



Hearing Procedure Script 3 Member Panel

The hearing procedures set forth below may, in the discretion of the arbitrators, be varied, provided all parties are allowed a **full** and **fair** opportunity to present their respective cases. The chairperson will initiate the hearing and is encouraged to be efficient in managing time during the hearing to minimize, whenever possible, the number of hearing sessions held.

Recording the Proceeding

There must be a record kept of every FINRA Dispute Resolution Services arbitration hearing. This is an important function and is required under FINRA rules. It is essential that care be taken to properly record each hearing and, for hearings held outside of FINRA's offices, to timely transmit the digital recorder and memory cards to FINRA Dispute Resolution Services.

Occasionally, the parties request a stenographic record. In such cases, the panel may determine that the stenographic record will be the official record and dispense with the recording of the hearing. If a stenographic record is used, the parties are required to defray the cost of such record and provide FINRA Dispute Resolution Services with an electronic copy.

To ensure the hearing is properly recorded, please remember the following:

- There are no "off the record" conversations between the parties and arbitrators. Record the entire proceeding!
- Before the hearing begins, if a recorder is being used, test the recorder using the record function: Press the REC button; clearly state the case name, case number and date; press the STOP button; press the PLAY button to listen.
- If Zoom is being used to record the hearing (e.g., in a FINRA office), the hearing room will appear as a participant in a Zoom meeting. The Zoom meeting can be administered from a laptop or from a control device in the hearing room, but a laptop offers the best hosting capabilities. If you are joining with a laptop while in the hearing room, please make sure to use the "Leave Computer Audio" option under the microphone option on the bottom left hand of your screen to avoid audio feedback.

- ☑ How to Record: Press the REC button to begin recording. If a recorder is being used, the REC indicator will be lit and steady while recording. If Zoom is being used, there will be a REC indicator at the top of the screen while recording.
 - ☑ How to Stop Recording: Press the STOP button to stop recording when the hearing adjourns for breaks, executive sessions, and at the end of the day.
 - ☑ Remember to press the REC button to resume recording after breaks and executive sessions.
 - ☑ On the last day of the hearing, for hearings held outside of FINRA's offices, all digital recorders and memory cards should be returned to the FINRA Dispute Resolution Services staff assigned to the case or the hearing facility that provided the recorder.
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Reminder for Virtual and Hybrid Hearings

The panel is expected to have their cameras turned on for the duration of the evidentiary hearings held by videoconference, absent technical difficulties or extenuating circumstances. The panel should have their cameras on while on the record. It is permissible for the panel to turn off their cameras for breaks.

Before the hearing begins the panel and parties should create a back-up plan in case someone loses power or their internet becomes disconnected. For example, participants may call or email the FINRA Case Administrator so that the panel can be advised and a plan to resume the hearing can be made.

Reminders for Requests to Expunge Customer Dispute Information

The panel may request from the associated person, or party requesting expungement on behalf of an unnamed person, any documentary, testimonial, or other evidence that is deemed relevant to the expungement request. For example, the panel should request a copy of the associated person's current BrokerCheck® Report. Please issue an Order for production of any additional evidence that is deemed relevant and has not been provided.

For Cases Filed Before October 16, 2023

The panel must comply with either Rule 12805 or 13805 (effective August 17, 2009 – October 15, 2023), as applicable.

If a separate expungement hearing is held, it is important to allow the customer(s) and their representative(s), if any, to participate in the expungement hearing if they wish to do so.

- Allow the customer(s) and their representative(s) to appear.
- Allow the customer(s) or their representative(s) to present opening and closing arguments, if the panel allows any party to present such arguments.
- Allow the customer(s) or their representative(s) to introduce documentary, testimonial, and other evidence.
- Allow the customer(s) or their representative(s) to cross-examine witnesses.

For Cases Filed on or After October 16, 2023

The panel must comply with either Rule 12805 or 13805 (effective October 16, 2023), as applicable.

The associated person and the party requesting expungement on behalf of an unnamed person or the party's representative must appear in person or by videoconference.

The panel must allow the customer(s) and their representative(s), if any, and, in straight-in cases, the authorized representative of state securities regulators, to participate in the expungement hearing if they wish to do so.

- Allow the customer(s), their representative(s), and the authorized representative of state securities regulators to appear.
- Allow the customer(s) or their representative(s) and the authorized representative of state securities regulators to present opening and closing arguments, if the panel allows any party to present such arguments.
- Allow the customer(s) or their representative(s) and the authorized representative of state securities regulators to introduce documentary, testimonial, and other evidence.
- Allow the customer(s) or their representative(s) and the authorized representative of state securities regulators to cross-examine witnesses.

A prior expungement award shall not be admissible evidence.

