

# FINRA Dispute Resolution Services

## Basic Arbitrator Training Program Transcript

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*This transcript is for reference purposes only. It is not intended to replace the online training program available on FINRA's Arbitrator Learning Site. Users must complete the online course and assessment in FINRA's Arbitrator Learning Site to receive credit.*

August 2025

## MODULE 1: Course Introduction

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### Slide 1: Video

*Thomas:* I'm Thomas Lee.

*Joann:* And I'm Joann Martin.

*Thomas:* We've both been FINRA arbitrators for a number of years. Throughout this course we'll share some memorable challenges from the first time we served together on a panel.

*Joann:* Some challenges, I'll never forget. Fortunately, FINRA provides great information and resources to support us throughout arbitration.

*Thomas:* Including this course. It's designed to help you succeed by exploring the arbitrator's role in ethical obligations and explaining the arbitration process.

*Joann:* Module one walks you through course functions and provides tips to help you complete the course and required course assessments.

*Both:* Good luck!

### Slide 2:

- Course Learning Objectives Include:
  - Understanding the requirements you must satisfy in order to take the required exams and pass the course;
  - Becoming familiar with the resources available to guide and assist you as an arbitrator;
  - Understanding how to use the DR Portal throughout arbitration;
  - Navigating the course modules and content; and
  - Using the self-assessments to prepare for the course exams.
  - For any technical issues, please contact our toll-free support line at 800 – 321 – 6273

### Slide 3:

- The basic controls for the course are as follows:
  - The Table of Contents icon allows you to navigate within each module.
  - The Glossary button will open and close the Glossary for each given module.
  - The "CC" or closed captioning button turns the closed captions on and off.
  - The Slide Number Indicator helps you keep track of your place within a module.
  - The Back Arrow allows you to go back to the previous slide.
  - The Play/Pause button allows you to pause a slide or continue playing.
  - The Forward Arrow allows you to skip ahead to the next slide.

### Slide 4:

- If you are taking this course to become a FINRA arbitrator and have not submitted an arbitrator application, you can complete the online arbitrator application found on the Become an Arbitrator page of FINRA's website.

- After you submit your completed application, the NAMC approves your application, you successfully complete this course, and receive a passing score on your exams, you will be eligible to serve on the roster of available FINRA arbitrators.
- You will receive written confirmation of your approval.
- Also, please note that FINRA Dispute Resolution Services arbitration awards are rendered by independent arbitrators who are chosen by the parties to issue final, binding decisions. FINRA makes available an arbitration forum—pursuant to rules approved by the SEC—but has no part in deciding the award.

**Slide 5:**

- Effective arbitration relies on the integrity and impartiality of the process. This course will help you:
  - Understand the arbitrator’s role and ethical obligations throughout the process;
  - Ensure confidentiality and security of the information and materials entrusted to you;
  - Become familiar with arbitration rules to conduct timely and effective proceedings;
  - Learn to manage and facilitate the arbitration; and
  - Understand considerations for making fair and just arbitration awards.

**Slide 6:**

- This is a self-paced program. However, you should complete the course within 120 days of approval to the roster.
- You must review Modules 2 - 15 before taking the required Basic Arbitrator Training assessment.
- You must review Module 16 before taking the separate Expungement assessment.
- Each module includes self-assessment questions at the end to help you check your understanding.
- You must score 80% or higher on both the Basic Arbitrator Training Assessment and the Expungement Assessment to be eligible to serve as a FINRA arbitrator.
- You have two opportunities to pass the Basic Arbitrator Training Assessment; you may take the Expungement Assessment as many times as needed.

**Slide 7:**

- You may complete the modules in any order, but earlier modules introduce concepts, resources, and terminology used later in the course.
- The Basic Arbitrator Training course, or Modules 2-15, covers arbitrator roles, ethical requirements, confidentiality and information security, and the overall arbitration process.
  - After reviewing the Basic Arbitrator Training course, you may then take the 25-question multiple-choice assessment on the content in these modules.
- Module 16 is dedicated to expungement.
  - After completion, complete a 10-question true/false assessment.

**Slide 8:**

- Each module includes:
  - A brief video introduction from fictional arbitrator “hosts” who will appear in short videos throughout the course;
  - An introductory page with:

- Learning Objectives;
- Resources that you may wish to review before or following the module; and
- Key concepts and terms.
- Each screen provides bulleted key content, accompanied by audio narration of more in-depth information. Many screens feature instructional graphics, animations, and video content.
- A brief video summarizes the content at the end of each module.
- You can complete a brief self-assessment with multiple choice questions before moving to the next module.

**Slide 9:**

- These resources provide guidance, rules, and information that are pertinent across all course modules. They are all available online, and you may want to bookmark them for ease of reference.
- The Code of Arbitration Procedure for Customer Disputes and the Code of Arbitration Procedure for Industry Disputes, both of which are also known as the Code, provide the rules governing the arbitration process.
- The Arbitrator’s Guide provides important information and resources to help arbitrators conduct an effective arbitration.
- The Code of Ethics provides guidance for how arbitrators must conduct themselves to ensure both impartiality and the appearance of impartiality.
- Each module includes a list of additional resources, such as specific rules and other arbitration forms and documents. It is helpful to review these resources before, while, or after you review the module content.

**Slide 10:**

- The Glossary provides definitions for specialized terms and concepts used in the module.
- Each module has its own individual Glossary of terms.
- The first use of each term within the course includes the definition.

**Slide 11:**

- FINRA is not responsible for any errors in or omissions from the information contained in this “Basic Arbitrator Training.” All information is provided “as is” without any warranty of any kind. FINRA makes no representations and disclaims all express, implied, and statutory warranties of any kind to the user and/or any third party, including any warranties of accuracy, timeliness, completeness, merchantability, and fitness for any particular purpose. FINRA reserves the right to amend this course at its discretion.
- FINRA shall not have any tort, contract, or any other liability to any user and/or any third party. Under no circumstances will FINRA be liable for any lost profits or lost opportunity, direct, indirect, special, consequential, incidental, or punitive damages whatsoever, even if FINRA has been advised of the possibility of such damages. The terms of this disclaimer may only be amended in a writing signed by FINRA.
- FINRA Dispute Resolution Services attempts to present information to readers in a format that is easily understandable. Please be aware, that in case of any misunderstanding concerning a rule in the Customer or Industry Code of Arbitration Procedure, the rule language prevails.
- After the conclusion video, close this browser window.

**Slide 12: Video**

*Thomas:* We're back to wrap up this introductory module.

*Joann:* We covered a lot!

*Thomas:* This module summarized course learning objectives, requirements, and testing; introduced important arbitration resources; and provided tips for navigating course content.

*Joann:* As a reminder, you may want to bookmark some of these resources for easy reference throughout the course.

*Thomas:* And take a few minutes to make sure that you are comfortable with course navigation and functions.

*Joann:* Go at your own pace and proceed to the next module whenever you are ready. Module 2 will provide an overview of arbitration and the arbitrator's role.

*Both:* Enjoy the course!

**Slide 13:**

To exit this module and proceed with the course, close this browser window and click on "Go to Class" in the top right to return to the main course page.

**MODULE 2: Arbitration Overview**

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**Slide 1: Video**

*Thomas:* This module is designed to help you understand the differences between arbitration and mediation and get familiar with the general arbitration process and several special types of arbitration. This module provides foundational information to help you understand FINRA arbitration and the arbitrator's role.

**Slide 2:**

- Learning objectives include:
  - Understanding how FINRA arbitration works in relation to mediation;
  - Knowing about common issues arbitrated in public customer disputes and employment disputes;
  - Becoming familiar with the general arbitration process;
  - Understanding several specialized types of arbitration; and
  - Learning the roles and responsibilities of FINRA arbitrators, both panelists and chairpersons.

**Slide 3:**

- FINRA Arbitration is a contractually mandated procedure for resolving securities disputes between two or more parties who agree to abide by the arbitrators' decisions.
- FINRA Arbitration is a formal dispute resolution process, guided by the Code of Arbitration Procedure for Customer Disputes and Code of Arbitration Procedure for Industry Disputes, referred together as the Codes.

- FINRA arbitration is a fast, fair, and relatively inexpensive alternative to litigation or lawsuits.

**Slide 4:**

- Arbitrators hear all sides of a dispute, study the facts and evidence, and make decisions and arbitration awards.
- Arbitration awards are final and legally binding, with no appeal process within FINRA. They may be reviewed by a court in limited circumstances.
- Once issued, FINRA arbitration awards are publicly available.
- FINRA staff and arbitrators keep all information obtained during arbitration confidential.
- However, parties or their counsel are generally free to disclose details of their arbitration.

**Slide 5:**

- FINRA also provides mediation, an informal dispute resolution process.
- A mediator doesn't make case decisions but facilitates negotiations to help parties find a mutually acceptable solution.
- Mediation is voluntary and nonbinding, meaning the mediator has no authority to decide the settlement or compel the parties to settle. If the parties agree on a resolution, they will enter into a settlement agreement that is legally binding.

**Slide 6:**

- Mediators hold joint sessions with both parties as well as separate, confidential sessions to help develop solutions. If the parties reach a resolution, their agreement is documented in a formal, written settlement agreement.
- Mediation is a private, confidential process. With the exception of some regulatory or reporting requirements, all communication and documents are kept confidential unless a party or the counsel chooses to disclose information.

**Slide 7:**

- FINRA mediation can run concurrently with arbitration, to avoid delays.
- If mediation results in a settlement, the arbitration case will be closed.
- The chairperson may remind parties of the option of mediation, when appropriate.
- Arbitrators are not entitled to information regarding a mediation and may not ask any questions regarding a mediation. However, if the involved broker proceeds with an expungement action after the mediation, arbitrators must request the mediation settlement agreement as part of the expungement evidence.
- Next, we'll look at several types of disputes that arbitrators may be asked to consider.

**Slide 8:**

- Customer disputes arise between a financial securities customer and a securities firm and/or registered representative.
- Claims may include a variety of issues such as:
  - Recommendations to purchase or sell a security that are not in the customer's best interest under the SEC's Regulation Best Interest, or Reg BI, given the customer's age, financial situation, investment objective or investment experience.
  - Excessive trading or conducting trades in excess of the investor's goals to generate commissions or fees.

**Slide 9:**

- Misrepresentation, or providing misleading information or failing to disclose pertinent facts about an investment, like risk, fees, company financial information, or bond ratings.
- Failure to execute a customer's order at the best possible price, given prevailing market conditions.
- Lack of supervision over compliance with securities laws and regulations and FINRA rules.

**Slide 10:**

- Most employment disputes within the securities industry must be handled through arbitration
- Claims may involve issues such as:
  - Promissory Notes
  - Bonus disputes,
  - Defamation or a report of false information resulting in professional damage,
  - Wrongful termination,
  - Breach of contract, and
  - Discrimination.
- Arbitration is elective rather than mandatory for discrimination claims.

**Slide 11:**

- One party, the claimant, files a statement of claim detailing relevant facts and the remedies requested.
- The party named in the claim, or the respondent, responds by filing an answer with relevant facts and defenses to the claim.
- FINRA provides the parties lists of potential arbitrators to select the panel to hear their case. The potential arbitrators' disclosure reports will accompany these lists.
- The arbitrators and parties hold a prehearing conference by telephone to schedule hearing dates and resolve preliminary issues.

**Slide 12:**

- During discovery, parties exchange documents and information with one another to prepare for the hearing.
- During hearings, the parties and arbitrators meet in person, along with any representatives and witnesses, to present arguments and evidence.
- After the final hearing, arbitrators consider the facts of the case and issue a written decision called an award.
- Most arbitration cases follow this process, but there are some special types of arbitration.

**Slide 13:**

- In addition to the general arbitration process just detailed, there are several special types of arbitration.
- When a party or essential witness is very ill or senior, the panel may expedite the arbitration process, while maintaining fairness for all involved parties.
- In a default procedure, a single arbitrator rules on a case without a hearing. This process may be used when a respondent, who is no longer a FINRA member, fails to file a timely answer to an arbitration claim.

**Side 14:**

- Simplified arbitration lets parties involved in claims of \$50,000 or less resolve disputes without a hearing. A single arbitrator decides the case based on materials submitted by the parties. Parties can also choose to have a full hearing with one arbitrator or a telephonic hearing under the special proceeding rules.
- Special Proceedings under Simplified Arbitration lets parties present their cases to a single arbitrator in a shorter, limited hearing by telephone.
- Expungement is the removal of customer dispute information from a broker's Central Registration Depository record, also known as CRD, through the arbitration process. Module 16 is dedicated to expungement.

**Slide 15:**

- Arbitrators must follow arbitration rules and guidance, including the Codes of Arbitration Procedure and Arbitrator's Code of Ethics, in every phase of arbitration.
- Often seen as both judge and jury, arbitrators play a vital role in hearings by carefully listening, asking appropriate questions, and conferring with the other arbitrators.
- Following the hearing, the panel reviews and weighs the evidence and testimony provided.
- Because their decision is final and binding, a panel must deliver a decision and award that are impartial and fair, providing a remedy appropriate to the claim and facts.

**Slide 16:**

With specialized training and significant arbitration experience, the chairperson is responsible for:

- Leading the arbitration panel, providing guidance and direction as appropriate, and assigning specific responsibilities;
- Managing the overall arbitration process and conducting hearings;
- Serving as the single arbitrator for arbitrations not requiring a panel of three arbitrators; and
- Overseeing the Discovery Process.

**Slide 17: Video**

*Thomas:* This module introduced you to a high-level overview of the arbitration process and the role of the arbitrator. The next module on ethical requirements describes standards of arbitrator conduct required throughout the process. Test your understanding of this module before proceeding.

**Test Your Knowledge Slides:**

**Slide 18:**

- **Question:** An arbitrator is responsible for:
  - A. Helping the parties in an arbitration develop a fair and just agreement.
  - B. Developing and managing an efficient arbitration process.
  - C. Understanding and applying the rules in the Code of Arbitration Procedure.**
  - D. Ensuring that the prevailing party receives the largest amount of damages available.

**Slide 19:**

- **Question:** While all mediation information is confidential, information regarding arbitration is:
  - A. Publicly available.
  - B. Entirely confidential.**

- C. **With the exception of awards, which are publicly available, arbitration information is kept confidential by arbitrators and FINRA.**
- D. Either public or confidential, as specified in the award.

## Slide 20: Knowledge Check Feedback

### MODULE 3: Ethical Considerations

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#### Slide 1: Video

*Joann:* Arbitrators must be impartial and neutral throughout arbitration. Any behavior that could cast doubt on arbitrator neutrality can adversely impact an arbitration and the parties involved. Failing to follow the Code of Ethics for Arbitrators could be grounds for removal from FINRA's arbitrator roster.

#### Slide 2:

- Learning Objectives include:
  - Understanding the critical importance of ethics throughout arbitration;
  - Becoming familiar with each Canon in the Code of Ethics; and
  - Gaining a deeper understanding of Canons I, II, and III.

#### Slide 3:

- An arbitrator should uphold the integrity and fairness of the arbitration process.
- An arbitrator must be independent in making decisions, and not pressured or influenced by parties, witnesses, or other arbitrators.
- An arbitrator must not enter into new relationships or pursue financial interests that present conflicts of interest or the appearance of partiality—during arbitration and for a reasonable period after the case decision.

#### Slide 4:

- An arbitrator should disclose any interest or relationship likely to affect impartiality or create an appearance of partiality. This includes:
  - Financial or personal interest in the arbitration outcomes;
  - Personal or professional relationships that could affect impartiality or independence; and
  - Even prior awareness of a dispute issue or situation.
- An arbitrator must disclose relevant information as soon as he or she discovers or recalls it, at any stage of the arbitration.
- If there is any doubt about the need to disclose information, disclose it.

#### Slide 5: Video

*Thomas:* My first Case as a chairperson had some interesting moments.

*Joann:* It was my very first arbitration, so I was a little nervous

*Thomas:* Oh, Joann was nervous! Fortunately, we had Bill Gray on the panel. He's served for many years and really knows the ins and outs of arbitration.

*Joann:* The case didn't seem too complicated. A small business owner, Earl, Smith, was representing himself.

*Joann:* Mr. Smith alleged that broker Elise Glenmore had misrepresented several investments.

*Thomas:* The respondent was represented by a very experienced lawyer, Raymond Stern. He had a reputation for being...shall we say...assertive.

*Jasmine [in Hearing Room Scene]:* Excuse me, is this hearing room number 2? Oh, good morning, Earl!

*Joann:* A key witness, Jasmine Long, looked really familiar.

*Joann:* It took me a few minutes to place her...she went by J.J. Long when I knew her. She used to be one of my mother's neighbors and I met her here. Few times when I was visiting or pet-sitting for my mom.

*Joann:* I asked for a quick executive session to talk about whether to disclose; I mean, the contact was several years ago.

*Bill [in Hearing Room Scene]:* We should talk about.

*Thomas [in Hearing Room Scene]:* everyone, the panel needs a brief executive session. If you could just wait outside, we'll call you back in shortly.

*Bill [in Hearing Room Scene]:* Just make a new disclosure...Remember, when in doubt, disclose.

*Thomas:* We brought the participants back and went through the panel disclosures, which went fine until we got to Joann's new disclosure.

*Joann:* I felt pretty dumb for missing that disclosure until the hearing.

*Thomas:* And it only took a minute for the respondent's representative to make the same assessment for us.

*Raymond [in Hearing Room Scene]:* So, can you tell us the last time you encountered Ms. Martin?

*Jasmine [in Hearing Room Scene]:* I'm sorry, I don't remember ever seeing her, much less meeting her.

*Joann:* Although he appreciated the additional disclosure, the respondent's representative was a little annoyed by the delay.

*Raymond [in Hearing Room Scene]:* Okay.

*Thomas:* Embarrassment aside, you did the right thing. It's far better to disclose a situation than assume it's trivial...and then have it become grounds to remove an arbitrator from a case-or worse, to vacate an award after the case concludes.

*Joann:* You're right! Although the representative **did** move to have me recuse myself on other grounds...

*Thomas:* But **that's** a story for later!

**Slide 6:**

- An arbitrator should avoid impropriety or the appearance of impropriety in communicating with parties.
- An arbitrator or prospective arbitrator should never discuss a case with any party in the absence of the other parties. Communicating with just one party is known as ex parte communications.
- An arbitrator should avoid being alone with a party and engaging in even casual discussion not related to the case.
- Additional information on communication is included in Module 9 on the hearing process.

**Slide 7:**

- An arbitrator should conduct the arbitration proceedings fairly and diligently. This includes:
  - Treating all parties and participants alike, with courtesy and patience.
  - Giving parties adequate notice of hearings and allowing each party a fair opportunity to present evidence and arguments.
  - Allowing parties to be represented by counsel or any other person they choose, subject to limitations under the Code.
  - Respecting the role and opinions of other arbitrators in deciding the case.

**Slide 8:**

- An arbitrator should make decisions in a just, independent, and deliberate manner.
- An arbitrator must carefully weigh the facts and evidence for the issues of a case and cannot make decisions on issues outside of the arbitration.
- An arbitrator should not permit outside pressure or influence to affect a decision.
- Arbitrators have a duty to make arbitration decisions, and cannot delegate that duty to anyone else, including other panel members.

**Slide 9:**

- An arbitrator should be faithful to the relationship of trust and confidentiality inherent in that office.
- Arbitrators must not misuse arbitration information for personal advantage, for the advantage of others, or to harm the interests of others.
- An arbitrator may not inform anyone of a decision before that decision is given to all parties.
- With the exception of the final award, which FINRA makes public, arbitrators must keep all arbitration information and evidence confidential throughout and following the arbitration. All panel discussions and deliberations are also confidential.
- Because confidentiality is an essential aspect of arbitration, arbitrators must understand and use good security practices to keep information and documents secure.
- Module 4 focuses on information security.

