

THE NEUTRAL CORNER

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What's Inside

DRS and FINRA News	6
Mediation Update	8
Questions and Answers	9
Education and Training	11
Arbitrator Disclosure Reminder	11

Our Mission

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.

Year End Message

As we close out 2024, we extend a heartfelt thank you to our arbitrators and mediators for their outstanding work this year. We are grateful for the professionalism and dedication of our neutrals who are committed to providing fair decisions. We wish you a joyous and healthy holiday season and look forward to working together in 2025.



Rick Berry, Executive Vice President,
FINRA Dispute Resolution Services

No Time to Sit Back: The Active Role of the Chairperson as Team Leader

By Annamaria Boccia Smith, Esq.*

The chairperson (chair) of the arbitration panel plays an active role in fulfilling FINRA Dispute Resolution Services' (DRS) mission of protecting investors by ensuring that the securities industry operates fairly and honestly.¹ Through its online training program available on FINRA's Arbitrator Learning Site, DRS offers extensive advanced training to arbitrators preparing to qualify as chairs. The goal of this article is to offer useful tips to newly qualified chairs. The checklist set out here is meant to supplement DRS' guidance, not replace it.

The role of the chair has been the subject of numerous articles.² Most focus on the chair as manager of the arbitration case who keeps the case moving while affording parties a full and fair opportunity to present their case or defense in a cost-effective

1. FINRA DRS Arbitrator's Guide (December 2024 ed.), p. 10.

2. For an excellent article on the role of the FINRA chair in ensuring due process see "Ten Best Practices for FINRA Chairpersons" by Anthony M. Sabino, Esq., *The Neutral Corner*, Volume 4 – 2021.

and efficient manner. In this capacity, the chair's role is viewed from the parties' and their representatives' perspectives.

This article focuses on the chair's role from the perspective of the other panel members: as team leader of the three-person panel. As the team leader, the chair is appointed to guide, monitor and lead the panel. From this perspective, one of the most important traits of the chair is inclusiveness. The chair should show respect for the role and opinions of the other arbitrators. The tips discussed here apply equally to FINRA customer cases, intra-industry cases and expungement cases, regardless of whether the hearings are held in person or virtually.

Before the Initial Prehearing Conference (IPHC)

*Send an introductory email to the panelists before the IPHC.*³

Before conducting the IPHC, the chair should consider sending an introductory email to the two panelists and confirming the date and time of the IPHC. The chair should also remind the panelists to have their calendars at the IPHC as they will need to schedule evidentiary hearing dates.

If the panel received any motions prior to the IPHC, the panel should discuss whether to (1) consider the motion during the IPHC, (2) decide the motion on the papers or (3) require a subsequent prehearing conference, while taking into consideration the parties' preferences. In addition, the chair should ask the panelists to remain in the conference for a post-IPHC executive session to decide how to allocate the IPHC fee in the event the case settles without a hearing.

In the introductory email, the chair might want to ask the panelists to join the IPHC a few minutes early to meet and chat informally. Finally, the chair can provide their phone number⁴ in case the panelists have any questions during the case.

The IPHC and Other Prehearing Conferences

Arrive at the IPHC (and all Zoom meeting conferences) early.

The IPHC is generally the first time the panel members will meet each other. Arriving to the conference early will allow the panel to discuss any logistical issues or other preliminary matters. This is also a good opportunity for the chair to answer a new arbitrator's questions.

Be a role model of courtesy, respect and professionalism.

Courtesy, respect and professionalism begin with the chair, whether interacting with the other panel members, DRS staff members, the parties, their representatives or witnesses.

The chair's demeanor sets the tone for the hearing. Therefore, the chair should exhibit professionalism, patience and judicial temperament during every phase of the arbitration. The chair should also treat all parties fairly and impartially and pay close attention to the proceedings while demonstrating neutrality.⁵ The chair's role also requires sensitivity. Accordingly, the chair should listen attentively without judgment, use neutral language and avoid any reactions, comments, questions, sounds, facial expressions or body language that can give the appearance of bias.⁶

The chair's approach to presiding over the conferences and hearing influences the panel's effectiveness.⁷ Encouraging the panel to listen to "diverse viewpoints with unbiased attention and without unnecessary disruption"⁸ ensures that all panelists demonstrate

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3. Although sending an introductory email is not a required practice, I have found it to be an effective reminder and appreciated by the panelists.

