

What’s Inside

FINRA Dispute Resolution Services and FINRA News	3
Mediation Update	8
Questions and Answers	10
Education and Training	12
Quarterly Arbitrator Disclosure Reminder	13

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.

Follow Us on Social Media

Follow us on [Twitter \(@FINRA\)](#) and [LinkedIn](#) for the latest **FINRA and Dispute Resolution Services** news.

Maintaining Arbitrator Neutrality in the Age of Social Media

By Joyce Park, FINRA Corporate Intern



FINRA [Rule 12405](#) of the Code of Arbitration Procedure for Customer Disputes (Customer Code) places a duty on all current arbitrators (and arbitrator applicants) to disclose to the Director “any circumstances which might preclude the arbitrator from rendering an objective and impartial determination in the proceeding.” This duty is ongoing and continues throughout the arbitrator’s service with FINRA.

What happens if a party finds controversial social media posts published by an arbitrator? What if these posts suggest that the arbitrator may be biased against one of the parties in a case?

If a party discovers social media activity suggesting arbitrator bias, they can request that the Director remove the arbitrator from the case and/or from the FINRA roster. If a case has already been decided, the party may file a motion to vacate the arbitration award in court based on the arbitrator’s failure to disclose.

Best Practices

In order to avoid these situations, arbitrators are encouraged to review their social media settings and follow the best practices included below.

Think Twice Before Posting

Keep in mind that anything you post online can last forever, even if you later delete the post. When you share content online, your audience can easily copy, screenshot or archive your post without your knowledge or consent. If your profile is public, third-party search engines may also retain a record of your content. Bearing this in mind, you may want to refrain from posting divisive articles, publications with debatable theses or content displaying religious, racial, sexual or political bias.

Tailor Your Audience

Publicizing your profile may generate more attention to your account and increase your social media presence; however, a public platform is subject to more scrutiny, including searches by parties and/or their counsel. To limit such scrutiny, set your social media profile to private, so that your posts are only available to your connections and cannot be searched by the public. Additionally, certain social media platforms like Facebook allow you to tailor your audience for each individual post. Take advantage of these settings to prudently customize your audience.

Be Cognizant of Your Activity

When you “like,” “share,” “follow” or “comment” on a public post or a public page, your actions may be visible to the public, even if your profile is set to private. You may want to refrain from liking, sharing, following and commenting on controversial or unprofessional content. A like, share or follow can be misconstrued as support for a contentious position. Likewise, a comment could be misunderstood or scrutinized by a third party.

Proactively Manage Others’ Activity When It Affects You

Generally, you are only accountable for your own social media activity. However—to the extent possible—you may want to consider managing others’ activity when that activity reflects negatively on you (especially if their activity is public). For instance, if someone leaves a politically charged comment on your post, consider removing that comment. If a connection tags you in a controversial public post, “untag” yourself from the post.

Conclusion

With so much new technology and different ways to communicate, it can be difficult to make the right choices about your social media presence. However, by understanding the consequences and taking precautions, you can protect yourself and the integrity of FINRA’s arbitration forum.

FINRA Dispute Resolution Services and FINRA News

COVID-19 Hearing Postponements and Virtual Hearings



In response to the evolving coronavirus disease 2019 (COVID-19), FINRA has decided to [administratively postpone](#) all in-person arbitration and mediation proceedings scheduled through **December 4, 2020**, unless the parties stipulate to proceed telephonically or by [Zoom](#), or the panel orders that the hearings will take place telephonically or by Zoom. Note that if all parties and arbitrators agree to proceed in-person based on their own assessment of public health conditions, the case may proceed provided that the in-person hearing participants comply with all applicable state and local orders related to the COVID-19 pandemic.

If you have an in-person hearing or mediation session scheduled through this date, you will be contacted by FINRA staff to reschedule or discuss remote scheduling options. Please note that postponing a hearing will not affect other case deadlines. All other case deadlines will continue to apply and must be timely met unless the parties jointly agree otherwise. Further, FINRA will waive postponement fees when parties stipulate to adjourn in-person hearing dates scheduled from December 7 through December 31, 2020. To avoid postponement fees, parties must provide written notice of the stipulation to adjourn more than 20 days prior to the first scheduled hearing date. Parties stipulating to adjourn in-person hearing dates should also consider stipulating to changing other case deadlines.

We recognize that FINRA's decision to postpone hearings may cause inconvenience and we do not make it lightly. We are taking this preventative action out of an abundance of caution, in the interest of public safety. The well-being of our FINRA employees, arbitrators, mediators, stakeholders and communities is of paramount importance.