**Slide 10:**

- An arbitrator should adhere to standards of integrity and fairness when making arrangements for compensation and reimbursement of expenses.
- FINRA has clear information and procedures for arbitration honoraria and reimbursable expenses, available through the FINRA website.
- Next, we'll take a closer look at the first three Canons.

**Slide 11:**

- FINRA has an established process to aid parties in choosing arbitrators. It is inappropriate for arbitrators to promote their services or solicit appointments.
- If there is any doubt about whether an arbitrator can be impartial, he or she should decline the appointment. For example, an arbitrator should refuse an appointment if he or she has firmly held beliefs about the issue in dispute or about a party to the dispute.

**Slide 12:**

- Arbitrators should avoid any financial, business, or other relationships that could affect impartiality or create an appearance of bias. For example, an arbitrator shouldn't accept work or personal engagement involving a party of the arbitration during the process and for a reasonable time after the arbitration is final.
- Arbitrators must strive to prevent abuse of, or disruption of the arbitration process, such as a party making unreasonable discovery requests, a party or counsel who is rude or disruptive during a hearing, or a party who requests excessive postponements or rescheduling.

**Slide 13:**

- Disclosure is required for any circumstance that might affect an arbitrator's ability to be impartial or create an appearance of partiality—including relationships, experience, or background information.
- Arbitrators must fully disclose any relationships or history of relationships with arbitration parties, counsel, witnesses, other panel members, and the organizations where they work.
- Disclosure extends to relationships and circumstances of the arbitrator's immediate family, employer and business associates.
- Arbitrators must also disclose serving as an arbitrator, counsel, or witness on any other cases involving the same parties or issues.
- Arbitrators must be diligent in informing themselves about arbitration participants and examining their relationships to provide disclosures.

**Slide 14:**

- The Code of Ethics provides specific guidance when an arbitrator makes a disclosure after proceedings have begun, and recusal is requested.
- If all parties request that you withdraw, you must do so.

**Slide 15:**

- If only some parties request withdrawal, do so unless:
  - There are procedures for deciding challenges to an arbitrator, based on an agreement of the parties, arbitration law agreed to by the parties, or other applicable law; in that case, follow those procedures; or
  - In the absence of such procedures, you determine the disclosure is not significant and you can decide the case impartially and fairly.
- Arbitrators can consult FINRA staff on withdrawal requests.
- Keep in mind that it is less expensive to step down in the middle of proceedings than for a party to attempt to vacate an award on the grounds of non-disclosure.

**Slide 16:**

- How you communicate with parties and other participants is important throughout arbitration.
- It's essential to communicate only in the presence of all parties and to communicate concurrently to all, whether in person, by phone, online or in writing.
- This extends to the post-award period. If parties, counsel, media representatives or anyone else contacts you after a decision, refer them to FINRA staff.
- Panel discussions and case details can't be shared with anyone outside the arbitration during or after the proceedings. Avoid discussions, including phone conversations, where they may be overheard.

**Slide 17:**

- Improper communication can have serious consequences for the arbitration and the arbitrator.
- Ex parte communications can be cited as a ground to challenge or overturn an award.
- Arbitrators have quasi-judicial immunity to protect them from lawsuits for their actions as arbitrators. An arbitrator may waive this protection for the entire panel by disclosing arbitration discussions.

**Slide 18: Video**

*Joann:* This module explored ethical guidance for FINRA arbitrators. We encourage you to become familiar with the Code of Ethics. The next module focuses on information security and confidentiality. Test your understanding of this module now before proceeding.

**Test Your Knowledge Slides:**

**Slide 19:**

- **Question:** During an arbitration case involving a large financial firm, you receive a consulting offer from one of its non-securities divisions. You haven't accepted the offer yet. Do you need to disclose the offer?
  - A. No. Since the company division is not involved with securities, there's no conflict of interest.
  - B. No. Since you haven't accepted the offer yet.
  - C. Yes. Your relationship with the company could create an appearance of partiality.**
  - D. No. There is no problem as long as you discuss it with your co-panelists.

**Slide 20:**

- **Question:** Just before a scheduled hearing, you learn your stepfather, whom you haven't seen for years, is suing a party's firm for an advertising dispute. Is this something you need to disclose?
  - A. No. The legal dispute has nothing to do with securities, so no disclosure is needed.
  - B. Yes. The situation involves an immediate family member and must be disclosed.**
  - C. No. Since you don't have a close personal relationship with your stepfather, he wouldn't be considered an immediate family member.
  - D. No. Since you didn't know about the suit when you were selected as an arbitrator, there's no need to disclose it.

**Slide 21: Knowledge Check Feedback**

### Slide 1: Video

*Thomas:* Ensuring confidentiality of arbitration information hinges on good security practices. Because arbitrators must maintain confidentiality, they should use sound security measures to protect arbitration documents, information, and discussions.

### Slide 2:

- Learning objectives include:
  - Understanding why security is essential to maintaining confidentiality;
  - Recognizing and protecting personal confidential information;
  - Recognizing common security risks and threats in public and online; and
  - Knowing how to apply good security practices throughout arbitration.

### Slide 3:

- Keeping personal confidential information or PCI secure is vital to prevent identity theft and fraud and maintain arbitration confidentiality.
- PCI includes identify information such as:
  - Name, address, and birthdate;
  - Social Security Number;
  - Taxpayer Identification Number; and
  - Other information that may be linked to or allow others to infer identity, such as a job title or employee number.

### Slide 4:

- Financial PCI includes information like brokerage, bank, or other financial account numbers.
- Medical records often include PCI along with insurance identification numbers, patient identification numbers, and medical information that is protected by law.

### Slide 5:

- Be alert for potential PCI in documents and evidence obtained throughout arbitration.
- Ensure you securely transport, store and dispose of case materials to preserve confidentiality.
- Return extra copies of hearing materials to FINRA when non-FINRA hearing locations don't provide secure document disposal.

### Slide 6:

- Learn about and use good security practices for phone and email communication, as well as reviewing and sharing of information electronically.
- Take advantage of FINRA information security information on the website.

### Slide 7:

- You may handle hard-copy case information, evidence, notes, and reports throughout an arbitration.
- Keep materials within your control. If you're working in a public space like a coffee shop, library or airport, never leave materials unattended, even if you're leaving only briefly.

- Secure materials you use in a quasi-private space like your office or a hotel room. Store them in a locking file cabinet or a hotel room safe when leaving the area.
- If you must leave materials in your car for a short while, ensure they are locked in the trunk.

**Slide 8:**

- Be careful not to expose confidential information that a passer-by could observe or photograph in public places.
- If you have materials after the case closes, check with FINRA on whether you should return them to FINRA for disposal or whether shredding the materials at home provides sufficient security.

**Slide 9:**

- To protect your device and arbitration information:
  - Always keep your device within sight when going through a security checkpoint.
  - Never leave your cell phone or laptop unattended in public, even if only for a few minutes to pick up a food order.
  - In public spaces, position yourself to protect your screen from prying eyes. Consider using a privacy filter or shielding screen to make it harder for onlookers to “shoulder surf.”

**Slide 10:**

- When discussing arbitration issues by phone, ensure both ends of the conversation are private.
- Be cautious about calls in public places or transportation. Choose a spot that lets you observe the area and ensure you’re not overheard.
- Ask other call participants to verify that they’re in a private location.
- If you’re using a speakerphone, close the door and make sure people not involved in the case are not within earshot.

**Slide 11:**

- When possible, use the DR Portal to share documents and other arbitration information.
- Email makes it easier to share arbitration information... including with the wrong people. Take steps to minimize the risks.
- Communicate only through individual accounts and not a group email that can be accessed by multiple people.

**Slide 12:**

- While hearings are typically held at FINRA facilities or conference centers with appropriate security, it’s always wise to take simple precautions.
- If your case is held at a FINRA facility, always wear the access badge in plain view while on premises.
- Avoid discussing personal information such as where you live, what type of car you drive, the names of family members, or upcoming travel plans.
- If anyone or anything about the environment makes you uncomfortable, respect your instincts. Seek safety in numbers by walking with other panel members or consult FINRA or facility staff.

### Slide 13: Video

*Thomas:* This module provided an overview and tips for information security to protect person confidential information and the confidentiality of arbitration proceedings. The next module overs eligibility to serve on a panel. Test your knowledge of this module before proceeding.

### Test Your Knowledge Slides:

#### Slide 14:

- **Question:** A party has redacted all names, Social Security numbers, and financial account information from the documents being shared. As an arbitrator, you should:
  - A. Request the redacted information so you can properly weigh the evidence.
  - B. Not worry about security, since all PCI is redacted.
  - C. **Treat the materials as confidential and keep them secure.**

#### Slide 15:

- **Question:** Personal Confidential Information includes:
  - A. Only name, birthdate, Social Security number, and financial account numbers.
  - B. Any information that a party or counsel directs to be redacted.
  - C. **Any personal information that could help expose a person to fraud or identity theft, reveal health information, or compromise confidentiality.**

### Slide 16: Knowledge Check Feedback

## MODULE 5: Panel Eligibility

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### Slide 1: Video

*Joann:* This module will help you determine whether you should accept an appointment based on case schedule any potential conflicts of interest.

#### Slide 2:

- Learning objectives include:
  - Understanding the arbitration selection process;
  - Determining whether your schedule allows you to participate;
  - Evaluating potential conflicts of interest or disqualifying relationships;
  - Updating your disclosure report and using the disclosure checklist;
  - Investigating potential conflicts involving your employer and colleagues or members of your immediate family;
  - Reviewing case materials to identify additional required disclosures; and
  - Understanding challenges to an arbitrator and the appropriate response.

#### Slide 3:

- FINRA has two classifications of arbitrators, public and non-public.
- Public arbitrators have no affiliation with the securities industry.
- Non-public arbitrators have worked in the financial industry or provided services to financial industry clients or to parties engaged in securities arbitration and litigation; or their firms or immediate family members have currently or recently engaged in securities related work

- Chair-qualified arbitrators have completed chair training and are either attorneys or have significant arbitration experience.

**Slide 4:**

- Using FINRA arbitrator lists, a computer system randomly generates lists of arbitrators for each case. For a customer case requiring a panel of 3 arbitrators, these include:
  - A public list with 15 names,
  - A public chair-qualified list with 10 names, and
  - A non-public list with 10 names.
- Each party may strike:
  - Up to six names on the public list, and
  - Up to four names each on the chair qualified list and non-public list
  - Parties in a customer case can also strike all names on the non-public list.
- The parties then numerically rank the remaining arbitrators, and FINRA's list selection system consolidates the rankings to appoint the three highest-ranked arbitrators.

**Slide 5:**

- Once you're appointed, FINRA will call to provide logistical information on the case and location.
- You must determine whether your schedule allows you to participate, and to promptly conduct the arbitration, as required by Canon I [CANON ONE] of the Code of Ethics.
- Accept a case only if you can properly conduct it within the anticipated time limits. If you anticipate extended travel or other situations that could delay arbitration, you should not accept the appointment.

**Slide 6:**

- FINRA staff provide case details, including case name and number, the names of the parties, the counsel or agents representing the parties, and the nature of the case.
- Consider any relationships with all parties, witnesses, or counsel for the case, your experience and knowledge of organizations they work for, and your knowledge and attitudes regarding the issues in the case.
- Also consider and disclose if you have been involved as an arbitrator, counsel, party or witness in any other cases involving the same parties, organizations, products or issues.
- When in Doubt, Disclose!
- If you have any doubts about remaining fair and impartial, decline the appointment.

**Slide 7:**

- Having established that you can accept the appointment, you must disclose all facts and relationships that could create an appearance of bias.
- You must complete the Oath of Arbitrator and review the Arbitrator Disclosure Report every time you serve on a case.
- The Oath of Arbitrator and Disclosure Report are sent with the case packet through the Dispute Resolution Portal or DR Portal. You can access the Oath and update your report any time through the Portal.

- Even if you have no changes to your report, affirm the information and update the affirmation date by submitting an update through the DR Portal. This is important, because parties may consider the last affirmation date in choosing arbitrators.

**Slide 8:**

- In addition to updating your Disclosure Report, the Oath of Arbitrator includes an Arbitrator Disclosure Checklist. You must sign the Oath and complete the Checklist every time you serve on a case.
- The Checklist provides detailed questions in 10 information categories to help you identify any potential conflicts.
- As described in Module 3 on Ethical Considerations, disclosure includes relationships and circumstances involving members of your immediate family.

**Slide 9:**

- In addition to disclosing known relationships, you must make a reasonable effort to learn about potential conflicts involving employers, business associates, and family members.
  - For example, an attorney must attempt to identify whether his or her firm has any business with any of the parties or representatives.
  - A broker must investigate whether the firm conducted business with participants or traded in the securities involved.
- Arbitrators must continue to explore and promptly report potential conflicts and make disclosures throughout the prehearing process and the hearing.

**Slide 10:**

- After being appointed to a panel, FINRA will send you a case packet with all the pleadings through the DR Portal.
- Pleadings are the claims submitted by the claimant and any other parties, and the answers to the claims, as detailed in the next slide.
- Pleadings may reveal new information about the parties or entities related to the case. Read the material to determine if you need to make additional disclosures.
- You will want to review the pleadings carefully before the prehearing conference to understand the facts and issues.

**Slide 11:**

- A claim is a document prepared by the party bringing the arbitration, or the claimant. It outlines facts as a basis to recover damages.
- An answer is the respondent's formal response to the claim.
- A counterclaim is a claim brought by the respondent to seek damages from the original claimant.
- In a cross claim, a respondent alleges wrongdoing by a co-respondent.
- Exhibits are documents that support a party's position and are often included within other pleading documents.

- As you review these documents, remember that no facts have been proven, and new information and clarification will emerge during the arbitration hearing. Arbitrators must keep an open mind and not reach any conclusions until the end of the case.

**Slide 12:**

- There are times when a Party might object to an arbitrator's continued service on the case.
- Parties may challenge an arbitrator appointment in several ways.
  - Parties can directly challenge the arbitrator by filing a Motion to Recuse.
  - Parties may also submit challenges to FINRA, through a Challenge for Cause or the Director's Authority.

**Slide 13:**

- If all parties ask an arbitrator to recuse or withdraw from the panel, the arbitrator must do so.
- If only some parties request recusal, an arbitrator should withdraw unless the arbitrator is certain he or she can act impartially and fairly.

**Slide 14:**

- A party may file a challenge for cause to remove an arbitrator before the first hearing session begins. All opposing parties may submit a response. FINRA staff reviews the challenge and any responses and determines whether to remove the arbitrator.
- FINRA will grant a challenge for cause when it is reasonable to infer that the arbitrator is biased, lacks impartiality, or has a direct or indirect interest in the outcome of the arbitration.
- If a party Challenges an arbitrator after the hearing begins, only the Director has the authority to grant recusal.
- After the first hearing session begins, the FINRA Director may grant a recusal request and remove an arbitrator only if the arbitrator has not disclosed required information, and the parties were not previously aware of the information.
- Restricting arbitrator challenges after the session begins prevents parties from raising challenges late in the process, when they should have been raised at the outset.
- As an arbitrator, you shouldn't take a challenge personally. Challenges are simply part of the arbitration process.

**Slide 15: Video**

*Joann:* This module provided an overview of arbitration selection and challenges, and a closer look at disclosure considerations. Module 6 provides an overview of discovery.

Test your knowledge of this module now, before proceeding.

**Test Your Knowledge Slides:**

**Slide 16:**

- **Question:** At an association dinner, you shared a table with an expert witness in your case. You did not speak with the person during the dinner. Should you: (Select One)
  - A. Mention your interaction with the expert witness to the panel before the hearing.
  - B. Wait until the first day of the hearing to disclose the interaction to the parties and the panel.
  - C. **Disclose the information to FINRA and report the disclosure on the record at the hearing.**

**Slide 17:**

- **Question:** You have made complete disclosures and have nothing new to disclose at the hearing. One party has a new Counsel at the hearing. Should you: (Select One)
  - A. Pull the counsel aside before the hearing to see whether she has reviewed the disclosures.
  - B. Make no disclosure statements, because counsel has access to all the Arbitrator Disclosure Reports and Checklists through the DR Portal.
  - C. **Repeat the disclosures, so there is no possibility that the counsel is unaware of them.**

**Slide 18:**

- **Question:** You must complete the Arbitrator Disclosure Checklist for any case you are assigned: (Select One)
  - A. Only when all required disclosures are not already included on your Arbitrator Disclosure Report.
  - B. Only when you change jobs or move.
  - C. **Each time you are assigned a new arbitration case.**
  - D. Only when it hasn't been updated lately, to ensure parties will consider you for cases.

**Slide 19: Knowledge Check Feedback**

**MODULE 6: Manage the Initial Prehearing Conference**

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**Slide 1: Video**

*Thomas:* This module covers the initial prehearing conference of IPHC and the discovery process. The IPHC is a conference to schedule hearing dates and other important case milestones. Discovery is the process by which parties request documents and other information from each other in preparation for the hearing. Arbitrators facilitate discovery by ruling on any issues that arise.

**Slide 2:**

- The following key concepts will be addressed in this module:
  - Initial prehearing conference;
  - Evidentiary hearing;
  - Discovery;
  - Ruling based on the papers;
  - Legal memorandum;
  - Legal brief;
  - Subpoena;
  - Deposition;
  - Interrogatory;
  - Orders of appearance and production;
  - Motion to compel;
  - Sanctions;
  - Stipulations of uncontested facts;
  - Adverse inference;
  - Dismissing with prejudice; and
  - Pro se party.

**Slide 3:**

- Certain terms are commonly used in motions, and arbitrators should become comfortable with them, including:
  - Case in Chief: the main case presented by the party who filed the claim.
  - Moving Party: the party making a request (motion) for a ruling or order.
  - Non-moving Party: the party that is the subject of the opponent's motion.
  - Motion Papers: Written request for a ruling or order.
  - Response: Written answer to a moving party's motion.
  - Reply: A party's response to the non-moving party's motion response.
  - With Prejudice: a ruling that prevents a party from refileing a claim.
  - Without Prejudice: a ruling that does not interfere with a party's right to refile a claim.

**Slide 4:**

- Learning objectives include:
  - Using the IPHC to set hearing dates and other case milestones and facilitate discovery.
  - Knowing how to expedite the arbitration process when very ill or senior parties or witnesses are involved.
  - Understanding the discovery process and timelines.
  - Ruling on discovery requests based on the papers.
  - Imposing discovery sanctions when a party fails to provide sufficient information or documents.
  - Understanding terms used in motions.

**Slide 5:**

- FINRA schedules an Initial Prehearing Conference (IPHC) with all parties and their representatives.
- The purpose of an IPHC is to:
  - Schedule hearing dates within nine months or less from the IPHC date in a regular case and within six months or less in an expedited case;
  - Ensure that discovery motions are filed no more than 3 months after the IPHC date; and
  - Determine if participation by very ill or senior parties or witnesses requires the arbitration to be expedited.

**Slide 6:**

- The IPHC is also designed to:
  - Facilitate discovery;
  - Remind parties of FINRA's mediation program; and
  - Remind parties of arbitration requirements and discovery deadlines and discuss issues that could impact discovery.
- Next, we'll look at the expedited hearing process.

**Slide 7:**

- Arbitration timelines can vary significantly, but arbitrators should strive to expedite the process when participants include senior or very ill parties. The objective is to ensure adequate time for fair consideration and a just arbitration, while condensing the timeline.
- Set a deadline for filing discovery motions no more than three months following the IPHC date and help expedite the exchange of documents and identification of witnesses.

