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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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## Maintaining Civility in Arbitration

By Carissa Laughlin, Principal Analyst, FINRA Case Administration



To maintain a fair, efficient and effective forum to hear securities-related disputes, DRS relies on arbitrators and all case participants to act in a civil manner throughout an arbitration proceeding. This article discusses how arbitrators should (1) set expectations for arbitration decorum, (2) maintain proper decorum and (3) intervene when necessary to preserve civility during an arbitration.

### Set Expectations for Hearing Decorum

At the outset of the arbitration, arbitrators must establish the right tone for parties and counsel. The list of [Top 10 Ways to Be a Better Arbitrator](#) expands on this concept and encourages arbitrators to set "ground rules" for behavior and to enforce them. Arbitrators should also remind parties and counsel to treat all case participants, including DRS administrative staff, with courtesy and respect.

### Maintain Hearing Decorum

Arbitrators, particularly chairpersons, must maintain decorum throughout a hearing. [The Civility in Arbitration](#) training helps arbitrators evaluate their obligations before and during service on a case and advises them to set a proper tone for conducting fair and efficient hearings.

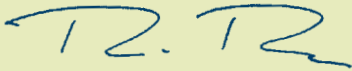
The Civility in Arbitration training provides tips for chairpersons to maintain decorum during a hearing, such as:

- holding professional, fair and neutral proceedings;
- reminding parties that they should limit their opening statements to a brief, non-argumentative outline of what they intend to prove;
- encouraging parties not to interrupt opening and closing statements;

### Year-End Message

As we close out 2022, we would like to extend a deepfelt thank you to our arbitrators and mediators for their remarkable work this year. Despite these unusual circumstances, we are grateful for our neutrals who always find a way to provide fair hearings and ensure that parties are heard. As we move ahead, we look forward to more in-person hearings and getting back to normal.

We wish you a joyous and healthy holiday season and look forward to working together in 2023.



Rick Berry  
Executive Vice President,  
FINRA Dispute Resolution  
Services

- reminding parties to direct comments or objections to the panel only;
- insisting participants act in a civil manner; and
- reminding participants to follow the rules of common courtesy and etiquette.

Arbitrators can also refer parties and counsel to the list of “The ‘Top Ten’ Standards of Good Practice at Arbitration Hearings” available in the [FINRA DRS Party’s Reference Guide](#). Among other things, the standards urge parties to:

- be courteous and civil;
- recognize that they can disagree without being disagreeable;
- avoid vulgar language;
- conduct themselves with dignity and refrain from acts of disrespect;
- recognize the authority of the arbitrators and conduct themselves accordingly; and
- respect all persons associated with the process regardless of race, color, national origin, religion, disability, age, gender or sexual orientation.

The standards also remind counsel that they should not engage in antagonistic or acrimonious behavior or engage in conduct intended to harass or humiliate witnesses. Counsel should also make sure their clients and witnesses understand how to behave at arbitration hearings and, to the best of their ability, prevent clients and witnesses from causing disorder or disruption.

To maintain hearing decorum, arbitrators should lead by example. They should strive to appear neutral and impartial. This includes avoiding any comment or body language (e.g., grimaces, frowns, hand signals) that indicates a preference for either party or disbelief in the testimony.

### Intervene When Necessary to Preserve Civility

Occasionally, arbitrators may need to intervene to maintain decorum during an arbitration. If this happens, arbitrators can start by calling for a recess. Should the behavior continue and become more serious, arbitrators may consider issuing sanctions and may, at the conclusion of the case, submit a disciplinary referral to FINRA.

### Call a Recess or Adjourn

Arbitrators should not use or tolerate hostile, demeaning or humiliating words in written or oral communications with or among case participants. If such behavior occurs during a hearing, arbitrators should intervene immediately or call a recess to allow everyone to collect themselves.

The panel can also warn the parties and counsel about the consequences for continuing misconduct (*e.g.*, a postponement and assessment of postponement fees). After warning the parties, arbitrators should call a recess to allow the parties and counsel to consider the panel's message.

### Issue Sanctions

When parties engage in improper conduct, arbitrators may consider issuing an order to address their conduct. If the conduct persists, the panel may consider sanctioning the party. Under FINRA [Rules 12212](#) and [13212](#) of the Codes of Arbitration Procedure (Codes), the panel may sanction a party for failure to comply with any provision in the Code, or any order of the panel. Sanctions may include, but are not limited to:

- assessing monetary penalties payable to one or more parties;
- precluding a party from presenting evidence;
- making an adverse inference against a party;
- assessing postponement and/or forum fees; and
- assessing attorneys' fees, costs and expenses.

