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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.

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## Bates Numbering: A Best Practice

By Gregory Curley and Glenn S. Gitomer



Bates numbering or Bates stamping refers to the consecutive numbering, usually in the lower right-hand corner, of documents produced during the course of litigation or arbitration. The consecutive numbering is preceded by an identifier indicating the party producing the document, for example, "Claimants 00001."

Bates numbering is named after the inventor Edwin G. Bates, who obtained a patent in the late 19th century for the Bates Automatic Numbering Machine or Bates Stamper, which was used to manually stamp documents with consecutive numbers. Common software, such as Adobe Acrobat, now has functionality to automatically complete the Bates numbering task. The process is quicker and easier than ever, and is now easily accomplished in most cases with minimal access to sophisticated technology and software. Current technology, however, does not lend itself readily to Bates numbering documents produced in native format, such as Excel Spreadsheets with multiple cells and Microsoft Outlook email files.

The efficient and orderly exchange of documents is vital to the fair and cost-effective resolution of disputes that are administered under the FINRA Code of Arbitration Procedure for Customer Disputes (Customer Code) and the FINRA Code of Arbitration Procedure for Industry Disputes (Industry Code together with the Customer Code, the Codes). [Rules 12505](#) and [13505](#) require parties to "cooperate to the fullest extent practicable in the exchange of documents and information to expedite the arbitration process."

Bates numbering advances the goal of expediting the arbitration process in a number of ways. Bates numbering:

- ensures completeness of production;
- identifies the source of produced documents;
- facilitates proof of whether documents have in fact been produced;

### Comments, Feedback and Suggestions

Please send your suggestions and comments to:

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You may also email Jisook at [Jisook.Lee@finra.org](mailto:Jisook.Lee@finra.org).

- eliminates the possibility that mechanical malfunction can lead to omission of one or more pages of a production;
- keeps cases with voluminous materials organized; and
- enables quick reference to a document by page number.

Best practices dictate that, when feasible, documents produced during the course of FINRA arbitrations should be Bates numbered. Most counsel practicing in this forum adhere to this practice and recognize its importance. In the event that a party fails to produce documents with Bates numbering, it is within the broad authority granted to arbitrators, upon a motion for cause shown, to require Bates numbering of produced documents. Bates numbering would not be appropriate in cases with self-represented parties or cases that involve limited document production.

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*Glenn S. Gitomer heads the Litigation Practice Group at McCausland Keen & Buckman in Devon, PA. Mr. Gitomer is the Chair of FINRA’s Discovery Task Force. He recently served on the NAMC. During his NAMC term, Mr. Gitomer served as the Chair of its Rules and Procedures and Neutral Roster Subcommittees.*

## Attorneys Serving as Arbitrators: A Cautionary Tale About Disclosure

By Rushelle Bailey, FINRA Corporate Intern



Disclosure is necessary for the impartiality and finality of arbitration. As part of the process, arbitrators conduct conflict checks to determine whether any information should be disclosed as required by FINRA [Rule 12405](#). This duty to disclose is continuous. Arbitrators must inform themselves of relationships and interests that affect their impartiality or may appear to affect their impartiality.

### Evident Partiality

Disclosure is paramount not only to maintain the integrity of the arbitration process, but also because courts may vacate an award under section 10(a)(2) of the Federal Arbitration Act (FAA) “where there was evident partiality or corruption in the arbitrators, or either of them.”<sup>1</sup> Evident partiality means that a reasonable person would conclude that the arbitrator was partial or biased to one party in the arbitration.<sup>2</sup> A recent decision from the Eleventh Circuit Court of Appeals shows why arbitrators who are attorneys need to research and disclose all potential and actual conflicts. This includes arbitrators working as “of counsel” at a law firm. Even though the Eleventh Circuit did not vacate the award, *Mendel v. Morgan Keegan & Co., Inc.* is a cautionary tale about how non-disclosure could affect the appearance of arbitrator impartiality and the finality of the award.

