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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 Dispute Resolution Services’ (DRS’) dedicated neutrals better serve parties and other participants in the DRS forum by taking advantage of this valuable learning tool.

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Objection, Your Neutral: Handling Objections in the FINRA Arbitration Forum



By Cassie Dimitry, FINRA Dispute Resolution Services Intern

Although FINRA arbitration differs from court litigation, parties may still raise objections during an arbitration hearing. While the panel is not required to follow federal or state rules of evidence pursuant to the [FINRA Rules 12604](#) and [13604](#) of the Codes of Arbitration Procedure (Codes), these rules can serve as a guide when addressing common objections. For example, a party may raise an objection because there is no foundation for the line of questioning or the witness does not have actual knowledge of the circumstances or the lawyer is testifying instead of the witness.

Ruling on Objections

When parties make objections to testimony, the chairperson (chair) typically rules on such objections in real time with a simple “sustained” or “overruled.” Alternatively, if the question is leading, misstates testimony or is otherwise objectionable, the chair may ask the party to rephrase the question. This direction may not be appropriate in all circumstances. However, if the chair allows a party to rephrase a question, the chair should afford this same opportunity (if applicable) to both claimants and respondents.

The panel can designate the chair the sole decision-maker on objections to evidence during the evidentiary hearing.¹ Making decisions on their own in real time promotes the efficiency and continuity of the testimony. When more deliberation is required, the chair can hold an executive session to discuss the objection in more depth with the other panel members. This discussion should focus on the relevance of the information and fairness to all parties to admit the evidence. If they choose to overrule the objection, the panel can later determine the weight of the testimony in their final deliberation.

In addition to fairness and relevance, an important consideration in determining how to rule on a party's objection is consistency with prior rulings. While some objections may be more substantive or reasonable than others, it is important for arbitrators to apply the same criteria to objections and not to appear to favor one party over the other.

Objections and Pro Se Parties

Pro se parties may be less familiar with the procedure and substance of evidentiary hearings. Arbitrators may provide additional guidance to pro se parties about the process but must avoid offering representation or substantive advice. Although they may be inexperienced in litigation or arbitration, pro se parties are entitled to make objections to testimony that is inappropriate or irrelevant. Likewise, opposing parties may object to pro se party questions during testimony that are inappropriate or irrelevant.²

Objections and the Maintenance of Decorum

Maintaining civility in arbitration is an important goal in handling objections.³ However, the use of objections by opposing parties can disrupt the maintenance of decorum. To ensure that the arbitration remains civil and professional, the chair should remind all parties, even experienced attorneys, to direct their objections to the panel and not to the party making the statement.

Although parties are entitled to make objections, opposing parties might view some objections as a tactic to interrupt their presentation. If frequent objections cause disruption and create contention between the parties, the chair should remind the parties of the purpose of objections and to ask direct and relevant questions that the witness has knowledge or experience about, and not mere speculation. Parties should raise objections for valid reasons and not just for the sake of objecting. To allow the parties to cool off, the panel can also call a recess.

Conclusion

Objections to live testimony balance protecting parties from unfair or irrelevant information while allowing parties to effectively present their case-in-chief and raise defenses. The chair has a vital role in handling objections fairly, efficiently and consistently.

Endnotes

1. [The Arbitrator's Guide](#) at 60 (2023).
2. [The Arbitrator's Guide](#) at 57-58 (2023).
3. See [Civility in Arbitration](#) online training available on the DRS learning site.

DRS and FINRA News

Arbitration Case Filings and Trends

[Arbitration case filings](#) from January through August 2023 reflect a 27 percent increase compared to cases filed during the same eight-month period in 2022 (from 1,717 cases in 2022 to 2,181 cases in 2023). Customer-initiated claims increased by 15 percent through August 2023, as compared to the same period in 2022.

Regulatory Notice 23-12: FINRA Adopts Amendments to the Codes of Arbitration Procedure to Modify the Process Relating to the Expungement of Customer Dispute Information

On August 11, 2023, FINRA published a [Regulatory Notice](#) on the amendments to the Codes to modify the process for the expungement of customer dispute information. The amendments impose requirements on expungement requests (a) filed by an associated person (AP) during an investment-related, customer-initiated arbitration (customer arbitration), or filed by a party to a customer arbitration on behalf of an associated person (on-behalf-of request), or (b) filed by an AP separate from a customer arbitration (straight-in request). The primary changes include:

- requiring that a straight-in request be decided by a three-person panel that is randomly selected from a roster of experienced public arbitrators with enhanced expungement training (Special Arbitrator Roster);
- prohibiting parties to a straight-in request from agreeing to fewer than three arbitrators to consider their expungement requests, striking any of the selected arbitrators, stipulating to an arbitrator's removal, or stipulating to the use of pre-selected arbitrators;
- providing notifications to state securities regulators of all requests to expunge customer dispute information and allowing state securities regulators to attend and participate in expungement hearings in straight-in requests;
- imposing strict time limits on the filing of straight-in requests;
- specifying procedures for requesting expungement of customer dispute information during simplified customer arbitrations;

- codifying and updating the best practices in the Notice to Arbitrators and Parties on Expanded Expungement Guidance applicable to all expungement hearings;
- requiring the unanimous agreement of the panel to issue an award containing expungement relief; and
- establishing procedural requirements for filing expungement requests, which include on-behalf-of requests.