Additionally, the panel may dismiss a claim, defense or arbitration with prejudice as a sanction for material and intentional failure to comply with an order of the panel if prior warnings or sanctions have proven ineffective.

When issuing sanctions, the panel should explain what conduct led them to sanction a party. If the panel sanctions a party in the form of fees (e.g., attorneys' fees, postponement fees), the panel should clearly state which fee and the amount of the sanction. Lastly, the panel should include any sanctions and the history of the conduct that led to the sanctions in the award. The written record in the award will be useful if the prevailing party seeks court confirmation of the award and if FINRA needs to commence suspension proceedings against an industry party for failing to pay the award.

### Submit a Disciplinary Referral

FINRA [Rules 12104](#) and [13104](#) outline the procedures for submitting a disciplinary referral during or at the conclusion of an arbitration case. Unless special circumstances exist that would materially compromise investor protection, arbitrators should submit referrals at the conclusion of an arbitration. [Volume 1 – 2017 of The Neutral Corner](#) includes an article about disciplinary referrals.

If an arbitrator submits a referral, the director of DRS will assess the arbitrator referral and determine whether to forward the referral to FINRA's National Cause and Financial Crimes Detection Programs (NCFC) team. NCFC provides FINRA employees with a process for reporting matters of potential regulatory concern. NCFC coordinates with other FINRA departments to pursue matters under FINRA's jurisdiction and may also make an appropriate external referral (e.g., to the local district attorney's office, Securities and Exchange Commission (SEC), Federal Bureau of Investigation, bar association or any other applicable agency) for further investigation.

### Conclusion

When arbitrators set and maintain expectations for hearing decorum and intervene, when necessary, to preserve civility throughout an arbitration hearing, they are partnering with DRS to provide a fair, efficient and effective forum for securities-related disputes.

## Evidentiary Issues in Arbitration

By Tracy Remy, FINRA Extern



Under FINRA [Rules 12604](#) and [13604](#) of the Codes, the panel is not required to follow state or federal rules of evidence. However, arbitrators may refer to evidentiary rules for guidance when evaluating whether to admit evidence and considering the testimony of expert witnesses.

During hearings, parties may raise objections to evidence or testimony. Chairpersons will generally rule on these issues on their own in real time. Sometimes, the chairperson may want input from the entire panel. In those situations, the chairperson can call an executive session to discuss the objection. To prepare for these situations, arbitrators should keep in mind whether the information is relevant and whether it would be fair to admit the information. They should also consider whether admitting the evidence would be consistent with the panel's prior rulings. Even if the panel decides to admit the information, they should determine the weight to give the evidence when evaluating the case as a whole.

Parties often have expert witnesses testify during the hearing to express views, give interpretations and apply their expertise to facts others have provided.<sup>1</sup> Generally, parties will agree to each other's experts. If there is a dispute, however, the panel should consider if the expert witness has specialized "knowledge, skill, experience, training, or education" that would help the panel "to understand the evidence or to determine a fact in issue."<sup>2</sup> Expert witnesses can be qualified to testify when their opinion is sufficiently reliable.<sup>3</sup>

Although arbitrators are not required to follow rules of evidence in DRS arbitrations, these resources can provide guidance when ruling on evidentiary objections and evaluating expert witnesses during an arbitration hearing.

### Endnotes

1 [The Arbitrator's Guide](#) at 54 (2022).

2 [28 U.S.C. § 702](#)

3 See Robbins, D. E. (2020). *Securities Arbitration Procedure Manual*. Matthew Bender.

## DRS and FINRA News

### Arbitration Case Filings and Trends



[Arbitration case filings](#) from January through November 2022 reflect an 11 percent decrease compared to cases filed during the same 11-month period in 2021 (from 2,711 cases in 2021 to 2,423 cases in 2022). Customer-initiated claims decreased by 14 percent through November 2022, as compared to the same time period in 2021.

### Proposed Rule Change to Amend the Codes of Arbitration Procedure to Modify the Current Process Relating to the Expungement of Customer Dispute Information

On November 10, 2022, the SEC issued a Notice of Filing of Amendment No. 1 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change, as modified by Amendment No. 1, to Amend the Codes of Arbitration Procedure to Modify the Current Process Relating to the Expungement of Customer Dispute Information. The comment period expired on December 7, 2022, and the rebuttal period expired on December 21, 2022.