### Case Analysis: Mendel v. Morgan Keegan & Co., Inc.

In *Mendel v. Morgan Keegan & Co., Inc.*, Jake Mendel invested in mutual funds through Morgan Keegan.<sup>3</sup> The asset-backed securities in the funds lost value during the financial crisis, and Mendel brought a FINRA arbitration claim against Morgan Keegan. FINRA sent a list of potential arbitrators and their disclosure reports to each party. One of the arbitrators chosen was employed at a law firm, which was disclosed in his Arbitrator Disclosure Report. The arbitrator also answered “no to the question<sup>4</sup> whether he had any professional or social relationships with any party in this proceeding or the firm for which they work.”<sup>5</sup> The arbitration panel unanimously awarded Mendel compensatory damages, but he alleged this

was less than one-tenth of the loss from his investments. Mendel then discovered a potential conflict of interest: the arbitrator's law firm had represented Morgan Keegan in unrelated matters. The supporting evidence included printouts from Martindale Hubbell, Lexis.com and Lawyers.com.

Mendel sought vacatur of the award in Alabama state court and requested a new arbitration, alleging the arbitrator's evident partiality towards Morgan Keegan under section 10(a)(2) of the FAA.<sup>6</sup> Morgan Keegan removed the case to federal court based on diversity jurisdiction. The District Court held that Alabama common law controlled the interpretation of the FAA.<sup>7</sup> Under Alabama Supreme Court precedent,<sup>8</sup> a showing of actual knowledge (the arbitrator's knowledge of the conflict) is not required.<sup>9</sup> Even though Mendel did not show the arbitrator actually knew there was a conflict, the District Court granted Mendel's motion for summary judgment and vacated the award. Morgan Keegan appealed the decision, arguing that the District Court erred by relying on Alabama Supreme Court precedent.<sup>10</sup> Separately, Mendel raised for the first time on appeal that the arbitrator's law firm represented Morgan Keegan in a separate matter thereby creating an actual conflict.

The Eleventh Circuit reversed the District Court.<sup>11</sup> The Court stated that its own precedent controls the outcome, and the appearance of bias was not enough to set aside the award.<sup>12</sup> The standard for evident partiality is "either (1) an actual conflict exists, or (2) the arbitrator knows of, but fails to disclose, information which would lead a reasonable person to believe that a potential conflict exists."<sup>13</sup> The Court did not rule on actual conflict because Mendel did not argue that before the District Court, and only raised the issue on appeal. For the second prong, Mendel needed to show that the arbitrator actually knew of the potential conflict.<sup>14</sup> His printouts from Martindale and Lexis were insufficient to show that the arbitrator "'kn[ew] of, but fail[ed] to disclose' the potential conflict."<sup>15</sup> Therefore, Mendel could not establish evident partiality under the FAA.<sup>16</sup>

### Implications for Attorney-Arbitrators

This case presents concerns for arbitrator impartiality. Although the “of counsel” relationship did not lead to vacatur of the award, the Mendel case is instructive to other arbitrators of what could happen when they do not disclose all potential conflicts. Most concerning was Mendel’s allegation on appeal that the arbitrator’s law firm was representing Morgan Keegan at the same time as the arbitration. A party who discovers an arbitrator’s professional relationship with the opposing party might allege the existence of an actual conflict in a motion to vacate. The outcome of this case is fact-specific and served to remind arbitrators of the need to rigorously investigate potential disclosures.

Finality is also a concern. The Eleventh Circuit reversed the District Court because there was insufficient evidence to show arbitrator bias. Arbitrators can strengthen the finality of the award by disclosing all potential conflicts, particularly those relating to their employment.

### Searching Professional Conflicts

It is not sufficient to simply list employment history; arbitrators must disclose any conflicts of interests arising from their employment. When answering questions on FINRA’s Arbitrator Disclosure Checklist about their personal and/or professional relationships, arbitrators should keep in mind their “of counsel” employment. The information must be disclosed, even if the connection or relationship seems remote. Arbitrators need to conduct thorough searches when answering the checklist questions. Of counsel arbitrators should use their firms’ conflict check system as a starting point. This will reveal any relationships that should be disclosed. If the firm is representing a party in the arbitration, this information must be disclosed. It is necessary to research all potential conflicts between arbitrators and the participants.

### Conclusion

*Mendel v. Morgan Keegan & Co., Inc.* is an example of how non-disclosure could threaten the appearance of impartiality and jeopardize the finality of an award. Arbitrators can help ensure robust disclosures by checking their firms' relationships with all participants in the arbitration. Even if the connection is remote, arbitrators should err on the side of disclosure.