The panel shall not give any evidentiary weight to a decision by a customer or an authorized representative of the state securities regulators not to attend or participate

in an expungement hearing when making a determination of whether expungement is appropriate.

If any request to expunge customer dispute information from an associated person's registration records is withdrawn or not pursued, the panel must deny the request with prejudice in an award.

NOTE: The following should be covered on the record. Italicized information in brackets is intended to clarify a point for you and does not need to be read to the parties. Make sure that a panel member is recording before proceeding. Also, make sure the hearing room is locked when it is not in use, including during breaks and overnight.

- A. Introduce the arbitrators. Please note that Arbitrator [state the arbitrator's name] will operate the recording device during the hearing and Arbitrator [state the arbitrator's name] will take custody of the exhibits.
- B. Restate to the parties any disclosures previously made by the arbitrators. Any additional disclosures should be made to the parties at this time. In addition, arbitrators should confirm on the record their current classifications as either public or non-public arbitrators.

*[Arbitrator disclosure is the cornerstone of FINRA arbitration, and the arbitrators' duty to disclose is continuous and imperative. Disclosure includes any relationship, experience and background information that may affect—or even appear to affect—the arbitrators' ability to be impartial and the parties' belief that the arbitrators will be able to render a fair decision. When making disclosures, arbitrators should consider all aspects of their professional and personal lives and disclose all ties between the arbitrators, the parties and the matter in dispute, no matter how remote they may seem. If you need to think about whether a disclosure is appropriate, then it is: **make the disclosure.**]*

- C. Solicit the names of all participants.

[If any participant is not attending in person, the following paragraph is to be read on the record by the chairperson.]

The panel orders the parties to disclose all persons that are in the room, whether they are on camera or not. Failure to do so may result in sanctions.

Ask each party's representative who should be reflected in the award as the representative for each party.

[Make a note of each response and include it on the Award Information Sheet.]

Ask whether any of the parties and representatives to this matter know of any potential conflicts between the arbitrators and any participant in this matter.

Obtain oral confirmation from all parties or their representatives of their acceptance of the panel's composition.

[If a party does not accept the panel's composition, the hearing should generally proceed as scheduled. Also, if a party says they intend to file a request for the Director to remove an arbitrator, the hearing should generally proceed as scheduled. However, adjourn the hearing if a panel member chooses to recuse themselves from the case and a decision is made to wait until a replacement arbitrator is selected to proceed.]

- D. *[If necessary, the chairperson should administer the following oath. Otherwise, the chairperson should state on the record: "We have submitted our properly executed Oaths of Arbitrators to FINRA Dispute Resolution Services staff."]*

Do you, as an arbitrator selected to hear this matter in controversy, solemnly swear or affirm your duty under the ABA Code of Ethics for Arbitrators in Commercial Disputes to keep confidential all matters relating to this arbitration proceeding and decision, including but not limited to any information, documents, evidence, or testimony presented; and that your duty is continuous and does not cease at the conclusion of the arbitration or upon your withdrawal as an arbitrator?

Do you solemnly swear or affirm that you are not an employer of, employed by, or related by blood or marriage to any of the parties, representatives, or witnesses whose names have been disclosed to you; that you have no direct or indirect interest in this matter; that you know of no existing or past financial, business, professional, family, or social relationship which would impair you from performing your duties; and that you will decide the controversy in a fair manner and render a just award?

Do you swear or affirm that, based on FINRA DRS' Temporary and Permanent Arbitrator Disqualification Criteria, you are not temporarily or permanently disqualified from being a DRS arbitrator?

Having reviewed the *Arbitrator Disclosure Checklist*, do you certify that you have made all disclosures of items on the Arbitrator Disclosure Checklist?

Do you swear or affirm that your *Arbitrator Disclosure Report* is accurate, current, and up to date and that you have no additional disclosures to make?

[The Chairperson should make sure that the oaths are executed in writing and submitted on the DR Portal for completion of the case file.]

- E. Formally open the hearing. ***[The following paragraphs are to be read on the record by the chairperson.]***

This controversy has been submitted to this panel of arbitrators for hearing in accordance with the Code of Arbitration Procedure. The panel is authorized to determine each of the matters set forth in the claims submitted and filed with FINRA Dispute Resolution Services. Unless the law directs otherwise, all awards rendered pursuant to the Code of Arbitration Procedure will be final and not subject to appeal.

It is suggested that no interruptions be made during an individual's testimony. Parties are entitled to make objections, cross-examine, and redirect witnesses and may, in the discretion of the arbitrators, present rebuttal testimony. The arbitrators may ask questions, as they deem appropriate.

