

# NASD Notice to Members 99-10

## NASD Guidelines For Compliance With New Requirements For Non- California Attorneys Representing Parties In NASD Arbitrations In California

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### Executive Summary

Effective January 1, 1999, the NASD Regulation, Inc. (NASD Regulation<sup>SM</sup>) Office of Dispute Resolution (ODR) adopted the following Guidelines and Certification Form to govern the practice of non-California attorneys in all arbitration proceedings in California. These Guidelines are in response to a change in California state law, effective January 1, 1999, that requires non-California attorneys participating in California arbitration proceedings to associate with California counsel and to file a Certification Form with the arbitration forum and the State Bar of California in each case in which they participate. Non-California attorneys who fail to comply with the state statute may be engaged in the unauthorized practice of law in California.

Questions concerning this *Notice* may be addressed to Terri L. Reicher, Assistant General Counsel, Office of General Counsel, National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) at (202) 728-8967 or [reichert@nasd.com](mailto:reichert@nasd.com).

### Guidelines For Appearance By Attorneys In ODR Arbitration Forum In California

#### Introduction

These Guidelines apply to all parties and their counsel whose arbitration cases have been or will be heard by NASD Regulation's ODR forum anywhere in the state of California. On August 31, 1998, the California legislature amended the California Civil Procedure Code Section 1282.4 to require non-California attorneys to meet certain obligations before they may represent parties in private arbitration proceedings in California. The amendments, which become effective on January 1, 1999, were enacted in response to the California Supreme Court's decision in *Birbrower, Montalbano, Condon & Frank v.*

*Superior Court*, 17 Cal. 4th 119 (1998) (*Birbrower*), which holds that under certain circumstances, non-California attorneys who appear in California arbitration proceedings are engaged in the unauthorized practice of law in violation of Cal. Bus. & Prof. Code Section 6125.

ODR has formulated the following Guidelines, effective January 1, 1999, to comply with Section 1282.4, as amended.

Please note that the statutory amendments address **only** arbitration, **not** mediation proceedings.

#### Guidelines

##### *Attorneys Who Are Admitted to Practice in California*

- Attorneys who are admitted to practice in California must include their California bar number on the initial correspondence and the initial pleading submitted to ODR.

##### *Attorneys Who Are Not Admitted to Practice in California*

- An attorney who is licensed in a state other than California may not appear in the ODR arbitration forum in California in a representative capacity unless he or she associates with a California attorney who will be attorney of record, and provides ODR with a Non-California Attorney Certification Form, which contains the information required by Section 1282.4. These obligations are created when ODR notifies the parties that an arbitration proceeding will be located in California.

- The Form (attached to this *Notice*) requests all of the information required by Section 1282.4. The Form must be filed with the San Francisco or Los Angeles Regional Office of the ODR (depending on which office is administering the pro-

ceeding), the State Bar of California, and served upon all parties and counsel whose addresses are known to the non-California attorney at the time the Form is filed. Upon associating with a California attorney and providing the information required under Section 1282.4, a non-California attorney may participate fully in the arbitration, provided that the California attorney has entered an appearance as counsel of record.

- The State Bar of California may require a filing fee for registration of attorneys who are not admitted to practice in California. Please contact the Office of Certification at State Bar of California (see the address below) regarding any fees that may be required. The Office of Dispute Resolution cannot accept filing fees on behalf of the State Bar of California.

Office of Certification  
State Bar of California  
180 Howard Street  
San Francisco, CA 94105-1639  
Phone: (415) 538-2115  
Fax: (415) 538-2180

#### *Determination of Location of NASD Regulation Proceedings*

- These Guidelines apply only to ODR arbitration proceedings taking place in California.
- The location of arbitration proceedings is governed by the Uniform Submission Agreement and the Code of Arbitration Procedure Rule 10315, which provide that the Director of Arbitration shall set the initial hearing location, and that the arbitrators may set the location thereafter.

### **Question And Answers: How Guidelines Affect ODR Administration Of Arbitration Proceedings**

**Question:** When must California counsel enter an appearance?

**Answer:** Within 45 calendar days of service of the statement of claim (the same time the answer is due). This applies to all parties.

Upon receipt of a statement of claim, ODR will serve the claim (providing that all other requirements are met) and notify the parties of the probable hearing location. When the hearing location is set in California, parties choosing to be represented by non-California counsel also must enter the appearance of California counsel, before or at the time the respondent's answer is due, which is 45 calendar days after service of the statement of claim. The time for parties to obtain California counsel will not be extended, even if the time for filing an answer is extended.

**Question:** What happens if a party fails to obtain California counsel?

**Answer:** If California counsel does not enter an appearance within 45 calendar days after service of the statement of claim, ODR will advise the parties that the non-California attorney may not appear in a representative capacity in the ODR forum, and that the party without California counsel is considered to represent him or herself until California counsel enters an appearance.

