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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.

Dispute Resolution and FINRA News

Case Filings and Trends

2015 Year-End Statistics



Arbitration [case filings](#) for 2015 reflect a 10 percent decrease compared to cases filed in 2014 (from 3,822 cases in 2014 to 3,435 cases in 2015). Customer-initiated claims decreased by 12 percent in 2015 compared to cases filed in 2014 (from 2,662 cases in 2014 to 2,341 cases in 2015).

In 2015, arbitration cases filed identified the following securities (listed in order of decreasing frequency): common stock, municipal bond funds, municipal bonds, mutual funds, corporate bonds, real estate investment trusts, government securities, preferred stock, options, exchange-traded funds, variable annuities, private equities, annuities, limited partnerships and commodities futures. The top two causes of action alleged were breach of fiduciary duty and negligence.

Statistics Through February

Arbitration [case filings](#) from January through February 2016 reflect a 17 percent increase compared to cases filed during the same two-month period in 2015 (from 478 cases in 2015 to 558 cases in 2016). Customer-initiated claims increased by 21 percent through February 2016, as compared to the same time period in 2015.

Updated Dispute Resolution Statistics Page

FINRA has updated the Dispute Resolution Statistics page. The new page now includes an interactive map displaying all hearing locations, cases per hearing location and arbitrators per hearing location. In addition, FINRA has added new charts detailing the top 15 most common case filing controversy types and security types in customer and industry cases.

Comments, Feedback and Suggestions

Please send your suggestions and comments to:

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Dispute Resolution Task Force

As we reported previously, the Dispute Resolution Task Force issued its final report in December 2015, which is posted on the [Dispute Resolution Task Force Web page](#). The National Arbitration and Mediation Committee (NAMC), FINRA's standing advisory committee, is currently reviewing the task force's recommendations. Any rule changes stemming from the report would need the approval of the Securities and Exchange Commission (SEC) prior to implementation.

Changes to Expungement Requests

As of January 1, 2016, FINRA is asking parties who request expungement to provide additional information to ensure the accurate and timely processing of all expungement requests. Parties must now provide the Central Registration Depository (CRD™) occurrence number(s) which is the subject of the expungement request; provide the case name and docket number that gave rise to the disclosure, if applicable; state whether they have previously requested expungement of the same disclosure in CRD, and if so, explain the outcome of that request; and state whether they are currently or previously registered in CRD and provide their CRD number. Please review the changes to expungement requests on our [website](#).

Update to Business Mileage Rate

FINRA recently updated its reimbursement guidelines to decrease the mileage reimbursement rate for 2016 to \$.54 per mile (per IRS Regulation). Please review the [Guidelines for Arbitrator Reimbursement](#) for more information about FINRA's reimbursement policy.

FINRA Annual Conference: May 23 – 25, 2016

FINRA's [Annual Conference](#) will take place May 23 – 25, 2016, in Washington, D.C. This year's Annual Conference brings regulators, leaders from firms, government representatives and others together to discuss the latest regulatory updates. Designed to assist financial professionals within an ever-changing and complex regulatory environment, the conference provides attendees with practical guidance for the financial services industry.

DR Portal Update

Neutral Portal

As a reminder, we strongly encourage arbitrators and mediators to register with the DR Portal. Portal benefits include:

- viewing and updating your profile information;
- viewing and printing your disclosure report;
- accessing information about your cases, including upcoming hearings and payment information;
- scheduling hearings;
- viewing case documents; and
- filing case documents.

FINRA is actively reaching out to arbitrators serving on portal cases to encourage them to register. Portal registration will be noted on the arbitrator disclosure report that parties review during arbitrator selection.

If you have not registered with the DR Portal, please send an email to [Dispute Resolution Neutral Management](#) to request an invitation. Please include “request portal invitation” in the subject line.

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SEC Rule Approval

Merger of Dispute Resolution With FINRA Regulation

On December 20, 2015, the SEC approved FINRA’s proposal to merge its dispute resolution subsidiary, FINRA Dispute Resolution, Inc. (DR) into and with its regulatory subsidiary, FINRA Regulation, Inc. (Regulation). To implement the merger, FINRA made necessary conforming amendments to its Plan of Allocation and Delegation of Functions by NASD to Subsidiaries (Delegation Plan), amended the FINRA Regulation By-Laws to incorporate substantive and unique provisions from the FINRA Dispute Resolution By-Laws, deleted the FINRA Dispute Resolution By-Laws in their entirety and made conforming amendments to FINRA rules. The SEC also approved amendments to the FINRA Regulation By-Laws to increase the total number of directors who may serve on the FINRA Regulation board from 15 to 17.