As noted above, FINRA Dispute Resolution Services (FINRA DRS) offers virtual hearing services (via Zoom and teleconference) to parties in all cases by joint agreement or by panel order. These services provide high-quality, secure, user-friendly options for conducting video and telephonic hearings and sharing documents remotely. Staff is available to schedule virtual hearings and provide technical support for virtual hearings. FINRA has also

Portal Enhancement: New Arbitrator Experience Survey

Arbitrators can now submit the Arbitrator Experience Survey (survey) directly through the [portal](#). This survey is an essential part of FINRA DRS's effort to ensure that arbitrators continue to meet their obligations to be fair, knowledgeable and professional. It also gives arbitrators an opportunity to evaluate FINRA DRS staff and the hearing facilities. Additionally, the survey helps us identify best practices and tips as well as suggestions for arbitrator training. The survey should be completed after the award has been finalized or after the case has settled or has been withdrawn. Your responses to the survey remain confidential.

You can find the survey in the portal by going to the "Drafts & Submissions" tab of the case and selecting "Arbitrator Experience Survey" as the submission type. After completing the survey, you can hit submit and send it to FINRA. If you have any questions about using the new form, contact FINRA staff for assistance at (800) 700-7065.

developed the [Arbitrator Resource Guide for Virtual Hearings](#) and [training videos](#). Parties that are interested in exploring the virtual hearing option are encouraged to contact their case administrator for details.

COVID-19 Reduced Fee Mediation Program

FINRA's Mediation Department is offering a [reduced fee mediation program](#) for parties, including parties in current arbitration cases, that use remote mediation through October 31, 2020. To date, more than 100 mediators have agreed to participate in the program, which features the following benefits:

- Parties will receive a random list of 10 national mediators along with their mediator disclosure reports for consideration and ranking.
- The mediator's payment for services is \$100 an hour, split by the parties.
- FINRA waives mediation filing fees and administrative fees (FINRA receives no revenues).

If you are interested in participating in this program, please advise your case administrator who will have the appropriate mediation administrator contact the parties to discuss mediation and assist with scheduling the virtual mediation.

Virtual Arbitration Hearing Statistics

Rather than postponing their hearings, some parties have opted to go forward with virtual hearings by Zoom. Through August, FINRA DRS has received 156 motions for Zoom hearings:

- 93 contested motions
 - 70 customer contested motions
 - 41 granted
 - 15 denied
 - 14 open

Portal Reminder: Use the Most Current Oath of Arbitrator in the Portal

Periodically, we update the Oath of Arbitrator and Checklist to add new questions. For example, we recently updated the Oath and Checklist to include a question about motions to vacate. To make sure arbitrators use the most current version, arbitrators should complete and submit the Oath and Checklist in the [portal](#). Even if you saved an Oath PDF form from a previous case, we strongly urge you to complete any Oaths and Checklists for new cases using the portal. The questions have likely changed from your saved version.

The portal makes it easy to complete the Oath and Checklist online. It also pre-populates party names, case numbers and names of the arbitrators. You can find the Oath and Checklist under the “Drafts & Submissions” tab in the portal by selecting “Oath of Arbitrator” as the submission type.

- 23 intra-industry contested motions
 - 11 granted
 - 9 denied
 - 3 open
- 63 joint motions (15 in customer cases and 48 in industry cases)
 - The virtual arbitration hearing statistics are now available on the [Dispute Resolution Statistics page](#).

Arbitration Case Filings and Trends

Arbitration [case filings](#) from January through August 2020 reflect a two percent increase compared to cases filed during the same eight-month period in 2019 (from 2,594 cases in 2019 to 2,657 cases in 2020). Customer-initiated claims decreased by 19 percent through August 2020, as compared to the same time period in 2019.

Register for the DR Portal Today

If you have not already done so, we strongly encourage arbitrators and mediators to register for the DR Portal ([portal](#)). The portal allows you to:

- file case documents including the electronic Oath of Arbitrator and Checklist, the Initial Prehearing Conference Scheduling Order, general, dismissal and postponement orders, the Award Information Sheet and 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 disclosure report;
- update the last affirmation date on the disclosure report; and
- review list selection statistics to see how often your name has appeared on arbitrator ranking lists sent to parties and how often you have been ranked or struck on those lists.

Portal registration is reflected on the disclosure reports that parties review when selecting arbitrators and mediators.