- Schedule the hearing within six months of the IPHC and set aside extra hearing dates to avoid delays if the original hearing dates must be cancelled.

**Slide 8:**

- In deciding postponement requests, consider the age and health of participants, and avoid postponements unless there is a genuine emergency.
- Sign orders electronically and return orders and decisions to FINRA as soon as possible through the DR Portal.

**Slide 9:**

- While the chairperson of the panel usually manages discovery, arbitrators may help facilitate the process if the chairperson is unavailable or requests panel assistance or a discovery dispute arises during the IPHC or hearing.

**Slide 10:**

- In some cases, parties voluntarily exchange information and documents and you are not involved in discovery.
- In other cases, a party may file a motion to compel, requesting the chairperson to direct or compel a party to provide disputed discovery information or documents. In discovery disputes, you evaluate the facts to decide if and when the parties exchange the disputed information.

**Slide 11:**

- The Discovery Guide, which includes the Document Production Lists, and discovery Rules 12505 [twelve five oh five] through 12511 [twelve five eleven] work together to streamline discovery exchanges.
- The Guide provides a list of presumptively discoverable documents known as the Document Production Lists, for firms and associated persons, or registered representatives, to produce.
- The Guide provides a separate list for customers.

**Slide 12:**

- While parties and arbitrators should consider the documents in the Document Production Lists, parties and arbitrators have some flexibility in the discovery process. Arbitrators may:
  - Order production of documents not provided for in the Lists;
  - Order that parties do not have to produce certain documents in the Lists; or
  - Change the production schedule set forth in the 12500 series of rules.

**Slide 13:**

- Unless parties agree otherwise, within 60 days of the date the answer to the statement of claim is due, parties must:
  - Produce all List documents in their possession or control;
  - Identify any documents that cannot be produced by the deadline and explain why; and/or
  - Object to the production of specific documents.
- Parties must respond to all other document requests within 60 days of receiving a discovery request.

**Slide 14:**

- Most discovery requests and motions allege that the opposing party did not produce requested documents and information.
- A party may file a written motion by serving it on each party, at the same time, in the same manner. Parties should file their motions through the DR Portal.
- The party must file the motion with FINRA.
- Arbitrators are responsible for:
  - Denying improper requests.
  - Making sure parties comply with proper requests.
  - Incorporating a ruling into a written order with a deadline for compliance and submitting it to FINRA to serve on the parties.

**Slide 15: Video**

*Thomas:* You'll recall that we encountered some turbulence around a new disclosure during our first hearing.

*Joann:* A month earlier, we had a pretty heated exchange during a prehearing conference.

*Thomas:* It's not unusual for parties to disagree on some discovery issues, and in this case they certainly did.

*Joann:* But the way Thomas handled it was a great lesson in how to maintain decorum and display impartiality.

*Thomas:* Why, thank you!

*Joann:* Nearly all prehearing conferences are by phone. Bu the claimant was a little nervous to be representing himself and requested an in-person prehearing.

*Thomas:* Since the Respondent didn't object, the panel agreed.

*Earl [in IPHC Scene]:* You send four boxes of documents I don't' need, but you can't provide an email thread and attachments? Or the original prospectus? I mean, this is ridiculous!

*Joann:* The claimant, Earl Smith, was upset that the respondent's representative, Raymond Stern, had omitted key documents.

*Thomas:* *The representative said the claimant requested the wrong documents.*

*Raymond [in IPHC Scene]:* And, frankly, my office can't be responsible for your company's inadequate record keeping.

*Thomas [in IPHC Scene]:* So, can we remember the importance of keeping calm?

*Joann:* I thought the claimant was going to lose it. But Thomas talked him down.

*Thomas [in IPHC Scene]:* That last remark was not constructive, Mr. Stern. We need to maintain civility and decorum in the conference, and throughout the arbitration process.

*Joann:* By getting both sides calm, we were able to establish that the claimant's request was both clear and reasonable.

*Thomas:* I reminded both sides of the discovery deadlines. And low and behold, the representative relented and agreed to deliver the missing material on time.

*Joann:* Thomas was able to de-escalate the situation and help the parties realize that cooperating on discovery could make the arbitration quicker and less costly for both sides.

*Thomas:* I think the respondent also did some convincing, once she realized her representative was about to prolong the arbitration process.

*Elise [in the IPHC Scene]:* What were you trying to do?

*Joann:* Unfortunately, by the time of the hearing, Mr. Stern seemed to forget that lesson, as we'll see later.

**Slide 16:**

- If a party contacts you directly about a discovery dispute:
  - Do not speak with them about the case.
  - Instead, refer them to FINRA staff.
  - And Let FINRA know that a party contacted you directly about a discovery dispute.
  - This is an example of ex parte communications, as discussed in Module 3.

**Slide 17:**

- In some cases, arbitrators can rule on discovery requests based on the motion and responses, which is called ruling on the papers.
- If you need to clarify issues to make an informed ruling, you can request more information from the parties in writing. If you feel discussion is needed, contact FINRA staff and request a prehearing conference.

**Slide 18:**

- Unless parties agree to an extension or the Director or the panel decides otherwise:
  - Written motions must be filed at least 20 days before a scheduled hearing.
  - Parties have 10 days from the receipt of a written motion to respond.
  - Parties have 5 days from the receipt of a response to a motion to reply.

**Slide 19:**

- Documentation often plays a primary role in case outcomes, but sometimes document requests can be designed to harass and burden the opposing party.
- The Arbitrator's Guide can provide guidance in deciding requests, and you may call other panel members or request a conference with the other members of the panel to discuss the request.
- You should first consider whether a document is relevant or likely to lead to relevant evidence.
- If the request is relevant, consider whether there is undue cost or burden for producing it.
  - If the burden is disproportionate to the need for the document, see if the time frame or scope can be reduced or other documents can provide the same information.

**Slide 20:**

- A party may object to document production on the grounds of privacy or confidentiality.
- To preserve confidentiality, arbitrators may:
  - Suggest a stipulation between parties that designated documents will not be disclosed or used outside arbitration.
  - Issue a confidentiality order, such as:
    - Requiring redaction of names or other information, or
    - Requiring parties to sign confidentiality agreements.

**Slide 21:**

- Arbitrators may not issue an order or use a confidentiality agreement to require parties to produce documents protected by attorney-client privilege or the attorney work product doctrine.
- If parties cannot agree on confidentiality, the party requesting confidentiality must demonstrate that the information is entitled to confidential treatment.

**Slide 22:**

- Arbitrators should strive to achieve confidentiality in the least restrictive manner, rather than designating all documents confidential.
- Arbitrators should consider a number of factors, including whether:
  - Disclosure invades personal privacy (Social Security number or medical information).
  - Harm could result from disclosing the information.
  - Information includes proprietary information or trade secrets.
  - Information has been published without confidentiality or is in the public domain.
  - An excessively broad confidentiality order is against the public interest or could impede justice.
  - Excessive confidentiality restrictions raise legal or ethical issues.

**Slide 23:**

- Stipulations between parties or arbitrator confidentiality orders during discovery do not restrict disclosure of specified documents to the SEC, FINRA, any other self-regulatory organization, or state or federal regulatory authorities.
- Using Confidentiality provisions to restrict an individual's ability to communicate with a regulatory authority is inconsistent with standards of commercial honor and principles of trade and may result in FINRA disciplinary proceedings for violation of FINRA Rule 2010.

**Slide 24:**

- Parties may request the production of information as well as documents. Information requested should be based on factual information on events or participants, not opinions or conclusions.
- For example, these are proper requests:
  - Who was the branch manager?
  - Was the current compliance manual in effect during the period in question?
  - Which individuals supervised the broker?
- While these types of questions are not appropriate:
  - What is your understanding of the document?
  - What was the client thinking when she signed the agreement?

**Slide 25:**

- Depositions are witness testimony provided under oath through transcripts based on oral or written questions, and they are discouraged in arbitration.
- Depositions are allowed in arbitration only in limited circumstances:
  - To preserve testimony of ill or dying witnesses;
  - To accommodate essential witnesses unwilling or unable to travel long distances;
  - To expedite large or complex cases; or
  - If the panel determines there are extraordinary circumstances.
- Witnesses generally can be compelled to attend depositions or hearings only if they are held in the county in which they live, are employed or transact business, or in another convenient location.

**Slide 26:**

- Arbitrators must balance the need for testimony against the cost and burden of taking a deposition – including travel and transcription costs and attorneys' fees.
- Consider:
  - Whether the information sought is important to the case;
  - Whether there is a reason that the witness can't be compelled to provide information at the hearing; and
  - Whether there is a less burdensome way to obtain information such as interrogatories or videoconference testimony.

**Slide 27:**

- Interrogatories are written questions from one party to another. They are less burdensome than depositions, but excessive questions can be used to harass an opponent.
- Interrogatories are appropriate when the information sought is likely to lead to additional discoverable evidence.
- Asking highly detailed questions is more appropriate for the hearing.
- Appropriate Questions:
  - Asking where a registered person worked.
  - Asking which broker handled a transaction for the claimant.
- Inappropriate Questions:
  - Asking about conversations a registered person had with a supervisor.
  - Asking how a claimant was introduced to a broker.

**Slide 28:**

- Rule 12513 permits an arbitrator to order the appearance of any person employed or associated with any FINRA member—including non-parties, and the production of documents they have.
- Orders, rather than subpoenas, are usually used for witnesses or documents from member firms, employees, or associated persons.
- The moving party sends the request for the order, including a draft order, to FINRA staff with copies to all parties; it is treated like a motion.
- Non-moving parties should respond within 10 days of receiving the request.

- Moving parties have 10 days from the receipt of response to reply.
- After the deadline or receipt of the responses, FINRA staff forward the request and responses to the chairperson.
- The chairperson rules on the order and returns it to FINRA.
- The party requesting witness appearance or production of documents is responsible for serving it on the person named within it and paying reasonable costs of appearance/production.

**Slide 29:**

- Sometimes, testimony and documents are not under the control of a brokerage firm or its employees. In those situations, Rule 12512 allows arbitrators to issue subpoenas for parties and non-parties for discovery or appearance at a hearing.
- Arbitrators can issue subpoenas only within geographic limits set by state or local law. For example, in some jurisdictions, you can't compel attendance of a witness living or working more than 40 miles from the hearing location.
- Parties make written motions requesting a subpoena by sending the motion, including a draft subpoena, to FINRA and all other parties at the same time.
- A party may file written objections to FINRA, with copies to parties, within 10 calendar days of the motion being served.
- The moving party may respond to objections within 10 calendar days of receipt.
- When all responses are received or the deadline passes, FINRA forwards the motion and responses to the chairperson.
- The chairperson rules promptly on whether to issue the subpoena or limit its scope.

**Slide 30:**

- The moving party must notify all other parties within 5 calendar days of receiving documents.
- If another party asks for copies of the subpoenaed documents, the moving party must provide copies within 10 calendar days.

**Slide 31:**

- A non-party may object to a subpoena.
  - The arbitrator can hold a conference call with the non-party and the parties to discuss the objection;
  - The arbitrator rules on the objection following the call;
  - FINRA staff advise all participants of the arbitrator's decision.
- Non-parties may also ask arbitrators to determine who pays costs incurred in appearing or producing documents.

**Slide 32:**

- Third-party subpoenas to regulatory authorities often seek documents with personal confidential information (PCI) about customers who are not parties to the arbitration.
- As discussed in Module 4, PCI includes information like Social Security Numbers, brokerage or other financial account numbers, and taxpayer identification numbers.
- If a regulatory authority objects to a subpoena, arbitrators may be asked to resolve the dispute by:
  - Issuing protective orders to limit the use of PCI;
  - Suggesting parties enter into confidentiality agreements;

- Requiring a party to redact PCI; or
- Modifying the scope of the subpoena.

**Slide 33:**

- Arbitrators are sometimes asked to facilitate discovery by ruling on procedural matters, such as:
  - Stipulations of uncontested facts, or agreement on certain facts of the case to simplify the issues involved and help streamline the process.
  - Requiring advance identification of exhibits.
  - Exchanging witness lists.
  - Estimating the length of the case.
  - Establishing a discovery schedule.
  - The selected arbitrator may establish rules to expedite the arbitration proceedings following a prehearing conference with the parties.
- If a pro se party, a party without legal representation, is involved, the arbitrator might provide more procedural direction and specific deadlines for discovery requests and responses to help move the case along. However, it's essential to remain impartial and never become an advocate for any party.

**Slide 34:**

- Failure to comply with the Code can result in sanctions, or disciplinary actions. For discovery this includes:
  - Failing to cooperate in the exchange of documents and information as required by the Code;
  - Frivolously objecting to production of documents or information; or
  - Failing to comply with a provision in the Code or an order.
- Sanctions can include – but aren't limited to – the following:
  - Assessing monetary penalties to one or more parties;
  - Assessing postponement or forum fees;
  - Assessing attorneys' fees, costs and expenses;
  - Precluding a party from presenting evidence;
  - Making an adverse inference against a party, meaning drawing a negative conclusion based on a party's failure to provide information or documents;
  - Initiating a disciplinary referral; or
  - Dismissing a claim or defense with prejudice, meaning it is permanently dismissed and may not be considered in the future for arbitration.

**Slide 35: Video**

*Thomas:* This module introduced the Initial Prehearing Conference, provided an overview of the discovery process, and discussed discovery issues that an arbitrator might deal with when ruling. The next module explains how to prepare and conduct a prehearing conference when additional information is needed in ruling on discovery. The module also goes over other motions that require decisions by the full panel. Test your knowledge on this module before proceeding.

**Test Your Knowledge Slides:**

**Slide 36:**

- **Question:** To determine whether a document request is reasonable, a first important step is:

- A. Asking FINRA staff for guidance.
- B. Determining whether it includes PCI for individuals who are not parties to the case.
- C. Evaluating whether the document is relevant or likely to lead to relevant evidence.**
- D. Considering if an interrogatory is a better way to get the information in a lengthy document.

**Slide 37:**

- **Question:** One party in an arbitration significantly delayed discovery by repeatedly objecting to reasonable information requests, providing documents late, and failing to comply with several panel discovery rulings. The panel has agreed to issue sanctions. This might include:
  - A. Assessing monetary penalties payable to FINRA.
  - B. Assessing postponement fees payable to the panel.
  - C. Dismissing the party's claim, with prejudice.**
  - D. Requiring the party to replace its disruptive counsel.

**Slide 38:**

- **Question:** It may be appropriate to conduct arbitration proceedings on an expedited basis when:
  - A. One of the parties is planning a move that could be disruptive to the arbitration.
  - B. A statute of limitations deadline is approaching for one of the claims.
  - C. A key witness for the claimant has been diagnosed with a very serious condition.**
  - D. There is alleged continuing wrongdoing by one party that is harming the other party.

**Slide 39: Knowledge Check Feedback**

MODULE 7: Deliberate on Specific Motions

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**Slide 1: Video**

*Joann:* While the previous module covered prehearing requests a single arbitrator can rule on, this module discusses motions that must be considered by the entire panel.

**Slide 2:**

- Learning objectives for this module include:
  - Ruling on motions to dismiss an arbitration case;
  - Ruling on postponing a hearing;
  - Severing and consolidating claims;
  - Ruling on requests to change a hearing location;
  - Barring a party from presenting facts or defenses; and
  - Ruling on motions in limine [pronounced li-mi-ne] – or the admissibility of evidence prior to a hearing.

**Slide 3:**

- One party may request that the arbitrators dismiss some or all of another party's claims prior to or after the conclusion of the case in chief.
- There are three types of motions:
  - Rule 12504(a) Motions are made before or during the hearing but before a party has concluded its case in chief.

- Rule 12504(b) Motions are made after a party has concluded its case in chief.
- Rule 12206(b) Motions are made based on eligibility grounds.

**Slide 4:**

- If a party files a motion to dismiss on multiple grounds, including eligibility, the panel must decide eligibility first.
- If the motion is granted on grounds of eligibility, the panel must not rule on any other grounds.

**Slide 5:**

- FINRA believes parties have the right to a hearing in arbitration. The panel cannot act upon a motion to dismiss a party or claim under paragraph (a) of this rule, unless the panel determines that:
  - The non-moving party released the claim or claims in dispute by a signed settlement agreement or written release;
  - The moving party was not associated with the account, security or conduct at issue; or
  - The non-moving party previously brought a claim for the same dispute, against the same party that was fully and finally adjudicated on the merits and memorialized in an order, judgment, award, or decision.

**Slide 6:**

- A party must first answer the claim and may then file a Rule 12504(a) motion in writing, separately from the claim. It must be filed at least 60 days prior to the hearing.
- Non-moving parties have 45 days to respond to the motion.
- Moving parties may reply to responses within 5 days of receiving them.

**Slide 7:**

- FINRA staff forwards motions, responses, and replies to the full panel for review.
- The panel must hold a hearing in order to grant the motion, unless the parties waive the hearing or the panel decides to deny the motion on the papers.
- A panel may ask parties for briefs if it needs additional information to rule on the motion.
- Decisions to grant a motion must be unanimous and include a written explanation.
- If the panel dismisses all claims, it must render an award and allocate forum fees and costs among the parties.
- A denied motion may not be refiled unless permitted by panel order.

**Slide 8:**

- If the panel denies the motion, it must assess forum fees against the moving party.
- If the panel deems the motion frivolous, it must award reasonable costs and attorneys' fees to any party that opposed the motion.
- If the motion was filed in bad faith, the panel may issue sanctions.
- Next, we'll look at motions to dismiss after the conclusion of the case in chief.

**Slide 9:**

- After a claimant has presented the case in chief with all evidence and testimony, the respondent may request dismissal on the grounds that the claimant failed to prove the allegations or failed to prove a right to recovery.

- These claims are typically made orally after the claimant's presentation at the hearing.
- A panel should view the evidence in a light most favorable to the claimant. If the evidence credibly supports recovery, deny the motion. If the testimony and documents do not support any possible recovery, the panel may grant the motion.

**Slide 10:**

- Be sure all parties had a full opportunity to argue the motion.
- Consider case issues carefully, including:
  - Whether the claimant had the chance to call all witnesses, and if not, why.
  - Whether the claimant met the burden of proof, remembering to look at all evidence presented in the light most favorable to the claimant.
  - Whether the claimant has any further witnesses, evidence or testimony to offer.
- You may direct the respondent to present his or her case, even if the claimant's case is weak and the respondent's motion has some validity.

**Slide 11:**

- If the panel dismisses the claim, it must render an award and consider how to allocate forum fees and costs among the parties.
- The rule allows for panel discretion on assessing fees and costs and does not prevent a panel from issuing sanctions if it determines a party filed a motion in bad faith.

**Slide 12:**

- A claim is not eligible for arbitration when six years have elapsed since the event giving rise to the claim.
- A full panel must resolve any questions regarding a claim's eligibility.
- The rule has several procedural requirements.
  - The respondent must first answer the claim and file the motion separately at least 90 days prior to the hearing.
  - Other parties have 30 days to respond.
  - The respondent has 5 days to reply to the response.
  - FINRA staff forwards the motion, responses, and replies to the full panel.

**Slide 13:**

- Granting an eligibility motion requires a unanimous decision from the panel.
- If a party files a motion on multiple grounds, including eligibility, the panel must decide eligibility first. If the motion is granted, the panel cannot rule on any other grounds for dismissal.

**Slide 14:**

- The panel should review the parties' submissions, pleadings, and arguments.
- The panel should give parties an opportunity to conduct discovery, if requested.
- If the panel has additional questions on eligibility, ask the parties to brief the issue.
- Arbitrators should consider whether a continuing occurrence or event is giving rise to the dispute. For example, a customer may have purchased stock 10 years ago, but allege ongoing fraud starting with the purchase which continued to a date within six years of the claim's filing date. In such a situation, arbitrators should carefully consider the evidence and arguments and may deny the eligibility motion.

