

# FINRA Dispute Resolution Services Chairperson Training 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. Arbitrators must complete the online course and assessment in FINRA's Arbitrator Learning Site to receive credit.*

May 2024

## MODULE 1: Course Introduction

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### Slide 1:

- Welcome to FINRA Dispute Resolution Services online training course for arbitration chairpersons.

### Slide 2:

- Welcome to Module 1, which introduces the course and explains content navigation.

### Slide 3:

- The Chairperson Training course provides guidance, suggestions, examples, and resources to prepare you to manage arbitration processes, facilitate the hearing, and ensure panel teamwork.
- Its primary goals are to enhance your leadership skills and help prepare you to conduct fair and impartial hearings, resulting in awards that can be sustained if challenged in court.
- It's not possible for the course to address every circumstance you may encounter as a chairperson. However, you will find suggestions for modifying arbitration procedures, when appropriate for specific case circumstances, throughout the course.

### Slide 4:

- Before we get started, let's review the chairperson requirements. Under Rule 12400 of the Code of Arbitration Procedure, only arbitrators who have completed this training and meet one of the following requirements may be considered for the chairperson roster:
  - Have a law degree, be a member of a bar in at least one jurisdiction, and have served as an arbitrator through award in at least one arbitration administered by a self-regulatory organization (SRO); or
  - If not an attorney, have served as an arbitrator through award in at least **three** SRO administered arbitrations.

### Slide 5:

- This introductory module walks you through course structure and functions.
- It describes course requirements and introduces you to resources to support this training and your work as a chairperson.
- Each module includes self-assessment questions, to help you evaluate your knowledge and prepare for the final assessment.

### Slide 6:

- If you experience technical issues, contact our toll-free support line at 800-321-6273.

### Slide 7:

- The course includes ten instructional modules and a final assessment.
- Each module requires about 30 to 90 minutes to complete. If you need to stop a module before you complete it, you can pick up where you left off later.
- You must complete each module in sequence. However, you can revisit earlier modules as you like to review content.
- You must also complete all the modules before you can take the required final assessment.

- After passing the assessment with a score of 80% or higher, DRS will add the chairperson training to your arbitrator disclosure report.

**Slide 8:**

- 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 module.
- The CC or closed captioning button turn the closed captions on and off.
- The Forward Arrow allows you to skip ahead to the next slide.
- The Play/Pause button allows you to pause a slide or continue playing.
- The Back Arrow allows you to go back to the previous slide.

**Slide 9:**

- Many of the resources for the course should be familiar to you.
- The Glossary is available for any terminology used in the course that might be unfamiliar.
- The FINRA Website provides many resources for arbitrators, such as additional training materials, the Codes of Arbitration Procedure and Arbitrator's Guide, and forms and tools. Because many rules in the Code of Arbitration Procedure for Customer Disputes (Customer Code) and Code of Arbitration for Industry Disputes (Industry Code) are identical, the training focuses primarily on the Customer Code.
- FINRA DRS's quarterly publication, The Neutral Corner, provides news, information, and updates for FINRA arbitrators and mediators.

**Slide 10:**

- The grounds to vacate an arbitration award can be found in Section 10 of Title 9 in the United States Code. Title 9 is about arbitration.
- FINRA DRS's website provides training and videos on conducting virtual arbitration hearings.
- You can always access FINRA DRS's basic arbitrator training modules and expungement training if you would like a refresher on any topic.
- You may want to bookmark some of the resources in your browser for easy reference throughout this course.

**Slide 11:**

- FINRA's Dispute Resolution Portal (DR Portal) provides access to case documents, such as parties' motions/responses, and forms you'll need to complete, such as the Oath of Arbitrator (Oath), Initial Prehearing Conference (IPHC) Order, and Award Information Sheet (AIS), among other important documents.
- DRS staff are available to respond to questions. DRS also has a roster of experienced chairpersons that new chairpersons can contact through the mentoring program.

**Slide 12:**

- It is critical for arbitrators to review their disclosure reports every time they are assigned to a new case and make timely disclosures.
- Arbitrators must also review the criteria for temporary and permanent disqualification every time they are selected to serve. They must disclose any fact or circumstance that might result in disqualification. Arbitrators must demonstrate appropriate demeanor, neutrality, skills, and performance.

- Arbitrators will be evaluated by their peers in Arbitrator Experience Surveys and by the parties in Party Experience Surveys after the case has concluded.

**Slide 13:**

- The chairperson’s behavior sets the tone for the panel and the arbitration hearings.
- Appropriate demeanor and behavior are, therefore, just as important as understanding and properly managing the arbitration process.
- Chairpersons must:
  - Ensure all panelists demonstrate neutral and professional behavior throughout the arbitration.
  - Demonstrate respect for all panel members and involve them in conducting fair hearings and decision-making. Demonstrate respect for all parties, representatives, and other hearing participants.

**Slide 14:**

- FINRA Dispute Resolution Services attempts to present information to readers in a format that is easily understandable.
- However, 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.

**Slide 15:**

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**Slide 16:**

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**Slide 17:**

- This concludes Module 1. Module 2 will cover Conducting an IPHC.
- Go at your own pace and proceed to the next module whenever you are ready.
- To exit this this module and proceed with the course, close the window, and click “Go to Class” in the top right to return to the main course page.

## MODULE 2: Conducting an IPHC

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### Slide 1:

- This module covers preparing for and conducting an Initial Prehearing Conference or IPHC.
- The IPHC is the first time that the parties and arbitrators meet, via videoconference, to set the schedule for the case and address other preliminary matters.

### Slide 2:

- This module is designed to prepare you to:
  - Complete the steps necessary to ensure a fair initial prehearing conference or IPHC;
  - Identify discovery issues that need to be resolved; and
  - Prepare the IPHC Scheduling Order.

### Slide 3:

- Scheduling evidentiary hearings is the primary goal of the IPHC.
- Under Rule 12500, the Director of Arbitration schedules an IPHC, after the panel is appointed, to provide the panel and parties an opportunity to discuss how the case will proceed, including:
  - Setting a deadline for filing prehearing briefs
  - Setting discovery and subpoena cut-off dates;
  - Identifying and scheduling due dates for potential motions;
  - Scheduling hearing dates;
  - Determining whether mediation is desirable; and
  - Resolving any other preliminary issues.

### Slide 4:

- Under Rule 12500(c), the parties may forego the IPHC if they provide the Director with the following required information:
  - A statement that the parties accept the panel;
  - Whether other prehearing conferences will be held, with at least four mutually agreeable dates and times for each, and whether the chairperson or full panel will preside;
  - At least four mutually agreeable hearing dates;
  - A discovery schedule;
  - A list of all anticipated motions, with filing and response due dates; and
  - A determination of whether briefs will be submitted, and, if so, the due date.

### Slide 5:

- Before the IPHC, the chairperson and co-panelists must read all the case information and review key resources, including:
  - The IPHC Script.
  - The Discovery Guide, if this is a customer case.
  - The Code of Ethics for Arbitrators in Commercial Disputes.
  - The Arbitrator Case Packet, which includes:
    - The documents listed in the Certificate of Arbitrator's Exhibit Number 1,
    - The Certificate itself,
    - The Arbitrator Disclosure Reports for the Panelists,
    - A cover letter with attachments, including the Case Information Sheet, and

- All filed pleadings including claims, answers, counterclaims, cross claims, and third-party claims.
- We'll go through these required reviews in more detail.

**Slide 6:**

- Reviewing the IPHC Script, along with the IPHC Scheduling Order, will help the chairperson and co-panelists prepare for the IPHC.
- The IPHC Script provides suggested language and prompts to help the panel conduct the IPHC.
- The IPHC Scheduling Order helps the chairperson accurately record the parties' agreements and the panel's decisions.
- DRS staff provides links to the IPHC Script and DR Portal in the Arbitrator Case Packet cover letter.
- You can reach out to DRS staff with any questions on these documents.

**Slide 7:**

- As chairperson, you should become familiar with Rules 12505 through 12511 of the Customer Code.
  - These rules pertain to the discovery process and preparing for the hearing.
  - The Discovery Guide, along with its Document Production Lists, helps facilitate the efficient exchange of documents and information in customer cases.
  - The discovery process in industry cases is very similar to that in customer cases, except that only customer cases use the Discovery Guide.
  - These resources and the discovery process are discussed further in Module 4.
- The Arbitrator Case Packet cover letter has an attachment, titled "Duties, Obligations, and Ethical Considerations for FINRA Arbitrators."
  - It provides valuable information that all panel members should review, and it includes a link to the Code of Ethics.
  - The chairperson and co-panelists must read and comply with the Code of Ethics.
  - DRS encourages arbitrators to refer to the Code of Ethics regularly.
  - It includes annotations on how courts have interpreted the rules of the Code of Ethics.
  - However, the Code of Ethics is not a substitute for, nor does it supersede, applicable law or the Codes of Arbitration Procedure for Customer Disputes and Industry Disputes.

