

Marcia E. Asquith:

Please accept this email communication as my comments in connection with the above matter. First, allow me to preface my comments with the recognition that I have not practiced law in several years and therefore presently have “no skin in the game.” I have been an ADR professional for nearly 20 years, having provided arbitration, mediation and other types of ADR services in numerous forums. I have been a FINRA arbitrator since 1999 and have served on AAA, JAMS and FMCS panels for almost as long.

With regard to my mediation work, I have reached the personal conclusion that one does not have to hold a law degree or law license in order to perform well as a mediator. In connection with my labor arbitration work through FMCS, I have handled several cases as an arbitrator where one of the parties was represented by a non-lawyer (usually a union representative).<sup>[1]</sup> It is quite obvious to me (anecdotally) that neither a legal education nor a law license is necessary to provide competent representation in a labor arbitration forum. (Conversely, holding a law license does not guaranty competent representation.)

I do not wish to denigrate any of the comments, previously posted, that present “horror stories” (again, anecdotally) or valid concerns about allowing non-lawyers to represent customers in the FINRA forum. However, as the Regulatory Notice clearly points out, there are definite “down-sides” to disallowing continued representation by non-lawyers. I would strenuously argue that the best remedy is not to disallow all non-lawyer representation, but rather to put into place adequate safeguards to better inform the public as to the risks of engaging a non-lawyer in the FINRA forum.

#### One suggestion

##### I would advance is

to put in place a rule that requires all non-lawyers who wish to appear in the FINRA forum to present a “disclosure notice” to the customer. The disclosure notice must be approved in advance by FINRA and must be in clear English. The notice should disclose, among other things, the lack of a legal education, applicable bar or ethical rules, and malpractice coverage of the individual/entity offering to provide representation. While this remedy may not cure all of the objections voiced previously, it would at least put prospective clients on notice of the risks involved and better allow them to determine if they wish to proceed with the non-lawyer, represent themselves or employ an attorney.

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<sup>[1]</sup> I have seen non-lawyers engage in advocacy work in Florida, Georgia and Alabama. I have no knowledge of the legal prohibitions any or all of those state have against the practice; I just know that it is done on a regular basis.

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