*Rushelle Bailey was a FINRA Corporate Intern for the Summer 2016 Program. She is a student at the Benjamin N. Cardozo School of Law, J.D. Candidate 2017.*

### Endnotes

- 1 9 U.S.C. § 10(a)(2).
- 2 *Nationwide Mut. Ins. Co. v. Home Ins. Co.*, 278 F.3d 621, 626 (6th Cir. 2002).
- 3 *Mendel v. Morgan Keegan & Co., Inc.*, No. 15-12801, 2016 WL 3626783, at \*1 (11th Cir. Mar. 23, 2016).
- 4 Question I on the FINRA [Arbitrator Disclosure Checklist](#).
- 5 *Mendel*, 2016 WL 3626783, at \*1.
- 6 *Id.* See also 9 U.S.C. § 10(a)(2) (“evident partiality or corruption in the arbitrators.”).
- 7 *Mendel*, 2016 WL 3626783, at \*2.
- 8 For the Alabama precedent relied on by the district court, see *Mun. Workers Comp. Fund, Inc. v. Morgan Keegan & Co., Inc.*, No. 1120532, 2015 WL 1524911 (Ala. Apr. 3, 2015).
- 9 *Mendel*, 2016 WL 3626783, at \*2.
- 10 *Id.* at \*3.
- 11 *Mendel*, 2016 WL 3626783, at \*4.
- 12 *Id.* at \*2 (citing to *Lifecare Int’l, Inc. v. CD Med., Inc.*, 68 F.3d 429, 433–34 (11th Cir. 1995)).
- 13 *Id.* at \*2 ((citing *Gianelli Money Purchase Plan & Trust v. ADM Inv’r Servs., Inc.*, 146 F.3d 1309, 1312 (11th Cir. 1998)).
- 14 *Id.* at \*2.
- 15 *Id.* at \*4 (citing *Gianelli*, 146 F.3d at 1312).
- 16 *Mendel*, 2016 WL 3626783, at \*4.

## 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 encourages arbitrators serving on portal cases 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.

## Office of Dispute Resolution and FINRA News

### Case Filings and Trends



Arbitration [case filings](#) from January through August 2016 reflect an 11 percent increase compared to cases filed during the same eight-month period in 2015 (from 1,942 cases in 2015 to 2,146 cases in 2016). Customer-initiated claims increased by 19 percent through August 2016 compared to cases filed in 2015 (from 1,292 cases in 2015 to 1,536 cases in 2016).

### Updated Dispute Resolution Statistics Page

FINRA has updated the Dispute Resolution Statistics page. The 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.

### Robert W. Cook Named FINRA’s President and CEO

In July 2016, [Robert W. Cook](#) joined FINRA as President and Chief Executive Officer. Mr. Cook succeeded Richard G. Ketchum, who served as Chairman and CEO since 2009. Mr. Cook was previously a partner at Cleary Gottlieb Steen & Hamilton LLP in the Washington, DC office. Prior to joining Cleary Gottlieb, Mr. Cook served as the Director of the Division of Trading and Markets of the U.S. Securities and Exchange Commission (SEC) from 2010 to 2013.

### John J. Brennan Elected Chairman of FINRA Board of Governors

In July 2016, the FINRA Board of Governors unanimously elected [John J. “Jack” Brennan](#), Vanguard Group Chairman Emeritus and Senior Advisor, as FINRA Chairman effective August 15, 2016. Mr. Brennan served as FINRA’s Lead Governor since 2011 and succeeds Richard G. Ketchum as Chairman. Mr. Brennan joined the Board of Governors of the National Association of Securities Dealers (NASD) and remained on the Board following the merger of the NASD and New York Stock Exchange Regulation in 2007.

## Financial Capability Survey

The FINRA Investor Education Foundation released results of its National Financial Capability Survey (NFCS). The NFCS is part of a large-scale, multi-year project that provides an in-depth, comprehensive understanding of financial capability and behaviors in the United States. The first study was conducted in 2009, then in 2012 and in 2015, and boasts one of the nation's most inclusive and in-depth representations of age, race, education and gender on these topics. In addition, the data set allows for state-by-state comparisons of financial literacy, making it valuable to policy makers interested in better understanding the level of financial capability in their states.