**Slide 15:**

- If the panel dismisses a claim, the non-moving party may withdraw any related claims without prejudice and may pursue all claims, including the dismissed claim, in court.
- If the panel denies a motion, it must assess forum fees against the moving party.
- If the panel deems a motion frivolous, it must award reasonable costs and attorneys' fees to any party that opposed the motion.
- If the panel determines a motion was filed in bad faith, it may issue sanctions.

**Slide 16:**

- The six-year eligibility rule is separate from any state or federal time limits for filing a claim.
- Even if a claim is filed within the six-year eligibility period, federal or state statutes may preclude an award for events during the six-year period. For example, some states have a two-year statute of limitations for breach of contract claims.
- A statute of limitations claim or argument may also apply to one claim in a statement of claim but not all the claims.

**Slide 17:**

- Whether statutes of limitations are applicable depends on the nature of the allegations and the law of the relevant jurisdiction. Arbitrators may ask parties for instructions on these issues.
- Arbitrators must consider whether any circumstances have tolled or extended the statute for legal and equitable reasons, such as:
  - Wrongdoing by a party;
  - Continuing wrong or misrepresentation; or
  - Filing of a prior legal action.
- The date the statute of limitations begins may depend on the date a party discovered or should reasonably have discovered alleged wrongdoing.
- If a statute of limitations applies and bars a claim, dismiss the claim with prejudice. Remember to consider the statute of limitations argument separately for each claim, as different claims may have different limitation periods.

**Slide 18:**

- Parties may move to deny the forum for several reasons. One is failure to obtain jurisdiction, meaning one of the parties did not agree to or is not required to go through arbitration.
- Most securities firms include an arbitration clause in customer agreements, requiring the firm and customers to resolve disputes through arbitration.
- FINRA members and employees are required to arbitrate all customer disputes, whether they have contractually agreed to or not.
- Per Rule 12203, motions to deny the forum are decided by the Director of Arbitration.

**Slide 19:**

- Any claim submitted as a class action is not eligible for arbitration.
- However, a claimant may opt out of a class action to pursue a separate action against the respondent. Such claims may be eligible for arbitration.
- Parties usually opt out of a class action by signing a form and sending it to the class representative.

**Slide 20:**

- A party can show intention to opt out before the class is certified by providing an affidavit, pleadings or other documents indicating the party wants to proceed with arbitration and intends to opt out. Arbitration can generally proceed without having a court approve the customer's intention to opt out.

**Slide 21:**

- Arbitrators may postpone a hearing on their own initiative or at the request of a party. Because arbitration is intended to provide a faster way to resolve disputes, arbitrators should avoid postponing hearings of their own accord if possible.
- Parties may request postponement for reasons such as:
  - Retaining counsel;
  - Completing discovery;
  - Attempting to settle the case;
  - Witness death or illness; or
  - Unavailability of a witness, party or counsel.

**Slide 22:**

- If all parties agree to postponement, the hearing is postponed, and the panel doesn't rule on the motion. Parties must provide information on other mutually available dates.
- If all parties request or agree to more than two postponements, the panel may dismiss the arbitration without prejudice.
- For motions without the agreement of all parties, the panel may not grant a request made within 10 days of a scheduled hearing without good cause. FINRA forwards the request - and any objections - to the panel along with four sets of hearing dates on which the parties are available.

**Slide 23:**

- Panels should consider several factors before ruling on postponement requests:
  - Fairness to the parties;
  - Number of prior postponements;
  - Burden placed on the parties by postponement;
  - The panel's ability to conduct a productive hearing; and
  - Whether the requesting parties had information forming the basis for the request previously and could have avoided the postponement request.

**Slide 24:**

- FINRA usually makes the initial determination on whether cases will be consolidated or severed, but parties have the right to raise the issue with the panel.
- A party files a motion to sever to have a claim heard separately from another claim.
- A party files a motion to consolidate to have a claim heard at the same hearing as another claim.
- In granting or denying these motions, arbitrators should consider:
  - Whether it is more efficient to hear more than one claim at the same hearing, when claims involve the same firms, brokers, or securities; and
  - Whether it would prejudice a party's case to hear all claims together.

**Slide 25:**

- FINRA selects the initial hearing location.
- Most public customer cases are heard at the location closest to where the customer lived at the time of the controversy, but the panel may change that location on request.

- If all parties agree to the change, the panel should grant the motion.

**Slide 26:**

- Respondents must submit an answer in response to the statement of claim within 45 calendar days of receiving a claim. If a respondent misses this deadline, the panel can bar presentation of defenses or facts at the hearing.
- If all parties agree in writing to extend or modify the deadline, the deadline is changed.
- If there is not a written agreement, the panel determines whether to bar late defenses, based on factors such as:
  - The reason for the delay;
  - Length of the delay; and
  - Whether the late filing prejudices the claimant's ability to prepare for the hearing.

**Slide 27:**

- A motion in limine [li-mi-ne] requests arbitrators to rule on the admissibility of evidence prior to the hearing.
- Parties may try to include other issues with motions in limine, including requests for dismissal of claims. Treat any requests for dismissal as motions to dismiss in accordance with the rules.
- Be alert to the possible misuse of motions to delay the hearing.

**Slide 28: Video**

*Joann:* This module provided an overview of motions that require the participation of the full panel, including motions to dismiss a case, postpone a hearing, sever or consolidate claims, change a hearing location, bar a party from presenting facts, and rule on the admissibility of evidence. The next module covers prehearing conferences. Test your knowledge on this module before proceeding.

**Test Your Knowledge Slides:**

**Slide 29:**

- **Question:** A customer filed a claim against his broker for losses in his account during a specific four-month period. The broker filed a motion to dismiss the claim, stating he did not make the disputed trades during the specified period. The claimant responds to the motion and provides documentation showing the broker was the named representative on the account during that time. The panel should:
  - A. Review the documentation carefully, hold a conference call if needed, and deny the motion unless the respondent can provide further proof.
  - B. Coordinate among themselves to grant the motion based on the papers.
  - C. **As a panel, deny the motion unless the respondent can prove that he was not associated with the account, securities, or conduct at issue or that the case was previously settled by the parties or through a final award or decision.**

**Slide 30:**

- **Question:** An arbitration hearing is scheduled for a case in which the claimant alleges a broker misrepresented the products sold to the claimant. 60 days before the hearing, the respondent files a motion to dismiss the case on the grounds that claims giving rise to the statement of claim occurred more than 6 years ago. The panel should:

- A. Request the parties to provide missing information about when the trades were made.
- B. Independently research what actions constitute misrepresentation by a broker.
- C. Decline to consider the motion because it does not comply with the 90-day deadline rule for eligibility motions.**
- D. Await the claimant's reply before ruling.

**Slide 31:**

- **Question:** Thirty days before the hearing, the respondent requests a postponement because the claimant failed to produce all the documents requested. After reviewing the documents and holding a conference with both party representatives, the panel found that the claimant did fail to provide significant documents that impeded a proper defense and is causing delay to the proceedings. The panel may:
  - A. Deny the motion, since the request wasn't made at least 90 days prior to the hearing.
  - B. Sanction both parties for delaying the proceedings.
  - C. Grant the motion, and assess the postponement fee against the claimant, since the claimant cause the delay.**

**Slide 32:**

- **Question:** A party's attorney sends FINRA a request for postponement through the DR portal 8 days prior to the scheduled hearing. The stated reason for the postponement is that a key witness is unavailable due to urgent surgery. The opposing counsel objects to the postponement request. The moving party replies that the witness' testimony is a critical part of the case. To rule on this request, the Panel should consider:
  - A. The availability of panel members for future hearing dates, to avoid the expense and delays of bringing in new arbitrators.
  - B. Whether the opposing party has been granted any motions during the prehearing process, in order to maintain fairness.
  - C. The reason for the request, the ability to conduct a productive hearing if the request is denied, and whether this is a first request for a postponement.**
  - D. The panel can't consider the request, because it was made within 10 days of the scheduled hearing session.

**Slides 33 - 34: Knowledge Check Feedback**

**MODULE 8: Conduct a Prehearing Conference**

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**Slide 1: Video**

*Thomas:* After the Initial Prehearing Conference, additional prehearing conferences can be a valuable way to gain a better understanding of the issues for a single arbitrator or the full panel.

**Slide 2:**

- Learning Objectives include:
  - Scheduling a prehearing conference through FINRA;
  - Preparing for a prehearing conference;
  - Effectively managing a prehearing conference;
  - Ruling on the issues in dispute; and

- Communicating decisions through a prehearing order.

**Slide 3:**

- In some cases, an arbitrator believes a discussion with the parties would clarify the issues and help to rule on a motion.
- As described in Module 7, several types of motions require consideration by the full panel and the panel may need a conference to clarify issues or facts.
- Most prehearing conferences are telephonic to save time and expense.
- An in-person conference may be more effective if the issues are complex, and the panel and party representatives are in the same general location.

**Slide 4:**

- Once you determine the need for a prehearing conference, coordinate with FINRA for scheduling.
- Contact FINRA staff with the dates you are available, and request staff to contact the parties and identify a mutually agreeable time. Scheduling can be done through the DR Portal.
- FINRA Staff will ascertain the parties' availability and inform you and the parties of the scheduled prehearing conference through the DR Portal.

**Slide 5:**

- The DR Portal will have the motions, responses, and any replies available to you prior to the prehearing conference.
- Read the motion papers and the pleadings, list the issues you have identified, and consider how you can logically and efficiently discuss them.

**Slide 6:**

- For issues that may be decided by one arbitrator, typically the chairperson, only the party representatives and the chairperson speak during the teleconference.
- For conferences where the full panel is present, the chairperson will lead discussions, with other panel members asking questions as appropriate.
- Remember not to start the discussion until all parties are on the line.
- Ask all individuals on the line and those listening to the conference to identify themselves.
- Provide the case name and number.

**Slide 7:**

- As you discuss issues with the parties, consider the oral arguments set forth and the documents provided prior to the conference. If motions to dismiss or other motions outside your authority arise, explain they must be tabled until the full panel convenes.
- The discussion follows the same general order as a hearing.
- The moving or requesting party explains the action or ruling requested.
- The opposing party responds.
- The moving party provides a brief rebuttal, if needed.
- After all parties have completed their presentations, ask any questions needed to clarify issues.

**Slide 8:**

- During the prehearing process, you should assist the parties in reaching agreements among themselves if possible.
- If parties cannot reach agreement, you must decide whether you agree with the moving party's position, the opposing position, or somewhere in between.

**Slide 9:**

- Once you have the required facts, you will make clear, specific rulings.
- Take notes of your orders as you make them. If an order requires details beyond whether a motion is granted or denied, read the written order to the parties to ensure there is no confusion. Include any deadlines for the parties.
- If the parties are unable to reach an agreement, be prepared to be firm in your ruling and don't allow parties to push back or debate your decision.

**Slide 10:**

- After hearing the issues raised by the parties, you may set additional rules, if needed, for the upcoming hearing.
- Ask the parties if there is need for any further discussion, then conclude the call.
- If the panel is to consider any motions, ensure all parties, representatives, and other listeners are off the line before beginning panel discussions.

**Slide 11:**

- Document the decisions made promptly, while the information is fresh in your mind.
- The chairperson will draft an order or request a party's counsel to submit a draft order to adopt or modify.
- Draft and submit the order through the DR Portal. The assigned FINRA staff member will distribute it through the portal to the panel and all parties.
- If you are the chairperson, be sure to note any motions requiring full panel consideration.

**Slide 12: Video**

*Thomas:* This module described how to schedule, manage, and conduct a prehearing conference to resolve discovery issues and help parties prepare for the hearing. The next module will detail how to call the hearing to order. Test your knowledge of this module before proceeding.

**Test Your Knowledge Slide:**

**Slide 13:**

- **Question:** To ensure your decision is clearly communicated to all parties, you can:
  - A. Communicate each decision as you make during the conference and then telephone FINRA staff with a summary.
  - B. Send an email to all participants immediately following the conference.
  - C. Draft an order and send it by mail to all participants.
  - D. **Make your ruling during the conference and repeat each ruling at the end of the conference. Also, record your rulings in a prehearing order that will be made available through the DR Portal.**

**Slide 14: Knowledge Check Feedback**

### Slide 1: Video

*Joann:* Conducting an effective hearing is key to ensuring fairness and just award. This module explains how to call a hearing to order and introduce the case. It also explains how to appropriately handle requests that an arbitrator withdraw from a case, and how to deal with the absence of a party during the hearing.

### Slide 2:

- Learning objectives include:
  - Understanding proper communication with parties and representatives before, during, and after the hearing.
  - Conducting the initial executive session.
  - Properly recording the proceedings.
  - Introducing the case.
  - Repeating previous disclosures and making any new disclosures.
  - Properly responding to party objections to an arbitrator.
  - Appropriately dealing with the absence of a party.

### Slide 3:

- Many hearings may be conducted in the same building. Make sure you are in the correct hearing room.
- Introduce yourself and ask whether the other panelists are present. The other panel members should introduce themselves.

### Slide 4:

- It's vital to avoid ex parte [ex PAR-tay] communications, or speaking alone with a party, representative, or witness in the absence of all parties. Panelists should not address the parties directly in the conference room prior to the hearing, beyond a simple introduction.
- Remain careful about communications throughout and after the hearing. If you appear biased toward a party, the opposing party could:
  - File a motion to recuse or move to remove you from the panel; or
  - File a motion with a court to vacate the arbitration award.

### Slide 5:

- Avoid being in the room with only one party, to prevent the appearance of ex parte communications. The chairperson may ask parties and counsel to wait outside the hearing room until all parties arrive.
- Avoid even pleasantries exchanged in the elevator, hallway or restroom. Early in the hearing, the chairperson will explain why panel members cannot speak with a party outside the hearing.
- Never discuss the case, evidence, or representatives with other panel members when any parties, representatives, or other persons are within earshot. Find a place where the panel can have a private conversation, or the chairperson can ask everyone except the panel to leave the room for panel discussions.

### Slide 6:

- If you slip and find yourself engaged in ex parte communication with a party:

- Terminate the conversation immediately.
- Disclose the communication on the record to the parties when the hearing reconvenes.
- For further information on ex parte communications, revisit Module 3—Ethical Considerations, Canon III [pronounced THREE] of the Code of Ethics, and Rule 12210 [Twelve Two Ten].

**Slide 7:**

- Panel members should arrive early to hold a private panel meeting, also known as an executive session, prior to the hearing. The chairperson will ask any parties, witnesses, and representatives to leave the hearing room.

**Slide 8:**

- The executive session gives the panel a chance to review case information and attend to administrative tasks in preparation for the hearing.
- This can include:
  - Testing the recorder
  - Preparing an exhibit list
  - Updating the panel on any prehearing rulings
  - Addressing any unresolved questions
  - Ensuring all arbitrators have signed the Oath of Arbitrator
  - Ensuring arbitrators have reviewed all pleadings and exhibits – which will be marked as Arbitrator’s Exhibit #1 during the hearing and
  - Dividing Arbitrator Duties

**Slide 9:**

- The Executive Session is also an opportunity to set ground rules for arbitrator conduct, such as:
  - How to ask questions; and
  - How to call an executive session.

**Slide 10:**

- Generally, arbitrators ask questions only after each witness has been examined and cross-examined by all counsel.
- You may occasionally need to ask questions to clarify evidence as it is presented. The panel should agree on whether members should ask such questions or have the chairperson ask them.

**Slide 11:**

- The panel should agree on routine administrative duties, including:
  - Responsibility for keeping a record of the witnesses and exhibits; and
  - Managing the recording of the proceedings.

**Slide 12:**

- An executive session is a meeting of the arbitrators without any parties, counsel or witnesses present. They are typically held in the hearing room after all participants leave the room at the request of the panel.
- Executive sessions can help facilitate a full and fair hearing.
- Any arbitrator may request a session for any reason, any time during the hearing.
- You may discuss procedural or substantive motions, or a question, concern, or observation from any panel member.

- Executive sessions help project panel unity. You might need to accept a ruling with which you disagree. Having the chance to talk through issues in private helps avoid appearance of dissension on the panel.

**Slide 13:**

- The chairperson calls parties into the room and starts the proceedings by beginning audio recording. Rule 12606 requires a record be kept of all hearings.
- The recording is the official record of the proceedings, even if it is transcribed.
- The chairperson introduces the panel and all other participants in the room introduce themselves for the record.
- The panel will prepare a daily attendance sheet to provide a written record of everyone present.
- It's important that the recording includes clear identification of the case name and number, hearing date, and recording number.
- The assigned arbitrator tests the recorder and ensures proper operation.
- It is important to remember to stop recording during breaks, executive sessions, and deliberations. If an executive session or deliberation is accidentally recorded, please notify FINRA staff immediately.
- The assigned arbitrator forwards all recordings promptly to FINRA after the hearing.

**Slide 14:**

- Any party may make a stenographic or written record, but the recording remains the official record unless the panel decides otherwise.
- If a stenographic record is the official record, a copy must be provided to the Director, each arbitrator, and each party.
- Costs of making and copying the record are borne by the party electing the stenographic record, unless the panel determines otherwise.
- Parties and counsel may not make audio or video recordings or transmissions of proceedings unless agreed to by all parties and arbitrators. This includes recording or transmission through a phone or mobile device app. Information regarding the case is strictly confidential and may not be shared anywhere, including posting on any social media platform.

**Slide 15:**

- For your personal security and confidentiality of the proceedings, be attentive to security during hearings.
- A few reminders:
  - If your case is conducted in a hotel, ensure only the chairperson has a key to the hearing room.
  - At FINRA facilities, wear your access badge in plain view.
  - Keep phones and other digital devices with you—or ask a panel member to watch them for you.
  - Don't discuss personal matters such as where you live, your car, family member names, or other sensitive details.
  - Alert assigned FINRA staff to any security concerns during the hearing.
  - If you experience a security threat off FINRA premises, contact the local authorities or facility security staff immediately.
- More security information and tips are available in Module 4, Confidentiality and Security.

**Slide 16:**

- At a minimum, the chairperson will begin the recorded hearing by stating the case name, case number, and hearing date and time.
- The panel must ensure all parties accept the composition of the panel on the record. As part of that process, each panel member must:
  - Repeat previous disclosures and make any new disclosures; and
  - Respond to any objections to the panel.

**Slide 17:**

- As detailed in Module 3 – Ethical Considerations, the need for disclosure is continuous throughout the case. You might, for example, recognize or recall a relationship as parties are introduced, such as:
  - A representative, party, or witness you have encountered socially;
  - Case information involving a firm you once worked for or with which you have a business relationship; or
  - A representative, party, or witness whose child participates in events with a member of your family.
- After you make a disclosure, parties typically ask follow-up questions. As you respond, be sure that you are still able to conduct a fair and impartial hearing.

**Slide 18:**

- Following disclosures, the chairperson will ask if the parties accept the composition of the panel. In most cases they will, but you should be prepared to respond appropriately if there are objections.
- A party may request a panel member to withdraw from the case through a motion to recuse. If a party asks you to recuse yourself, you must be prepared to rule fairly on the request.

**Slide 19: Video**

*Thomas:* So, after the discovery drama in the pre-hearing conference, and much ado about disclosure earlier in the hearing, we hoped the rest of the session would go smoothly.

*Joann:* We did hope that. But, just as the claimant, Earl Smith, was about to present his case, the respondent's representative, Raymond Stern, got an urgent text and requested a break.

*Thomas:* When we reconvened, Mr. Stern had an announcement.

*Joann:* His office sent him an article on financial services ethics roundtable...which, he said, proved I was biased.

*Thomas:* Several passages cited Joann by name...and they did indicate some pretty strong views.