**Slide 8:**

- Pleadings provide the framework for party agreements or panel decisions on issues, such as scheduling evidentiary hearing dates and resolving discovery disputes.
- The panel should review them carefully.
- As you review the pleadings consider the following:
  - Whether the claimant filed a Submission Agreement listing all named parties.
  - Whether any party with a third-party claim filed a Submission Agreement appropriately naming the additional parties.
  - Whether DRS effected service of the claim or DRS has provided notice of returned mail.
  - Whether any amendments or subsequent pleadings have been properly served by the parties.
  - Whether the items checked off on the Certificate of Arbitrator's Exhibit No. 1 correspond to the pleadings received.

- If you have questions or note a problem or inconsistency when reviewing the pleadings, contact DRS staff.
- Note that jurisdictional, service, or notice problems pertaining to missing respondents are discussed in Module 7.

**Slide 9:**

- Arbitrators must conduct themselves in a manner that encourages and protects the parties' right to a full and fair hearing.
- As a chairperson, you must:
  - Ensure the panel listens to diverse viewpoints with unbiased attention and without unnecessary disruption; and
  - Call for private executive sessions to consult with co-panelists, as needed, during and after the IPHC.
  - DRS staff is on hand and handles videoconference breakout rooms to ensure privacy.

**Slide 10:**

- The parties and arbitrators must be prepared with their calendars to complete scheduling, including recording all hearing dates in their calendars.
- Remember that scheduling evidentiary hearings is the primary goal of the IPHC.
- The IPHC Script provides procedures that should be followed, but may, in the panel's discretion, be varied to allow the parties a full and fair opportunity to present their respective positions.
- For example, the panel may determine the order in which to schedule hearings and set discovery, motion, or briefing deadlines.
- Regardless of the order, the panel should strive to schedule hearings within nine months or less after the IPHC.

**Slide 11:**

- An IPHC is not recorded unless the panel determines otherwise, on their own initiative or upon a party's motion.
- Adhere closely to the IPHC Script and IPHC Scheduling Order to ensure fair and complete discussion of all issues and that all party agreements and panel decisions are captured.
- If a DRS staff member is present, they will introduce the arbitrators.
- Otherwise, the chairperson will introduce them.
- Next, identify each conference participant and their role.
- If applicable, confirm that the hearing will be conducted as a Special Proceeding.
- If applicable, confirm that the case is proceeding on an expedited basis for senior or seriously ill parties, and remind the parties that hearing dates should be scheduled to expedite the process but still provide reasonable time for case preparation.
- Additional scheduling guidance is covered later in this lesson.

**Slide 12:**

- The panel should make any disclosures not previously contained in the Arbitrator Disclosure Report and confirm, on the record, their current classifications as either public or non-public arbitrators.
- Ask the parties and counsel if they know of any potential conflicts between the arbitrators and any party, counsel, or witness in the matter.
- Ask the parties to confirm acceptance of the panel's composition.

- If an arbitrator is the subject of a causal challenge and believes it would be appropriate to withdraw, they should disconnect from the video conference.
- Confirm that each panelist has executed and submitted their Oath to DRS through the DR Portal.
- If not, verify that each arbitrator has reviewed FINRA’s Temporary and Permanent Arbitrator Disqualification Criteria, the Arbitrator Disclosure Checklist, and their Arbitrator Disclosure Report.
  - If an arbitrator has not received and reviewed these items, they will not be permitted to rule on any item on the IPHC agenda.
  - If an arbitrator has reviewed the items, administer the Oath, provided in the IPHC Script, and ensure they are executed in writing and given to DRS staff to include in the case file.
- Remind the parties and counsel to express their views and any objections to the panel and not one another.
- Also, remind participants to remain civil in all prehearing conferences and evidentiary hearings.

**Slide 13:**

- A party may challenge continuing with an IPHC for several reasons.
- We’ll discuss four scenarios:
  - The parties are in the process of settling the case;
  - A party has a pending motion to dismiss the case;
  - A party has a causal challenge to an arbitrator; or
  - A party doesn’t accept the composition of the panel.
- As a chairperson you will handle each situation differently, depending on the specific circumstances.
- Let’s take a look.

**Slide 14:**

- A party may not want to go forward with an IPHC because the parties are in the process of settling the case.
- Acknowledge that the parties are working on a settlement.
- Advise the parties that they can continue the process, but since they didn’t cancel, the IPHC should proceed.

**Slide 15:**

- A party may want to cancel the IPHC because they plan to file a motion to dismiss.
- Advise the parties that the IPHC will go forward, and a prehearing conference may be scheduled to hear arguments on the motion.

**Slide 16:**

- A party may challenge an arbitrator.
- If the arbitrator decides to withdraw from the panel, the party might refuse to proceed with the IPHC after the challenged arbitrator disconnects.
- Because substantive issues are not usually addressed in an IPHC, the conference should continue.

**Slide 17:**

- A party may refuse to accept the panel composition.
- The chairperson should make a note of the party’s concern and continue with the IPHC.

**Slide 18:**

- Acknowledge and identify the pleadings, listing the documents.
- Acknowledge any outstanding deficiencies, such as undated Submission Agreements, unpaid fees, or failure to file proof of service. Set a deadline to cure the deficiencies.
- If a party has not filed a Submission Agreement, advise that the party must do so within 30 days, or they may be subject to sanctions.
- If a party failed to submit an answer, the panel will decide whether service is complete, in order for the case to proceed to hearing.
- Advise the parties that DRS provides a voluntary mediation program, designed to proceed in parallel with arbitration.

**Slide 19:**

- If the case involves a pro se party, a party not represented by an attorney, advise that the arbitrators will provide the parties with procedural guidance and direction to ensure all parties receive a fair hearing.
- Explain that arbitrators cannot advocate for any party.
- Emphasize that arbitrators cannot provide legal advice.
- Remind any pro se party that they have the right to be represented by a lawyer at any point in the proceedings.

**Slide 20:**

- Arbitrators and parties may arrange for direct communication solely to alert the panel that:
- The parties have settled the case,
- The claimant has withdrawn the claim, or
- The parties jointly agreed to postpone the hearings.
- Remind the parties that they may not communicate with any member of the panel except in the presence of all parties or representatives,
- even if the panel and parties agreed to direct communication.
- Emphasize that all correspondence and pleadings must be filed with DRS via the DR Portal for distribution to the panel.
- Copies of direct communication must also be filed with DRS via the DR Portal.

**Slide 21:**

- DRS charges a postponement fee equal to the applicable hearing fee for all postponed hearings.
- Arbitrators may allocate the fee to the party or parties that requested or agreed to postponement or that caused or contributed to the need for postponement.
- DRS will not charge the fee if the parties have reached a final settlement and the case can be closed.
- Separate from the postponement fee, if a party requests a postponement within 10 days of a scheduled hearing, that party must pay an additional fee of \$600 per arbitrator.
- This fee also applies if a hearing is cancelled because parties have settled the case.

**Slide 22:**

- For Special Proceedings, DRS recommends setting the hearing date within four months from the IPHC.
- If the parties have agreed to potential hearing dates, discuss them with your co-panelists.

- If the parties have not agreed on dates, request the parties' and panel's availability on a month-by-month basis until a date is selected.
- Remind the parties that they have until 10 days before the hearing date to advise DRS of a postponement or final settlement in order to avoid the late cancellation fee.

**Slide 23:**

- For non-expedited cases, encourage the parties to set aside extra dates to avoid delays.
- Advise that the goal is to commence hearings within nine months after the IPHC.
- Assure the parties that arbitrators will avoid postponements, absent a genuine emergency, and pledge to be on time for all conferences and hearings.
- Explain that, in turn, the parties and counsel should avoid postponements and be prepared and on time for all conferences and hearings.
- Unless agreed otherwise, hearings will run eight hours each day, starting at 9:00 a.m. and ending no earlier than 5:00 p.m.
- If the parties have agreed to potential hearing dates, discuss them with your co-panelists.
- If the parties have not agreed on dates, request the parties' and panel's availability on a month-by-month basis until a date is selected.
- Advise parties that they have until 10 days prior to the hearing date to let DRS know of any postponement or final settlement in order to avoid the late cancellation fee.

**Slide 24:**

- When proceedings are expedited for senior or seriously ill parties, the panel should make every attempt to expedite the process while providing a reasonable amount of time for case preparation.
- Arbitrators should return orders and decisions to DRS as soon as possible via the DR Portal.
- Encourage setting a discovery cut-off as close to the IPHC as reasonably possible.
- Schedule the discovery motion deadline no more than three months after the IPHC.
- Advise that DRS recommends setting the hearing within six months after the IPHC and selecting extra dates to avoid delays.
- In deciding adjournment requests, avoid postponements absent a genuine emergency.
- If the parties have agreed to potential hearing dates, discuss them with your co-panelists.
- If the parties have not agreed on dates, request the parties' and panel's availability on a month-by-month basis until a date is selected.
- Advise the parties that they have until 10 days before the hearing date to advise DRS of any postponement or settlement in order to avoid the late cancellation fee.

**Slide 25:**

- For all cases, remind the parties that they are required to fully cooperate with one another in exchanging documents and information.
- In customer cases, advise the parties to carefully review the Discovery Guide and Document Production Lists, which can be downloaded from FINRA's website.
- Remind the parties that any abuse of the discovery process undermines the integrity and fairness of the arbitration, and the panel may impose sanctions to address abuse.
- Ask the parties to describe the status and progress of discovery to date.