The survey's full data set, methodology and related questionnaire are available at [USFinancialCapability.org](http://USFinancialCapability.org). State-by-state results are available for all 50 states and the District of Columbia for the 2015, 2012 and 2009 survey years.

## Practising Law Institute's Securities Arbitration 2016: September 28, 2016

FINRA will be participating in PLI's Securities Arbitration 2016 program. This program provides an opportunity to hear about the latest developments and hot topics directly from FINRA Office of Dispute Resolution leadership, arbitrators, noted academics and experienced attorneys who represent customers and industry parties. PLI's distinguished faculty will provide best practices from an arbitrator's perspective, tips for preparing for employment disputes and a practicum on the use of experts and crafting effective closings. In addition, attendees will learn about ethical scenarios in securities arbitration that practitioners should always keep in mind.

The program will be presented live in New York City on September 28 at 9 a.m. Eastern Time. It will also be available simultaneously via webcast, which can be accessed remotely; a recorded version may be viewed later. CLE credit is available.

FINRA arbitrators and mediators will receive a 25 percent discount off the regular registration fee. Please [use this link to PLI's website](#), which contains the special pricing, for more information about the program.



## Eighth Annual Securities Dispute Resolution Triathlon

The [Eighth Annual Securities Dispute Resolution Triathlon](#) (DR Triathlon) will take place October 15-16, 2016, 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. FINRA invites local FINRA neutrals to serve as judges, mediators and arbitrators. Note that all FINRA arbitrators and mediators are eligible to serve as judges in any round. Judges for the negotiation and mediation rounds observe the students and score their performances. We use only experienced mediators to mediate during that round of the competition. For the arbitration round, the three arbitrators will also submit scores as judges. Please complete the [participation form](#) if you would like to be a judge or neutral.

## SEC Rule Filings

### RSS Feed for Office of Dispute Resolution (ODR) Rule Filings

FINRA recently updated its website to include a subscription-based RSS (Rich Site Summary) feed for ODR rule filings. RSS is a format for delivering regularly changing web content. If you would like to be alerted when ODR updates its website with new rule-filing information, you may subscribe to the RSS feed. Please select the "Subscribe via RSS" button on the [ODR Rule Filings webpage](#) to subscribe to this feed.

### Filing Comments on Proposed Rule Changes

Arbitrators and mediators may comment on FINRA's proposed rule changes by submitting the comment with the SEC. Such a comment will be posted publicly on the SEC's website. Individuals may submit a comment on a proposed rule change in one of the following ways:

#### Electronic Comments

Use the SEC's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include the file number on the subject line. (For the Broadening Chairperson Eligibility in Arbitration proposal below, for example, the file number is SR-FINRA-2016-033.)

#### Paper Comments

Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

## Use of the Dispute Resolution Party Portal

On July 27, 2016, FINRA filed with the SEC a proposed rule change to amend the Codes to require all parties, except customers who are not represented by an attorney or other person (pro se customers), to use ODR's Party Portal (Party Portal) to file initial statements of claim and to file and serve pleadings and other documents on FINRA or any other party. Under the proposed rule change, FINRA would require parties to use the Party Portal to file and serve correspondence relating to discovery requests, but would not permit parties to file documents produced in response to discovery requests through the Party Portal. FINRA is also proposing to amend the Code of Mediation Procedure (Mediation Code) to permit mediation parties to agree to use the Party Portal to submit and retrieve documents and other communications. In addition, FINRA is revising other provisions in the Codes to conform to existing practice. Please view [SR-FINRA-2016-029](#) for more information about this filing.

## Motions to Dismiss in Arbitration

On August 3, 2016, FINRA filed with the SEC proposed amendments to [Rules 12504](#) and [13504](#) (Motions to Dismiss) of the Codes to provide that arbitrators in its forum may act upon a motion to dismiss prior to the conclusion of a party's case-in-chief if the arbitrators determine that the non-moving party previously brought the same dispute against the same party, and the dispute was fully and finally adjudicated on the merits. Please view [SR-FINRA-2016-030](#) for more information about this filing.