The amendments become effective on October 16, 2023. Please review [Regulatory Notice 23-12](#) for a full description of the new amendments.

Approved Rule Change to Amend the Codes of Arbitration Procedure to Make Various Clarifying and Technical Changes

On September 7, 2023, the Securities and Exchange Commission (SEC) approved the proposed rule change to make various clarifying and technical changes to the Codes in response to the [Lowenstein Report](#), as modified by Amendment No. 1.

Please see [SR-FINRA-2022-033](#) for more information.

Implementing Lowenstein Recommendations

DRS completed all but one of the Lowenstein recommendations. Details of our progress are reported on [FINRA.org](#). This March, DRS began work on the final recommendation by selecting a third-party consultant to conduct an updated review of DRS' list selection algorithm. The review will assess whether FINRA's current technology is still the most effective means in creating random, computer-generated arbitrator lists for arbitration participants.

SEC Response to Congress: Mandatory Arbitration Among SEC-Registered Investment Advisers

On June 27, 2023, the SEC released a [report concerning arbitration clauses](#) in investment adviser client agreements. The SEC report made favorable observations regarding the cost effectiveness, efficiency and investor friendly rules of FINRA's arbitration program compared to the private arbitration forums used by the majority of investment advisers.

DR Portal Help

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

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2023 Demographic Survey

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

As part of an ongoing recruitment campaign, DRS continues to seek individuals from varied backgrounds to serve as arbitrators. The data from this annual survey helps us track our progress toward enhancing the diversity of the roster and guide future recruitment events.

The results of past demographic surveys are published on our [website](#). Thank you to those who have previously participated in the survey. Please look for an email from DataStar (surveystar.com) in November with instructions to complete the 2023 survey.

Register for the DR Portal Today

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

- file case documents including the electronic Oath of Arbitrator and Checklist, the IPHC 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.

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

Mediation Update

Mediation Case Filings and Trends

From January through August 2023, parties initiated 448 [mediation cases](#), a decrease of 25 percent from the same period in 2022. DRS closed 417 cases during this time. Approximately 85 percent of these cases concluded with successful settlements.

October is Mediation Settlement Month

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

To participate in this program, parties must enter into a mediation agreement by October 31, 2023, and conduct the mediation by December 31, 2023.

Participating mediators will offer the following rates, to be assessed equally between the parties unless otherwise agreed upon:

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

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

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

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.

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

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

Mediator List Process and Disclosure Updates

DRS successfully completed the mediator list pilot program that began in August 2022. Parties who did not choose a pre-selected mediator were provided three list options: the randomized virtual option (new default), the in-person option (old default) and the bespoke request option. The bespoke option uses demographics and skills information provided by mediators. Staff continues to survey participants to consider any changes to the program.

Mediators can update their profile anytime through the [DR Portal](#). Keeping your mediator disclosure report up to date—including the number of times you have mediated cases, your success rate and the types of cases you have mediated—helps parties during selection. References who can attest to your skills and mediation style also help parties choose the correct mediator. Remember to include your cancellation policy if you have one.

Mediator Training Opportunities

Occasionally, FINRA receives information about mediator training that we think would be of interest to our mediators. We will contact our roster and post information and links to these training opportunities on the [Resources for Mediators](#) page on our website.



Questions and Answers

Submitting and Reviewing Awards on the DR Portal

Question: I'm serving as the chairperson on a case that just concluded. Can you share some tips for submitting the Award Information Sheet (AIS) on the [DR Portal](#)?

Answer: First, add "*.finra.org" to your browser's list of Trusted Sites and to your pop-up blocker's exception list to allow the AIS to open. It's also a good idea to keep your web browser up to date. Oftentimes, the AIS will not load because your computer has a pop-up blocker that prevents the document from opening, or because you are using an outdated web browser. It is also important to note that the AIS logic will populate specific questions based on your responses. For example, if you indicate in the AIS that no party requested expungement, the form will not ask the expungement-related questions later in the document. Please be sure to take your time answering each question.

Question: I completed the AIS and would like my co-panelists to review it. Can I share a draft with the other panelists in the DR Portal before submitting it to DRS?

Answer: Yes! There is "Share" button next to each of your draft forms in the "Drafts & Submissions" tab. When you press the "Share" button, your draft form will be visible to the other panelists on the "Shared Draft Submissions" section of their case page. The other panelists will receive an email notifying them that you have shared a draft for their review. Note that other panelists cannot edit your draft form; they can only view it. If they have comments about your draft, they should communicate with you directly. If you make additional edits to your draft and save them, the other panelists will need to refresh their browser page to see your changes.

Question: The DRS case administrator sent me the final award for my signature. How do I sign it on the DR Portal?