**Slide 26:**

- Encourage the parties to meet and confer about discovery.

- Determine if the parties wish to stipulate to any deadlines for filing discovery requests or schedule a prehearing conference with the chairperson to address discovery disputes they are unable to resolve.
- Parties may ask the panel to consider motions at the IPHC.
- The panel is not obligated to do so at that time, even if motions and responses were received prior to the IPHC.
- The panel and the parties may discuss the need for a subsequent prehearing conference.
- The panel will determine whether a prehearing conference is appropriate.
- If the panel deems it appropriate, schedule the conference during the IPHC and record it in the IPHC Scheduling Order.

**Slide 27:**

- Determine if the parties agree to a specified deadline, before the first scheduled hearing, for serving subpoenas and arbitrator orders on non-parties.

**Slide 28:**

- Ask whether the parties intend to file any prehearing motions.
- If applicable, advise that DRS staff will wait for the reply deadline before sending motions to the panel for decision, along with any response and reply.
- Remind parties that written motions, except for Motions to Dismiss, must be served via the DR Portal at least 20 days before an evidentiary hearing, unless the panel decides otherwise.
- Parties have 10 days to respond and five days to reply via the DR Portal, unless the moving party agrees to an extension, or the Director or panel decide otherwise.

**Slide 29:**

- Parties must notify DRS when scheduled prehearing conferences are no longer needed.
- If the parties request cancellation within three business days of a scheduled prehearing conference, a cancellation fee will be assessed for each arbitrator.

**Slide 30:**

- Ask if there are unique legal issues that warrant the filing of briefs.
- If so, set deadlines for submitting the briefs and ask the parties to attach all cases, laws, rules, and regulations cited.
- Parties should simultaneously exchange the briefs and submit them to DRS.

**Slide 31:**

- Parties must exchange witness lists at least 20 calendar days before the first hearing date.
- Request that the parties concurrently file witness lists with DRS via the DR Portal, for forwarding to the panel.
- Timely receipt allows the panel to determine if the appearance of a witness may create a potential conflict with an arbitrator or trigger the need for additional arbitrator disclosures.
- Parties should include the business affiliation of each witness or other descriptive information to aid in conflict checks.
- A party should only identify an expert witness that the party has actually retained.

**Slide 32:**

- Advise that, to conserve hearing time, the parties should confer on the admission of hearing exhibits to resolve any issues around exhibit authentication and witness scheduling.
- If the hearing will not be in person, consider whether the panel would like hard copies of exhibits.
- If the panel does not need hard copies, determine when DRS staff will forward the electronic exhibits to the panel.
- For in-person hearings, parties will provide exhibits to the panel on the first day of the hearing.
- The parties are obligated to exchange hearing exhibits at least 20 calendar days prior to the first scheduled hearing date.
- Request that the parties also file all of the exhibits which may be entered into evidence at the hearing with DRS via the DR Portal for recordkeeping purposes.
- Set deadlines for when the exhibits should be uploaded to the DR Portal.
- If the hearing will not be in person, consider whether the panel would like hard copies of exhibits and how the panel wishes to receive hard copies.
- If the panel does not need hard copies, determine when the electronic exhibits will be forwarded to the panel by DRS staff.

**Slide 33:**

- If expungement has been requested, consider the requirements for granting expungement and whether the necessary documents have been received yet.
- Set deadlines for when any necessary documents must be filed by the party requesting expungement.

**Slide 34:**

- Advise that arbitrators must provide an explained decision if the parties file a joint request for one at least 20 calendar days prior to the first hearing date.
- The explanation will state the general reasons for the arbitrators' decision and does not need to include legal authorities or damage calculations.
- No fee is assessed to the parties for the explained decision.
- The chairperson will only receive an additional honorarium for writing an explained decision if it was jointly requested by the parties at least 20 days prior to the hearing.
- No additional honorarium will be paid if the explained decision is required by FINRA rules, such as when granting a motion to dismiss or recommending expungement of a customer dispute.

**Slide 35:**

- Before concluding, ask if there are any other matters that need to be addressed prior to the hearing.
- Ensure all parties have been given an opportunity to completely state their views on all issues.
- Announce that you are submitting an IPHC Scheduling Order that confirms all agreements and rulings reached during the IPHC.
- Advise that DRS will send the IPHC Scheduling Order to all parties via the DR Portal.
- Read your draft of the IPHC Scheduling Order and ask the participants to inform you if any statement is incorrect.
- Advise the parties that DRS will not remind them of their deadlines.
- Emphasize their responsibility for discovery deadlines.
- Remind the parties to serve one another via the DR Portal, simultaneously when filing with DRS.

- Thank everyone for their participation.
- Contact DRS staff immediately after the videoconference if any filed pleading is missing.

**Slide 36:**

- Conduct an executive session to consider the following:
  - How the cost of the IPHC should be assessed to the parties if the case is settled before evidentiary hearings commence and the parties fail to allocate the cost in a settlement agreement, under Rule 12701(b).
  - Submit the IPHC Scheduling Order to DRS within two business days via the DR Portal.

**Slide 37:**

- Test your knowledge now by responding to the following questions.

**Slide 38:**

- **Question:** When it comes to managing arbitration on an expedited basis, it is most important to:
  - A. Return orders and decisions to DRS as soon as possible via the DR Portal.
  - B. Schedule the discovery motion deadline no more than three months after the IPHC.
  - C. Strive to complete all hearings on a compressed schedule of no more than six months.
  - D. **All of the above.**

**Slide 39:**

- **Question:** When it comes to filed pleadings, the chairperson should:
  - A. **Ensure all panel members have received and reviewed them prior to starting the IPHC conference.**
  - B. Be solely responsible for reviewing all pleadings and other Arbitrator Case Packet contents well in advance of the IPHC in case something is missing.
  - C. Distribute the pleadings among their co-panelists so each arbitrator only has to review and understand specific pleadings.

**Slide 40:**

- **Question:** If the panel has received motions prior to the IPHC, the panel:
  - A. **Will decide whether to consider them during the IPHC, decide based on the papers, or require a subsequent prehearing conference.**
  - B. Should not consider them during the IPHC since they are not included in the script.
  - C. Must consider them during the IPHC to expedite the proceeding.

**Slide 41:**

- This concludes Module 2.
- Module 3 will cover Discovery Issues.
- Continue at your own pace and proceed to Module 3 whenever you are ready.
- To exit this module and continue with the course, close the browser window, and click “Go to Class” in the top right to return to the main course page.

### Slide 1:

- This module provides an overview of discovery issues the chairperson must understand and manage in order to prepare for an effective prehearing discovery conference.

### Slide 2:

- Learning objectives include:
  - Understanding the powers of the selected arbitrator;
  - Using the Discovery Guide and Document Production Lists;
  - Understanding how to tailor discovery decisions; and
  - Understanding and making decisions on discovery subpoenas, orders of appearance and production, and requests for privileged documents

### Slide 3:

- One arbitrator, usually the chairperson, is appointed to determine unresolved discovery issues on the panel's behalf.
- On the DR Portal, the selected arbitrator receives a copy of the discovery motions, objections, responses, and related documents.
- The arbitrator then determines whether to decide the issues by reviewing the filed papers or after oral arguments at a prehearing conference.
- Rule 12503(d)(3) authorizes the selected arbitrator to make decisions on the following:
  - Issuing subpoenas;
  - Ordering the appearance of witnesses;
  - Ordering the production of documents;
  - Setting deadlines for compliance with appearance or document production orders; and
  - Issuing any other ruling which will expedite the arbitration proceedings.
- The selected arbitrator also has the option to refer any discovery issue to the full panel for a decision.

### Slide 4:

- Rule 12503(d)(5) requires the full panel to issue dispositive rulings:
  - To decide or dispose of motions to dismiss under Rule 12504;
  - To determine eligibility based on the time of claim submission to arbitration under Rule 12206;
  - To determine eligibility based on the subject matter under Rule 12201; and
  - To dismiss a claim, defense, or arbitration under Sanctions Rule 12212.

### Slide 5:

- Rule 12503(d)(5) also reserves certain non-dispositive rulings for the full panel, including the following:
  - Sanctioning a party for failure to comply with any provision in the Code or any order of the panel under Rule 12212 or 12511;
  - Decisions on requests to file amended pleadings, after the panel has been appointed, under Rule 12309;
  - Consolidating arbitration proceedings or severing claims under Rules 12312-12314; and

- Barring the presentation of facts or defenses not included in filed answers or barring the presentation of defenses or arguments when answers are not filed in a timely manner under Rule 12308.

**Slide 6:**

- Non-dispositive rulings that require the full panel also include:
  - Changing the time or location of the hearing under Rule 12600;
  - Excluding or allowing the presentation of documents or production of witnesses at the hearing, which were not exchanged or identified at least 20 calendar days before the first evidentiary hearing date under Rule 12514;
  - Deciding what evidence to admit at the hearing under Rule 12604; and
  - Adjourning hearings under Rule 12601.

**Slide 7:**

- The Guide and its Document Production Lists supplement the discovery rules (12505-12511) and guide the parties and the arbitrators in customer cases.
- These resources help facilitate and streamline the exchange of documents among parties without arbitrator intervention.
- The documents described in the List for Firms and List for Customers should be considered presumptively discoverable.
- That means the documents should be provided to the opposing party absent a specific objection to the document being withheld.
- However, the parties and the arbitrators retain flexibility in the discovery process.