4. The phone number of the chairperson (in addition to those of the panelists) is also available on the Arbitration Case Abstract page on the DR Portal.

5. FINRA DRS Arbitrator's Guide (December 2024 ed.), "Neutrality," p. 14. See also, The Code of Ethics for Arbitrators in Commercial Disputes, "Neutrality," pp. 2 and 11.

6. FINRA DRS Chairperson Training Transcript (May 2024), Module 8, Slide 3.

7. FINRA DRS Chairperson Training Transcript (May 2024), Module 7, Slide 3.

8. FINRA DRS Chairperson Training Transcript (May 2024), Module 2, Slide 9.

“neutral and professional behavior”⁹ throughout the proceedings.

*Thank the FINRA DRS staff members at conferences in the presence of all parties and counsel.*¹⁰

Each arbitration case filed in the FINRA forum is administered by a dedicated group of DRS staff who work together to ensure that the case is managed efficiently. They are a valuable resource for guidance on procedural issues. On behalf of the panel, the chair should remember to thank the staff for their efforts to ensure the smooth administration of the case.

Making Decisions

Foster cohesiveness by conferring with the panelists on decisions throughout the proceedings.

As team leader, the chair facilitates decision-making of the panel by creating a sense of inclusiveness. The chair should call for executive sessions as needed to consult with the panelists.¹¹ Including the other panelists in decision-making assures them that their input is valued. This also assures the parties and witnesses that the panel is a cohesive team and is making important decisions together.

The panel works together to resolve issues at every stage of the hearing. During panel introductions at the IPHC, the chair should remind all participants that although the chair presides over the hearing, each panel member has an equal vote. In fact, many motions require determination by the full panel.

Most motions are decided by the full panel, with the exception of discovery-related motions, which are usually decided by the chair.¹² Examples of motions decided by the full panel (assuming the panel has been appointed) include changing the hearing location, combining claims under FINRA [Rule 12314](#) of the Code of Arbitration Procedure for Customer Disputes

(Customer Code), separating claims under FINRA [Rules 12312](#) or [12313](#) or motions to postpone a hearing under FINRA [Rule 12601](#). Determining eligibility under FINRA [Rule 12206](#) and motions to dismiss under FINRA [Rule 12504](#) also require a full panel decision.

Given the significant impact of rulings on an arbitration case, it is not surprising that most motions require the full panel to decide them. In engaging the full panel, the chair should “[d]emonstrate respect for all panel members and involve them in conducting fair hearings and decision-making.”¹³

Discovery Issues and the Prehearing Discovery Conference

*Share any information learned in the prehearing discovery conference with the panelists.*¹⁴

All decisions made by the chair are made on behalf of the panel and are, therefore, panel decisions. The chair usually determines unresolved discovery issues on behalf of the panel.¹⁵ Thus, a chair’s discovery ruling is a panel ruling.

On their own, the chair typically presides over a prehearing discovery conference where parties make oral arguments (unless the parties request that the full panel resolve discovery disputes, or the chair refers the discovery issue to the full panel). Since the other panelists generally do not participate in the discovery conference, the chair should advise them of any significant developments not apparent from the discovery order.

Executive Sessions

Hold executive sessions to consider the views and opinions of the panelists.

The chair should hold an executive session before the first in-person evidentiary hearing. This will likely be the first time the panel members meet each other in

9. FINRA DRS Chairperson Training Transcript (May 2024), Module 1, Slide 13.

10. Although not required by FINRA, a “thank you” always goes a long way.

11. For example, the chair may call an executive session to confer with a non-public panelist about issues where industry expertise may be beneficial.

12. FINRA Rule 12503(e)(5).

13. FINRA DRS Chairperson Training Transcript (May 2024), Module 1, Slide 13.

14. Although not required by FINRA, providing an update to the other panelists following the prehearing discovery conference is good practice.

15. See *supra* note 12.

person. Everyone should plan to arrive at the hearing early. At the executive session, the chair should reiterate a “tone of teamwork”¹⁶ and work out any hearing logistics and other matters.