The merger does not affect the services and benefits provided by or the costs to use the DR forum or have a practical impact on its corporate governance or oversight. FINRA will continue to operate the forum, now as a separate department within Regulation, under the name of the “Office of Dispute Resolution.”

The amendments became effective on December 20, 2015. See [Regulatory Notice 16-04](#) for more information.

Rulemaking Item Approved at the December 2015 FINRA Board of Governors Meeting

Award Offsets in Arbitration

At its [December 2015 meeting](#), FINRA’s Board of Governors authorized FINRA to amend [Rule 12904](#) of the Code of Arbitration Procedure for Customer Disputes and [Rule 13904](#) of the Code of Arbitration Procedure for Industry Disputes (Codes) to address award offsets in arbitration. Specifically, the Board authorized FINRA to file a proposal with the SEC to provide that, absent specification to the contrary in an award, when arbitrators order opposing parties to pay each other damages, the monetary awards would offset, and the party that owes the larger amount would pay the net difference.

New Feature: Arbitrator List Statistics

You may now review your list selection statistics in the portal. By selecting “view my Arbitrator List Statistics” from the left hand menu, you can see how often your name has appeared on arbitrator ranking lists sent to parties and how often you are ranked or struck on those lists.

Updating Email Addresses in the Portal

FINRA has simplified email maintenance by removing the ability to store multiple email addresses in a neutral’s profile. Therefore, each neutral will have only one email address on file, which is the same email address used to register in the DR Portal. All other email addresses have been deleted.

FINRA staff cannot make any changes to a neutral’s email address after the neutral has registered in the portal. If you have already registered in the portal and need to update your email address, you must update it by logging into the [portal](#). From the homepage, select the “manage my account” link from the left-hand navigation panel. After you update your email address, press the “save” button and confirm that your data has been saved.

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Mediation Update

Mediation Statistics

2015 Year-End Statistics



In 2015, parties initiated 507 [mediation cases](#), an increase of 18 percent compared to cases filed in 2014. FINRA closed 481 cases during this time. Approximately 81 percent of these cases concluded with successful settlements, and the average case turnaround time was 82 days.

Statistics Through February

From January to February 2016, parties initiated 124 mediation cases, an increase of 72 percent for the same period in 2015. FINRA closed 132 cases during this time. Approximately 61 percent of these cases concluded with successful settlements, and the average case turn-around time was 121 days.

FINRA Small Claims Mediation Program Starting its Fourth Year

FINRA’s [Small Claims Mediation Program](#) reached its three-year anniversary in January 2016, and continues to receive positive feedback from parties and mediators. The small claims program offers parties in active arbitration cases free or low-cost telephone mediation for cases with initial claim amounts of \$50,000 or less. Claims of \$25,000 or less are eligible for mediation at no cost, while claims over \$25,000 through \$50,000 are eligible for mediation at a reduced fee of \$50 per hour (divided equally by the parties). FINRA collects no mediation filing fees for these cases.

We strongly recommend that you use a personal email address rather than a work address. This will ensure that despite any changes in employment, your email address will remain current.

Please contact the Neutral Management department by [email](#) or by telephone (855-209-1620) if you have any questions. You may also review the [Frequently Asked Questions and User Guides](#) for any help with the portal.

Telephone mediation provides parties with convenience and flexibility. The program also offers seniors or those with difficulty traveling, the option to participate in a mediation without having to travel to an on-site meeting. To date, more than 90 percent of the cases that mediate through this program have reached a settlement. The settlement rate is higher than in mediations conducted through our regular program and emphasizes that mediations can be conducted telephonically with great success.

We look forward to another successful year offering parties in small cases an affordable option with the convenience and scheduling flexibility of telephonic mediation.



Question and Answer

Maintaining Neutrality

Question: I recently served as chair on a case. At the start of the first hearing, counsel for one party presented the panel with coffee and pastries. The panel accepted the pleasantries despite its reservations. Is there a better approach to this situation? Are there ethical considerations?

Answer: The Code of Ethics for Arbitrators in Commercial Disputes (Canon I, Paragraph C) provides that an arbitrator should avoid acquiring any financial or personal interest which is likely to affect impartiality or which might reasonably create the *appearance* of partiality. There are no *de minimis* exceptions to this guidance.