*Raymond [in Hearing Scene]:* And for that reason, I'm asking you to recuse yourself.

*Joann:* I was stunned because I had nothing to do with the roundtable.

*Thomas:* So, another executive session to sort things out. Joann checked the roundtable website, then the faculty roster. It didn't take long to prove that participant J.L. Martin was James, not JOANN.

*Joann:* It was just sloppy reporting! But I needed to be sure I could remain impartial, given the attorney's attitude.

*Bill [in Hearing Scene]:* Only you can decide whether to recuse yourself. But, whatever you decide, don't take the rancor personally – it's just a tactic.

*Joann:* After really thinking it through, I had no bias against the respondent. I actually felt bad for both sides for the drama and delays. So, I decided to stay on the case.

*Thomas:* I called an early lunch to give everyone time to settle down again. And we pick up our hearing in the next module.

**Slide 20:**

- If you decide not to withdraw, the moving party may request that the Director remove you from the case, in accordance with Rule 12407. The Director may remove an arbitrator from a case only if both of the requirements below are met:
  - The information was not previously known by the parties when the arbitrator was selected to serve; and
  - The information was required to be disclosed under Rule 12405.

**Slide 21:**

- As explained in Module 5, if all parties request that you recuse yourself, you must do so. If all parties do not request recusal, you must decide whether to withdraw.

**Slide 22:**

- Canon II-G of the Code of Ethics provides a balancing test to help decide whether to withdraw.
- If some parties request an arbitrator to withdraw, he or she should do so, unless:
  - There are established, agreed to procedures for determining arbitrator challenges. If there are, you must follow them.
  - If there are no procedures, carefully consider if the challenge is substantial or has merit. If not, and you feel certain you can decide the case impartially and fairly, you may deny the motion.
- You may consult with the panel members or FINRA staff to aid in your decision.

**Slide 23:**

- You are provided the Oath of Arbitrator through the DR Portal when you are assigned a case. Sign and submit your Oath through the DR Portal before prehearing conferences or hearings begin.
- If a panel member brings the executed Oath to a hearing, the chairperson will collect it and send it to FINRA.
- The chairperson will announce on the record that each panelist has executed and filed the Oath.

**Slide 24:**

- The Oath requires arbitrators to affirm that:
  - They will keep all case information confidential;
  - They have no conflicts with any participants;
  - They have reviewed FINRA's Disqualification Criteria; and

- Everything on their disclosure reports is accurate and current.

**Slide 25:**

- The chairperson will read the opening segment of the Hearing Procedure Script to explain the hearing guidelines.
- Pro se parties may be less familiar with arbitration procedures. The chairperson may explain the guidelines in more detail, including:
  - The purpose of arbitration;
  - Arbitration procedures;
  - The opening statement;

**Slide 26:**

- The Chairperson explains:
  - The hearing must be orderly, but is not bound by formal Rules of Evidence;
  - The pro se party may present testimony in a narrative statement;
  - During witness examination, parties may not argue with the witnesses;
  - Parties address motions or objections to the panel, not the opposing party;
  - A party may object if he/she feels a question from the other party is irrelevant or inappropriate;
  - Parties must provide copies of each document to opposing parties, who may object to them, before the panel decides to admit them as evidence; and
  - All parties have the right to representation at any time in the proceedings.

**Slide 27:**

- Per Rule 12602, the parties and their representatives are entitled to attend all hearings. The attorney for a non-party witness may also attend while that witness testifies.
- Per Rule 12208(a) parties may represent themselves in an arbitration. This includes a partner or officer representing a corporation or organization.
- A non-attorney may represent a party, unless state law prohibits it, or the person is suspended or barred from the securities industry or the practice of law.

**Slide 28:**

- The panel decides which witnesses may remain in the hearing room and which witnesses should be sequestered and wait outside.
- The chairperson may swear in witnesses individually or as a group before sequestering witnesses.
- The chairperson cautions witnesses not to discuss the case or their testimony with each other.
- Fact witnesses testify on the material facts of the case.
  - Unless both parties agree, or a fact witness is one of the parties, the panel usually sequesters fact witnesses because their testimony should be independent and not influenced by other witnesses.

**Slide 29:**

- Expert witnesses:
  - Express views,
  - Provide interpretations, and
  - Apply standards of expertise to facts others have provided.

- Unless there are good reasons to the contrary, expert witnesses are permitted to attend all hearings.
- An expert witness can help both parties and the panel understand technical and complex issues and may help expedite the hearing.

**Slide 30:**

- The panel must address a party's failure to appear. A respondent is more likely to be absent if he or she didn't answer a claim.
- If a party's representative is present, the party is considered present.
- The panel should hold an executive session and work with FINRA to determine why the respondent is absent. You may:
  - Review correspondence to determine whether the statement of claim was returned to FINRA.
  - Use the Central Registration Depository (CRD) to verify the respondent is still working in the securities industry and seek a current address.

**Slide 31:**

- The panel may also ask, on the record:
  - Whether the claimant served notice to the respondent. Claimants may use a process server and have documentation verifying delivery.
  - The panel may also ask whether the claimant discussed arbitration with the respondent. While conversation alone is not a basis to proceed, it is a factor to consider. The claimant is charged with enforcing any award and may want to wait until the respondent is located.
- If the panel decides the respondent had due notice of the claim, the chairperson will ask the other parties if they want to proceed without the respondent.
- If other respondents are present, the claimant may want to proceed.
- If the claimant wants to postpone the hearing, do so.

**Slide 32:**

- In some cases, a claimant may use default procedures and have a single arbitrator rule on the case without a hearing.
- A claimant may request default proceedings when the respondent fails to file a timely answer and falls into one of the following categories:
  - FINRA membership has been terminated, suspended, cancelled or revoked;
  - A member expelled by FINRA.
  - A member who is otherwise defunct.
  - An associated person whose registration is terminated, revoked or suspended.

**Slide 33:**

- The claimant must notify the Director in writing of their desire to use the default procedures; and
- Provide copies to all other parties at the same time in the same manner of notification.
- If there is more than one claimant, all claimants must agree in writing to proceed under this rule.

**Slide 34:**

- The appointed arbitrator decides the case based on the statement of claim and other documents presented by the claimant.
- Claimants must present a sufficient basis to support making an award. The arbitrator may not issue an award based solely on the non-appearance of a party.
- The arbitrator may not award damages exceeding those requested in the claim or any other relief not requested in the claim.
- If the respondent files an answer after the Director notifies parties of the default procedures but before an award is issued, default procedures are terminated. The claim then proceeds under the regular provisions of the Code.

**Slide 35:**

- Because the claimant initiates the case, he or she is much less likely to be absent, unless the claimant:
  - Didn't receive FINRA's notice of hearing date and location;
  - Is delayed, for example, due to illness or traffic; or
  - Decided not to proceed.
- The Panel may ask FINRA to contact the claimant to determine the reason for absence.

**Slide 36:**

- If the claimant fails to appear, the chairperson states on the record that the claimant is absent and opens the record to the respondent's position. The respondent may move to dismiss the case.
- If the claimant cannot be reached, the panel may:
  - Grant the respondent's motion and dismiss the case;
  - Adjourn and reschedule to give the claimant time to submit a written explanation for the absence; or
  - The chairperson may state for the record that the case will be dismissed unless the claimant gives a reasonable basis for the absence.

**Slide 37: Video**

*Joann:* This module went over the steps involved in calling a hearing to order. The following module describes managing the hearing as parties present their cases. Test your understanding of this module now before proceeding.

**Test Your Knowledge Slides:**

**Slide 38:**

- **Question:** During a break from the hearing, you pass the claimant in the hallway. He asks jovially, "Hot enough for you?" You should:
  - A. Respond very briefly but pleasantly so he doesn't get the impression you are hostile toward him.
  - B. Hand him a note reminding him that you cannot speak to parties outside the hearing.
  - C. Answer only if no one else can observe the conversation.
  - D. **Do not respond.**

**Slide 39:**

- **Question:** The claimant has a new attorney who appeared before you during previous arbitrations and no one objected to your serving on the panels at those hearing. After you disclose this previous contact, all parties in the current case ask you to withdraw, even though you feel you can decide the case fairly. You should:
  - A. As for an executive session and explain to the other arbitrators why you should remain on the panel.
  - B. Appeal to FINRA to remain on the panel.
  - C. Follow guidance in Canon II-G of the Code of Ethics, which indicates you may remain on the panel if you can render an equitable and unbiased decision.
  - D. **Withdraw from the case.**

**Slide 40:**

- **Question:** There are two fact witnesses for the claimant and two for the respondent, and one expert witness for the respondent. When the hearing begins, the Chairperson should:
  - A. Allow all fact witnesses to remain, since there is an equal number for each party, but required the expert witness to wait outside.
  - B. Require all the witnesses to wait outside the hearing room until they are called to testify.
  - C. **Sequester the fact witnesses but allow the expert witness to remain during the hearing.**
  - D. Allow all witnesses to remain for the testimony the chairman deems relevant.

**Slide 41:**

- **Question:** Default procedures are used:
  - A. As a means to sanction a party who has defaulted on providing required discovery materials before the hearing.
  - B. **As a way to decide a case when the respondent fails to answer a claim and the respondent's FINRA membership has been terminated.**
  - C. When very elderly or ill parties require a speedy arbitration process.
  - D. When the claim amount is less than \$50,000 and all parties agree to default procedures.

**Slides 42 - 43: Knowledge Check Feedback**

**MODULE 10: Case Presentation**

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**Slide 1: Video**

*Thomas:* Once the hearing has opened, the panel's behavior and how the panel manages participant behavior sets the tone for a fair and effective hearing. This module provides guidance on how to effectively facilitate case presentations, often considered the heart of the hearing.

**Slide 2:**

- This module provides guidance on maintaining hearing decorum and explains considerations in facilitating case presentation.
- Learning objectives include:
  - Maintaining hearing decorum by managing participant behavior.
  - Facilitating the parties' opening statements.
  - Asking questions of parties and witnesses to clarify and elicit important facts.

- Ruling on the admissibility of potential evidence.
- Facilitating testimony provided by videoconference, telephone, or affidavit.
- Facilitating panel executive sessions.
- Conducting simplified arbitrations.

**Slide 3:**

- Decorum preserves the integrity of the hearing process and your credibility as an arbitrator.
- Maintaining decorum is easier than attempting to restore it. Canon I of the Code of Ethics directs arbitrators to prevent any disruption of the arbitration process.
- If participants or attendees are allowed to disrupt the proceedings it may raise doubt that the findings were based on facts rather than emotion.
- In addressing the parties and other participants, you should keep your language as neutral as possible to signal impartiality and help avoid arguments.
- Next, we'll look specifically at managing the conduct of parties and witnesses, representatives, and panel members.

**Slide 4:**

- Witnesses and parties might disrupt the decorum of the proceedings, through:
  - Distracting body language or facial expressions;
  - Whispering or passing notes (although parties may pass notes to representatives, except during their testimony);
  - Loud laughter;
  - Interrupting witnesses, arbitrators, or parties;
  - Arguing with one another; or
  - Using cell phones during the hearing for non-emergencies.

**Slide 5:**

- At the first incident, the chairperson should instruct participants that the behavior is inappropriate and must not be repeated.
- If disruption continues, the chairperson can call a recess and instruct counsel to speak with the witness or party.
- While parties and their representatives have the right to be present throughout the hearing, the chairperson may remove witnesses or other attendees.
- In cases of extreme misbehavior, the panel may consider sanctions.

**Slide 6:**

- Representatives might jeopardize the tone of the hearing and impede efficiency by:
  - Asking leading questions to their own witnesses to direct their answers, or attempting to testify;
  - Repeating evidence in the hopes of persuading the panel;
  - Making speaking objections to guide witness answers. This is an objection, often in the form of an argument, with more information than needed to sustain or overrule it; or
  - Shouting, using profanity, or making gratuitous remarks.

**Slide 7:**

- The chairperson may intervene by:
  - Consistently sustaining opposing counsel's objections to disruptive behavior;

- Educating pro se parties when inappropriate behavior is due to lack of understanding of the process;
- Reminding representatives that only one person may speak at a time;
- Instructing representatives to direct comments and questions to the panel and not to each other; and
- Calling a recess and instructing representatives to maintain decorum when the hearing reconvenes.
- As with witnesses and parties, the panel may also consider sanctions.

**Slide 8:**

- Occasionally panel conduct or even the chairperson's behavior needs intervention to ensure decorum and impartiality. Problems that might arise include:
  - Sounding aggressive or impatient in asking questions;
  - Expressing opinions about the parties, products, or any facts of the case;
  - Engaging in ex parte communication;
  - Displaying body language, facial expression, or tone of voice that suggests bias against a party, representative, or witness;
  - Disagreeing with another panel member in front of the parties;
  - Appearing bored or falling asleep;
  - Using electronic devices during the hearing; or
  - Wearing clothing that is not professional business attire.
  - In addition, arbitrators should avoid alcoholic beverages during lunch.

**Slide 9:**

- If any problematic behavior or situation arises with an arbitrator, you may:
  - Immediately call for an executive session.
  - Politely remind the panel member that such behavior undermines the integrity of the arbitration and award process.
  - If necessary, adjourn for the day to give the panel member time to regain composure.
- Next, we will discuss facilitating the parties' opening statements.

**Slide 10:**

- After the chairperson has called the hearing to order, each party may make an opening statement. To facilitate the process, the panel will:
  - Introduce Arbitrator's Exhibit #1,
  - Resolve any preliminary matters, and
  - Listen to the parties' opening statements.

**Slide 11:**

- The pleadings and attached documents the parties submitted comprise Arbitrator's Exhibit #1.
- The chairperson follows the Hearing Procedure Script as a panel member identifies, marks, and accepts Arbitrator's Exhibit #1 into evidence.
- Only documents admitted into evidence are part of the record and may be considered in panel deliberations.

**Slide 12:**

- The chairperson asks if there are any preliminary matters to discuss, such as:

- Unresolved discovery issues;
- Timing of hearing breaks;
- Changes in the order of witnesses;
- Pre-marked exhibits or briefs offered by the parties; or
- Last-minute motions to sever or dismiss claims, or other motions.

**Slide 13:**

- The chairperson advises the parties that they may each make an optional opening statement.
- Opening statements are road maps, showing what the parties intend to prove.
- They should not be used to present evidence.
- The Claimant presents its opening statement first.
- Following the opening statements, the parties begin presenting evidence to support their claims and defenses.

**Slide 14:**

- After the opening statements, the claimant presents first.
- Parties ordinarily begin by calling a witness, who may present testimony and identify documents to enter into evidence.

**Slide 15: Video**

*Joann:* By the afternoon, I was really looking forward to finally hearing from the parties.

*Thomas:* Things went smoothly as the claimant presented his case...until he called his first witness.

*Jasmine [in Hearing Scene]:* Mr. Bishop came to your firm and invested quiet a bit of his retirement...

*Raymond [in Hearing Scene]:* \*distracting coughing\*. \*Pause\*

*Joann:* I wasn't sure if the respondent's representative was trying to rattle the witness or distract the panel.

*Thomas:* [sighs] I think both.

*Thomas [in Hearing Scene]:* Can we take a break here?

*Thomas:* I called a break and reminded everyone that each side has a right to present its case.

*Thomas [in Hearing Scene]:* Outbursts and disruptions will not be tolerated. Is that clear? Mr. Smith, you may continue examining your witness.

*Joann:* That stopped the outbursts. But now, Mr. Stern constantly raised objections, with Thomas firmly over-ruling most of them.

*Thomas and Raymond [in Hearing Scene]:* Objection! Overruled! Objection! Overruled!

*Joann:* He finally gave up! But during cross-examination, the claimant retaliated, firing off one objection after another.

*Thomas and Earl [in Hearing Scene]:* Objection! Overruled!

*Raymond [in Hearing Scene]:* Regarding your statement about the anticipated return that you were...

*Thomas and Earl [in Hearing Scene]:* Objection! Overruled.

*Elise [in Hearing Scene]:* Can I object? Both of you are dragging this out and it's going to cost me a fortune!

*Thomas:* I called another break, advised both parties that they were delaying the proceedings, and adjourned for the day.

*Thomas [in Hearing Scene]:* We expect all participants to maintain decorum during our next session. We'll see all of you tomorrow morning.

*Elise [in Hearing Scene, slightly under her breath]:* He may not see all of us.

*Joann:* As it turned out, our next session was postponed for several weeks. The respondent obtained new counsel after we adjourned.

*Thomas:* And, I am happy to say, the next session was remarkably calm and productive.

*Joann:* I second that!

**Slide 16:**

- Although objections are normally made and followed by a response before the chairperson rules on them, the chairperson in this case overruled the disruptive counsel's harassing objections in order to regain control of the hearing.
- The chairperson may swear in or affirm witnesses together at the beginning of the hearing or as they are called.
- An affirmation is the secular variant of an oath.
- The witness must swear to or affirm the truth of the testimony.
- The witness then states his or her name, home address, and business affiliation, if applicable, for the record.

**Slide 17:**

- The party that called the witness will ask questions first, in a process called direct examination.
- The opposing party may then ask questions or cross-examine the witness.
- Following cross-examination, the party that called the witness may again ask questions, in redirect examination.
- The opposing party may have another round of questions or recross-examination.
- The panel then has a chance to ask questions.
- Panel questions may create a need for the parties to question the witness again.
- After all questioning concludes, the chairperson excuses the witness, reminding him or her not to discuss testimony with other witnesses.

**Slide 18:**

- A pro se party may present a narrative statement to the panel and then be cross-examined. The chairperson will swear in a pro se party like any other witness.

- If witness testimony is interrupted by a recess, when the hearing reconvenes, the chairperson will state that the witness is still under oath.
- Next, we'll look at how panel members can appropriately question witnesses.

**Slide 19:**

- You should save most questions for after the parties have finished their examinations of the witness. You should:
  - Request explanations of unfamiliar legal or securities terms important to your understanding.
  - Signal impartiality through neutral expressions, body language, and voice tone.
  - Avoid exchanges with the witnesses or representatives.
  - Keep questions neutral. For example ask, "Could you explain that point in more depth?" rather than, "What do you mean by that?"
  - Phrase inquiries as questions, not statements.
  - If documents like charts or legal summaries would enhance your ability to decide the case, consider requesting them.
  - Avoid giving the impression you are helping a party with its case; and
  - Try not to catch one or both parties off-guard; allow them sufficient time to respond.
- Next, we'll cover ruling on the admissibility of evidence. But first, test your knowledge of appropriate and inappropriate questions in the following activity.

**Slide 20: Test Your Knowledge Activity**

**Slide 21:**

- Rules of evidence used in court may provide guidance, but arbitrators are not bound by them. It is up to the panel to decide whether to admit evidence and how much weight to give it.
- Relevance is a key factor: determine how evidence relates to the issue. Then consider how much a document or testimony supports a party's case or defense.
- Consider whether evidence is duplicative or corroborates a fact already proven by other evidence presented.
- Form may impact how reliable the evidence may be. For example, a financial blog may not be sufficiently reliable to establish the facts stated, while an official public record is generally more reliable.
- A party may object to evidence on the grounds that it is prejudicial, meaning it may unduly influence the decision.
- Determine if any prejudice outweighs the probative value of evidence or its usefulness in determining the facts. If the value is greater than the prejudice, admit the evidence.

**Slide 22:**

- Even though you decide a witness's testimony is relevant, parties may object to how testimony was elicited, such as:
  - Leading questions
  - Argumentative questions
  - Repetitive questions that have already been answered
  - Misquoting the witness
  - Questions with insufficient foundation, or lack of sufficient preliminary evidence

**Slide 23:**

- Questions assuming facts not yet in evidence; such questions assume something is true when no evidence has yet been shown for it;
- Questions too complex or convoluted to answer;
- Questions asked in a derogatory or abusive manner, such as “You didn’t think about that because you’re too stupid, is that it?”;
- Witness questioning the counsel;
- Rambling testimony with no question; and
- Non-responsive answers.

