience?

Answer

Here is a checklist to review before the hearing:

- ▶ Use a familiar device.
- ▶ Ensure you have the latest version of the Zoom application installed on your device.
- ▶ Check the system requirements and verify that your computer meets Zoom's system requirements.
- ▶ Test your audio and video beforehand:
- ▶ Open Zoom and go to "Settings" > "Audio" to test your microphone and speakers.
- ▶ Go to "Settings" > "Video" to check your camera functionality and adjust settings.
- ▶ Make sure you have a reliable internet connection. If possible, use a wired connection for better stability.
- ▶ Find a quiet, well-lit space free from background noise and distractions.
- ▶ Close any applications that are not needed during the meeting to free up system resources.
- ▶ Join the meeting a few minutes early to address any last-minute issues.

Question

I am ready to join the Zoom hearing. How should I identify myself on the screen? How do I keep track of everyone, especially if there are many participants?

Answer

The easiest way to identify yourself is to "rename" yourself on screen. By right clicking on your video thumbnail and selecting "rename," you can type your full name and title—for example, Jane Doe - Chairperson. Your name will appear on the bottom left corner of your video thumbnail.

It is important for the participants and the DRS host to know who you are and your role once you join the videoconference. By default, your display name is typically the name associated with the Zoom account and may not include your full name and your role in the arbitration. Changing your display name as soon as you log in provides clarity for all participants.

To keep track of all the participants, ask them to rename themselves on their video thumbnails with their full names and roles (e.g., John Doe – Respondent's Counsel).

For more information about virtual hearings, you can review the [Resource Guide for Virtual Hearings](#) and watch the [Arbitrator Training Videos for Virtual Hearings](#).

Education and Training

American Bar Association (ABA): 2024 Advanced Mediation and Advocacy Skills Institute (Virtual)

On October 16-17, 2024, the ABA will host [“The 21st-Annual Institute: Mediation Comes of Age in a Time of Divisiveness.”](#) Featuring keynote speakers Kenneth Feinberg, in conversation with Noah Hanft, and Donna Hicks, this program offers the opportunity to learn from leading mediation authorities. Plenary sessions are followed by small group break-out discussions allowing participants to interact in-depth with faculty and other participants. As a partnering organization, FINRA encourages arbitrators and mediators to consider attending this program. Please use the following discount code to receive the ABA member rate: **MEDPARTNER24**

Arbitrator Disclosure Reminder

As a reminder, arbitrators should review their Arbitrator Disclosure Reports (ADRs) regularly to ensure all information is accurate and current. Even if arbitrators are not currently assigned to cases, their ADRs may be sent to parties during the arbitrator selection process. Providing parties with the most current and complete information helps them make informed decisions when selecting their panel. Complete disclosures also minimize arbitrator challenges and delays to the case. Arbitrators should log in to the [DR Portal](#) to update their ADRs.

Last Affirmation Dates on ADRs

In 2017, DRS enhanced ADRs by publishing the date that arbitrators last affirmed their accuracy. The affirmation date is displayed prominently at the top of the ADR that parties review during the arbitrator selection process. Parties may consider the affirmation date when making decisions about ranking and striking arbitrators.

To provide parties with the most current information, DRS asks arbitrators to review their ADRs regularly and affirm the information. Arbitrators can refresh the affirmation date by submitting an update through the DR Portal or by submitting an Oath when assigned a case. Even if there are no changes, arbitrators can update the affirmation date through the DR Portal.

If you need to register for the DR Portal or 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.

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