Please see [SR-FINRA-2022-024](#) for more information.

### Amendment to Change References in the Codes of Arbitration Procedure From the Neutral List Selection System to the List Selection Algorithm

Effective September 15, 2022, FINRA amended the Codes to change references from the “Neutral List Selection System” to the “list selection algorithm.” Please see [SR FINRA-2022-026](#) for more information.

## COVID-19 Impact on Arbitration and Mediation Hearings

[All DRS hearing locations are open](#) for in-person proceedings.

Effective **November 21, 2022**, DRS will no longer contact arbitrators six to eight weeks in advance of a hearing date to ask if they are unwilling to participate in person. DRS is primarily an in-person forum, and arbitrators are expected to participate in person at most hearings. Furthermore, DRS will no longer require vaccination attestations in advance of in-person hearings.

## Vaccination Requirement for In-Person Participants

All in-person participants, including arbitrators, mediators, counsel, parties, paralegals, court reporters, witnesses and others, [must be fully vaccinated](#) to attend DRS arbitration hearings or mediation sessions (hearing). An exception will be made for in-person participants who have circumstances preventing them from being vaccinated. In-person participants who are not fully vaccinated must take a negative PCR or antigen test within 72 hours of the start of the hearing and every 72 hours during the course of the hearing.

DRS no longer requires in-person participants to submit daily health attestations. Instead, each day at the start of the hearing, the arbitrators will ask in-person participants to confirm that all of the statements in the online [Health Self-Assessment](#) are true. In-person participants must review the online Health Self-Assessment before appearing at the hearing. If someone is unable to confirm that all the statements are true, they cannot enter FINRA facilities or participate in a FINRA-sponsored hearing in person.

## Testing Requirement for In-Person Participants (Florida Hearing Locations Only)

For cases with in-person arbitration hearings or mediation sessions (hearing) in Florida, all in-person participants, including arbitrators, mediators, counsel, parties, paralegals, court reporters, witnesses and others, must take a negative PCR or antigen test within 72 hours of the start of the hearing and every 72 hours during the course of the hearing. Alternatively, in-person participants in Florida can be fully vaccinated. Arbitrators may request reimbursement for

at-home COVID tests from their insurance providers or, in the alternative, request reimbursement from DRS for up to \$15 per COVID test. For all other in-person participants, all costs associated with COVID testing are the responsibility of the parties or individuals that incurred them.

As in other hearing locations, DRS no longer requires in-person participants to submit daily health attestations. Each day at the start of the hearing, the arbitrators will ask in-person participants to confirm that all of the statements in the online [Health Self-Assessment](#) are true. In-person participants must review the online Health Self-Assessment before appearing at the hearing. If someone is unable to confirm that all the statements are true, they cannot enter FINRA facilities or participate in a FINRA-sponsored hearing in person.

### Safety Protocols for In-Person Hearings

DRS is committed to taking measures to ensure each hearing is safe for the hearing participants. DRS is reviewing the Centers for Disease Control and Prevention (CDC) guidance and consulting with public health experts to determine the appropriate safety protocols at each hearing venue. Details on the exact safety protocols will be sent to parties and arbitrators before scheduled hearing dates.

These protocols may include:

- making masks, hand sanitizer, Plexiglass divider and face shields available in each room;
- requiring masks at FINRA offices where the COVID-19 Community Level is High (please note the CDC recommends that people at risk because of their health conditions consider wearing a mask if the COVID-19 Community Level is Medium); and
- providing information on best practices when traveling to and attending the hearing.



## Virtual Arbitration Hearing Statistics

Since the postponement of in-person hearings through November 30, 2022, 1,163 arbitration cases have conducted one or more hearings via Zoom (483 customer cases and 680 industry cases).

Through November 30, 2022, DRS received 1,360 motions for Zoom hearings:

- 620 contested motions
  - 439 customer contested motions
    - 266 granted
    - 166 denied
    - 7 open
  - 181 intra-industry contested motions
    - 135 granted
    - 44 denied
    - 2 open
- 740 joint motions (324 in customer cases and 416 in industry cases).

The virtual arbitration hearing statistics are now available on the [Dispute Resolution Statistics page](#).

## Prehearing Conferences by Zoom

After a successful pilot program, all prehearing conferences are now being held via Zoom with video, unless the parties agree or the panel orders otherwise.

Arbitrators and parties should go to the [DR Portal](#) for the link to join their prehearing conferences. More information is available on the [Prehearing Conferences](#) webpage, including questions and answers about using the DR Portal.