*Review hearing procedures with the panelists in an executive session before the evidentiary hearing commences.*¹⁷

At the executive session, the chair should remind panelists about ex parte communication, specifically to: (1) avoid being present in the hearing room unless all parties are present; (2) avoid having any conversations with hearing participants in common spaces such as hallways or restrooms; and (3) avoid having any conversations—even casual ones unrelated to the case—with any party, even if all parties are present. The chair should remind the panelists to reserve all comments about the issues, parties, counsel and witnesses for an executive session. Reviewing these recommendations reduces the likelihood of a motion to vacate an award based on bias. The chair and the panelists should also agree on how they will request a break, call an executive session or raise another matter during the hearing. Preplanning makes the evidentiary hearing more efficient.

*Discuss with the panelists how evidentiary rulings will be made at the hearing.*¹⁸

Obtaining panel consent is consistent with FINRA [Rule 12410](#), which provides that all panel rulings and determinations be made by a majority of the arbitrators unless the parties agree or the Customer Code or applicable law provides otherwise. At the executive session, the chair should explain the need to make minor decisions on behalf of the panel and seek the panel’s agreement. The chair’s authority to make minor decisions—like ruling on objections to leading or repetitive questions or objections that prevent a witness from fully responding to questions—allows the chair to streamline the hearing. If a minor issue

becomes a major point of contention, the chair should consult the full panel in executive session before ruling.

*Reach an accord with the panelists in advance on asking questions at the evidentiary hearing.*¹⁹

Since the panel should act as a cohesive unit, the panel should agree before the evidentiary hearing on how they will ask questions during the hearing. Some minor questions, like asking for a statement to be repeated, may be asked during counsel’s presentation or during a witness’s testimony. Substantive questions, such as those to identify and clarify the issues, however, are more appropriate to hold until the end of counsel’s presentation or at the conclusion of a witness’s testimony.

Regardless of the chair’s approach to asking questions, panel members should remain “neutral in appearance.”²⁰ As neutral decisionmakers, they should listen to all the evidence with an open mind. When asking questions, they should be mindful of using neutral language and avoiding argumentative words or tone. One helpful approach is for the panelists to submit questions to the chair, who can ask counsel or a witness on behalf of the panel.

The Evidentiary Hearing

Decide the admissibility of evidence and objections to testimony on behalf of the panel.

At the evidentiary hearing, the chair typically rules on the admissibility of evidence and objections to testimony. The chair has discretion to consult the panelists before ruling on a significant issue that would benefit from the input of the full panel.

If the chair deems it appropriate to include the full panel on an objection to the admissibility of documents or testimony, the chair should share the following considerations²¹ with the panelists: (1) although state and federal evidence rules do

16. FINRA DRS Chairperson Training Transcript (May 2024), Module 5, Slide 4.

17. FINRA DRS Chairperson Training Transcript (May 2024), Module 6, Slide 25.

18. FINRA DRS Chairperson Training Transcript (May 2024), Module 5, Slide 5.

19. *Id.*

20. FINRA DRS Chairperson Training Transcript (May 2024), Module 6, Slide 9.

21. FINRA DRS Chairperson Training Transcript (May 2024), Module 8, Slide 12.

not govern arbitrations;²² they do provide practical guidance for admitting or excluding evidence; (2) arbitrators should consider relevance, fairness and the perception of fairness; (3) arbitrators should make even-handed, consistent evidentiary rulings; (4) arbitrators should be aware of their previous rulings and apply the rationale underlying those rulings consistently; and (5) if arbitrators remain uncertain about an objection, they should err on the side of admitting the evidence.

Procedural Issues

Lead the panel by dealing decisively with procedural issues.

The chair leads the panel in resolving all procedural issues at the hearing. The chair should seek prior agreement from the panel about what minor evidentiary or procedural issues they will decide.

Minor issues²³ relative to the examining attorney's questioning might include argumentative questions, leading questions, questions already asked and answered, questions that are convoluted or in improper form, abusive questions, questions that assume facts not yet in evidence and questions that mischaracterize testimony. Minor issues²⁴ relative to the witnesses' testimony might include answers that are not responsive to questions and volunteered testimony. Minor issues relative to opposing counsel²⁵ might include speaking objections. For significant objections, the chair should hold an executive session to allow the full panel to consider them.

Make rulings on behalf of the panel.