**Slide 8:**

- Tailoring discovery decisions to the submitted issues promotes more efficient evidentiary hearings.
- Examples of flexibility for arbitrators include the ability to:
  - Order production of documents not included in the Lists;
  - Order that parties do not have to produce certain documents on the Lists that may not be relevant in the case; and
  - Alter the production schedule described in the discovery rules.
- All discovery rulings should be recorded in an order.

**Slide 9:**

- Discovery is not limited to only those documents specifically included in the Lists.
- Arbitrators should use their judgment and assess requests for items not on the Lists by considering the relevance and potential value of the document's information against the burden and cost of production.

**Slide 10:**

- Rule 12505 requires parties to cooperate to the fullest extent practicable in exchanging documents and information.
- Unless the parties agree otherwise, within 60 days of the date the answer is due, the parties must:
  - Produce all documents in the Lists in their possession or control;

- Identify and explain why specific documents in the Lists cannot be produced within the required time and produce all other documents; or
- Object to the production of specific documents and produce all other documents.

**Slide 11:**

- A party may object to producing a document due to the cost or burden of production.
- Arbitrators should first determine if the document is relevant or likely to lead to relevant evidence.
- If it is relevant, they should then consider whether any alternatives exist that would lessen the cost or burden of production, such as another document providing the same information or narrowing the time frame or scope of the requested item.
- If there are no alternatives, consider the value or importance of the information against the cost or burden of production.

**Slide 12:**

- Rules 12212 and 12511 describe sanction provisions and clarify arbitrators' authority to impose sanctions on parties for:
  - Non-compliance with any provision in the Code or any order of the panel;
  - Non-compliance with discovery rules; or
  - Non-compliance with panel discovery orders.

**Slide 13:**

- While parties should strive to produce documents and make witnesses available without the use of subpoenas, they are sometimes necessary.
- One circumstance that may require subpoenas is when important testimony and documents are not under the control of a brokerage firm or its employees.
- Per Rule 12512, only arbitrators can issue subpoenas for parties and non-parties for discovery or for appearance at a hearing.
- Also, per Rule 12512, unless circumstances dictate the need for a subpoena, arbitrators shall not issue subpoenas to non-party FINRA members and/or employees or associated persons of non-party FINRA members at the request of FINRA members and/or employees or associated persons of FINRA members.

**Slide 14:**

- A party must file a written motion for a subpoena, along with a draft subpoena, on the DR Portal.
- Any objections must be filed within 10 calendar days of service of the motion.
- The party requesting the subpoena may file a response to the objection within 10 calendar days of receipt.
- DRS staff forwards the subpoena and any response and reply to the selected arbitrator for ruling.
- The arbitrator should rule promptly and file the order on the DR Portal.

**Slide 15:**

- The arbitrator will consider any objections and determine whether to issue a subpoena and whether to limit its scope.
- DRS will forward the decision to the parties.

- If the arbitrator issues a subpoena, the requesting party must serve the subpoena on all parties.
- Once the requesting party receives documents in response to the subpoena, they must notify all other parties within 5 days.

**Slide 16:**

- The same process and timelines for issuing subpoenas apply to reviewing challenges to subpoenas issued to third parties.
- Per Rule 12512, a non-party can file an objection to a subpoena. In this case:
  - The arbitrator may hold a prehearing conference with the non-party and the parties to discuss objections.
  - The party requesting the subpoena will pay for reasonable costs of the non-party FINRA member and/or any employee or associated person of a non-party FINRA member's appearance and/or production unless the panel directs otherwise.
  - Non-parties, who are not FINRA members or associated with FINRA members, may ask the arbitrator to decide who pays costs of producing subpoenaed documents.
  - The arbitrator's order should be submitted on the DR Portal for transmission to the non-party and parties.
  - If another party requests copies of documents from a non-party subpoena, the requesting party must provide them within 10 calendar days.
  - Unlike orders of appearance for FINRA members, subpoenas may only be issued within geographic limits set by state or local law.
    - For example, in some jurisdictions, arbitrators cannot compel attendance of a witness living or working more than 40 miles from the hearing location.

**Slide 17:**

- Documents subpoenaed from regulatory authorities may contain personal confidential information (PCI) for customers who are not parties to the arbitration.
- PCI includes information such as social security numbers, account numbers for brokerages, banks, and other financial accounts, and Taxpayer Identification Numbers.
- Regulatory authorities may object to subpoenas because of PCI.
- If asked to resolve the dispute, arbitrators may, in no particular order:
  - Issue protective orders to limit use of PCI;
  - Suggest using confidentiality agreements;
  - Require a party to redact PCI; or
  - Modify the scope of the subpoena.

**Slide 18:**

- Rule 12513 permits an arbitrator to order the appearance of individuals employed or associated with any member of FINRA, and the production of any documents such persons possess or control.
- Per Rule 12513, a request for an order is treated like a motion.

**Slide 19:**

- The process is similar to that for subpoenas. A party must file a written motion for an order of appearance or production, along with a draft order, on the DR Portal.
- Any objections must be filed within 10 calendar days of service of the motion. The party requesting the order must file a response to the objection within 10 calendar days of receipt.

- DRS staff forwards the request and any response and reply to the arbitrator on the DR Portal. The arbitrator should rule promptly and file the order on the DR Portal.
- DRS returns the signed order to the parties. The requesting party is responsible for serving it on the person named and providing copies to all parties.
- Unless the panel directs otherwise, the requesting party, under Rule 12513, pays reasonable costs of appearances and/or production.

**Slide 20:**

- Parties are not required to produce documents subject to an established privilege, such as attorney-client privilege or the attorney work product doctrine.
- However, parties must file objections stating the privilege, and not simply withhold documents on the grounds that they are privileged.
- Under Rule 12508, objections must be timely, in writing, and served to all other parties.
- An objecting party must identify what document or information it is objecting to and the basis for the objection.

**Slide 21:**

- If the objection is challenged, arbitrators must determine whether a privilege exists based on the facts and case circumstances.
- If requested by a party, arbitrators may request that a party asserting privilege provide information sufficient for other parties to assess the privilege claim, without revealing the information itself.
- Concerns about confidentiality and privilege may also arise for subpoenas issued to non-parties.

**Slide 22:**

- Test your knowledge now by responding to the following questions.

**Slide 23:**

- **Question:** When it comes to the powers of the selected arbitrator:
  - A. The selected arbitrator can decide discovery issue only by reviewing the filed papers.
  - B. The selected arbitrator can set deadlines for document production orders and issue sanctions for failure to comply with orders to produce documents.
  - C. The selected arbitrator may make decisions on issuing subpoenas and ordering the appearance of witnesses.**

**Slide 24:**

- **Question:** What is true of privileged documents in arbitration?
  - A. Because arbitration is different than a court case, attorney-client privilege is not grounds for withholding a document.
  - B. A party can exclude privileged documents from discovery by notifying DRS in writing that they are privileged.
  - C. A party in possession of privileged documents must file an objection based on privilege, specifically identifying the document or information and the basis for the objection to producing it.**

**Slide 25:**

- **Question:** What is true of documents containing personal confidential information (PCI)?

- A. Documents with PCI may be produced if the parties execute a confidentiality agreement, or a protective order is issued to limit the use of PCI.
- B. Any discovery document containing PCI must be redacted before sharing it with other parties.
- C. PCI includes any sensitive personal information such as social security number, names of romantic partners, and criminal records.

**Slide 26:**

- This concludes Module 3.
- Module 4 will cover Managing the Prehearing Discovery Conference. Go at your own pace and proceed to the next module whenever you are ready.
- To exit this module and proceed with the course, close the browser window, and click “Go to Class” in the top right to return to the main course page.

## MODULE 4: Prehearing Discovery Conference

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**Slide 1:**

- This module discusses how the selected arbitrator can effectively manage a Prehearing Discovery Conference and panel options for enforcing compliance with discovery motions and directives.

**Slide 2:**

- Module learning objectives include:
  - Preparing for an effective conference.
  - Using a conference agenda to ensure all matters and issues are addressed during the conference.
  - Managing the prehearing discovery conference.
  - Appropriately addressing non-discovery matters.
  - Understanding what sanctions the panel may impose for non-compliance with discovery orders.
  - Making decisions and verifying party agreements, ensuring that they are specific, complete, and understood by all parties.
  - Communicating all rulings through a written order.

**Slide 3:**

- To prepare for the conference, you’ll need to review the following:
- Rules 12505-12514 of the Code.
- Be mindful of your decision-making authority to ensure compliance with the Code.
- The IPHC Scheduling Order and any other orders, to be aware of all prior decisions.
- All pleadings and notes from the IPHC to have an informed basis for discovery decisions.
- All documents the parties have filed related to the discovery dispute.
- If the conference is for a customer case, review the Document Production Lists for expected document production and time frames.
- Ensure your calendar is up to date so you can establish discovery timeframes in coordination with other dates, such as hearing dates.
- Create a check list to ensure that you cover all relevant issues during the conference.