**Slide 24:**

- Upholding or sustaining an objection does not mean the question cannot be asked – only that it should be asked at a different time or in a different manner.
- The chairperson should be careful that panel rulings are consistent and even-handed.
- We’ll next consider another admissibility issue, failure to produce evidence during discovery.

**Slide 25:**

- Per Rule 12514, at least 20 days before the first hearing, parties must provide all other parties with copies of all documents and materials in their possession or control that they intend to use at the hearing that have not already been produced.
- The idea behind the 20-day rule is not to penalize parties who produce documents late, but to maintain a level playing field by giving the other side time to review the documents.
- Documents not exchanged or witnesses not identified by the deadline may be barred from the hearing, unless the panel finds good cause.
- Good cause includes the need to use documents or call witnesses based on developments during the hearing for:
  - Rebuttal or providing evidence that contradicts or nullifies other evidence; or
  - Impeachment or discrediting witness testimony by providing contrary evidence.
- Documents and lists of witnesses in defense of a claim are not considered rebuttal or impeachment information and, therefore, must be exchanged by the parties.

**Slide 26:**

- In determining admissibility, panels should consider:
  - If the document was exchanged, how late was the exchange?
  - How long did the party have the document before exchanging it?
  - Is the complaining party prejudiced in any way? If so, how can the prejudice be remedied?
  - Was the late exchange beyond the producing party’s control?
  - If a third party prepared the document, did the party exchange the document as soon as possible?
- The panel may give parties one last chance to exchange documents and identify witnesses by warning that further rule violations may result in the exclusion of the document or witness.

**Slide 27:**

- Live testimony is preferred, but parties may agree to videoconference or telephone testimony when a witness is unable to appear or cannot be ordered or subpoenaed to appear.
- The chairperson should:
  - Have the party calling the witness initiate the call;

- Swear in the witness and ask the witness to confirm her or his identity; the panel may have a notary at the witness location if there are any doubts;
- Introduce all participants and others listening to the testimony;
- Make the same announcements as for in-person testimony, and caution the witness not to discuss the case with other witnesses;
- Confirm the witness has all documents that will be referenced during testimony; and
- Confirm the witness is alone in a private room.

**Slide 28:**

- If parties disagree on video or telephone testimony, consider:
  - The witness's reason for not attending in person;
  - Whether the person's testimony will be brief;
  - Whether the witness will comment on documentary evidence – and any difficulty in providing it;
  - Whether you can judge witness credibility over the phone; and
  - Whether videoconference can remedy issues with phone testimony.

**Slide 29:**

- Affidavits are allowed in Simplified Arbitration, where cases are decided on the papers, because it is the best way to present sworn testimony in written form.
- Affidavits are rarely used in hearings except for matters like authenticating third-party records.
- The panel should hold an executive session to discuss why a witness cannot attend the hearing or testify by telephone or videoconference and decide whether to admit an affidavit.
- The chairperson may state that an affidavit's weight as evidence may be diminished, since there is no cross-examination to challenge the truth of its statements.

**Slide 30:**

- It's important for the panel to present a unified front during proceedings. Executive sessions let arbitrators resolve issues and make decisions privately.
- The chairperson asks everyone except the panel to leave the room.
- Recording stops so discussion remains off the record.
- The chairperson should ask for members' views before stating his or hers.
- If all panel members agree on the ruling, resume the hearing and announce the decision.
- If one arbitrator disagrees, consider dissenting views. If a unanimous decision is not possible, ensure the dissenting arbitrator understands the reasoning for the ruling.
- Announce the ruling without indicating whether or not it was unanimous. Do not explain or justify the decision, as this can invite argument.

**Slide 31:**

- There are three options for cases with claims of \$50,000 or less, excluding interest and expenses.
  - The default option is a ruling by a single arbitrator, based on the papers or pleadings provided by both parties, with no hearing.
  - Parties may elect a regular, full hearing, conducted by a single arbitrator.
  - A special proceeding is an intermediate option, allowing the parties to present their cases before a single arbitrator by teleconference.

**Slide 32:**

- Special Proceedings use the following procedures:
  - Claimants, collectively, and respondents, collectively, each have two hours to present their cases.
  - Claimants and respondents are each limited to one-half hour for rebuttal and closing arguments.
  - The hearing is limited to one day with no more than two sessions.
  - Parties may not cross-examine the opposing party's witnesses nor call them as witnesses.
  - The arbitrator may ask questions and may cede some of his/her allotted time to the parties.
  - Parties must provide copies and file all documents with FINRA at least 20 days prior to the hearing. A deadline for document exchange should be set during the IPHC.
  - Special Proceedings follow the usual order of a hearing.

**Slide 33: Video**

*Thomas:* In this module, you learned how to facilitate case presentation, including asking questions to clarify or to elicit facts; ruling on the admissibility of evidence; facilitating remote testimony; and using executive sessions effectively. The next module will explain how to complete the hearing. Test your knowledge of this module before proceeding.

**Test Your Knowledge Slides:**

**Slide 34:**

- **Question:** The respondent's representative has shouted profanities at a witness, interrupted his testimony, and ignored panel instruction to cease abusive behavior. To restore decorum, the panel may:
  - A. Sequester the representative for the remainder of the witness's testimony and direct the claimant to complete questioning.
  - B. Call a recess and advise the representative and respondent to maintain decorum, and that any further disruption could result in sanctions.**
  - C. Deny all objections from the representative in order to limit outbursts and complete the session on time.

**Slide 35:**

- **Question:** Respondent's counsel presents excerpts from the firm's employee handbook while directly examining the respondent. The book outlines behavior a broker-dealer must follow. The claimant objects that she was not furnished copies of the handbook during discovery or as part of the 20-day identification of documents and witnesses. Which of the following is NOT something the panel should consider in ruling on the objection?
  - A. The relevance of the handbook to the issues.
  - B. Whether the handbook was a formal company document or a draft that was never issued to employees.
  - C. Why the respondent didn't furnish the handbook within the 20-day deadline.
  - D. Whether the arbitration is being conducted as a special proceeding.**

**Slide 36:**

- **Question:** In a special proceeding case administered under the simplified arbitration rules:
  - A. A single arbitrator must decide the case by ruling on the papers.

- B. The claim must not exceed \$100,000.
- C. Parties have two hours per side to present their cases.**
- D. The parties may question any witnesses.

**Slide 37:**

- **Question:** When it comes to witness testimony at a hearing:
  - A. In-person testimony is preferred because it makes examination and questioning easier.**
  - B. A sworn affidavit is preferred as the most cost-efficient and streamlined way to obtain evidence.
  - C. Affirming a witness means verifying their identity by having a notary present with them during telephonic testimony.
  - D. Witnesses can testify by telephone or video conference only with the agreement of all parties.

**Slides 38 – 39: Knowledge Check Feedback**

**MODULE 11: Complete the Hearing**

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**Slide 1: Video**

*Joann:* Properly closing a hearing is important to ensure all parties feel that they had a full and fair hearing. This module describes how to facilitate closing arguments and address any last issues or objections.

**Slide 2:**

- Learning objectives include:
  - Determining the need for additional hearing dates.
  - Facilitating the parties' closing arguments, and
  - Effectively closing the hearing.

**Slide 3:**

- A case might not close within the allotted time when there are complex issues or many witnesses and documents in evidence.
  - The chairperson may ask the parties to estimate how long case presentations will take.
  - The list of witnesses and documents submitted per the 20-day rule may help estimating hearing time.
- Never cut off a hearing if the parties have not completed their presentations.
- If additional hearing sessions are needed, schedule them before the hearing adjourns, for the next dates all parties, representatives, arbitrators and witnesses are available.
- The chairperson will announce the hearing dates before adjourning. The panel must also communicate them to FINRA staff.

**Slide 4:**

- Prior to closing arguments, the chairperson will ask if the parties or panel members have any questions.
- If you have questions, you may request additional information to help reach a fair decision, such as:

- Written summaries of the parties' cases;
- Proposed draft awards with the specific relief requested; or
- Briefs of legal issues. The party that raised a legal issue will generally offer a brief setting forth the law or statute and explaining how it applies to the case.

**Slide 5:**

- If the panel requests briefs, be sure to:
  - Set a deadline and page limit for any information requested.
  - Specify which issues the parties should brief or information they should submit.
  - Indicate whether submissions should be simultaneous.
  - Stipulate whether parties may reply to one another's submissions.
  - Advise FINRA staff that parties will file post-hearing submissions.
  - Arbitrators must not make independent factual investigations of a case, nor should they ask FINRA staff to conduct research on their behalf. If you are in doubt about a legal or other issue, request briefs from the parties. If cases are cited in a party's motion or brief, and the arbitrators wish to read the full court opinions, the arbitrators should ask the parties to supply copies.
  - Arbitrators should review only those materials presented by the parties.

**Slide 6:**

- Closing arguments are strictly for summarizing evidence already presented, not for presenting new evidence.
- The panel must rely on the documents and testimony entered into evidence, and ensure closing arguments accurately reflect the evidence admitted.
- If a party tries to present new evidence, the other side will usually object and the chairperson may sustain the objection. If the chairperson does not sustain the objection or the other side does not object, the panel should request a post-hearing brief limited to the new evidence.

**Slide 7:**

- Usually, the claimant presents their closing arguments first.
- The respondent then presents and may include rebuttal.
- The claimant may then rebut the respondent's closing argument.
- The claimant may also devote most or all of the closing argument to rebuttal.
  - If the claimant devotes the entire closing argument to rebuttal, the respondent gives a closing argument, followed by the claimant.

**Slide 8:**

- Following all party closing statements, the chairperson will use the hearing script to close the hearing.
- The chairperson will ask the parties if they have additional evidence to offer.
- If there is no further evidence, the chairperson inquires if the parties have any issues or objections they have not previously raised.
- If a party raises an issue or objection, the panel must review the evidence or testimony and address the issue. If a party is still not satisfied, you should consider the costs (such as any additional fees) and benefits (in particular any probative value of the evidence) for any further review of the request. Make sure any objections are captured for the record.

**Slide 9:**

- Once all issues or objections are addressed, the chairperson will advise the parties that FINRA will serve the award when the panel has made its decision.
- The chairperson will caution the parties that they may not contact panel members after the hearing and should direct any questions to FINRA staff.
- The chairperson asks all parties to leave the hearing room at the same time to avoid ex parte communications.

**Slide 10: Video**

*Joann:* This module provided guidance on determining whether additional hearing dates are needed, facilitating closing statements, and closing the hearing. The next module goes over what happens after the hearing. Test your knowledge on this module now, before proceeding.

**Test Your Knowledge Slides:**

**Slide 11:**

- **Question:** Following all case presentations, the panel has a question regarding legal issues raised during the hearing. To obtain more clarification you should:
  - A. Request that both parties submit briefs to ensure that you have a balanced view of the issue.
  - B. Set a follow-up hearing session to walk through the issues in depth and resolve all questions.
  - C. Ask FINRA staff to advise on any legal precedents that may apply.
  - D. Ask the party that raised the legal issue to provide a brief, specifying the page limit and date required.**

**Slide 12:**

- **Question:** It becomes apparent that the case will not conclude within the allotted hearing time. The panel should:
  - A. Ask parties to limit their presentations to an hour each.
  - B. Stick to the original schedule and then determine the case based on the papers.
  - C. Schedule additional sessions before the hearing adjourns.**
  - D. Adjourn on time, and request that FINRA staff work with the parties to schedule additional sessions.

**Slide 13: Knowledge Check Feedback**

**MODULE 12: Decide Case Outcomes**

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**Slide 1: Video**

*Thomas:* At this stage, the arbitrators have all the facts and are ready to conduct deliberations. This module describes how to weigh the credibility of witnesses and evaluate the weight or value of documents to determine liability. Liability must be determined before the panel can consider an award or the allocation of costs.

**Slide 2:**

- Learning objectives include:
  - Conducting effective panel deliberations;
  - Determining the facts of the case;
  - Reaching a decision on liability; and
  - Assessing liability among the parties.

**Slide 3:**

- Conduct deliberations immediately after the hearing or schedule an in-person or telephone conference while evidence is fresh.
- Convey respect and consideration through language, tone of voice, and body language.
- Present views in turn, ensuring each panel member's observations and opinions are heard, acknowledged, and considered.
- Discuss differences openly.
- Don't judge other opinions; it's appropriate to challenge ideas, but not people.
- Be courteous and specific in exploring another's point of view, using phrases like "Please explain," or "What evidence supports that idea?"
- Remember the hearing is confidential. If you hold a telephone conference or discuss the case in a public space, make certain no one can overhear you.

**Slide 4:**

- The first step in deciding the outcome of the case is determining the facts, and whether they support a finding of liability.
- You should not consider remedies unless and until liability is determined.
- To determine the facts, you will:
  - Evaluate the testimony and weigh the credibility of the witnesses; and
  - Evaluate the weight or the value of documents.

**Slide 5:**

- 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.
- A witness who remembers only facts that help his or her position may not be as credible as a witness whose memory is less selective.
- A witness with a record of untruthfulness may be less credible.
- A witness who makes inconsistent statements on significant events may be less credible.
- A witness whose testimony is contradicted by other significant testimony or documents may be less credible.
- NOTE: If you determine part of a witness's testimony is not credible, you may disregard all or part of that testimony.

**Slide 6:**

- In assessing documentary evidence, consider that:
  - A document prepared by a disinterested party may be more reliable than one prepared by an interested party.
  - A document prepared in the normal course of business is often more reliable than one created with arbitration or litigation in mind.

- A document prepared soon after a conversation or event is generally given more weight than one prepared months later.
- The chain of custody, or whether someone else had an opportunity to create or change a document, may be critical to the value you give it.

**Slide 7:**

- Arbitrators are not strictly bound by legal precedent or law, but it's important not to disregard a law that applies to the case.
- As a reminder, arbitrators must not conduct research on their own, but should ask parties to provide briefs.
- If the law is clear and applies to the facts of the case, apply it in your decision. Blatantly disregarding the law could be grounds for vacating an award in some jurisdictions.
- If the law is not clear or you are uncertain if it applies, ask the parties to address this in their closing arguments or provide written briefs to the panel. Note that you can place page limits on briefs or request briefs only about a very specific question. This will cut down on the parties using the brief as an opportunity to re-litigate the whole case.
- 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.

**Slide 8:**

- Decisions on liability require a majority vote. While at least two panel members must agree, the reasons behind their determination may vary.
- If the claimant separates the claim into specific issues, analyze and decide each issue separately.
- The standard for determining whether a claimant has proven the case is by a preponderance of the evidence. The panel must decide if the claimant has proven that he or she suffered damages and the respondent is responsible for those damages.

**Slide 9:**

- Liability requirements vary by jurisdiction. Ask the parties to educate the panel on the jurisdiction's specific requirements if needed.
- A panel must decide all properly submitted claims.
- The claimant has the responsibility to prove his or her claim.
  - If neither party proves its case by a preponderance of evidence, find for the respondent.
  - If the claimant's case is even slightly more believable, and the claimant has proven liability, find for the claimant.

**Slide 10:**

- Before considering remedies, the panel must assess liability, if any, for each respondent. 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.
- You may 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.
- With joint and several liability, each respondent can be held responsible for the full award regardless of the degree of fault. The claimant may enforce the award against any or all parties. Look to the parties for guidance on the applicable law.

- Some laws impose liability without fault based on the relationship, such as an employer's responsibility for its employees' acts. The parties can provide guidance on the circumstances and limitations of this liability.

### Slide 11: Video

*Thomas:* This module explored how to determine liability. By participating in deliberations, together the panel can determine the facts of the case, apply the law to the facts, and determine liability. The next module covers the steps in determining the award. Test your knowledge of this module now, before proceeding.

### Test Your Knowledge Slides:

#### Slide 12:

- **Question:** A claimant who has a disability alleges that his employer failed to provide access to its office as required by the Americans with Disabilities Act. His representative provided a legal analysis showing the applicability of this law to the claim. The employer has submitted quotes showing that retrofitting the elevator will cost at least \$50,000, arguing the costs are excessive. In deciding this case, it's appropriate to:
  - A. Weigh the potential benefits to the employee against the costs to the employer.
  - B. Find for the respondent if you believe this is more equitable, since arbitrators are not bound by law.
  - C. Find for the claimant. Arbitrators cannot disregard the law where it is clear and applicable to the case.**

#### Slide 13:

- **Question:** Joint and several liability means:
  - A. Both an employee and the employer share responsibility for damages to a claimant, even if the employer was not aware of employee misconduct.
  - B. Each respondent can be held responsible for the full award regardless of the degree of fault.**
  - C. The panel may find one respondent responsible and dismiss the others.

### Slide 14: Knowledge Check Feedback

## MODULE 13: Determine the Award

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### Slide 1: Video

*Joann:* Once the panel has determined the liability of the parties, the panel will then determine the award. This module focuses on remedies and determining damages.

#### Slide 2:

- The following key concepts will be addressed in this module:
  - Actual damages or compensatory damages;
  - Net out-of-pocket losses;
  - Benefit of the bargain;

- Well-managed portfolio account;
- Statutory damages;
- Full compensatory damages including:
  - Lost profits;
  - Taxes;
  - Loss of available funds;
  - Loss of financing; and
  - Commissions paid
- Other Remedies including:
  - Rescission; and
  - Disgorgement
- Mitigation;
- Interest;
- Punitive damages;
- Sanctions;
- Specific performance; and
- Injunctive relief.

**Slide 3:**

- Learning objectives include:
  - How to determine actual damages;
  - Understanding the remedies of rescission and disgorgement;
  - Factors in awarding interest;
  - Awarding punitive damages;
  - Issuing sanctions; and
  - Orders for injunctive relief.

**Slide 4:**

- FINRA provides an Award Information Sheet, which the panel should complete through the DR Portal.
- The Award Information Sheet helps ensure arbitrators consider all requests for relief. Failure to decide all claims may be a basis for a court to vacate an award.

**Slide 5:**

- Depending on the relief the parties request, there are several types of remedies you may consider, including:
  - Actual damages and/or statutory damages;
  - Punitive damages;
  - Specific performance; and
  - Injunctive relief.

**Slide 6:**

- Actual damages, or compensatory damages, are a monetary award to compensate a party for his or her loss.
- While arbitrators have flexibility in awarding damages, they should have a rational and understandable basis for their award.

- Actual damages should make the claimant whole for losses suffered from misconduct.
- The claimant has the burden of proof regarding damages, but the panel must listen carefully to all parties and determine the type of damages that might be owed, such as:
  - Net out-of-pocket losses;
  - Benefit of the bargain or the anticipated value of the investment;
  - Well-managed portfolio account; and
  - Statutory damages based on applicable law.

**Slide 7:**

- Some claimants believe the panel must look beyond net out-of-pocket loss to award full compensatory damages. Such special or consequential damages may include:
  - Lost profit from dividends on stocks sold because of wrongdoing;
  - Taxes the claimant incurred;
  - Loss of available funds in the claimant's business;
  - Loss of financing; and
  - Commissions paid.

**Slide 8:**

- This calculation depends on whether wrongful conduct involved one or more specific trades or management of an entire account.
- For specific trades, the loss is the purchase price of the security plus commissions, minus the total value of the security on the relevant date, minus any dividends or interest received.
- For wrongful conduct involving an entire account, losses are calculated by taking the beginning account value, plus money and securities deposited, minus money and securities withdrawn, less the account value on the relevant date.
- You should look to the parties for instruction on these issues.