If a panelist disagrees with a prospective ruling in an executive session, the chair should (1) discuss the reason for the disagreement and (2) ensure that the dissenting panelist understands the rationale for the majority view. If disagreement remains, the chair can suggest that the panel reserve their decision on the objection until later in the hearing. If deferring the

decision is not possible, the chair should remind the panelists that to preserve panel unity, the ruling will be announced as a panel ruling.²⁶

*Hold an executive session before closing arguments.*²⁷

An executive session before closing arguments will give the panel time to address any outstanding issues such as unmarked exhibits, undecided motions, requests for additional evidence and other matters. This session will also allow the full panel to discuss whether the parties have answered all questions and addressed all material issues. The panel may make additional requests before closing arguments and may request additional submissions from any party before closing the record.²⁸

Submission of Hearing Forms for In-person Hearings

Ensure that all FINRA hearing forms for in-person hearings are completed and submitted at the end of the hearing.

At the end of evidentiary hearing, the chair ensures that the completed Hearing Status Sheet, Attendance List, List of Claimant's Exhibits and List of Respondent's Exhibits are provided to DRS staff.

Deliberations

*Encourage collaboration among the panel members by expressing views last during deliberations.*²⁹

The chair should emphasize teamwork by encouraging the other panelists to assume an active part in decision-making. All panel members should express their views, consider them carefully and ask questions. To avoid exercising undue influence over the deliberations, the chair should share views with the panelists last.

Decisions

Ask the panelists to carefully review the draft of the Award Information Sheet (AIS).

22. FINRA Rule 12604.

23. FINRA DRS Chairperson Training Transcript (May 2024), Module 8, Slide 15.

24. *Id.*

25. *Id.*

26. FINRA DRS Chairperson Training Transcript (May 2024), Module 8, Slide 16.

27. FINRA DRS Chairperson Training Transcript (May 2024), Module 5, Slide 11.

28. FINRA Rule 12608.

The chair is responsible for making the panel's decision part of the hearing record. After the panel has concluded deliberations and reached a decision, the chair should complete the AIS in the DR Portal. Another helpful tip is for the chair to complete the AIS during the deliberation. The chair can then use the Share feature in the DR Portal to share the draft form of the AIS, and other important documents, with the panelists.³⁰ The attachments should include the completed Hearing Status Sheet(s), Attendance List(s), List of Claimant's Exhibits, List of Respondent's Exhibits and any Explained Decision. The AIS will be used by DRS staff to prepare the award.

Submission of Hearing Forms for Virtual Hearings

Ensure that all FINRA hearing forms for virtual hearings are completed and timely submitted via the DR Portal.

Once all three panel members have agreed on the award, the chair should submit the AIS and attachments to DRS via the DR Portal.

Conclusion

Given DRS' robust recruitment efforts, many new arbitrators have joined the roster. The chair's efforts to serve as the team leader will help both new and experienced chairs. The parties, their representatives and the arbitration process itself will benefit from the chair's lead.

The Code of Ethics for Commercial Arbitrators states in its Preamble that "persons who act as arbitrators undertake a serious responsibility...."³¹ I would extend that statement: persons who act as FINRA arbitration panel chairs undertake an even more serious responsibility to protect America's investors and to ensure the integrity of the securities industry.

*Annamaria Boccia Smith, Esq. is the Senior Settlement Coordinator of the Supreme Court of Queens County, Civil Term. Before entering public service, Annamaria was an arbitrator at FINRA for almost 25 years. At FINRA, she arbitrated approximately 200 cases, the majority as chair.

Prior to serving as an arbitrator, Annamaria was an administrative law judge for the New York City Department of Finance. She is the author of "Let's Get Personal: All About Arbitrator Disclosures," The Neutral Corner (Volume 1, 2024). Annamaria began her legal career practicing law at a large insurance defense firm. She is a graduate of St. John's University (BA), New York University (MA), and St. John's University School of Law (JD). Annamaria is a member of the New York, Connecticut, and D.C. Bars. She can be reached at annamariabocciasmith@gmail.com.

DRS and FINRA News

Arbitration Case Filings and Trends

[Arbitration case filings](#) from January through November 2024 reflect a 27 percent decrease compared to cases filed during the same 11-month period in 2023 (from 3,149 cases in 2023 to 2,312 cases in 2024). Customer-initiated claims decreased 13 percent through November 2024 compared to the same period in 2023.