2020 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 completed the survey in past years. We look forward to your participation again this year. Please look out for an email from Alight Solutions in November with instructions to complete the 2020 survey.

Portal How-to Videos

If you need assistance updating your profile or submitting the Oath of Arbitrator or other forms in the [portal](#), the portal [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.

SEC Rule Filing

Proposed Amendments to the Codes of Arbitration Procedure Relating to Requests to Expunge Customer Dispute Information, Including Creating a Special Arbitrator Roster to Decide Certain Expungement Requests

On September 22, 2020, FINRA filed with the Securities and Exchange Commission (SEC) proposed amendments to the Codes of Arbitration Procedure (Codes) to: (1) impose requirements on expungement requests (a) filed during an investment-related, customer initiated arbitration (customer arbitration) by an associated person, or by a party to the customer arbitration on-behalf-of an associated person, or (b) filed by an associated person separate from a customer arbitration (straight-in request); (2) establish a roster of arbitrators with enhanced training and experience from which a three-person panel would be randomly selected

to decide straight-in requests; (3) establish procedural requirements for expungement hearings; and (4) codify and update the best practices of the [Notice to Arbitrators and Parties on Expanded Expungement Guidance](#) that arbitrators and parties must follow. In addition, the proposed rule change would amend the Code of Arbitration Procedure for Customer Disputes to specify procedures for requesting expungement of customer dispute information arising from simplified arbitrations. The proposed rule change would also amend the Codes to establish requirements for notifying state securities regulators and customers of expungement requests. Please see [FINRA 2020-030](#) for more information.

Regulatory Notice

Regulatory Notice 20-25: FINRA Amends Arbitration Codes to Apply Minimum Fees to Requests for Expungement of Customer Dispute Information

On May 26, 2020, the SEC approved FINRA's proposal to amend [Part IX \(Fees and Awards\)](#) of the Codes to apply minimum filing fees to requests for expungement of customer dispute information, whether the request is made as part of the customer arbitration or the associated person files an expungement request in a separate arbitration (straight-in request). The amendments also apply a minimum member surcharge and process fee to straight-in requests, as well as a minimum hearing session fee to expungement-only hearings. The amendments are effective for cases filed on or after September 14, 2020. Please see [Regulatory Notice 20-25](#) for more information.

Mediation Update

Mediation Case Filings and Trends



From January through August 2020, parties initiated 283 [mediation cases](#), a decrease of 24 percent from the same period in 2019. FINRA also closed 405 cases during this time. Approximately 82 percent of these cases concluded with successful settlements.

Mediation Settlement Month and COVID-19 Reduced Fee Mediation Program

In lieu of Mediation Settlement Month this year, FINRA DRS will continue its COVID-19 [reduced fee mediation program](#) for parties that use remote mediation through October 31, 2020. To date, more than 100 mediators have agreed to participate in the program, which features the following benefits:

- Parties will receive a random list of 10 national mediators along with their mediator disclosure reports for consideration and ranking.
- The mediator's payment for services is \$100 an hour, split by the parties.
- FINRA waives mediation filing fees and administrative fees (FINRA receives no revenues).

Please contact FINRA's Mediation Department if you have any questions about this program.

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 between 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 provides mediators with additional opportunities to mediate in hearing locations across the country, regardless of the mediator's home base.

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 reports. Please add references to your disclosure report, so parties may consider them when selecting a mediator. 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 would be of interest to our mediators. We will post information and links to these training opportunities on the [Resources for Mediators](#) page on our website.

Become a FINRA Mediator

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



Questions and Answers

Special Proceedings Under Simplified Arbitration

Question: I have been assigned as the sole arbitrator on a Special Proceeding case (under FINRA Rule 12800(c)(3)(B)). What is the difference between a Special Proceeding hearing and a regular hearing with one arbitrator?

Answer: A Special Proceeding provides an abbreviated telephonic hearing for parties with claims of \$50,000 or less. Special Proceeding hearings are similar to standard arbitration hearings but are streamlined to make the process easier for the parties:

- You will hear the case by telephone conference call unless all parties agree to another method of appearance.
- Each side (the claimants, collectively and the respondents, collectively) has two hours to present their case and one-half hour for rebuttal and closing statement.
- You have up to three hours to ask the parties questions about their cases. You may cede some or all of this time to the parties.
- The hearing lasts no more than eight hours and must be completed in one day.
- The parties may not question an opposing party's witnesses.
- The parties may not call an opposing party as a witness.

Question: How will the hearing day go? What is the order of the hearing?