**Slide 4:**

- You may order the parties to provide a subject matter agenda and copies of document requests or responses that have been exchanged.
- Developing an agenda based on this information sets clear expectations for all conference participants.
- The agenda will help you track your decisions about issues addressed during the conference, which may include:
  - Requests to produce additional documents or information not in the Discovery Lists.
  - Requests to order depositions of essential witnesses who are physically unable or unwilling to attend an evidentiary hearing and cannot be ordered to do so.
  - Requests for subpoenas or orders of appearance or production;
  - Confidentiality;
  - Early identification of party witnesses and testimony;
  - Early identification and pre-marking of party exhibits; or
  - Scheduling witnesses, particularly those traveling long distances.

**Slide 5:**

- An agenda can also help you provide procedural guidance to facilitate evidentiary hearings on topics such as:
  - Arrangements for testimony by videoconference or telephone;
  - Affidavits;
  - Depositions;
  - Interrogatories;
  - Agreements on facts or law; or
  - legal briefs

**Slide 6:**

- To manage the conference fairly and efficiently, complete the following actions:
- Explain the purpose of the conference and that you will ensure all parties have the opportunity to state their views on all issues.
- If you have decided any discovery issues based on the papers, inform the parties of the decisions, and direct them to focus their presentations on the remaining issues.
- Tell the parties you may request a draft order or letter containing all decisions or agreements for your review and signature.
- Remind the parties that you will follow the conference agenda and focus on those issues.
- Then the parties and their representatives will make their oral arguments.
- When the arguments are concluded, make your determinations on the discovery issues.

**Slide 7:**

- After you make all necessary discovery determinations, address other matters that may facilitate the evidentiary hearing, such as:
  - Guidelines on the admissibility of affidavits or testimony by telephone or video;
  - The appropriateness of legal briefs or the schedule for filing them; and
  - The appropriateness of scheduling a prehearing conference for the full panel to consider unresolved motions.

**Slide 8:**

- A party may make a motion to sanction another party for failing to produce an ordered document or information.
- The motion must be heard by the full panel.
- The party alleged to be non-compliant must be afforded a full and fair opportunity to respond.
- If the party lacks justification for the failure to produce, per Rules 12212 and 12511, the panel may issue sanctions.
- The panel may also issue sanctions sua sponte, or of its own accord, without a motion from a party.
- If that party has an explanation that substantially justifies the failure to produce the document or information, give the party another opportunity to comply, directing the time and manner of production.
- An example of a justifiable explanation is a party who, due to circumstances beyond their control, is still gathering the documents or information.

**Slide 9:**

- The panel may issue sanctions that include the following:
  - Assess monetary penalties payable to one or more parties.
  - Preclude a party from presenting evidence.
  - Make an adverse inference against a party.
  - Assess postponement and/or forum fees.
  - Assess attorneys' fees, costs, and expenses.
  - The panel may also initiate a disciplinary referral.
  - If prior warnings or sanctions have proven ineffective, the panel may dismiss a claim, defense, or arbitration with prejudice.

**Slide 10:**

- Monetary penalties may only be assessed against a party.
- Monetary penalties cannot be assessed against counsel or a non-party.
- Any payment must be made to one or more parties.
- Monetary penalties should not be made payable to FINRA, as FINRA is not a party to the arbitration.
  - For example, arbitrators may also consider sanctions to address a party's failure to submit a properly signed Submission Agreement within 30 days, unless there has been a specific jurisdictional challenge.
  - A claimant is required to submit a Submission Agreement when the claim is filed.
  - If a claimant is added, a new Submission Agreement is required.
  - A respondent is required to submit a Submission Agreement within 45 days of being served with the statement of claim.
  - All Submission Agreements must be properly signed.
  - The failure to submit a properly signed Submission Agreement may cause confusion, lead to ancillary litigation, and undermine the enforceability of arbitration awards.

**Slide 11:**

- At the conclusion of the Prehearing Discovery Conference, verify all decisions and any party agreements by reading them to the parties.

- Ensure decisions or agreements are specific, complete, and clearly understood by all conference participants.
  - For example, if you order the production of documents and information, describe precisely what is to be produced and set a due date.
  - Being clear and specific helps ensure complete compliance with your written order.

**Slide 12:**

- Promptly go to the DR Portal to draft the Order.
- Being timely will help you remember the details discussed and help the parties comply with your rulings.
- The Order will become a permanent part of the case file. Keep that in mind when drafting it.
- Communicate all discovery rulings, including the production schedule, and all other conference decisions, such as:
  - Referral of unresolved discovery issues for panel determination.
  - Referral of non-compliance with any discovery order for panel determination of the appropriate action.
  - Scheduling for an additional prehearing conference, the filing of legal briefs, or witness testimony.
  - Ensure the Order addresses all issues regarding when, where, and who should pay for document production.
  - Assess which party or parties will be responsible for the cost of the conference.
  - If there is more than one claimant or more than one respondent, you may assess the cost jointly and severally, meaning that all the claimants or all the respondents are responsible for that percentage.
  - You may also assess a percentage to a specific party.
  - Attach any additional document that the parties will need, such as a signed subpoena.
- When the Order is completed to your satisfaction, click the submit button to send the Order to DRS staff.

**Slide 13:**

- Test your knowledge now by responding to the following questions.

**Slide 14:**

- **Question:** During the prehearing conference, you should use Rule 12506 and the Document Production Lists in the Discovery Guide to:
  - A. Limit production to those documents specified in the Lists.
  - B. Obtain guidance on time frames for documentary production.**
  - C. Verify the types of documents that are expected to be produced for any FINRA arbitration.

**Slide 15:**

- **Question:** Which of the following is true of sanctions?
  - A. A noncompliant party may be assessed both monetary penalties and postponement and forum fees.**
  - B. The chairperson has wide discretion in imposing sanctions for non-compliance with Discovery Orders.
  - C. Arbitrators can impose monetary penalties and make referrals for disciplinary investigation but cannot prevent a party from presenting evidence.

**Slide 16:**

- **Question:** A Submission Agreement:
  - A. Must be signed and submitted by the Respondent within 30 days of receiving the Statement of Claim.
  - B. Doesn't need to be submitted by the Claimant.
  - C. **If not properly signed and submitted, can undermine the enforceability of an arbitration award.**

**Slide 17:**

- This concludes Module 4. Module 5 will cover Part 1 of Managing the Hearing Process: Panel Communication and Coordination.
- Go at your own pace and proceed to the next module whenever you are ready.
- To exit this module and proceed with the course, close the window, and click "Go to Class" in the top right to return to the main course page.

**MODULE 5: Panel Communication & Coordination**

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**Slide 1:**

- This module discusses coordinating executive sessions and other panel communication to facilitate effective hearings.

**Slide 2:**

- Learning objectives include:
  - Conducting the first executive session;
  - Obtaining panel consent to make minor decisions;
  - The importance of keeping panel discussions private;
  - Maintaining neutrality in appearance and fact;
  - Preserving the right of reasonable inquiry;
  - Assigning hearing duties;
  - Ensuring the hearing is properly recorded; and
  - Conducting an executive session prior to closing arguments.

**Slide 3:**

- Successful hearings, like successful prehearing conferences, result from effective chairperson leadership. The chairperson creates an atmosphere of trust and directs the entire proceeding.
- To help ensure a fair hearing resulting in a final and binding decision, the chairperson must manage all hearing participants, including co-panelists.
- To do so, the chairperson must understand and use the Code, as well as the Hearing Script.

**Slide 4:**

- Conduct an executive session, before the first hearing session begins. This emphasizes the importance of each panel member in the proceeding. All arbitrators should arrive early to conduct this session.
- To tailor your comments appropriately during this executive session, review the Arbitrator Disclosure Reports to understand the other arbitrators' backgrounds and hearing experience.
- If you have any questions about the other arbitrators, contact DRS staff.

- The chairperson must set a tone of teamwork at the first executive session.
- This is particularly important if the other arbitrators have little or no hearing experience or you have not previously served as chairperson with either of them.
- Because teamwork is vital, it's essential that other panel members understand and agree to the chairperson's role in making minor decisions, as we'll detail in the following sections.

**Slide 5:**

- Obtaining panel consent also honors Rule 12410, which requires that all panel rulings and determinations be made by a majority of the arbitrators.
- Explain to the other arbitrators that their permission will authorize you to streamline the proceedings by covering matters such as objections to leading or repetitive questions and objections to prevent a witness from fully responding to a question.
- Assure the other panel members that if a minor issue prompts a heated exchange among parties or representatives, you will consult the entire panel in executive session before making a decision.
- Also inform the other arbitrators that any decision you make on their behalf will be described on the hearing record as a panel decision.
- When you announce panel decisions, you should state, "The panel has ruled ..." At the start of the hearing, explain to the parties, on the record, that the panelists have consented to this process, to avoid any party or representative perceptions that you are acting unilaterally.

**Slide 6:**

- Remind the other arbitrators that all panel disagreements must remain private to maintain panel unity.
- Explain that partiality by one panel member may taint all panel members, the fairness of the hearing, and the finality of the award.
- Inform all panel members that neutrality includes:
  - Making no preconceived or premature conclusions based only on the pleadings,
  - or on the absence of a pleading or party or on the testimony of one witness.
  - Disclosing at any stage of the proceedings any fact or circumstance a party might reasonably view as demonstrating partiality or bias and any fact or circumstance that might change the arbitrator's classification.
  - as a public or non-public arbitrator.
  - If, for example, ex parte communication occurs, the arbitrator involved should disclose the communication to the other arbitrators and parties on the record when the hearing resumes.
  - Maintaining neutral conduct before, during, and after a proceeding concludes.