Rule Approvals

FINRA Adopts Amendments to the Codes of Arbitration Procedure to Provide Non-Party Customers With a Copy of the Official Record of an Expungement Hearing

FINRA has amended FINRA Rule 13606 of the Code of Arbitration Procedure for Industry Disputes to provide that the Director of DRS will provide a copy of the official record of an expungement hearing held pursuant to FINRA Rule 13805, and any transcript if the recording is transcribed, to any non-party customers, upon request, who attend and participate in the expungement hearing, or who provide their position on the expungement request in writing. The amendments became effective on December 1, 2024.

Please see [Regulatory Notice 24-15](#) for more information.

29. FINRA DRS Chairperson Training Transcript (May 2024), Module 9, Slide 6.

30. For instructions on how to share draft submissions, see FINRA DR Portal: User Guide for Arbitrators and Mediators, pp. 19-20.

31. The Code of Ethics for Commercial Arbitrators, *Preamble*, p. 1.

Approved Rule Change to Amend FINRA Rule 12800 (Simplified Arbitration) to Clarify and Amend the Applicability of the Document Production Lists

On October 28, 2024, the Securities and Exchange Commission (SEC) issued an order approving the proposed rule change to the Customer Code to clarify and, in some instances, amend the applicability of the Document Production Lists to simplified customer arbitrations administered under FINRA Rule 12800. FINRA will announce the effective date of the revised rules in a *Regulatory Notice*.

Please see [SR-FINRA-2024-008](#) for more information.

Rule Filings

Proposed Rule Change to Amend the Codes of Arbitration Procedure to Make Clarifying, Technical and Procedural Changes to the Arbitrator List Selection Process

FINRA filed with the SEC a proposed rule change to amend the Codes of Arbitration Procedure to make changes to certain provisions relating to arbitrator list selection.

Please see [SR-FINRA-2024-022](#) for more information.

Proposed Rule Change to Amend the Codes of Arbitration Procedure to Accelerate the Processing of Arbitration Proceedings for Parties Who Qualify Based on Their Age or Health Condition

FINRA filed with the SEC a proposed rule change to amend the Codes of Arbitration Procedure to add new FINRA Rules 12808 and 13808 (Accelerated Processing) to accelerate the processing of arbitration proceedings for parties who qualify based on their age or health condition.

Please see [SR-FINRA-2024-021](#) for more information.

2024 Annual Arbitrator Survey Thank You

Thank you for participating in the 2024 survey. As in previous years, the survey was administered by a third-party consulting firm, and participation in the survey was voluntary.

As part of our 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 and determine future recruitment events.

We look forward to publishing the 2024 results soon. You may review the results of past surveys on our [website](#).

Updated Hearing Scripts

The following hearing scripts have been updated to include a reminder to arbitrators to securely dispose of case-related materials, both paper and electronic, at the conclusion of their service:

- Hearing Procedure Script – Three Member Panel
- Hearing Procedure Script – Single Arbitrator Case
- Hearing Procedure Script – Special Proceeding

Arbitrators can review the most current hearing scripts on the [Forms and Hearing Scripts](#) page.

Register for the DR Portal Today

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

- file case documents, including the electronic Oath of Arbitrator and Arbitrator Disclosure Checklist, the Initial Prehearing Conference Scheduling Order, general orders, 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 Arbitrator Disclosure Report (ADR);
- update the last affirmation date on the ADR;
- submit expense reports; and
- review list selection statistics to see how often their name has appeared on arbitrator ranking lists sent to parties and how often they have been ranked or struck on those lists.

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

DR Portal: Did You Know?

Did you know that you can review all your previous arbitration cases in the DR Portal, including cases that did not go to award? You can review your past cases by clicking on the “Arbitration Cases” tab and selecting “View All Cases.” When you choose a case to view, you can see the parties, counsel, arbitrators, hearings, payments, documents and other details associated with the case. This is especially helpful when you are trying to determine if you have a potential conflict in a new arbitration.