## Updated Initial Prehearing Conference Scripts and Order

**Scripts:** Based on feedback and suggestions from arbitrators, the NAMC, the Zoom Task Force (ZTF) and DRS staff, DRS made the following enhancements to the IPHC Script by creating:

- a separate script for Single Arbitrator Cases;
- an expanded discovery section; and
- new sections that cover:
  - virtual and hybrid hearings;
  - hearing exhibits; and
  - expungement requests.

You can find the IPHC Scripts on the [Forms and Tools](#) page of FINRA's website. If you previously saved a copy of the IPHC Script, please be sure to replace it with the two new versions.

**Order:** The IPHC Scheduling Order has been updated on the [DR Portal](#). The order corresponds to the updated IPHC Scripts and is easier to complete.

## Updated Arbitrator Resource Guide for Virtual Hearings and New Pro Se User Guide for Virtual Hearings

Based on feedback and suggestions from the ZTF, DRS updated the [Arbitrator Resource Guide for Virtual Hearings](#) to include additional best practices for arbitrators. Specifically, it was updated to require arbitrators to keep their cameras turned on for the entire Zoom prehearing conference or Zoom evidentiary hearing, absent technical difficulties or extenuating circumstances.

Additionally, the ZTF worked with DRS staff to draft a new [Resource Guide for Self-Represented Parties with Virtual \("Zoom"\) Hearings](#) (Resource Guide). The Resource Guide is written in an easy-to-follow "Q&A" format and provides tips for pro se parties to maximize their Zoom hearing experience. The Resource Guide includes information on necessary equipment, background, audio, lighting, privacy considerations, scheduling Zoom trial-runs with DRS staff, exhibits, witnesses, recording of the Zoom hearing and general troubleshooting.

## 2022 Demographic Survey Thank You

Thank you for participating in the 2022 demographic 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 toward enhancing the diversity of the roster and helps to determine future recruitment events.

We look forward to publishing the 2022 results soon. You may review the results of past demographic surveys on our [website](#).

## Results of the 13th Annual Securities Dispute Resolution Triathlon Program

On October 15 – 16, 2022, DRS and St. John’s University Hugh L. Carey Center for Dispute Resolution held the [13th Annual Securities Dispute Resolution Triathlon](#). Thanks to the students, volunteer judges and staff, we were able to hold the competition virtually this year. Fourteen teams of law students competed and demonstrated their advocacy skills in three critical forms of alternative dispute resolution: negotiation, mediation and arbitration.

Congratulations to the competitors:

- Overall Winner: University of Maryland Francis King Carey School of Law
- Negotiation Round Winner: Texas A & M University School of Law
- Mediation Round Winner: Brooklyn Law School
- Arbitration Round Winner: Elizabeth Haub School of Law at Pace University
- Advocate’s Choice Winner: University of Houston Law Center

*\*Advocate’s Choice is based on votes by competitors for the team that demonstrated skill, competence and professionalism.*

Below is the complete list of participating schools:

Claimants	Respondents
Cornell Law School	Chapman University, Fowler School of Law
Brooklyn Law School	University of Illinois, Chicago School of Law
Elizabeth Haub School of Law at Pace University	University of Houston Law Center
Rutgers Law School	Texas A & M University School of Law
Cardozo School of Law	South Texas College of Law Houston
Quinnipiac School of Law	University of Texas at Austin School of Law
University of Maryland Francis King Carey School of Law	University of Pittsburgh School of Law

## Arbitrator Travel Policy Tips

DRS updated its Arbitrator Travel Policy to raise meal allowances. Notable changes are as follows:

- The daily meal allowance for Category A and D arbitrators has increased to \$30.
- The daily meal allowance for Category B and C arbitrators has increased to \$125 (\$185 for Puerto Rico).
- Receipts are now only required for individual meal expenses greater than \$75.

To process expenses quickly, carefully review the Arbitrator Travel Policy to understand what items are and are not reimbursable. For example, newspapers, magazines and over-the-counter medicines are not reimbursable. Additionally, usage of sedan services and rental cars must be pre-approved. Please review the [Expense Reimbursement](#) page for more information about DRS' arbitrator expense reimbursement.

## DR Portal Help

If you have any questions about logging into the DR Portal, please contact the FINRA Gateway Call 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.