## Broadening Chairperson Eligibility in Arbitration

On August 12, 2016, FINRA filed with the SEC proposed amendments to [Rules 12400](#) and [13400](#) (Neutral List Selection System and Arbitrator Rosters) to revise the chairperson eligibility requirements. Specifically, an attorney arbitrator would be eligible for the chairperson roster if he or she completes chairperson training and serves as an arbitrator through award on at least one arbitration, instead of two arbitrations, administered by a self-regulatory organization in which hearings were held. Please view [SR-FINRA-2016-033](#) for more information about this filing.

## SEC Rule Approvals

### Award Offsets in Arbitration

On August 11, 2016, the SEC approved FINRA's proposed rule change to amend [Rules 12904](#) and [13904](#) of the Codes to address award offsets in arbitration. Specifically, the amendment provides that, absent specification to the contrary in an award, when arbitrators order opposing parties to pay each other damages, the monetary awards will offset, and the party that owes the larger amount will pay the net difference. Please view the Approval Order for [SR-FINRA-2016-015](#) for more information.

### Panel Selection in Customer Cases with Three Arbitrators

On September 14, 2016, the SEC approved amendments to [Rule 12403](#) (Cases with Three Arbitrators) of the Customer Code to increase the number of public arbitrators on the list sent to parties during the panel selection process in customer cases. Specifically, FINRA will increase the number of public arbitrators on the list from 10 to 15 and the number of strikes to the public list from four to six. Please view the Approval Order for [SR-FINRA-2016-022](#) for more information.

## Regulatory Notice

### Forum Selection Provisions Involving Customer, Associated Persons and Member Firms

FINRA posted a *Regulatory Notice* concerning firms' use of forum selection provisions with customers and brokers. Specifically, the *Notice* reminds firms that customers have a right to request arbitration at FINRA's arbitration forum at any time and do not forfeit that right under FINRA rules by signing any agreement with a forum selection provision specifying another dispute resolution process or an arbitration venue other than the FINRA arbitration forum. It also reminds firms that FINRA rules do not permit them to require brokers to waive their right to arbitration under FINRA's rules in a predispute agreement. Please view [Regulatory Notice 16-25](#) for more information.

## Mediation Update

### Mediation Statistics



From January through August 2016, parties initiated 354 [mediation cases](#), an increase of 17 percent compared to cases filed in 2015. FINRA closed 352 cases during this time.

Approximately 75 percent of these cases concluded with successful settlements, and the average case turnaround time was 103 days.

### Discontinuation of Mediator Annual Fee

In 2015, FINRA's Dispute Resolution Task Force encouraged the use of more diverse mediators as a way to improve the Mediation Program. As a result, FINRA staff worked closely with the National Arbitration and Mediation Committee (NAMC) to consider strategies to support the Task Force's recommendation. It was determined that, as a measure to provide more opportunities for mediator applicants, FINRA's Office of Dispute Resolution would discontinue the annual \$200 fee requirement for mediators. We anticipate this initiative will also provide the parties with a deeper, more diverse pool of quality mediators from which they may select.

FINRA mediators who have not paid the annual fee and wish to rejoin the roster should email [mediate@finra.org](mailto:mediate@finra.org).

### 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.

The following special rates will apply during Mediation Settlement Month

Amount of Claim	Length of Mediation	Mediation Session Fee
\$25,000 and under	4 hours	\$100/party
\$25,000.01 - \$100,000	4 hours	\$200/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.



## Questions and Answers

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### Panel Composition

**Question:** How should a chairperson proceed if a party does not accept the composition of the panel during a prehearing conference?

**Answer:** This will vary depending upon the nature and timing of the objection. Once a panel has been appointed by FINRA, arbitrators may only be removed from a panel in one of two ways:

**1. Motion to Recuse**

Pursuant to [Rules 12406](#) and [13409](#) of the Codes, a party may file a motion to recuse, which is decided by the arbitrator that is the subject of the motion.

**2. Challenge**

Pursuant to [Rules 12407](#) and [13410](#) of the Codes, a party may challenge the arbitrator's continued service on the panel. If a party asserts a challenge, the Director will decide whether to replace the arbitrator. Rules 12407 and 13410 state:

- If a challenge is made before an arbitrator has participated in any hearings (telephonic or otherwise), the Director will grant the challenge if it is reasonable to infer that the arbitrator is biased, lacks impartiality or has a direct or indirect interest in the outcome of the arbitration.
- If the challenge is made after an arbitrator has participated in any hearings, the Director will only grant the challenge if it is based upon information that was not previously known by the parties but was required to be disclosed by the arbitrator pursuant to [Rules 12405](#) and [13408](#).