The submission of this matter to arbitration will not preclude any right of FINRA that it would otherwise be authorized to adopt, administer, or enforce. If any matter comes to the attention of this panel during and in connection with this panel's participation in this proceeding, either from the record or from material or communications related to this proceeding, that this panel has reason to believe may constitute a violation of FINRA's rules or the federal securities laws, this panel may initiate a referral of the matter to FINRA for disciplinary investigation. If we make any such referral, it will only be initiated after this dispute has been either settled or otherwise disposed of or after a final award has been rendered.

- F. State the responsibility of neutral arbitrators. ***[The following paragraphs are to be read on the record by the chairperson.]***

We have been selected to serve as neutral arbitrators to hear and decide this matter. We are not FINRA Dispute Resolution Services employees. We are independent arbitrators. FINRA makes available this arbitration forum—pursuant to rules approved by the SEC—but has no part in deciding the award.

Pursuant to Canon I of the ABA Code of Ethics for Commercial Arbitrators, we, as neutral arbitrators, have the duty of conducting these proceedings with fairness and integrity. This duty extends to all parties and to this process. Therefore, on behalf of the panel, I respectfully request that all parties and their representatives refrain from engaging in any conversations or contact with the members of this panel except while in this room and in the presence of all parties and representatives. Thank you for your anticipated cooperation.

- G. Permit parties and corporate representatives to remain throughout the proceeding. Permit expert witnesses to remain, unless the panel determines that the witness should be excused. Excuse all other witnesses until they are called to testify unless the panel determines otherwise.

[Barring countervailing reasons, expert witnesses who are assisting parties in the presentation of their cases should be permitted to attend all hearings. Generally, there is a presumption that expert witnesses, as opposed to witnesses testifying as to the facts pertinent to the case, will be permitted to attend the entire proceedings.]

- H. Enter Arbitrators' Exhibit #1 into evidence. ***[The following paragraph is to be read on the record by the chairperson.]***

The arbitrators have read the papers that have been submitted by the parties. These papers, along with the executed Submission Agreements, will be marked and received into evidence as Arbitrators' Exhibit #1.

[The chairperson should explain the contents of Arbitrators' Exhibit #1.]

- I. Other important open matters may be addressed here.
- J. Solicit party evaluations. ***[The following paragraph is to be read on the record by the chairperson.]***

As part of FINRA Dispute Resolution Services' ongoing effort to improve the arbitration process, each party or representative is asked to voluntarily complete an evaluation concerning this arbitration. For your convenience, FINRA has made it possible for you to complete the Party Experience Survey via the DR Portal.

- K. Explain how the hearing will proceed. ***[The following paragraphs are to be read on the record by the chairperson.]***

Each party may make an opening statement. It should be limited to what the party intends to prove and should not be a presentation of evidence or of the merits of the case.

Evidence will be marked for identification and shown to the opposing party for review and possible objection to its admissibility. Parties are responsible for providing copies of all proposed exhibits to all other parties and to the panel. The panel will rule on any objections asserted and determine whether the document will be admitted as evidence.

All participants are expected to act in a civil manner at all times. Participants are requested to be on time for all sessions and to limit breaks to the time allotted. Parties are encouraged to avoid repetitive arguments. Direct all objections and motions to the panel and not to each other.

The panel asks that everyone silence their cell phones or other electronic devices. This will help us to minimize distractions and focus on testimony and

does not apply to the use of electronic devices used to present evidence with audio. There will be periodic breaks that will allow us to view incoming messages that arrive during the hearing.

The [recording or stenographic record, if applicable] will be the official record of the hearing. Participants cannot use electronic devices to record or broadcast the hearing.

[If arbitrators use an electronic device to access arbitration documents or information during the hearing (e.g., pleadings, rules or scripts), please let the parties know that they are doing so. This will ensure the parties know that they are devoting their full attention to the hearing.]

[The administrative announcements have been completed. Proceed with opening statements and the presentation of evidence. This is a reminder that all further conversations between the parties and the arbitrators should be on the record (i.e., recorded digitally or by Zoom). Please ensure that a panel member is recording after any breaks or executive sessions. In addition, do not leave the recording device unattended.]

- L. Proceed with opening statements. ***[The following paragraph is to be read on the record by the chairperson.]***

We will now proceed with opening statements, beginning with the claimant.

- M. Proceed with the presentation of evidence. ***[The following paragraph is to be read on the record by the chairperson.]***

Participants will now present their evidence, beginning with the claimant.

- N. Administer the oath to each witness. ***[The following paragraph is to be read on the record by the chairperson.]***

Do you solemnly swear or affirm that the testimony you are about to give shall be the truth, the whole truth and nothing but the truth?

[For each witness not testifying in person, the following paragraphs are to be read on the record by the chairperson.]

During their testimony, witnesses may have counsel present in the room but are not permitted to communicate with their counsel unless the Panel allows such communication. During their testimony, witnesses must not communicate by text, email, or other electronic means with any persons. Do you solemnly swear or affirm that you will refrain from any impermissible communications while testifying?