The panel should have been mindful that the other party may have felt uncomfortable if the panel accepted the coffee and pastries. Moreover, the other party may have been hesitant to object to the gesture for fear of alienating the panel. The panel should have politely declined the party's offer and reminded the parties of the need to avoid similar offers, however well intended, for the remainder of the hearing. Even if the parties jointly offer the coffee and pastries, the panel should decline such courtesies.

A panel should take this approach if a party offers similar courtesies, such as a ride to the airport, carrying the arbitrator's bags or an offer to hail a cab or secure a car service.

Education and Training

Arbitrator Trainings



The following is a summary of FINRA's advanced arbitrator training courses. All training courses are free, and we encourage arbitrators to complete them to ensure that they are aware of the most current information about these topics. The training materials are also provided as a resource to all arbitration participants that include parties, parties' representatives and arbitrators.

Online Trainings Available Through FINRA Learning Management System

FINRA offers most of its advanced trainings through [FINRA's Learning Management System](#) (LMS). Arbitrators must register in the LMS before they can access the courses. After arbitrators complete a course, FINRA will add the completed training information to the arbitrator's disclosure report. The advanced training courses available to arbitrators are:

- **Chairperson Training:** Instructs arbitrators on the added responsibilities of serving as the chairperson of the panel.
- **Civility in Arbitration:** Helps arbitrators evaluate their obligations before and during service on a case and set a proper tone for conducting fair and efficient hearings.
- **Direct Communication Rule:** Provides an overview of FINRA's direct communication rule and its practical application.
- **Discovery, Abuses & Sanctions:** Focuses on the respective duties of arbitrators and parties in the discovery process, explains the Discovery Guide and helps arbitrators recognize and address discovery abuses.
- **Expungement:** This mandatory course provides an overview of the expungement process and gives an in-depth review of FINRA [Rule 2080](#) and [Rules 12805](#) and [13805](#) of the Codes. The course also explains the importance of CRD.
- **Understanding the Prehearing Stage:** Helps arbitrators manage and organize the Initial Prehearing Conference.
- **Your Duty to Disclose:** Explains the importance of arbitrator disclosure and instructs arbitrators on how to make disclosures.

FINRA provides PDF (printable and searchable) versions of all of its arbitrator trainings, offered through the LMS, on the [Written Materials for Arbitrator Training](#) Web page of our website.

Compliance and Regulatory Courses

In addition to arbitrator training, FINRA offers compliance and regulatory courses online. Arbitrators may review the course catalog on [FINRA's website](#) and register—with any of the vendors listed on our website—for courses, such as “Senior Investor Issues: Diminished Decisional Capacity” and “Suitability and Know Your Customer Obligations.” These courses are available to arbitrators at a discounted rate of \$12.50 instead of \$25. Arbitrators may also purchase the entire library of courses for \$45.

Video Training Available Through FINRA's Advanced Arbitrator Training Page

Arbitrators may access video training courses directly from FINRA's [Advanced Arbitrator Training Web page](#), with no registration required. After arbitrators complete a course, they may send an email to FINRA to confirm completion and request that FINRA include the training on their disclosure report.

In addition to viewing a training video, arbitrators may download the accompanying training documents available on the Web page.

- **Explained Decisions:** Helps arbitrators understand the explained decisions rules and apply them in an arbitration case.
- **Motions to Dismiss:** Explains the three types of motions to dismiss and provides guidance to arbitrators on how to address them during arbitration.
- **Anti-Money Laundering Requirements and Suspicious Activity Reporting:** Discusses anti-money laundering requirements and provides guidance to arbitrators about what to do if suspicious activity report (SAR) issues arise during arbitration; explains how suspicious activity reporting fits into anti-money laundering regulation; and helps arbitrators understand and follow the confidentiality requirements for SARs.

- **Operating the Digital Recorder:** Provides step-by-step instructions on how to operate the digital recorder for offsite hearings to ensure that arbitrators comply with the requirement under the Codes to make a tape, digital or other recording of every hearing. FINRA will not include completion of this course on an arbitrator's disclosure report.
- **Completing the Arbitrator Expense Report:** Provides an overview of the Guidelines for Arbitrator Reimbursement and offers step-by-step instructions on how to complete the Arbitrator Expense Report. FINRA will not include completion of this course on an arbitrator's disclosure report.