If a party objects to the panel's composition during a conference call, the chairperson should remind that party of his or her options, as explained above, and may set a deadline to file the request. In such event, the parties may mutually agree to reschedule the call until the request is decided and, if necessary, a replacement arbitrator is appointed. Absent the agreement of the parties, the other two arbitrators who are not the subject of the challenge, have the authority to determine whether to proceed with the conference call or to reschedule.

Alternatively, a party may move for recusal of an arbitrator during the call. The arbitrator that is the subject of the motion may hear oral arguments during the call and make an immediate decision. If the arbitrator grants the motion to recuse, the parties may mutually agree to reschedule the call until a replacement arbitrator is appointed. Absent the agreement of the parties, the remaining two arbitrators have the authority to decide how to proceed.

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### Last Minute Motions

**Question:** Recently, I served on a case where the parties filed motion papers on the eve of the hearing. Can you provide guidance on how to proceed when parties file last minute motions?

**Answer:** Under [FINRA Rules 12503](#) and [13503](#), written motions must be served at least 20 days before a scheduled hearing, with responses due 10 days from receipt, unless the panel decides otherwise. Therefore, when parties file motions within 20 days of the evidentiary hearing, FINRA staff will contact the chairperson for direction on how to proceed. The panel has the authority, under [Rules 12409](#) and [13413](#), to interpret and determine the applicability of all provisions under the Codes. The chairperson is authorized to act on behalf of the panel to set deadlines and issue any other order that may serve to expedite the process and permit any party to develop its case fully. Some chairpersons may prefer to make these decisions with their colleagues and request the full panel be convened to decide how and when to address the motion.

In the event of a last minute motion, the chairperson and/or the panel can:

- determine not to rule on the motion;
- set an expedited briefing schedule to ensure the motion is addressed prior to the evidentiary hearing;
- hold a prehearing conference with the parties and arbitrators as necessary; or
- choose to address the motion at the final hearing.

Once the chairperson and/or the panel determines how to proceed, the chairperson should submit an order to staff memorializing the directive. If the chairperson is not able to do so quickly, staff can accept their verbal instruction and send an email to parties. Alternatively, if all parties and

arbitrators agree, they can use direct communication for the sole purpose of expediting the resolution of last minute motions before the evidentiary hearings.

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### Security at Hearing Locations

**Question:** I recently served in a hearing held at a regional office and noticed increased security. Is there a reason for the heightened security?

**Answer:** FINRA takes security very seriously. If we believe there is even a remote possibility of a security concern, we will take additional security measures. For example, if a party has been disruptive during the prehearing phase, FINRA will provide additional security at the onsite hearing to ensure the safety of all participants. We want to assure participants that FINRA is vigilant and proactive in ensuring the safety of all participants attending arbitration hearings. If you have any questions or concerns, please contact the case administrator assigned to your case.

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## Arbitrator Disclosure Reminder

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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. Arbitrators should log into the [DR Portal](#) to update their disclosure reports.

## Education and Training

### FINRA Regulatory Trainings



In addition to [arbitrator trainings](#), FINRA offers podcasts and webinars on timely regulatory and compliance topics. Please visit [FINRA's online learning page](#) for more information about these training opportunities.

## Arbitrator Tip: Modifying Hearing Procedures



FINRA encourages arbitrators to be receptive to parties' reasonable requests to modify hearing procedures. Requests for modification can include the use of technology, offsite hearing locations and extended hearing sessions.

Technology, such as video conferencing and electronic exhibits, can provide cost effective and efficient solutions. If a party or witness is unable to appear in person at a hearing, videoconferencing is available to facilitate testimony from that witness and help keep the case on track. Occasionally, parties request that hearings take place at an offsite location, generally at the law firm of one of the parties. Sometimes, parties request to extend hearings (three sessions) whether to accommodate arbitrators' and parties' schedules, reduce travel expenses or to finish the hearing. If the panel approves any modification to the hearing procedures, it should notify the case administrator to ensure staffing and to make any necessary arrangements with the conference facility.

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