Answer: On the homepage, click on the case name and select the “Award Review” tab. Click the red “View Award Draft” button to open the draft award PDF in your browser. If the contents of the award are completely accurate, check the affirmation checkbox, type your full name into the signature box and click the “Sign Award” button. If you find any errors or omissions in the award, click the “Issues” checkbox, and press the “Return for Corrections” button. You should also immediately contact the assigned staff so they can edit the award per your instructions. After making the corrections, staff will post the updated award for the panel’s review.

Question: How can I correct a previously provided response on an Oath?

Answer: You can send an email to the case administrator, informing them of the error and providing the corrected response. Unless requested by the case administrator, there is no need to resubmit an Oath. You should also make any additional disclosures at the IPHC.

Submitting and Reviewing Awards on the DR Portal

Question: How do I submit an order on the [DR Portal](#)?

Answer: The “Order” is available a fillable form that can be completed and sent to staff in the DR Portal. After selecting the case you are working on, follow these steps to submit an order through the DR Portal (rather than emailing the document):

1. Press the “Submit Documents” button or click on the “Drafts & Submissions” tab in the case.
2. Select “Order” from the submission type drop-down menu.
3. Press the red “Start” button to open the order form.
4. Answer the required questions in each of the blue bands.
5. Select “Preview Full Draft” to review your draft before submitting it. Once you are ready, hit the red “Submit” button. DRS staff will process the submission before publishing to the parties.

Question: After I review and sign a subpoena, can I submit it through the DR Portal?

Answer: Absolutely! After dating and signing the subpoena, you can save it on your computer as a PDF using Adobe Acrobat Reader. In the “Drafts and Submissions” section of the DR Portal, select “Neutral Case Submission” as the document type and upload the signed subpoena as a PDF attachment.

If you do not currently have Adobe Acrobat Reader installed on your computer, you can download it from the Adobe website: <https://get.adobe.com/reader/>. More information about how to install and use this program can be found in our [DR Portal User Guide for Arbitrators and Mediators](#).

If the subpoena is contested and requires a fee assessment, you can follow the steps to submit an order through the DR Portal and upload the executed subpoena as an attachment to the order.

Education and Training



Enhanced Expungement Training

On June 30, 2023, DRS released the [Enhanced Expungement Training](#) to provide an overview of the [amendments](#) to the Codes to modify the process relating to the expungement of customer dispute information. The amendments require that all expungement requests filed under the Industry Code be decided by a three-person panel randomly selected from a roster of experienced public chair arbitrators who have completed the Enhanced Expungement Training (Special Arbitrator Roster). The revised rules also require that expungement requests made during simplified customer arbitrations be considered by public chair arbitrators who have completed the Enhanced Expungement Training. The Enhanced Expungement Training is available for arbitrators on the [DRS learning system](#).

The amendments become effective on **October 16, 2023**. Please see [Regulatory Notice 23-12](#) for more information.

Upon completion of the training, eligible arbitrators will automatically be added to the Special Arbitrator Roster. Public chairs who complete the Enhanced Expungement Training will also be able to consider expungement requests during simplified customer arbitrations. We encourage all public chairs to complete this training.

Updated Chairperson Training

On July 17, 2023, DRS released a new, more dynamic version of [Chairperson Training](#). It was revamped to create a more engaging training experience, which now includes active graphics, narration and closed captioning throughout the course. Current chairpersons are not required to retake the course but can review it as a refresher. We also encourage arbitrators interested in serving on the chairperson roster to take the training. The Chairperson Training is available on the DRS learning system.

American Bar Association: 2023 Ombuds Day: Diverse in Role, United in Service

On October 12, 2023 at 1:00 p.m. ET, the Ombuds Day Subcommittee of the American Bar Association (ABA) will host "[A Conversation with Thomas Zgambo](#)." Dr. Zgambo, the Ombudsman for the International Monetary Fund, has worked in the field for nearly 30 years with organizations including Polaroid, Coca-Cola and the World Bank. The program is complimentary, but participants should register beforehand.

American Bar Association: 2023 Advanced Mediation and Advocacy Skills Institute

On October 18 – 19, 2023, the ABA will host a two-day virtual program, "Mediating at the Cutting Edge: Advanced Tools and Strategies for Today and Tomorrow." Featuring plenary speakers Hon. Bridget McCormack (Ret.) and Hon. Bruce E. Meyerson (Ret.), this program offers attendees the opportunity to learn from leading mediation authorities. Plenary sessions are followed by small group break-out discussions allowing participants to interact in-depth with faculty and other participants. FINRA arbitrators and mediators can register [here](#) using this discount code: **CO2023**.

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. Providing parties the most current and complete information helps them make informed decisions when selecting their panel. Arbitrators should log in to the [DR 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 is displayed 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.

To provide parties with the most current arbitrator information, FINRA asks 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 DR Portal or by submitting an Oath 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 DR Portal. If you would like to register in the DR 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.

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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*:

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CCSD-7337-09/23