**Slide 7:**

- Explain that arbitrator questions to witnesses must be appropriate in time and neutral in content to maintain fairness in perception as well as fact.
- Remind the other arbitrators that uncertainty about the timing and content of questions or who should ask particular questions should be discussed and resolved in an executive session.

**Slide 8:**

- The arbitrator selected to resolve discovery disputes should report the following to other panel members:

- Discovery decisions.
- Unresolved issues requiring panel determination.
- Any non-compliance with discovery orders.
- Party agreements, such as agreements on facts or law, identification and pre-marking of documentary exhibits, or scheduling of witnesses.
- Next, you'll explain and assign hearing duties to the other arbitrators, as detailed in the following section.

**Slide 9:**

- Explain, assign, and ensure each arbitrator understands who will be responsible for important hearing duties.
- This includes:
  - Logging and maintaining exhibits.
  - Keeping a record of all hearing attendees, including witnesses.
  - Keeping track of all outstanding motions or requests.
  - Operating the digital recorder to record the hearings.
    - The recording is the official record of the proceeding per Rule 12606.
    - The panel member responsible for recording must ensure the recorder is working properly before the hearing begins, that the recorder is on when the hearing begins, and that it is stopped during breaks or executive sessions.

**Slide 10:**

- During a hearing, any panel member may request an executive session.
- During an in-person hearing the chairperson will announce that the panel will be going into an executive session and ask all participants to leave the hearing room together.
- The panel will remain in the hearing room to meet privately.
- During a virtual hearing, DRS staff will ensure that the panel moves to a private, virtual meeting room.
- It's vital to ensure that only the panel members are present for any executive session, to allow for a free and private discussion.
- Remember to turn off the recorder, as executive session conversations are private and not part of the hearing record.
- If the panel accidentally records an executive session, let DRS know immediately.

**Slide 11:**

- An executive session before Closing Arguments allows the panel to address any outstanding issues, such as:
  - Unmarked exhibits;
  - Undecided motions; or
  - Parties' requests for additional evidence.
- Generally, these issues should have been addressed previously, but there may be matters that still need to be resolved.
- The session also allows arbitrators to discuss and decide whether the parties have answered all questions and addressed all issues so the panel can render a fair and final award.
- If not, the panel can decide whether to request additional testimony, documentary evidence, memoranda, or briefs.

**Slide 12:**

- Test your knowledge now by responding to the following questions.

**Slide 13:**

- **Question:** During an evidentiary hearing:
  - A. Only party representatives or parties representing themselves should question witnesses.
  - B. Arbitrator questions must be posed neutrally to maintain fairness.**
  - C. The chairperson may ask clarifying questions at any time.

**Slide 14:**

- **Question:** A hearing witness encounters a panel member outside the building and asks for directions to a nearby coffee shop. The arbitrator should:
  - A. Ask the chairperson to reprimand the party's attorney for the witness's breach of ex parte communications.
  - B. Disclose the contact on the record when the hearing resumes.**
  - C. Pretend not to hear the witness and walk away quickly, thereby avoiding ex parte communication.

**Slide 15:**

- This concludes Module 5. Module 6 will cover preparing for an evidentiary hearing. Go at your own pace and proceed to the next module whenever you are ready.
- To exit this module and proceed with the course, close the browser window, and click "Go to Class" in the top right to return to the main course page.

**MODULE 6: Preparing for an Evidentiary Hearing**

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**Slide 1:**

- This module discusses default proceedings, chairperson and panel preparation for the first evidentiary hearing, and addresses administrative matters during the evidentiary hearing.

**Slide 2:**

- Module learning objectives include:
  - Using default proceedings when a respondent fails to respond to a claim;
  - Effectively preparing to conduct a fair hearing;
  - Conducting a Simplified Arbitration;
  - Leading a Special Proceeding Hearing;
  - Managing party and witness participation;
  - Maintaining appropriate chairperson and panel demeanor; and
  - Avoiding and responding to Ex Parte Communication.

**Slide 3:**

- Under Rule 12801, a claimant must provide written notice to the Director of DRS of their intent to initiate default proceedings against a respondent associated person or member firm that has not filed an answer to the claim.
- If there are multiple claimants, all the claimants must agree in writing to proceed under Rule 12801.

- If the respondent is an associated person, their FINRA registration must be terminated, revoked, cancelled, or suspended or they must be expelled or barred from FINRA.
- If the respondent is a member firm, its membership must be terminated, suspended, cancelled, or revoked or it must be expelled or barred from FINRA or be otherwise defunct.
- If the Director determines the rule requirements have been met, the case will proceed on the papers with a single arbitrator.
- If a three-person panel was previously appointed, that will be the chairperson.

**Slide 4:**

- The claimant must present a sufficient basis for an award in their favor through the filed claim and any additional evidence.
- The Chairperson cannot award damages to the claimant based solely on the respondent's non-appearance.
- After default proceedings are initiated, if the respondent files an answer prior to the Award being entered, the default proceedings will be terminated.
- The arbitration will proceed under the regular procedures.
- However, pursuant to Rule 12308, the panel may bar the respondent from presenting defenses or facts at the hearing due to their untimely filing of an answer.

**Slide 5:**

- To prepare for the first evidentiary hearing, you must review:
  - All filed pleadings and amendments;
  - Any unresolved motions and responses;
  - The Case Information Sheet;
  - The parties' Witness Lists;
  - The Code of Arbitration Procedure; and
  - The Hearing Procedure Script.
  - The review will refamiliarize you with the procedural guidelines and rules for conducting fair hearings and prepare you to address issues that may be presented and to manage the participants.
- Other helpful resources include:
  - The Code of Ethics,
  - The Arbitrator's Guide, and
  - Information on FINRA's website.

**Slide 6:**

- This lesson will focus on using the Hearing Procedure Script for a three-member panel.
- However, if a case only has a chairperson, the Hearing Procedure Script for a single arbitrator or a special proceeding would be used.
- You should review the appropriate Hearing Procedure Script before the hearing.
- The number of arbitrators is determined by the amount of the claim.
- Claims of more than \$100,000, exclusive of interest and expenses, unspecified claims, and non-monetary claims, have three-member panels, unless the parties agree in writing to have one arbitrator.
- Claims of more than \$50,000 up to \$100,000, exclusive of interest and expenses, have one arbitrator, unless the parties agree in writing to have a three-member panel.

- Claims of \$50,000 or less, exclusive of interest and expenses, have one arbitrator and are subject to the simplified arbitration procedures under Rule 12800.

**Slide 7:**

- In simplified proceedings, the Document Production Lists do not apply, according to Rule 12800.
- However, the arbitrator may choose to use relevant portions of the Document Production Lists in a manner consistent with the expedited nature of simplified proceedings.
- Also, the parties may request documents and other information from each other.
- By default, the customer will receive a decision based solely on the pleadings and other materials submitted by the parties.
- No hearing is held. This is called a decision on the papers.
- Alternatively, the customer may choose from two hearing options:
- A hearing under the regular provisions of the Code of Arbitration Procedure without limitations, as previously described; or
- A special proceeding hearing.

**Slide 8:**

- A Special Proceeding hearing has the following limitations:
  - It is held telephonically unless the parties agree to a videoconference or in-person hearing.
  - Claimants, collectively, and respondents, collectively, are each limited to two hours for case presentation and one-half hour for rebuttal and closing arguments, exclusive of questions from the arbitrator and responses to them.
  - The hearing must be completed in one day with no more than two hearing sessions.
  - Parties may not question, or cross-examine, an opposing party's witness.
  - A customer may not call an opposing party, a current or former associated person of a member party, or a current or former employee of a member party as a witness.
  - Members and associated persons may not call a customer of a member party as a witness.

**Slide 9:**

- Due to the brevity of a Special Proceeding hearing, the arbitrator may cede some of their three hours of time to the parties to ask questions.
- However, because there is no cross examination in a Special Proceeding hearing, it is important that you consider the pleadings and testimony carefully before ceding your time to the parties.
- You must ensure that you have the information you need to make an informed and fair decision.
- You may want to use your time to explore the credibility of the parties and any weaknesses in their respective cases.
- To facilitate the hearing, you may want to prepare questions in advance based on your review of the pleadings. You may find that you have questions on sections of the pleadings that are unclear or where the respective parties' pleadings contradict each other.
- However you approach asking questions, you should bear in mind the importance of remaining neutral in appearance.
  - For example, you may ask clarifying questions while the parties are presenting their cases.
- However, you should reserve any lengthy questions until after the parties have finished presenting their cases.

**Slide 10:**

- At every hearing, follow the appropriate Hearing Procedure Script.

- The script will help you stay on track during the proceedings, comply with the Code of Arbitration Procedure and federal and state arbitration laws, and conduct fair hearings that result in binding decisions.
- The script may be adapted to specific hearing circumstances, so long as all parties have a full and fair opportunity to present their respective cases.
- However, the chairperson and other panel members should rarely stray from the script.