Answer: You will begin the hearing by reading the Hearing Procedure Script to the parties. After that, the Special Proceeding will follow the usual order of a hearing:

- Starting with the claimant, parties will present opening statements.
- The parties will then present their cases followed by any rebuttal.
- You may ask questions of the parties.
- The parties will then present closing statements.

With the exception of the requirements for Special Proceedings, an arbitrator may vary the hearing procedure, provided all parties are allowed a full and fair opportunity to present their respective cases.

Question: Am I required to ask questions?

Answer: You may cede your time to the parties. However, it is important to remember that parties do not have the opportunity to cross-examine witnesses during Special Proceeding hearings. Before ceding the entirety of your time to the parties, you should consider the pleadings and testimony carefully to ensure that you have the information you need to make an informed and fair decision.

Question: I understand the importance of the arbitrator question portion of a Special Proceeding hearing. How should I approach this?

Answer: How you approach the arbitrator question portion of the hearing will depend heavily on how the parties have presented their cases. Because the parties do not have the opportunity to cross-examine witnesses in Special Proceeding hearings, you may want to use your time to explore the credibility of the parties and any weaknesses in their respective cases.

You will have three hours to ask questions. To facilitate the hearing, you may want to prepare questions in advance based on your review of the pleadings. You may find that you have questions on sections of the pleadings that are unclear or where the respective parties' pleadings contradict each other.

However you approach this portion of the hearing, you should bear in mind the importance of remaining neutral in appearance during your questioning.

Question: What if I have questions while the parties are presenting their cases? Do I have to wait until they finish?

Answer: You may ask clarifying questions while the parties are presenting their cases. However, you should reserve any lengthy questions until after the parties have finished presenting their cases.

Education and Training

Arbitrator Training Videos for Virtual Hearings



FINRA DRS is committed to providing [training resources](#) to arbitrators on how to use Zoom effectively when participating in virtual hearings. In its first training video, “Zoom Basics for Arbitrators,” Regional Manager for the Northeast Region, Erin Jett, provides an overview of the ways in which Zoom is secure, easy to use and helps to replicate the in-person experience.

Beyond the basics for using Zoom, there are training videos that address specific topics in-depth, including: “How to Set Up Your Environment for Virtual Hearings,” “Effective Zoom Practices for Arbitrators” and “Zoom Host Responsibilities for Arbitrators.” Although arbitrators can host a Zoom hearing, FINRA staff will generally serve as the host and perform the Zoom tasks, such as starting and pausing the recording, admitting participants into the meeting and managing breakout rooms. All of these training videos are available now on FINRA.org and can be accessed using the above link.

FINRA Virtual Conference Panel: Practical Tips & What’s New in Arbitration Procedures

FINRA’s [Virtual Conference Panels](#) series provides a unique opportunity to hear the most up-to-date information directly from industry and regulatory experts. In the latest video, Director of FINRA DRS, Richard Berry, moderates a discussion on timely arbitration topics with FINRA arbitrator Renee Gerstman and practitioners Beverly Jo Slaughter and Jeff Kaplan. They discuss the impact of COVID-19 on arbitration cases, offer tips and resources for conducting effective Zoom virtual arbitration hearings and share the latest in arbitration procedures. The videos are free and available on FINRA.org.

Updated Basic Arbitrator Training Program

On August 3, 2020, we released an updated version of the Basic Arbitrator Training Program. The online training was revamped to create a more dynamic and engaging training experience, which now includes videos, active graphics, narration and closed captioning throughout the course. Even though active arbitrators are not required to re-take the Basic Arbitrator Training Program, we encourage arbitrators to review the training and refresh your knowledge of FINRA arbitration fundamentals. Arbitrators can access the updated training in [FINRA’s Learning Management System](#).

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. Giving parties the most current and complete information helps them make informed decisions when selecting their panel. Arbitrators should log in to 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 do not have any 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 would like to register 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 Services

Todd Saltzman
Vice President of Dispute Resolution
Services

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 Services Offices

Northeast Region

FINRA Dispute Resolution Services
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 Services
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 Services
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 Services
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

Leslie Leutwiler Case
Administration

Daniel Zailskas Southeast Region

Nora Sassounian West Region

Manly Ray Mediation

Felicia Fox Midwest Region

Kristine Vo Office of General
Counsel

© Volume 3 – 2020 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 Services 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 Services
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
© 2020 FINRA. All rights reserved.
FINRA and other trademarks of the
Financial Industry Regulatory Authority, Inc.
may not be used without permission.
20_0270.1-09/20