**Slide 9:**

- This measure seeks to give the claimant the expected value of the investment.
- A claimant's damages would be the amount the investment would be worth if the respondent's misrepresentation were true, less what the investment is actually worth.

**Slide 10:**

- This approach lets the claimant recover the difference between what the claimant's account made or lost versus what a well-managed account, given the investor's objectives, would have made during the same period.

**Slide 11:**

- A claim may be based on a statute that directs how damages should be calculated.
- Look to the parties to provide guidance on how the law requires you to calculate damages.

**Slide 12:**

- Rescission is designed to return the claimant to the position occupied before the wrongful transaction.
- It may include the return of the securities at issue.

- Disgorgement is intended to make wrongdoing unprofitable and deter it by making the respondent disgorge profits or commissions.
- This remedy may be available even when the claimant has not suffered net out-of-pocket losses.

**Slide 13:**

- Mitigation is the concept that a party should, when possible, take action to limit loss or avoid damage.
- Some laws require a claimant to act reasonably to avoid losses once the harm is discovered. Other laws, including some state securities laws, do not recognize mitigation as a defense.
- If the issue arises, ask the parties for guidance regarding the role of mitigation in each method of calculating damages.

**Slide 14:**

- Interest rates can vary by jurisdiction and case. Some states specify the interest rate that may be awarded. Other jurisdictions use Internal Revenue Service rates or treasury bill rates. In some cases, panels use the rate of interest the broker applies to customers for outstanding debts.
- Interest is generally accrued from the date a contract was breached or the time a debt became due or payable. Be sure to include the end date for interest to stop accruing.
- A panel should apply a reasonable interest rate based on the facts of the case. If the panel isn't sure what interest rate to apply, it should request information from the parties.

**Slide 15:**

- Parties may request punitive damages, which are intended to punish and deter wrongdoing rather than right a wrong.
- Panels have discretion in punitive damages and may award them if claimant requests them and the respondent has engaged in serious misconduct meeting the standards for award and any arbitration forum rules.
- Standards for punitive damages vary. Most states permit them only for conduct that is malicious or intentional, but some permit punitive damages for reckless indifference to the rights of others or gross negligence.
- Punitive damages are not permissible for actions alleging breach of contract.
- Ask the parties to brief the issue to help determine factual and legal bases.

**Slide 16:**

- If the panel issues sanctions, this information must be included in the award.
- Arbitrators must make monetary sanctions payable to a party and not to counsel or FINRA, as counsel and FINRA are not parties to the proceedings.

**Slide 17:**

- A claimant may ask for specific performance instead of or in addition to actual damages.
- Specific performance requires precise fulfillment of a legal or contractual obligation when monetary damages are inappropriate or inadequate. For example, a panel might decide that specific performance is the only way to place the parties in the position they were in before the wrongdoing.
- Make sure the award is specific and clear as to:
  - The action to be taken;

- The individual who will take the action; and
- When the action will take place.

**Slide 18:**

- Injunctions require parties to refrain from certain acts.
- Claimants typically request injunctive relief when the alleged harm is imminent and would cause irreparable harm if continued.
- Parties to industry or clearing disputes who are required to arbitrate under the Code may seek a temporary injunctive order from a court. A party seeking a temporary injunction must simultaneously file a statement of claim with FINRA for permanent injunctive relief. Expedited hearings often include a request for injunctive relief.

**Slide 19: Video**

*Joann:* This module explained how to determine the award and discussed various remedies, including actual damages, rescission and disgorgement, awarding interest, punitive damages, sanctions, and orders for injunctive relief. The next module will cover how to determine and allocate forum costs. Test your knowledge of this module now, before proceeding.

**Test Your Knowledge Slides:**

**Slide 20:**

- **Question:** A broker alleges it has a contract with the respondent, a former employee, who is contacting its customers in violation of a non-compete clause in the contract. What remedy might a panel consider for this claim?
  - A. Specific performance to compel the employee to fulfill the contractual obligation.
  - B. Rescission to require the employee to cease contact and return all wrongfully acquired client email addresses to the brokerage.
  - C. **Injunctive relief to require the respondent to cease contacting brokerage customers.**

**Slide 21:**

- **Question:** Which of the following are true of actual damages?
  - A. **Actual damages should have a rational and understandable basis and be designed to make the claimant whole for the losses suffered.**
  - B. **Because arbitrators are not bound by the law, the panel need not consider any jurisdictional laws or different legal theories in making awards.**
  - C. An award of actual damages cannot be combined with an award of punitive damages or sanctions.

**Slide 22: Knowledge Check Feedback**

MODULE 14: Determine Costs

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**Slide 1: Video**

*Thomas:* In addition to any monetary awards, the panel decides which party must pay various arbitration fees and other case related expenses.

**Slide 2:**

- Learning objectives include:
  - Determining forum fees;
  - Awarding attorneys' fees;
  - Determining witness expenses and document production fees;
  - Assigning other case-related costs; and
  - Understanding required member surcharge and process fees.

**Slide 3:**

- A party filing a claim, counterclaim, third party claim, or cross claim must remit a filing fee, based on the amount in dispute and number of arbitrators hearing a case.
- The total amount of forum fees is determined by the number of hearing sessions. A hearing session is any meeting between the parties and the arbitrators that lasts four hours or less. For example, a hearing that runs eight hours a day for two days requires forum fees for four hearing sessions.

**Slide 4:**

- The panel may ask FINRA staff to provide a summary of all fees incurred and payments made by each party.
- Don't assume parties, particularly pro se parties, are familiar with the fees they may incur. Remind them periodically.

**Slide 5:**

- The panel may assess forum fees among the parties, except for hearings where expungement is the sole topic. You may consider:
  - Temporary waivers of filing fees or hearing session deposits for financial hardship.
  - Party actions that prolonged the hearing.
  - The legitimacy of the arguments made, or positions taken.
  - Party disruption or hearing delays, including the option to assess adjournment fees.
  - The ultimate merits of the case or which party prevailed.

**Slide 6:**

- You may award attorneys' fees when, for example:
  - The parties' contract includes a clause providing for attorneys' fees, as long as that clause does not violate FINRA Rules or any other applicable law;
  - The governing law provides for the fees when all the parties request or agree to them;
  - The fees are required or permitted as part of a statutory claim; or
  - As otherwise provided by law, FINRA rules, or as determined by the panel to be appropriate.

**Slide 7:**

- FINRA does not provide guidance on awarding attorneys' fees, since laws vary widely by jurisdiction.
- If a party requests attorneys' fees and you have any questions, request briefs from the parties. You must not conduct independent legal research.
- If the panel determines a party has a right to the fees, that party must prove the amount to the panel's satisfaction.
  - The panel may permit testimony or evidence during the case-in-chief as proof, or
  - Accept a post-hearing written submission.

**Slide 8:**

- Parties may request arbitrators to direct reimbursement for witness fees.
- In reviewing requests for witness fees, generally follow the rule in the applicable jurisdiction.
- If in doubt, ask the parties to brief the issue.
- The panel may wait until the conclusion of the hearing to assess fees.

**Slide 9:**

- Production costs are incurred in producing and copying documents relevant to the case.
- The party requesting production of documents is responsible for the costs unless the panel directs otherwise.
- If parties cannot agree, the panel finds a reasonable solution and documents it in an order or award.

**Slide 10:**

- Parties may request reimbursement for expenses such as:
  - Record transcription;
  - Travel costs for last-minute postponement of a hearing;
  - Expert fees; and
  - Teleconference or videoconference fees.
- The panel may assess these fees and costs in its award, considering equitable factors such as which party caused the underlying fee, and the merits of the case.

**Slide 11:**

- FINRA may alert the panel to outstanding administrative costs such as:
  - Recording duplication fees;
  - Copy charges;
  - Mailing charges;
  - Unpaid postponement fees; and
  - Unpaid administrative costs.
- Like party-requested costs, the panel may assess these fees and costs in its award, considering equitable factors.

**Slide 12:**

- Arbitrators may not reallocate any member surcharge or process fees paid by a firm to another party.
- A brokerage firm must pay these fees when:
  - It files a claim;
  - It is a respondent in a claim, counterclaim, cross claim, or third party claim; or
  - It employed a person at the time of the dispute who is now a respondent in a claim, counterclaim, cross claim, or third party claim.

**Slide 13: Video**

*Thomas:* This module provided information and guidance on determining forum and related costs as part of the award. The next module will cover the documentation used to complete the award. Test your knowledge of this module now, before proceeding.

## Test Your Knowledge Slide:

### Slide 14

- **Question:** A couple brought a claim against a small broker-dealer, spending 18 days putting on their case to prove the company was negligent with their account. The case was postponed seven times due to unavailability of the claimants, their attorney, or their witnesses, and they were frequently late to hearings. The panel determined the claimants proved their case by a preponderance of the evidence. How might you assess forum fees and costs for the case?
  - A. You could charge the claimant the proportion of the respondent's attorneys' fees caused by their delays, and member process fees as a penalty for the protracted hearing.
  - B. You could charge claimants adjournment fees, travel fees if postponements were last-minute, and any additional forum fees caused by the delays.**
  - C. You could deduct hourly expenses for the time off the record arbitrators spent waiting for the claimants.

### Slide 15: Knowledge Check Feedback

## MODULE 15: Complete Documentation

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### Slide 1: Video

*Joann:* After determining liability, remedies, and any other fees and costs, the panel must communicate the hearing results to FINRA. This module explains how to prepare an award and how to respond to any post-award requests.

### Slide 2:

- The following key concepts will be addressed in this module:
  - Award Information Sheet
  - Award Offsets
  - Explained Decisions
  - Dissenting Opinions
  - Post-Case Disciplinary Referrals
  - Mid-Case Disciplinary Referrals
  - Confidentiality
  - Quasi-Judicial Immunity
  - Indemnification
  - Motion to Submit Documents in Closed Cases
  - Motions to Vacate An Award

### Slide 3:

- Learning objectives include:
  - Properly completing the Award Information Sheet;
  - Deciding whether and when to make disciplinary referrals;
  - Understanding the arbitrator evaluation process; and
  - Appropriately dealing with post-award communication and requests

**Slide 4:**

- Code of Arbitration Procedure Rule 12904 directs arbitrators to render an award within 30 business days of closing the record. However, arbitrators should render their decision and submit it to FINRA staff as promptly as possible to ensure parties receive the award in a timely fashion.
- The panel should advise parties that the record will remain open until the panel reaches a decision. The Hearing Procedure Script provides suggested language.
- Arbitrators should ensure other obligations don't interfere with a timely award.

**Slide 5:**

- To prepare the Award Information Sheet, the panel reviews its notes on important issues considered and decided, such as amendments, jurisdiction, settlements, exclusion of witnesses or evidence, dismissal of claims, and due notice to non-appearing parties.

**Slide 6:**

- Arbitrators can complete the Award Information Sheet directly in the DR Portal and submit it to FINRA.
- FINRA prepares the award and notifies the panel when the draft is ready.
- The panel members carefully review and sign the award. To expedite the award, the panel members should sign the award electronically via the portal. All arbitrators must sign the award.
- FINRA makes arbitration awards and arbitrator names available to the public on its website.

**Slide 7:**

- The Award Information Sheet includes detailed questions. If you have any concerns about completing it, contact the staff member assigned to your case.
- Rule 12904 requires that all awards include specific information, as illustrated.
- Submit the completed sheet through the DR Portal to FINRA as soon as possible after the hearing, while the information is fresh. The case administrator might have additional questions for the panel while preparing the award.

**Slide 8:**

- An award may include additional information, such as an award offset, or provide information on a dissenting arbitrator decision.
- When arbitrators order the parties to make payments to one another, the awards offset each other, and the party assessed the larger amount pays the difference.
- A panel member who disagrees with the majority decision signs the award as a dissenting arbitrator. The dissenting arbitrator may opt to write a dissenting opinion.

**Slide 9:**

- Explained decisions are awards that include a written explanation of the arbitration decision.
- If arbitrators feel an explanation would benefit the parties, they may include a written decision within the award. If arbitrators choose to do so, there is no payment for the explanation.
- If both parties want a written decision, they must request it at least 20 days before the first scheduled hearing. The chairperson is paid \$400 for writing this explanation.

**Slide 10:**

- A disciplinary referral is a recommendation that FINRA's regulatory offices conduct an investigation to determine if disciplinary action is appropriate.
- Arbitrators may make referrals if they hear evidence of serious wrongdoing.
- Many arbitration awards are reported on Central Registration Depository records and may become the basis for an investigation without a referral.

**Slide 11:**

- At the conclusion of an arbitration, any arbitrator may refer member conduct to FINRA for investigation.
- Referral is appropriate when an arbitrator has reason to believe the conduct may violate FINRA rules, federal securities laws, or other applicable laws.

**Slide 12:**

- Arbitrators may refer conduct before the case is decided if it is likely to harm investors without immediate action, such as a Ponzi scheme or money laundering.
- Arbitrators should not make referrals based solely on claims, since FINRA analyzes pleadings for fraud or rule violations.

**Slide 13:**

- If you hear evidence suggesting imminent threat, consider whether other documentation, testimony, or cross-examination corroborates or refutes it. Make sure you have all relevant facts and evidence.
- If the case is nearing conclusion, consider a post-case referral. For example, if you learn of an issue on the third of four consecutive hearing days and deliberations will be complete shortly thereafter, defer the referral to avoid case delays.

**Slide 14:**

- Balance potential claimant harm from a mid-case referral against the potential harm to non-party investors.
  - Claimants may incur costs due to delays, motions for recusal, and additional witness and attorneys' fees.
  - Parties may need to restart a case if all panel members recuse themselves.
- Make mid-case referrals only in extraordinary, urgent circumstances.

**Slide 15:**

- Mid-case referrals are forwarded to the Director, who determines whether or not to forward a referral to other FINRA divisions.
- Regardless of the Director's decision, FINRA will disclose to the parties that the panel made a mid-case referral.

**Slide 16:**

- A party may request recusal of the arbitrator or arbitrators who submitted the referral within three calendar days of notification.
- The referring arbitrator must decide whether to grant or deny the request.
- Denying a recusal request is not a valid basis to challenge an award.

- Consider whether making a referral has compromised the ability to remain impartial for the remainder of the case. If it has, it may be appropriate to grant the recusal request.

**Slide 17:**

- While a single arbitrator may initiate a referral, FINRA encourages arbitrators to first discuss the matter with the panel.
- Complete and submit the online Arbitrator Disciplinary Referral Form and upload it to the DR Portal.
- The referral should not include case information -- only facts and circumstances pertaining to the referral.
- Remember to also contact the FINRA staff person assigned to the case.

**Slide 18:**

- FINRA continuously evaluates its arbitrators and the hearing process.
- Please complete the Arbitrator Experience Survey after each arbitration. Comments on co-arbitrators are confidential and not shared without permission.
- FINRA asks all parties and their representatives to complete a Party Experience Survey through the DR Portal, which assesses characteristics essential to successful arbitrator performance.
- FINRA staff members also evaluate arbitrators on demeanor, skills, and performance.

**Slide 19:**

- You may receive requests or communication from parties or other individuals and organizations following the award.
- You must remember your continuing obligation to maintain confidentiality; and
- Understand how to handle any requests.
- We'll discuss each of these requirements.

**Slide 20:**

- As emphasized throughout this course, an arbitrator's obligation to maintain confidentiality extends beyond the arbitration award.
- You may not discuss the pleadings or hearing with anyone who was not in the hearing room except for fellow arbitrators or FINRA staff.
- You may not discuss the case with a party or representative, as that constitutes an ex parte communication.
- You may not distribute or disclose awards. You can only explain where to access an award online if asked.
- If you receive a request to file an affidavit regarding a case or are served with a subpoena or notice to testify, contact FINRA staff immediately.

**Slide 21:**

- While arbitrators enjoy quasi-judicial immunity from civil liability that may arise out of their conduct as arbitrators, an arbitrator may waive this immunity by discussing the pleadings and what happened inside the hearing room with individuals outside the hearing room.
- If one arbitrator waives this immunity by discussing the case, they may waive immunity for the entire panel.

- FINRA will provide legal counsel and indemnify you, if you become a party to a legal action or proceeding relating to your role as an arbitrator.

**Slide 22:**

- A party or representative might contact you about a case decision.
- You should never have post-award discussions with parties, representatives, or witnesses on a disputed matter.
- Inform the individual that you may not discuss the case and refer him or her to FINRA staff. Then immediately inform staff about the ex parte communication.

**Slide 23:**

- Parties may submit documents to arbitrators for closed cases only in the following circumstances:
  - Within 10 days of (1) being served the award or (2) being notified that the case has been closed, a party may ask to submit documents to correct typographical or computational errors or mistakes in the description of any person or property referred to in the award;
  - If all parties agree, a party may submit a request within 10 days of service of the award or notice that a matter has been closed; or
  - As ordered by a court to modify or correct an award due to errors.
- Next, we'll look at court orders.

**Slide 24:**

- A court order may direct the modification or correction of an award due to errors in:
  - Completeness, meaning all claims were not addressed;
  - Mistakes regarding a matter of law;
  - Miscalculation of figures; or
  - Erroneous descriptions of parties or properties.

**Slide 25:**

- The FINRA case administrator will arrange for the panel to convene for discussion, typically by conference call.
- Whether or not a panel decides to modify an award, it must communicate its decision to staff.

**Slide 26:**

- Motions to vacate must be made through the courts.
- Parties may challenge awards on the following grounds:
  - The award was procured by corruption, fraud, or undue means;
  - Arbitrator partiality or misconduct, which may include failing to make a required disclosure;
  - Arbitrator refusal to postpone a hearing for good cause, refusal to hear pertinent evidence, or other misbehavior that prejudices a party's rights; or
  - Exceeding the arbitrator's powers or so imperfectly executing them that a just award was not made.

**Slide 27:**

- In motions to vacate on grounds of partiality or misconduct, an arbitrator may be asked to provide testimony. In such cases, arbitrators should:
  - Contact FINRA immediately, and

- Not discuss the matter with the party or representative.

**Slide 28:**

- A respondent who did not participate in arbitration may challenge the award on procedural or legal grounds, such as:
  - Invalidity of or absence of an arbitration agreement;
  - Expiration of a statute of limitations; or
  - Lack of notice of the arbitration proceedings.
- As with motions based on arbitrator misconduct, if you are contacted,
  - Do not communicate with the party or representative, and
  - Contact FINRA staff immediately.

**Slide 29: Video**

*Joann:* This module provided guidance on preparing the award. It also went over disciplinary referrals, arbitrator evaluations, and how to properly respond to post-award motions and communications. There is important course information on the following screens. Test your understanding of this module before proceeding.

**Test Your Knowledge Slides:**

**Slide 30:**

- **Question:** In making a disciplinary referral, it's important to:
  - A. Include relevant information about the case as well as the facts and circumstances that led to the referral.
  - B. Make mid-case referrals when possible, in order to address misconduct as quickly as possible.
  - C. Obtain unanimous agreements among the panel members.
  - D. Ensure you have all the relevant facts and testimony, rather than relying on the pleadings.**

**Slide 31:**

- **Question:** A party's representative calls you after she receives the award and asks you to clarify one aspect of the award. You should:
  - A. Advise her to draft a motion to Submit Documents in order to review and clarify the issue.
  - B. Explain that she must contact FINRA and report the ex parte communication to the staff person assigned to the case.**
  - C. Consult with the other panel members to draft a response.
  - D. Suggest she file a motion to vacate.