## 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](#). The DR Portal allows you to:

- file case documents including the electronic Oath of Arbitrator and Checklist, IPHC Scheduling Order, Motion to Dismiss Order, Postponement Orders, Order, Award Information Sheet and 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 November 2022, parties initiated 716 mediation cases, an increase of 19 percent from the same period in 2021. DRS closed 719 cases during this time. Approximately 91 percent of these cases concluded with successful settlements.

### FINRA Mediation Settlement Month

FINRA's 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, 2022. Thank you to the participants who contributed to another successful Mediation Settlement Month Program.

### Mediator List Pilot Program

On August 1, 2022, DRS' Mediation Department initiated a new list pilot program. Parties may still choose a pre-selected mediator, but now they can request an expanded list based on their specific needs.

Under the list pilot program, parties may choose from the following three list options:

#### 1. Randomized Virtual Option

The randomized virtual list option provides parties with a randomized list of 20 mediators who are available to mediate virtually in the parties' hearing location time zone. This option provides mediators the opportunity to use Zoom to mediate outside their current physical location.

*This is the default option that will be used if the parties do not advise of a different agreement.*

### 2. In-Person Option

The in-person list option provides parties with a randomized list of 20 mediators who are available to mediate in person in the parties' hearing location. This list includes mediators who are willing to travel to this location. Parties may request local mediators for a more cost-effective option.

### 3. Bespoke Request Option

With the bespoke option, parties can request specific mediator attributes (self-reported based on the mediation survey sent in January 2022). The mediator roster can be filtered by actual location, language, diversity, rates, reduced-fee program participation and securities skills and expertise (e.g., churning, employment issues). Mediation administrators will work directly with the parties to ensure that the requests are included on the bespoke list.

This list pilot program is intended to provide parties with more options and control over the mediator selection process, while providing qualified mediators a greater opportunity to be selected by the parties. Mediation staff will be following up with participants to seek feedback.

Please contact DRS' [Mediation Department](#) with any questions.

### DRS' Mediation Program for Small Arbitration Claims

DRS expanded the [Mediation Program for Small Arbitration Claims](#) by increasing the maximum amount in controversy from \$50,000 to \$100,000 and making available all virtual platforms (telephonic and video) for these mediations. With these changes, the program is able to provide more parties the benefit of an expedient and cost-effective option for resolving small claims while also introducing parties to qualified, but underutilized diverse mediators on our roster.

The program offers virtual mediation at these costs:

- no cost for arbitration claims of \$25,000 or less;
- \$50 per hour for cases with claims between \$25,000 and \$50,000 to cover reduced mediator fees (DRS collects this fee and divides it equally between the parties); and

### Become a DRS Mediator

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

\$100 per hour for cases with claims between \$50,000 and \$100,000 to cover reduced mediator fees (DRS collects this fee and divides it equally between the parties).

Virtual mediation offers parties the option to participate in a mediation from their own homes. It also provides mediators with additional opportunities to mediate in hearing locations across the country, regardless of the mediator's home base. To help facilitate efficient virtual mediations, DRS developed the [Guide for Using Breakout Rooms in Mediation](#).

When parties mediate through this program, DRS waives all mediation filing fees. Please contact the Mediation Department if you have any questions about this 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 the types of cases you have mediated—matters to parties when selecting a mediator. References who can attest to your skill and mediation style can also help parties select the right mediator for their case. Please consider adding references to your disclosure report for parties to consider during mediator selection. If you have a cancellation policy, please include it in your disclosure report. You can update your mediator profile anytime through the [DR Portal](#).

### Mediator Training Opportunities

Occasionally, DRS 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.





## Questions and Answers

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### Arbitrator Etiquette for Virtual Prehearing Conferences and Evidentiary Hearings (Zoom Hearings)

**Question** How should I dress for Zoom hearings?

**Answer** Arbitrators should always look professional and dress as though they are attending an in-person hearing. Zoom hearings, like in-person hearings, are serious and formal proceedings, and arbitrators should be dressed appropriately.

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**Question** When can I leave my seat during Zoom hearings?

**Answer** If you need to leave your seat at any point during the Zoom hearing, request a break. Otherwise, arbitrators should remain seated and engaged in the proceeding, with their cameras on while the hearing is on the record. Leaving your seat unannounced may raise concern among the case participants. Understandably, they might think you are not paying attention to their presentations or are distracted with something off-screen. Remember, case participants are watching arbitrators' engagement during Zoom hearings.

Arbitrators must have their cameras turned on for the entire prehearing or evidentiary hearing held by Zoom, absent extenuating circumstances. You are welcome to get up and stretch, use the restroom and walk around during breaks. During breaks, you should turn your camera off and mute your microphone.