**Question:** How do the Guidelines affect open arbitration cases?

**Answer:** All parties in open arbitration cases must comply with these Guidelines within 30 calendar days of the statute's January 1, 1999 effective date. This means that

California attorneys must provide the ODR with their bar numbers, and non-California attorneys must provide the San Francisco or Los Angeles Regional Office of ODR (whichever Office is administering the particular proceeding) with a completed Form, and have an associated California attorney file an appearance in the case. Parties who fail to have appearances entered by California attorneys by February 1, 1999, will be considered to represent themselves until a California attorney enters an appearance on their behalf. Non-California attorneys who fail to associate with California attorneys by the deadline may not file any documents with ODR, or appear in prehearing conferences or hearings. This prohibition applies whether or not the events require the non-California attorney to be physically present in California.

These Guidelines also apply to cases that were originally located outside of California but are subsequently transferred to California. In these cases, non-California counsel must comply with these Guidelines within 30 calendar days of the date the parties are notified the case is being transferred to California, or before the parties' first appearance in a prehearing conference after the case has been transferred to California, whichever is first.

These Guidelines also apply to California cases in which a non-California attorney is retained to represent a party after the answer has been filed. In these cases, the non-California attorney must submit the Certification Form within fifteen (15) calendar days of being retained, or before the next scheduled hearing (including prehearing conferences), whichever is sooner.

**Question:** Do the Guidelines apply to mediation cases?

**Answer:** No. The statute and these Guidelines apply only to arbitration cases in the NASD Regulation forum. NASD Regulation takes no position on the applicability of the statute or Birbrower with respect to

mediation cases. Counsel or other representatives participating in mediations should take whatever actions they deem necessary to comply with applicable California law, including but not limited to legal

research and consulting with counsel and/or the California State Bar.

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**NASD REGULATION, INC.'S OFFICE OF DISPUTE RESOLUTION  
NON-CALIFORNIA ATTORNEY CERTIFICATION FORM  
PURSUANT TO CAL. CIV. PRO. CODE SECTION 1282.4**

**INSTRUCTIONS:** This Certification Form must be completed by attorneys not admitted to practice in California who seek to represent a party in an NASD Regulation, Inc. arbitration proceeding in California. This Form shall constitute the certificate required under Cal. Code of Civil Procedure Section 1282.4(c), as amended. The Form must be filed with the NASD Regulation, Inc.'s Office of Dispute Resolution regional office administering your arbitration (check office and address below):

**San Francisco Office**  
NASD Regulation, Inc.  
Office of Dispute Resolution  
525 Market Street, Suite 300  
San Francisco, CA 94105

**Los Angeles Office**  
NASD Regulation, Inc.  
Office of Dispute Resolution  
300 S. Grand Avenue, Suite 1620  
Los Angeles, CA 90071

The Form also must be filed with the Office of Certification, State Bar of California, 180 Howard Street, San Francisco, California, 94105-1639, and must be served upon all other parties and counsel in the arbitration whose addresses are known to the attorney.

**Section I. Case Information**

Case Name: \_\_\_\_\_

Case Number: \_\_\_\_\_

**Section II. Non-California Attorney Information**

Name: \_\_\_\_\_

Office: \_\_\_\_\_

Address: \_\_\_\_\_

City/state/zip: \_\_\_\_\_

Office Phone : \_\_\_\_\_

Office Fax: \_\_\_\_\_

Home Phone: \_\_\_\_\_

Home Fax: \_\_\_\_\_

**Section II continued:** Court(s) where attorney is admitted to practice and date(s) of admission (separate sheet may be attached if necessary):

In the two years preceding the date of this form, have you filed an application to appear as counsel pro hac vice in the State of California, or have you filed a Certification Form pursuant to Cal Civ. Proc. Code Section 1282.4? If the answer is "yes," please identify the title of the court or other forum and the case in which you filed such an application or certificate, and whether or not it was granted.

**Section III. California Counsel Information**

The following attorney is admitted to practice of law in California, and will serve as the attorney of record in this arbitration.

Name: \_\_\_\_\_

California Bar #: \_\_\_\_\_

Address: \_\_\_\_\_

City/state/zip: \_\_\_\_\_

Office Phone : \_\_\_\_\_

Office Fax: \_\_\_\_\_

Home Phone: \_\_\_\_\_

Home Fax: \_\_\_\_\_

**Section IV. Certifications**

I hereby certify that:

- (a) I am currently a member in good standing of and eligible to practice law before each of the courts listed in Section II above; and
- (b) I am not currently on suspension or disbarred from the practice of law of any court; and
- (c) I am not a resident of the State of California; and
- (d) I am not regularly employed in the State of California; and
- (e) I am not regularly engaged in substantial business, professional or other activities in the State of California; and
- (f) I agree to be subject to the jurisdiction of the courts of the State of California with respect to the law of the State of California governing the conduct of attorneys to the same extent as a member of the State Bar of California; and
- (g) I am aware that filing a certificate containing false information or otherwise failing to comply with the standards of professional conduct required of members of the State Bar of California will subject me to the disciplinary jurisdiction of the State Bar of California with respect to any of my acts occurring during the course of the arbitration.
- (h) The foregoing information is true.

Date: \_\_\_\_\_

Non-California  
Attorney Signature: \_\_\_\_\_

Please type or  
print name here : \_\_\_\_\_