**Slide 32:**

- **Question:** To document a case award, the arbitrators will use:
  - A. The Hearing Procedure Script.
  - B. The FINRA Code of Awards.
  - C. A post-case Disciplinary Referral Form and the proceeding recordings.
  - D. Their notes from the case and the Award Information Sheet.**

**Slides 33 – 34: Knowledge Check Feedback**

**Slide 35:**

- This module concludes the content covered in the Basic Arbitrator Training Assessment. The next screen provides important information on taking the assessment.
- Remember that you must also complete the final course module on Expungement, and take the separate, required Expungement assessment to qualify as an arbitrator.

**Slide 36:**

- You're ready to take the mandatory Basic Arbitrator Training assessment.
- Feel free to review any course material before starting the assessment.
- The assessment includes 25 multiple-choice questions.
- You have only two attempts to pass the assessment with a score of at least 80% or 20 correct answers out of 25 questions.
- You'll be granted access to the Basic Arbitrator Training Assessment once all modules have been reviewed.
- Test results will be available on screen upon completion.
- Close this module window and click on "Go to Class" in the top right to return to the main course page to launch the Basic Arbitrator Training Assessment.

**MODULE 16: Expungement**

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**Slide 1: Video**

*Thomas:* Welcome back! This final module of the Basic Arbitrator Course is dedicated to Expungement.

*Joann:* Expungement cases involve requests to permanently remove information from a broker's registration record. Arbitrators must determine whether permanent removal is warranted by the facts.

*Thomas:* Because expungement is so specific, this module has its own separate assessment.

*Joann:* At the end of module, you'll have an opportunity to test your understanding before taking the assessment.

**Slide 2:**

Learning objectives for this module include:

- Understanding the role of the Central Registration Depository or CRD [C-R-D] in protecting the investing public.
- Understanding the expungement rules and process and requirements for recommending expungements.
- Understanding the distinctions between expungement requests for customer dispute information and intra-industry cases.

**Slide 3:**

- Throughout this module, we will reference the following resources:
  - The Uniform Registration Forms used to gather disclosure information for the Central Registration Depository;
  - Four FINRA Rules pertaining to expungement; and

- The Expanded Expungement Guidance that explains arbitration requirements for expungement.
- Being familiar with these materials is critical to understanding expungement. Please take a moment to review and bookmark them for reference.

**Slide 4:**

- You must pass the Expungement Assessment and the Basic Arbitrator Training Assessment to become a FINRA arbitrator. You may take the Expungement Assessment after completing 100% of the module.
- You must achieve a score of at least 80% or 8 correct answers out of the 10 true/false questions to pass.
- You may take the Expungement Assessment as often as you like.
- A Self Test at the end of this module lets you test your understanding before taking the assessment.

**Slide 5:**

- Expungement is the permanent removal of disclosure events from a broker's Central Registration Depository or CRD record.
- Expungement is often sought for information regarding customer disputes, employment terminations, or internal reviews. For example, when a broker is named as a respondent, or is the subject of a customer-initiated arbitration, that event must be reported on the broker's Form U4 and recorded on the broker's CRD record.
- Form U4 is the uniform application for securities industry registration or transfer.
- Expungement is an extraordinary remedy. Arbitrators should recommend expungement of customer dispute information only if it has no meaningful investor protection or regulatory value. Once the information is expunged, it is permanently deleted and no longer available to the investing public, regulators, or prospective broker-dealer employers.
- We'll next look at CRD in more detail.

**Slide 6:**

- CRD is FINRA's online registration and licensing system.
- It includes administrative and disclosure information on registered securities firms and brokers.
- FINRA works with several organizations to ensure CRD information is accurate, including:
  - The North American Securities Administrators Association, or NASAA [pronounced as a word like NASA];
  - The Securities and Exchange Commission or SEC [S-E-C];
  - Other regulatory community members, including state and federal regulators and self-regulatory organizations; and
  - Brokerage firms.

**Slide 7:**

- Regulators use CRD to fulfill regulatory responsibilities and help identify trends or potential threats to investors.
- Brokerage firms rely on CRD information for hiring decisions.
- Investors use CRD information provided through BrokerCheck when considering whether to work with a broker or brokerage firm. BrokerCheck is a free online tool that helps investors

research the professional backgrounds, business practices, and conduct of current and former FINRA registered securities firms and brokers.

**Slide 8:**

- Securities firms and regulatory authorities report disclosure events to the CRD system, including:
  - Civil judicial actions or non-criminal court actions;
  - Criminal matters;
  - Customer disputes including complaints, arbitrations, and court actions;
  - Employment terminations;
  - Internal reviews conducted by firms;
  - Investigations conducted by regulatory organizations;
  - Financial matters such as credit issues or bankruptcy; and
  - Regulatory actions.

**Slide 9:**

- Disclosure information is submitted through the Uniform Registration Forms. These forms are designed to collect information relevant to regulatory licensing and enforcement. Forms discussed in this module include:
  - Forms U4 and U5, used by securities firms to report registration and employment-related information; and
  - Form U6, used by regulators to report disciplinary actions.

**Slide 10:**

- Arbitrators have a crucial role in deciding whether to recommend expungement of customer dispute information.
- Arbitrators must remember the importance of maintaining the integrity of CRD information.
- They must have all relevant information for an informed and appropriate recommendation.
- Arbitrators should request relevant documents and other evidence.
- It is particularly important to seek out information in:
  - Cases that settle before an evidentiary hearing, or
  - Cases where only the party requesting expungement participates in the hearing.

**Slide 11:**

- Rule 2080 [twenty-eighty] specifies the three narrow grounds for expungement.
- Rule 2081 [twenty-eighty-one] prohibits conditioning settlement of a customer dispute on the customer's agreement to consent to, or not to oppose, expungement.
- Rules 12805 [twelve eight oh five] and 13805 [thirteen eight oh five] detail four procedures arbitrators must follow before recommending expungement.
- We'll walk through each rule after reviewing customer dispute information.

**Slide 12:**

- The standards for expungement under Rules 2080, 2081, 12805 and 13805 apply only to cases involving customer dispute information.
- These expungement requests involve customers filing complaints or bringing cases, including allegations of misconduct, against brokers and securities firms.

- The rules don't apply in arbitration cases between individual brokers and securities firms or between firms if the panel recommends expungement based on the defamatory nature of the information. CRD honors such expungement requests without a court order.

**Slide 13:**

- Expungement may occur only after the arbitrators find and document one of the narrow grounds for expungement specified in Rule 2080:
  - The claim, allegation or information is factually impossible or clearly erroneous.
  - The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation or conversion of funds; or
  - The claim, allegation or information is false.
- Next, we'll look at additional information and examples for each of the grounds for expungement.

**Slide 14:**

- For example, if a broker named in a claim was not employed by the securities firm during the relevant time period, arbitrators could:
  - Find that he or she was erroneously named in the claim,
  - Dismiss the claim against the broker, and
  - Recommend expungement of claim information from the broker's CRD record.
- The expungement recommendation must still be confirmed by a court before the information can be expunged from the CRD.

**Slide 15:**

- This ground specifies the types of customer complaints registered persons must report to CRD, per Form U4.
- If arbitrators find that the broker was not involved in any specified activity, there is no logical basis for keeping the claim on the individual's CRD record and arbitrators may recommend expungement.
- The expungement recommendation must still be confirmed by a court before the claim can be expunged from the CRD.

**Slide 16:**

- Arbitrators can use this standard only after considering the merits of the allegations against a broker or securities firm.
- For example, if a customer alleged the broker made unauthorized trades, and the broker provided a document directing the trades and signed by the customer, arbitrators could find that the allegation was false.

**Slide 17:**

- To recommend expungement, arbitrators must indicate in the award which Rule 2080 ground is the basis for expungement.
- If the award doesn't include this, parties must name FINRA as a party in any court proceedings for expungement.
- If arbitrators recommend expungement based on Rule 2080 grounds, FINRA may waive its right to be named a party, thus waiving the right to oppose the expungement request.

- Per Rule 2080(a), CRD will expunge customer dispute information when a court confirms the award.

**Slide 18:**

- Rule 2081 prohibits firms and registered representatives from conditioning settlement of a customer dispute on the customer's agreement to consent to, or not to oppose, expungement of information from the CRD.
- This prohibition applies to:
  - Written and oral agreements and to agreements entered into during settlement negotiations;
  - An agreement that is separate from the negotiations; and
  - Any settlements involving customer disputes, not only those related to arbitration claims.

**Slide 19:**

- The rule also prohibits any compensation to the customer, following a settlement, in return for not opposing an expungement request.
- The rule precludes bargaining for expungement as part of settlement negotiations, because a customer's interest in compensation may outweigh public or regulatory interests.
- The rule helps ensure that negotiated agreements don't influence arbitrator decisions to recommend expungement, thus helping preserve the integrity of CRD information.

**Slide 20:**

- Arbitrators considering expungement must follow the procedures under Rules 12805 and 13805. They are designed to ensure:
  - Arbitrators have an opportunity to consider the facts for and against recommending expungement; and
  - They recommend expungement only when they find and document one of the Rule 2080 grounds.
- The procedural requirements include:
  - Conducting a recorded hearing session,
  - Reviewing the settlement,
  - Identifying the ground(s) for expungements under Rule 2080, and
  - Assessing forum fees.
- In the following slides, we will detail each of the procedural requirements along with special circumstances for hearings.

**Slide 21:**

- Pursuant to Rule 12805, Arbitrators must hold a recorded expungement hearing session by telephone or in person.
  - A hearing is required even if the other party doesn't object to expungement.
  - It is required for Simplified Arbitration, even if a claimant didn't request a hearing.
  - Arbitrators may rule on expungement during the evidentiary hearing. If there was no hearing, they must convene a hearing to address expungement.
  - The broker or firm requesting expungement must demonstrate a basis for expungement under one of the Rule 2080 grounds.

**Slide 22:**

- There are several special circumstances for expungement hearings, including:
  - Unnamed brokers,
  - Settled cases, and
  - Expungement-only cases.
- We'll review each.

**Slide 23:**

- A broker may be the subject of an arbitration claim but not named as a party in the arbitration. The arbitration is still reported on the broker's CRD record.
- A party may file an expungement claim on the broker's behalf during arbitration or the broker may file a separate arbitration claim seeking expungement.
- In either case, arbitrators must find and document at least one ground under Rule 2080, ensure Rule 2081 is not violated, and satisfy the procedural requirements of Rules 12805 and 13805.
- If the unnamed broker didn't testify during the evidentiary hearing, arbitrators may need to seek testimony and documentary evidence during a separate expungement hearing.

**Slide 24:**

- Expungement hearings for settled cases have special considerations.
- Arbitrators must allow customers and their counsel to participate if they wish, including:
  - Appearing at the hearing;
  - Providing customer testimony;
  - Introducing documents and evidence;
  - Cross-examining the broker and witnesses called by the party seeking expungement; and
  - Presenting opening and closing arguments if the panel allows any.

**Slide 25:**

- Customers rarely attend an expungement hearing following settlement, so arbitrators often hear only the broker's position.
- There has often been no hearing in a settled case, and thus no testimony or documents presented.
- To gain relevant facts and information, arbitrators may:
  - Request any relevant documentary and other evidence;
  - Require witness testimony, including expert witnesses; and
  - Request an in-person rather than telephonic expungement hearing, to better evaluate testimony and evidence.
- If a customer opts not to attend the hearing, it should not be a factor for or against recommending expungement.

**Slide 26:**

- An associated person may file an arbitration against a FINRA member to seek expungement, without naming the customer as a respondent.
- To ensure customers know about the request, arbitrators should order the associated person/claimant to provide the Statement of Claim to customers involved in the customer

dispute, along with notice of the date and location of the hearing and of the customer's right to appear and participate in the hearing.

- This enables customers to provide their positions on expungement in writing or by participating in the expungement hearing if they choose to do so.
- Next, we'll cover the procedural requirement to review Settlement Documents.

**Slide 27:**

- Arbitrators must review settlement documents before recommending expungement.
  - Look critically at large monetary settlements that exceed a nuisance value, or the cost to settle a frivolous claim.
  - Consider whether the settlement raises questions about the culpability of the broker or firm.
  - Provide a written rationale for why expungement is appropriate despite a large settlement.
- Consider if a party conditioned the settlement on an agreement not to oppose expungement.
- Arbitrators should also request a current BrokerCheck report.

**Slide 28:**

- Review the information in the BrokerCheck report that the broker wishes to expunge.
- Disclosure Events include regulatory actions, investigations, criminal matters, and other disclosures that may be relevant to the expungement request.
- The report helps arbitrators consider the expungement request in the context of the requester's entire securities industry record.
- If the broker is requesting expungement in more than one case, the circumstances might factor into the decision on whether to recommend expungement.
- Next, we'll explore the procedural requirement for a written explanation.

**Slide 29:**

- Arbitrators must identify which Rule 2080 ground or grounds provide the basis for expungement.
- They must include a written explanation with case facts and evidence that support the grounds, and clearly connect their reasons for recommending expungement to the Rule 2080 expungement standard cited.
- Prevailing in an arbitration is not, by itself, sufficient reason to recommend expungement of arbitration information. Remember that this is an extraordinary remedy.
- If the panel doesn't provide an adequate explanation, FINRA may choose not to waive the obligation to be named as a party to court expungement proceedings.

**Slide 30:**

- The panel must assess forum fees for hearing sessions held solely to consider expungement against the party requesting expungement relief.

**Slide 31:**

- The panel must document its findings on expungement in the Award Information Sheet at the end of the case.
- FINRA staff may ask for additional information to satisfy expungement rule requirements.

- Arbitrators must document at least one of the three grounds under Rule 2080 in the award, with a written explanation.
- The award need not include legal authorities or damage calculations.
- The award must include an assessment of forum fees for hearing sessions held solely to consider expungement.
- The award must be confirmed by a court, before CRD will expunge the record.

**Slide 32:**

- Parties seeking expungement relief of customer-dispute information must obtain an order from a court that confirms the arbitration award containing expungement, before FINRA will remove the information from a broker's CRD record.
- Upon request, FINRA may waive the obligation to be named as a party if FINRA determines that expungement relief is based on one or more of the findings under Rule 2080.
- FINRA generally participates in court confirmation proceedings and opposes confirmation of the expungement recommendation if it does not meet at least one of the Rule 2080 [twenty eighty] grounds, comply with Rule 2081 [twenty eighty-one], and satisfy the procedural requirements of Rules 12805 [twelve eight oh five] and 13805 [thirteen eight oh five].
- States may intervene if they have concerns whether investor protection or regulatory questions will be fairly considered.

**Slide 33:**

- Parties may settle a case and request that expungement be incorporated in a stipulated award.
- Arbitrators must ensure the settlement meets the expungement rule requirements before recommending expungement.
- Arbitrators should not accept a stipulated award involving a settlement that violates Rule 2081.
- A stipulated award signed by two arbitrators, or the majority of the panel, shouldn't affect the validity of the parties' settlement. However, the arbitrator who doesn't agree with the stipulated award should sign the award as a dissenting arbitrator.
- However, a majority of the arbitrators must be in agreement and sign an award to meet Rule 2080 requirements to recommend expungement.

**Slide 34:**

- There are several circumstances in which expungement is inappropriate.
- One is when arbitrators decided in favor of the customers in a claim against a broker, known as an adverse arbitration award.
- Arbitrators may erroneously believe that certain grounds are reasonable for recommending expungement, when they are not by themselves sufficient grounds under Rule 2080. Examples include:
  - Information that is aged, or from an event that happened some time ago.
  - The information subject to the expungement request is the only disclosure event reported on an otherwise clean CRD record.
  - Customer allegations that relate to a single investment product.

**Slide 35:**

- When an arbitration panel or court has issued an award denying an expungement request, the broker may not request expungement of the same information in another arbitration case.

- Arbitrators should ask the requesting party whether a panel or court previously denied expungement of the information at issue. If there was a prior denial, the panel must deny the expungement request and contact FINRA staff for assistance.

**Slide 36:**

- Certain disclosure events are not eligible for expungement from the CRD system through arbitration.
- One example is civil judicial actions, or non-criminal cases which:
  - Enjoined a broker in connection with an investment-related activity;
  - Found a broker violated investment-related statutes or regulations; or
  - Dismissed, per a settlement agreement, an investment-related civil action against a broker by a state or foreign financial regulatory authority.

**Slide 37:**

- Also ineligible for expungement are:
  - Criminal matters, including charges and convictions for any felonies and misdemeanors on Forms U4 and U5 such as fraud, wrongful taking of property, or bribery.
  - Financial matters including:
    - Compromises with creditors and bankruptcies within the past 10 years;
    - A bonding company denial, payment on, or revocation of a bond for a broker; and
    - Any unsatisfied judgments or liens.

**Slide 38:**

- Finally, investigations and regulatory actions also may not be expunged, including:
- Investigations or proceedings by a domestic or foreign government body or SRO [S-R-O] with jurisdiction over investment-related businesses.
- Regulatory Actions brought by federal, state, or foreign regulatory authorities or SROs, including:
  - Findings or penalties imposed against a broker, and
  - Revocation or suspension of authorization to act as an attorney, accountant or federal contractor.

**Slide 39:**

- Although these events cannot be expunged from CRD, there are limited circumstances in which they will not be disclosed publicly in BrokerCheck.
  - For example, once a judgment or lien is satisfied, the event is removed from BrokerCheck.

**Slide 40:**

- Before the case concludes, arbitrators might dismiss a broker early who then requests expungement. If an associated person requests immediate expungement, the panel may order a new case before the same arbitrators to address expungement.
- If the panel recommends expungement, FINRA issues a signed award to the broker, who can seek award confirmation in court. The award remains subject to Rules 2080, [twenty eighty] 12805 [twelve eight oh five] and 13805 [thirteen eight oh five].
- Arbitrators who wish to grant early dismissal and recommend expungement should consult FINRA staff on the procedure.

**Slide 41:**

- Although FINRA expects that arbitrators will consider the majority of expungement requests, a judge may also make the affirmative finding required under Rule 2080. However, brokerage firms or brokers seeking expungement relief in court must name FINRA as a party. FINRA will determine whether to oppose the expungement request based on the reasons for requesting expungement.

**Slide 42: Video**

Thomas: Congratulations on completing the expungement module.

Joann: This module provided information on several important concepts.

Thomas: Including the CRD system and its role in protecting the public.

Joann: FINRA's expungement rules and the process to expunge customer dispute information.

Thomas: Types of disclosures that cannot be expunged through arbitration.

Joann: And the distinction between requests in customer disputes and intra-industry cases.

Thomas: The next slide includes information about taking the Expungement Assessment.

Joann: But before moving on to the instructions, take a few minutes to check your understanding of this module.

Both: And good luck!

**Test Your Knowledge Slides:**

**Slide 43:**

- **Question:** Customer dispute information on the CRD System includes information about customer complaints, arbitration claims, and court actions.  
**A. True**  
**B. False**

**Slide 44:**

- **Question:** Rule 2080 does not require a court of competent jurisdiction to confirm the arbitrators' arbitration award containing a recommendation for expungement.  
**A. True**  
**B. False**

**Slide 45:**

- **Question:** There is no need for arbitrators to make specific findings under Rule 2080 if the parties agree on expungement and seek a stipulated award.  
**A. True**  
**B. False**

**Slide 46:**

- **Question:** Prevailing in an arbitration case is an appropriate ground for expunging information about the proceeding from the CRD system.  
A. True  
**B. False**

**Slides 47-48: Knowledge Check Feedback**

**Slide 49:**

- To be qualified to serve as a FINRA arbitrator, you must successfully complete the Expungement assessment.
- You must achieve a score of at least 80% or 8 correct answers out of 10 to pass.
- You may take the assessment as many times as you wish.
- Close the module window by clicking the “x” symbol located on the top right corner to return to the main course page and launch the Expungement Training Assessment.
- Remember, you must also pass the Basic Arbitrator Training Assessment to qualify as an arbitrator.