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

ADRs: Inactive Firms

DRS has noticed that some arbitrators have accounts, coded as current on their ADRs, with firms that are no longer active as a broker-dealer. We are asking arbitrators to review their ADRs—specifically in the Conflict Information section—to verify and update their list of accounts. In some cases, firms go through mergers, and while your accounts may remain unaffected, names and entities change. For example, several arbitrators still have accounts with TD Ameritrade on their ADRs although TD Ameritrade is now Charles Schwab. To ensure that DRS has the most current information to provide to parties, we urge arbitrators to review their ADRs on the [DR Portal](#) and update any outdated accounts.

Mediation Update

Mediation Case Filings and Trends

From January through November 2024, parties initiated 450 mediation cases, a decrease of 24 percent from the same period in 2023. FINRA closed 455 cases during this time. Approximately 86 percent of these cases concluded with successful settlements.

FINRA Mediation Settlement Month

DRS’ Mediation Department offered its annual reduced fee program during [Mediation Settlement Month](#) in October. As a reminder, all participants under this program should endeavor to complete their mediations by December 31, 2024. Thank you to the participants who contributed to another successful Mediation Settlement Month Program.

FINRA Mediator Summit

On October 15, 2024, DRS Mediation held its first Mediator Summit in New York, NY. DRS invited current mediators to attend virtually or in person

and had about 40 mediators in attendance. Interactive sessions included an administrative overview, mediator ethics and business development tips. It was a great opportunity for mediators and staff to meet, network and brainstorm best practices. Based on the overwhelmingly positive response, DRS plans to host a virtual event in 2025 and another in-person summit in 2026.

Mediator Disclosure Updates

Mediators can update their profile anytime through the [DR Portal](#). Keeping mediator disclosure reports up to date—including the number of cases, case success rates and the types of cases mediated—helps parties during the selection process. References who can attest to a mediator’s skills and mediation style also help parties choose the most appropriate mediator for their case. Remember to include a cancellation policy if applicable.

Earlier this year, staff contacted all mediators on the roster with the yearly mediator questionnaire. This also gave mediators another opportunity to provide updates.

Become a FINRA Mediator

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

Call for Experienced Mediators

The Queens County Supreme Court – Civil Term is seeking experienced mediators to serve in its Commercial Division Program and Presumptive ADR Program (PAP). Mediator candidates (1) must be an attorney admitted to practice in New York State for five or more years and (2) have completed at least 24 CLE credits of basic mediation training and 16 CLE credits of advanced mediation training, plus work experience as a mediator. If you are interested, please complete the [Application to Mediate for New York State Trial Courts](#) and indicate that you are applying to the Commercial Division or PAP Program in the 11th Judicial District (Queens County State Supreme Court).

Questions and Answers

Post-hearing Deliberations

Question

I am a new chair, and my first evidentiary hearing is approaching. Can you provide some tips for conducting a successful deliberation?

Answer

Here are five tips for a successful deliberation:

Tip 1: Aim to conduct deliberations immediately after the hearing (after the recording has stopped). If you are unable to conduct deliberations immediately following the hearing, reach out to the DRS case administrator to schedule an in-person or Zoom conference as soon as possible while the evidence is fresh. Remember the deliberation is confidential. So, if you hold a telephone conference or discuss the case in a public space, make sure no one can overhear you.

Tip 2: Convey respect and consideration throughout the deliberation process. Present views in turn, ensuring each panel member’s observations and opinions are heard, acknowledged and considered. Be courteous and specific in exploring another’s point of view, using phrases like “Please explain,” or “What evidence supports that idea?” As a panel, discuss differences openly and refrain from judging others’ opinions. It is appropriate to challenge ideas, but not people. Sometimes, arbitrators may not agree unanimously, and one arbitrator dissents. If that is the case, be sure to highlight this in the Award Information Sheet, or AIS, for staff.

Tip 3: Consider remedies only after liability has been determined. The first step in deciding the outcome of a case is determining the facts, and whether they support a finding of liability. Parties typically disagree on some key facts. Assess the credibility of each

witness to determine which testimony most accurately reflects the facts of the case. In assessing documentary evidence, consider who prepared the document, whether the document was prepared in the normal course of business and the chain of custody. Whether someone else had an opportunity to create or change a document may be critical to the value you give it.