**Slide 11:**

- At the beginning of each hearing day, identify the arbitration by case name, case number, date, and time immediately after going on the record.
- Introduce yourself and ask panel members to introduce themselves on the record.
- Each arbitrator must then make any disclosures that might reasonably create an appearance of non-neutrality or bias.
- However, disclosures may also be made at any time during a hearing, as needed.
- Remember: arbitrators have a duty to disclose any information about their service on any related case that may involve the same parties and/or products, any relationships with parties or witnesses, and any ex parte communication.
- In addition to making new disclosures, restating previous disclosures on the record helps ensure that all parties and representatives know and understand them.
- It also helps eliminate later court complaints of arbitrator bias because of nondisclosure.

**Slide 12:**

- On the first day of the hearing, have all parties, attorneys, and representatives identify themselves at the beginning of the hearing.
- Ask each party's counsel or representative who should be reflected in the award as counsel or representative for each party.
- Make note of each party's response, because the Award Information Sheet requires this information.
- Ask whether any of the parties and counsel to this matter know of any potential conflicts between the arbitrators and any party, counsel, representative, or witness in this matter.
- This allows parties, counsel, representatives, and witnesses to make any additional disclosures resulting from a possible conflict of interest or appearance of bias.
- Be sure to identify on the record any other person who is present at the hearing.

**Slide 13:**

- Obtain confirmation that the parties accept the panel's composition.
- If the panel's composition is accepted, confirm that the panel has submitted their Oaths.
- If an arbitrator has not submitted their Oath, you must administer it.

**Slide 14:**

- If any party or representative objects to the panel's composition, the panel should proceed with the hearing unless there is a motion to recuse.
- Rule 12406 makes it clear that requests for arbitrator recusal are decided by the arbitrator who is the subject of the request.
- An arbitrator must recuse if requested to withdraw by all parties.
- Under Canon IIG of the Code of Ethics, if all parties request recusal, an arbitrator must withdraw from the case.

- If fewer than all parties request the arbitrator to withdraw, the arbitrator should withdraw unless:
  - After carefully considering the matter, the arbitrator determines that the reason for the challenge is not substantial AND
  - The arbitrator can act and decide the case impartially and fairly.
- The chairperson must immediately inform DRS staff when an arbitrator has been challenged or an arbitrator decides to withdraw from a case.

**Slide 15:**

- Read on the record the Formal Opening of Hearing and the following paragraphs found in the Hearing Procedure Script.
- The opening:
  - Explains that all awards are final and not subject to appeal.
  - Advises participants not to interrupt during testimony.
  - Confirms that parties are entitled to make objections, cross-examine, and redirect witnesses, and may, at the discretion of the arbitrators, present rebuttal testimony.
  - Acknowledges that the arbitrators may ask questions.
  - Warns that if the panel has reason to believe that a violation of FINRA's rules or federal securities laws have been committed, it may refer the matter to FINRA for disciplinary investigation.
  - Explains the panel's role as neutral arbitrators, with a duty to conduct the proceedings with fairness and integrity and advises that the duty extends to all parties.
- Accordingly, participants are asked to avoid ex parte communication.
- Methods for avoiding ex parte communication will be discussed in detail later in this module.

**Slide 16:**

- Explain that the arbitrators have read the pleadings submitted by the parties, which along with their Submission Agreements, will be marked and received into evidence as Arbitrators' Exhibit No. 1.
- Address any other open matters.
- Advise parties that they may each make an opening statement limited to what the party intends to prove.
- The opening statement should not be a presentation of evidence or the merits of the case.
- Explain that evidence will be marked for identification and shown to the opposing party for review and possible objection to its admissibility.
- Advise that the panel will rule on any objections and determine whether the submission will be received into evidence.
- Encourage parties or representatives to complete an evaluation of the arbitration through the DR Portal at the conclusion of the case.

**Slide 17:**

- Advise all participants:
  - They are expected to always act in a civil manner.
  - To be on time for all sessions and limit breaks to the time allotted.
  - That parties are responsible for providing copies of all proposed exhibits to other parties and to the panel.
  - To avoid repetitive arguments.

- To direct all objections and motions to the panel and not one another.
- That the digital recording will be the official hearing record.
- To silence their cell phones and other electronic devices to minimize distractions.
- That they cannot record or broadcast the hearing.

**Slide 18:**

- Parties and corporate representatives are entitled to remain in the hearing room throughout the proceedings.
- Expert witnesses may remain in the hearing room, unless the panel determines they should be excused until they are called.
- All other witnesses should be excused until they are called, unless the parties agree otherwise.
- If a witness is represented by counsel, their attorney may be in the hearing room while they testify.
- Unless the panel authorizes otherwise, the attorney's role is limited to asserting recognized privileges, such as attorney-client privilege, work product privilege, and the privilege against self-incrimination.
- Per Rule 12208(a):
  - Parties may represent themselves in any arbitration in a U.S. hearing location.
  - A member of a partnership may represent the partnership.
  - An officer of a corporation, trust, or association may represent that organization.
  - A non-attorney may represent a party, unless state law prohibits it or the non-attorney representative is suspended or barred from the securities industry or is currently disbarred or suspended from the practice of law.

**Slide 19:**

- Expert witnesses express opinions, give interpretations, and apply their standards of expertise to facts that others have provided.
- Fact witnesses testify as to their personal knowledge of material facts of the case.
- Rule 12605 requires all witnesses to take an oath or affirmation before testifying.
- The chairperson ordinarily administers the witness oath or affirmation, as provided in the Hearing Procedure Script.
- After administering the oath, have the witness state their name, address, and, if applicable, business affiliation on the record.

**Slide 20:**

- Exhibiting neutral demeanor is critical to hearing fairness and process finality.
- Panel members must always behave and speak in ways that suggest neutrality.
- Remain calm. Ensure other arbitrators listen to all views before the panel deliberates and decides issues.
- Avoid saying anything that could be perceived as disbelief or preference for one side, including comments that appear to advocate for or encourage one party over another.
- Be careful with your tone of voice.
- Even if language is not explicitly biased, a party may perceive an arbitrator's tone toward a party as partial or sarcastic.

**Slide 21:**

- Nonverbal cues can also send the wrong message.

- Demonstrate genuine interest and attention to all of the arguments presented to help convey neutrality.
- Avoid gestures or posture that may suggest boredom, impatience, skepticism, or disrespect.
- Remain focused and avoid activity that suggests inattention, including using cell phones or other devices, fidgeting, doodling, or staring into space.
- Avoid inappropriate signals, such as a thumbs up or down, nodding along as a participant speaks, head shaking, passing notes, or whispering.
- If a panel member exhibits concerning behavior and does not respond to advice and direction for proper demeanor, consult with DRS staff.

**Slide 22:**

- This guidance holds true for virtual hearings as well as in-person hearings.
- Especially for virtual hearings when arbitrators are at home, they must refrain from eating or leaving the camera frame to attend to non-hearing matters.
- And even though the hearing may take place from home, arbitrators must still dress professionally when on camera.

**Slide 23:**

- The importance of maintaining a neutral demeanor continues even after a case closes.
- Canon IC of the Code of Ethics directs that, for a reasonable time following the proceeding, you should avoid entering into any financial, business, professional, family, or social relationship, or from acquiring any financial or personal interest, with any party.
- To do otherwise might create an appearance that you were influenced in the earlier arbitration in anticipation or had an expectation of an ensuing relationship or interest.

**Slide 24:**

- All parties, counsel or representatives, and witnesses should refrain from any conversation or other contact with a panel member outside the presence of everyone in the hearing room.
- Such ex parte communication is prohibited by Rule 12210 and the Code of Ethics.

**Slide 25:**

- Remind the other arbitrators to avoid being in the hearing room unless all the parties or representatives are present.
- Caution them against any conversation with hearing participants in hallways, restrooms, and restaurants.
- Urge them to avoid even casual conversation unrelated to the dispute with any party, even when all parties are present.
- Remind them to save all comments about the issues, parties, representatives, and witnesses for a private executive session.
- Remind all participants to avoid ex parte communications at the start and the end of each hearing.
- And instruct all participants to leave the hearing room at the same time.
- Adhering to these procedures helps reduce the likelihood of motions to vacate an award on grounds of perceived or actual arbitrator bias and preserves the integrity of the arbitration.

**Slide 26:**

- If you observe ex parte communication or an arbitrator informs you of it, ascertain the nature of the communication and determine if the arbitrator feels it may affect their impartiality.
- If the arbitrator's impartiality is affected in any way, encourage them to withdraw from the case and contact DRS staff.
- If impartiality is not affected, withdrawal is not necessary.
- Regardless of the effect on impartiality, direct the arbitrator to disclose the ex parte communication on the record.

**Slide 27:**

- Test your knowledge now by responding to the following questions.

**Slide 28:**

- **Question:** When using the Hearing Procedure Script:
  - A. You may adapt the script to the specifics of the case, such as changing the order of certain procedures.**
  - B. You must not deviate from the script without first conferring with DRS.
  - C. You can direct participants to read certain script elements on their own to save time.
  - D. Both A and C.