Other Resources

- **FINRA's Website:** FINRA continually updates its [website](#) to provide up-to-date information. Among other things, the website provides information about rule changes, updated arbitration procedures and new training opportunities.
- **Neutral Workshops:** [Neutral workshops](#) provide information about developments within FINRA's dispute resolution program and best practice tips for arbitrators and mediators. FINRA pre-records neutral workshops and posts them as video files on FINRA's website for arbitrators and mediators to view at any time.
- **DR Monthly Email:** FINRA distributes a monthly email that highlights new developments in FINRA's dispute resolution program. For example, the email includes information about SEC rule filings and approvals and arbitrator training. The email is sent at the beginning of each month to all available arbitrators and mediators on the roster, as well as to individual subscribers.

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 in their hearing locations during arbitrator selection. Parties should have the most current and complete information about an arbitrator to make an informed decision when selecting arbitrators.

Arbitrator Tips

Scheduling Hearing Dates Within Nine Months From the Initial Prehearing Conference



Arbitrators schedule dates for the evidentiary hearing during the Initial Pre-Hearing Conference (IPHC) with the parties. The [IPHC script](#) encourages parties and arbitrators to schedule evidentiary hearings within nine months of the IPHC. The script asks arbitrators to remind parties that the expeditious resolution of disputes is one of the goals of arbitration. In light of this guidance, arbitrators have asked FINRA what they should do when parties agree to hearing dates that are more than nine months after the IPHC.

Party Agreement on Hearing Dates

If the parties agree on hearing dates before the IPHC is held, the arbitrators should accept the parties' agreed hearing dates (even if the dates are more than nine months after the IPHC), if appropriate. The arbitration process belongs to the parties and the arbitrators should defer to the parties' agreement on scheduling.

Parties Disagree on Hearing Dates

In many cases, however, the parties do not agree on hearing dates prior to the IPHC. If the parties disagree on hearing dates proposed during the IPHC, arbitrators should work with the parties to schedule evidentiary hearings within nine months after the IPHC. There may be times when this is not feasible. However, starting the arbitration hearings nine months or more after the IPHC should be the exception.

Scheduling Tips

If one party or the party's counsel is unavailable to attend evidentiary hearings within nine months of the IPHC, arbitrators may consider the following options:

- Ask the parties or their counsel to provide specific reasons why they are unavailable to schedule a hearing on specific days. For example, a response such as "I'm booked all of July" should be considered unacceptable. During the IPHC, arbitrators can require the parties and/or their counsel to go through their calendars on a week-by-week basis (day-by-day, in some instances) and describe the prior commitments that make them unavailable to schedule additional arbitration hearings.

- Suggest that the representative with the scheduling conflict consider asking a colleague in his or her firm to handle the conflicting event, which would allow the representative to resolve the arbitration case in a timely manner.
- Schedule back-up hearing dates in case hearings need to be postponed for unforeseen circumstances. Arbitrators will save valuable time if they pre-select back-up dates.
- Consider scheduling non-consecutive hearing dates if doing so will prevent excessive scheduling delays.
- Suggest that hearings be scheduled in the evenings or on weekends.

A significant goal of arbitration is the quick resolution of disputes. Thus, during the IPHC, arbitrators should do everything within reason to schedule hearings promptly, and yet still provide parties with a reasonable amount of time to prepare for the case.

Avoiding Late Recusals

In its [Final Report and Recommendations](#), the FINRA Dispute Resolution Task Force recommended that FINRA take steps to emphasize to arbitrators the need to avoid late recusals, which create scheduling difficulties for the parties and cause delays.

[The Code of Ethics](#) (Canon I, Paragraph H) states that 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. FINRA does not consider non-emergency conflicts to be valid reasons for withdrawing from a case. For example, double-booking arbitrations that go to hearing simultaneously, thereby necessitating withdrawing from one case to accommodate another case, is not an acceptable reason for withdrawal. As a way to keep hearing calendars current, we encourage arbitrators to register for the DR Portal. By using the portal, arbitrators can view their entire hearing calendar for all of their assigned FINRA cases. This will help arbitrators avoid conflicts when scheduling additional hearing dates.

Arbitrators must remain available to attend any hearings they previously scheduled with the parties. Every effort should be made to keep the case on track and avoid delays. If withdrawal is unavoidable, the arbitrator should inform FINRA immediately, so that it may find a replacement arbitrator and alert the parties. An arbitrator who causes scheduling delays may be removed from the roster.

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