Tip 4: If the law is clear and applies to the facts of the case, apply it in your decision. If the law is not clear or you are uncertain if it applies, ask the parties to address this by providing written briefs to the panel. As a reminder, arbitrators must not conduct research on their own, but may ask parties to provide briefs. If the law is not clear or you cannot determine if it applies to the facts of the case, you should look to equity, fairness and justice.

Tip 5: If the claimant separates the claim into specific issues, analyze and decide each issue separately. If there are multiple respondents, the panel must determine liability for each. In some cases, you may find that one respondent is liable and dismiss the others. Before considering remedies, the panel must assess liability, if any, for each respondent. You may also find that several respondents are liable but in different amounts. For example, a claimant may have had accounts with two respondent firms and suffered differing compensable losses at each.

Drafting Awards

Question

I just submitted the AIS on the DR Portal. What happens next?

Answer

Once DRS receives the completed AIS, DRS staff will prepare the award. The award memorializes pertinent case information, the

relief requested and the panel's decision, among other things. Staff might have additional questions for the panel while preparing the award.

When the draft award is complete, staff will notify the panel and publish a copy of it on the DR Portal for the panel's review.

Panel members should carefully review the draft award for accuracy. If the arbitrators have any edits, the chair should email the panel's comments to the assigned case administrator. They will make the changes and upload a revised draft award in the DR Portal for the panel to review and sign. To expedite the award, the panel members can sign the award electronically via the DR Portal. All arbitrators must sign the award (if an arbitrator dissents, they can sign it as a dissenting arbitrator). After the award is signed by the arbitrators, FINRA will send the executed award to the parties and simultaneously publish it on the [Arbitration Awards Online](#) page of the external website.

Secure Disposal of Case-Related Materials

Question

When a case concludes, what should I do with physical copies of case-related materials, such as printed copies of pleadings, motions and exhibits?

Answer

Arbitrators have an ethical duty to keep all case-related materials confidential. This duty includes ensuring that all case-related materials are securely disposed of at the conclusion of a case.

Question

How do I securely dispose of physical copies of case-related materials?

Answer

There are several ways to securely dispose of physical copies. If the hearing is held at a FINRA office, you can leave the case-related materials in the hearing room and let staff know they should be shredded. If you have case materials at home, FINRA will reimburse arbitrators for expenses associated with shredding materials. FINRA will also provide pre-paid mailing labels for mailing materials to FINRA for secure disposal.

Question

What if I have electronic copies of case-related materials saved on my computer or other device?

Answer

Ensuring that electronic copies are securely disposed of at the conclusion of a case is part of the ethical duty to keep all case-related materials confidential. Arbitrators must ensure that electronic copies are permanently deleted from any device where they are saved, such as computers, tablets or cell phones.

For more information regarding the secure disposal of case-related materials, please visit the [Arbitrator's Guide](#) or contact DRS staff.

Education and Training

DRS Videos: “What to Expect During the Arbitration Process” and “What to Expect at a FINRA Arbitration Hearing”

DRS produced these “What to Expect” videos to provide insight into the arbitration process for newcomers to the forum. The “Arbitration Process” video details how an arbitration case is administered at DRS, while the “Arbitration Hearing” video takes the viewer through a typical hearing day. The videos feature DRS staff from regional offices across the country. We invite you to watch the videos available on [FINRA's Arbitration Process](#) page.

Arbitrator Disclosure Reminder

As a reminder, arbitrators should review their Arbitrator Disclosure Reports (ADRs) regularly to ensure all information is accurate and current. Even if arbitrators are not currently assigned to cases, their ADRs may be sent to parties during the arbitrator selection process. Providing parties with the most current and complete information helps them make informed decisions when selecting their panel. Complete disclosures also minimize arbitrator challenges and delays to the case. Arbitrators should log in to the [DR Portal](#) to update their ADRs.

Last Affirmation Dates on ADRs

In 2017, DRS enhanced ADRs by publishing the date that arbitrators last affirmed their accuracy. The affirmation date is displayed prominently at the top of the ADR 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 information, DRS asks arbitrators to review their ADRs regularly and affirm the information. Arbitrators can refresh the affirmation date by submitting an update through the DR Portal or by submitting an Oath when assigned a case. Even if there are no changes, arbitrators can update the affirmation date through the DR Portal.

If you need to register for the DR Portal or 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

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