Do you solemnly swear or affirm that you have disclosed all persons that are in the room with you now, physically, or electronically, whether or not they are on camera?

Do you solemnly swear or affirm that you will inform the panel if these circumstances change at any point for the duration of your testimony?

[The Chairperson may require virtual participants to scan their videoconference locations with the camera to show that there are no undisclosed individuals in the room.]

Ask each witness to state their name, address, and if applicable, their business affiliation.

Inform each witness that electronic devices cannot be used to record or broadcast the hearing.

After testimony, remind each witness that – in order to avoid influencing other witnesses or creating an appearance of impropriety – the witness should refrain from communicating about the case with others who may be testifying prior to the conclusion of the hearing.

- O. Prior to closing arguments, ensure that all evidence and testimony has been presented. ***[The following paragraph is to be read on the record by the chairperson.]***

Does anyone have any further evidence or testimony to present?

- P. Proceed with closing arguments. ***[The following paragraph is to be read on the record by the chairperson.]***

The participants may make closing arguments and are directed to limit their closing argument to a summation of what they believe has been proven. We will now proceed with closing arguments, beginning with the claimant. Rebuttal is allowed and the claimant may reserve its entire closing for rebuttal.

[It is the practice in these proceedings to allow Claimants to proceed first in closing argument, with rebuttal argument being permitted. Claimants may reserve their entire closing for rebuttal. The procedure may, however, be varied in the discretion of the arbitrators, provided all parties are allowed a full and fair opportunity to present their respective cases.]

- Q. Solicit the parties' final damage requests unless the only issue being determined is expungement. ***[The following paragraphs are to be read on the record by the chairperson.]***

We realize that at the time the claim was initiated the parties may not have had all of the information needed to accurately or completely state their claims. Therefore, at this point, we ask that the parties restate their requests for relief.

For parties requesting damages, please provide us with a summary of your final request for damages. You may present your final damage request as a range, as opposed to a specific monetary amount, and may include a description of each theory of damages.

The parties should also address the issue of hearing session fees. In the award, we will assess the amount of hearing session fees that each party will pay. Therefore, the parties should include a statement of how we should assess the hearing session fees.

[If a party's final request for damages is different from the amount stated in its pleading, please record the request in the Award Information Sheet.]

- R. Prior to adjourning the hearing on the last day, ensure there are no remaining issues to be resolved. ***[The following paragraph is to be read on the record by the chairperson.]***

Do the parties have any other issues or objections you would like to raise that you have not previously raised?

- S. Provide final reminders. ***[The following paragraphs are to be read on the record by the chairperson.]***

The panel's final decision will be forwarded in writing to the participants.

As mentioned at the beginning of the case, we ask that each party or representative complete an evaluation of this arbitration. Your participation – while strictly voluntary – greatly assists FINRA Dispute Resolution Services' ongoing effort to improve the arbitration process. You can find the Party Experience Survey on the DR Portal.

As a reminder, the parties are responsible for filing all the exhibits admitted into evidence at the hearing with DRS via the DR Portal for recordkeeping purposes within the number of days set in the Initial Pre-hearing Conference Scheduling Order. Unless the parties agree among themselves for one party to be responsible for uploading all admitted exhibits, each party is responsible for uploading their own admitted exhibits.

[This paragraph is for in-person hearings only.] Participants should take all documents that are not needed for the official record when leaving the hearing room.

T. Close the hearing. ***[The following paragraphs are to be read on the record by the chairperson.]***

The record will remain open until the panel arrives at a decision or the panel determines that it is closed.

No party will contact any member of this arbitration panel directly. All communications are to be directed to the FINRA Dispute Resolution Services staff assigned to this case.

We request that the parties leave the hearing at the same time.

As a reminder for the panel, arbitrators have an ethical duty to keep confidential all case-related materials. Included in this duty is ensuring that all case-related materials - electronic and paper - are securely disposed of at the conclusion of a case. FINRA provides reimbursement to arbitrators for expenses associated with shredding materials, pre-paid mailing labels for mailing materials back to FINRA for secure disposal, and for hearings held at FINRA locations, secure shredding bins. If case-related materials were downloaded to laptops, computers, tablets, or any other electronic device, arbitrators must ensure that they are permanently deleted. If you have any questions regarding secure disposal of case-related materials, please contact your Case Administrator.

REMINDERS:

- **On the last day of the hearing, for hearings held outside of FINRA's offices:**
 - **All digital recorders and memory cards should be returned to the FINRA Dispute Resolution Services staff member assigned to the case or the hearing facility that provided the recorder.**

- **On the last day of the hearing, for hearings held in FINRA's offices:**
 - **Arbitrators should notify FINRA Dispute Resolution Services staff that the hearings have concluded so the recording can be secured.**