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**Question** When is it appropriate to eat or drink during Zoom hearings?

**Answer** You are encouraged to stay hydrated during Zoom hearings. Most arbitrators drink water, tea or coffee. Please be conscious of misperceptions you may inadvertently create during Zoom hearings with your choice of beverage. For instance, if you drink your grape juice out of a wine glass, parties may think you are actually drinking wine.

As for food, it is best to avoid eating during Zoom hearings, as this can be very distracting. If you would like to have a snack, please ask for a break. Our general guidance for arbitrators is to schedule a break every hour and a half, in addition to a one-hour lunch break.

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**Question** I use two computer monitors for Zoom hearings: one for the Zoom screen and one for exhibits that parties have submitted through the DR Portal. I don't want the parties to think that I'm not paying attention. What steps can I take to alert the parties?

**Answer** Before the Zoom hearing begins, let parties know that you will be using multiple monitors during the hearing. Explain that if you are not looking directly at the camera during the proceeding, it means that you are looking at the exhibits on your other monitor. However, reassure parties that you will remain focused on the presentations. It's best to let the participants know at the outset about your work setup, so they do not think that you are reading or watching something unrelated to the case.

Please avoid multitasking during Zoom hearings. Do not check your cell phone or personal emails while the case is on the record. Also be sure to mute your devices (*i.e.*, cell phones, iPads) and your microphone when you are not speaking. Muting your microphone minimizes background noises (*e.g.*, construction work, lawnmowers, barking dogs), which can interrupt the hearing. Please be sure to turn your microphone back on before speaking.

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## Arbitrator Tips

### Promptly Review Witness Lists



Under FINRA [Rules 12514 and 13514](#), at least 20 days before the first scheduled hearing date, all parties must provide each other party with the names and business affiliations of all witnesses they intend to present at the hearing. Simultaneously, parties must file their witness lists with DRS, which will distribute them to the panel.

Immediately upon receipt, arbitrators should carefully review the witness list for any potential conflicts. You should notify DRS staff of any additional disclosures or conflicts that might create an appearance of bias or prevent you from making an impartial determination. Arbitrators should consider any circumstance that relate to the subject matter in dispute, as well as to existing or past, direct or indirect, financial, business, professional, family, social or other relationships with any of the parties, counsel or witnesses. The duty to disclose requires arbitrators to make a reasonable effort to become aware of these relationships or interests. Carefully reviewing and disclosing information beforehand facilitates a smooth start to the hearings.

### Identify Hearing Dates on the Record

Unless the arbitrators decide otherwise, they will record the hearings using a digital recorder or, in some cases, an iPad (if the hearing is taking place at a DRS office) provided by DRS. According to FINRA [Rules 12606 and 13606](#), this recording will be the official recording of the proceeding. Before the hearing starts, the arbitrator assigned to operate the recorder must test the recorder to ensure it is working properly. When the hearing begins, the arbitrator must clearly state the case name, case number and the date of the hearing on the record. It is important to make sure this information, including the correct date, is announced on the record for each hearing day. If the recordings are reviewed after the hearing, announcing this information makes it easier to track the proceeding.

## Wait to Decide a Case

Arbitrators are reminded to refrain from deciding a case before the hearing has concluded. During a hearing, you may hear from several witnesses. While their testimony may seem irrefutable at the time, you should wait to hear from all witnesses, during direct and cross examinations, and deliberate with your co-panelists before drawing any conclusions about the case.

Remain impartial throughout the hearing. Be aware of your body language and facial expressions that may signal your opinion about the evidence, arguments or testimony that has been presented. Parties can sense when arbitrators seem uninterested or frustrated because they have already made up their minds about the case. Keep an open mind as you hear testimony and wait until the end of the presentations to come to any conclusions.

## 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 [DR Portal](#) to update their disclosure reports.

### Last Affirmation Dates on Arbitrator Disclosure Reports

In 2017, DRS 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, DRS is 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 DR 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 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.

## 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  
Brookfield Place  
200 Liberty Street  
New York, NY 10281  
Phone: (212) 858-4200  
Fax: (301) 527-4873  
[neprocessingcenter@finra.org](mailto: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](mailto: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](mailto: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: (301) 527-4851  
[midwestprocessingcenter@finra.org](mailto:midwestprocessingcenter@finra.org)

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*The Neutral Corner* is published  
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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  
Brookfield Place  
200 Liberty Street  
New York, NY 10281

Or call (212) 858-3999.

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CCSD-3615-01/23