**Slide 29:**

- **Question:** What is true of arbitrator disclosures?
  - A. Repeating disclosures that have already been made should be discouraged as it wastes time and may confuse participants.
  - B. It is important to disclose any ex parte contact with a hearing participant, even if the contact was accidental and trivial.**
  - C. A recent, brief consulting assignment, in which you had minimal contact with the company, doesn't warrant a new disclosure.

**Slide 30:**

- This concludes Module 6.
- Module 7 will cover ruling on procedural issues during an evidentiary hearing. Go at your own pace and proceed to the next module whenever you are ready.
- To exit this module and proceed with the course, close the browser window, and click "Go to Class" in the top right to return to the main course page.

**MODULE 7: Ruling on Procedural Issues**

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**Slide 1:**

- Welcome to Module 7. This module covers ruling on procedural issues during an evidentiary hearing.

**Slide 2:**

- This module will prepare you to lead a panel in deciding issues, during the hearing, pertaining to:
  - An absent respondent;

- An absent claimant;
- Postponement; and
- Dismissal of claims.

**Slide 3:**

- As chairperson, you must lead the panel in resolving procedural issues that may arise.
- The panel must ensure all parties are heard on procedural motions and related issues.
- This supports the overarching objective of ensuring that all parties are given a full and equitable opportunity to be heard on all issues.
- It's important to state the panel's decision and reasoning on the record for each motion or issue.
- If specific Code provisions or Canons in the Code of Ethics underlie the panel's decision, state that on the record.
- If the panel's decision involves documentation, state that on the record and make sure the documents have been admitted into evidence as exhibits.
- Include the panel's decisions and reasoning on critical procedural issues in the Award Information Sheet.
- A complete record provides a court with a basis to uphold the Award in the event of a challenge.

**Slide 4:**

- If a respondent does not appear at the evidentiary hearing, the panel must decide how to proceed.
- The absent respondent may have provided notice that they would not participate.
- If notice was not provided, the claimant or DRS staff may have communicated with the absent respondent.
- The chairperson may ask the claimant and DRS staff if they have any knowledge of why the respondent is absent.
- When the reason for a respondent's absence is unknown, there are generally three factors that may affect how the panel decides to proceed:
  - Whether there is jurisdiction over the absent respondent;
  - Whether the absent respondent was properly served with notice of the claim; and
  - Whether the absent respondent was provided with notice of the hearing.

**Slide 5:**

- The panel must decide whether it has jurisdiction over the absent respondent.
- For a customer case, examine Rule 12200 to determine whether the dispute between the claimant and the absent respondent must be arbitrated.
- For an intra-industry case, examine Rule 13200 to determine whether the dispute between the claimant and the absent respondent must be arbitrated.
- If the panel does not have jurisdiction over the absent respondent, and that is the only respondent, the panel should not proceed with the hearing.
- The chairperson should dismiss the case without prejudice on the Award Information Sheet.
- If the panel finds there is proper jurisdiction, it should determine whether the claim was served on the absent respondent.

**Slide 6:**

- If necessary, the chairperson should ask DRS staff whether the case file has any correspondence submitted on behalf of the absent respondent and any proof the claim was served per Rules 12300 and 12301.
- If the absent respondent is a member firm or associated person, the chairperson may also ask DRS staff about addresses in the CRD.
- Member firms and associated persons are obligated to keep CRD information current, while registered and for a two-year period after leaving the industry.
- DRS staff will attempt to effect service using available information about a party's address, but, ultimately, the claimant is responsible for service and proof of service.
- This includes counterclaimants, cross-claimants, and third-party claimants.
- The chairperson should inquire regarding the claimant's efforts to effect service.
- If the panel determines the claim must be re-served, they should postpone the hearing.
- This gives the claimant time to locate and serve the absent respondent and gives the respondent time to answer the claim.

**Slide 7:**

- If the panel finds the claim was properly served, it should next decide whether the absent respondent was provided due notice of the evidentiary hearing or if the effort to provide notice was sufficient.
- Once served during the arbitration, a respondent has a continuing obligation to keep their contact information current.
- Also, all parties other than a pro se customer are required to use the DR Portal and service on the DR Portal is sufficient to establish notice.
- Rule 12603 authorizes arbitrators to begin or continue a hearing in the absence of a party if that party had due notice of the hearing.
- However, if the panel determines the absent respondent must be re-served with notice of the hearing, the panel should postpone the hearing to allow time for the notice to be sent.

**Slide 8:**

- Why are the three factors we just discussed important?
  - If the absent party is found liable and the claimant seeks to enforce the Award in a court of law, the respondent may challenge the Award by asserting that there was no obligation to arbitrate, the claim was not properly served, or notice of the hearing was not provided in accordance with the Code.
- While the grounds on which a court may vacate an Award are limited, per Section 10 of the Federal Arbitration Act, a court may vacate the Award based on any of these three assertions, if proven.
- As with other procedural decisions, ensure the panel's decision and reasoning are made part of the hearing record.

**Slide 9:**

- If a claimant does not appear at the evidentiary hearing, the panel must decide how to proceed.
- The respondent or DRS staff may have communicated with the absent claimant.
- The chairperson may ask the respondent and staff if they have any knowledge of why the claimant is absent.

- If the reason for claimant's absence is unknown, the chairperson may adjourn the hearing until a future date or, pursuant to Rule 12603, begin or continue a hearing in the absence of the claimant if the claimant had due notice of the hearing.
- If a respondent moves to dismiss claimant's claims and/or moves for reasonable costs due to the claimant's absence, the chairperson should suggest that the panel reserve its decision pending the claimant's explanation.
- As with other procedural decisions, ensure the panel's decision and reasoning are made part of the hearing record.

**Slide 10:**

- When deciding whether to grant a postponement, the panel may consider:
  - Fairness to the parties.
  - Merits of the Request.
  - The parties' agreement or disagreement.
  - Previous motions for postponement and whether they were by agreement or contested.
  - The panel's ability to conduct a productive hearing.
- While arbitrators may consider the burden that postponement poses for the panel, that should not be a primary decision-making factor.

**Slide 11:**

- Under Rule 12601:
  - If all parties agree to a postponement, the hearing shall be postponed.
  - If parties agree to postpone the hearing to mediate the dispute through FINRA, no postponement fee will be charged.
  - If the postponement is not to mediate the dispute through FINRA, the parties will be charged a postponement fee, unless the panel waives the fee.

**Slide 12:**

- Contested postponement requests may be made for valid reasons, but the delay may not be reasonable or fair.
- Under Rule 12601, the panel may not grant a contested motion to postpone made within 10 days of a scheduled hearing, unless the panel determines that good cause exists.
- This provision is intended to reduce last-minute postponement requests, unnecessary delays, and unfairness.
- In an executive session, the chairperson should remind the other arbitrators of the obligation to consider all the facts or circumstances when deciding whether good cause exists.

**Slide 13:**

- Let's look at an example of a contested motion to postpone. A pro se party wants a postponement because they want to seek legal counsel.
- During the Initial Prehearing Conference, you reminded the claimant of his right to legal counsel. The claimant insisted he didn't need representation.
- Then, in the second day of evidentiary hearings, halfway through the respondent's presentation, the claimant requests a postponement to retain legal counsel.
- The respondent's attorney objects, arguing that the respondent's substantial hearing costs, including travel for three witnesses, makes a postponement unfair.

- Think through how you would approach the postponement request as chairperson before you go to the next slide.

**Slide 14:**

- In the example we presented, the panel should grant the motion to postpone.
- The right to representation is an important arbitration tenet and there is significant guidance for arbitrators.
- Rule 12208 states that parties have the right to representation at any stage of the proceeding.
- The Arbitrator's Guide describes the right to representation by an attorney as absolute.
- The Code of Ethics states that arbitrators should not deny any party the opportunity to obtain representation.
- Courts have found that a panel's failure to grant a request for postponement to obtain counsel constitutes serious misconduct and grounds to vacate an award.

**Slide 15:**

- The panel may grant a motion to amend pleadings at the hearing.
- Depending on the circumstances, the panel may consider granting a postponement to allow the opposing party time to respond and determine whether to present additional witnesses or evidence to address the amended pleading.

**Slide 16:**

- Other examples of circumstances that may constitute good cause for postponements include:
  - Counsel's court conflict that cannot be resolved;
  - A participant's medical or personal emergency;
  - Unavailable expert or other witnesses;
  - Severe weather conditions; and
  - Incomplete Discovery.

**Slide 17:**

- If a panel decides there have been numerous motions to postpone, whether agreed or contested, which have been abusive or unreasonable, they may consider dismissal of all the claims.
- Rule 12601 provides that, if all parties jointly request or agree to more than two postponements, the panel may dismiss the case without prejudice.

**Slide 18:**

- As with other procedural decisions, the chairperson is responsible for ensuring the panel's decision and reasoning on the motion to postpone are made part of the hearing record.
- If there have been previous postponements at the request of the parties, state on the record how many times requests have been made, by whom, at what arbitration stages the requests were made, and the prior decisions.
- Explain that the panel has an obligation of fairness to all participants under the Code of Ethics.
- If a postponement is granted, while on the record, reschedule the hearing dates and, if advisable, alternative dates.

**Slide 19:**

- A detailed hearing record is essential.

- It preserves participants' rights and the integrity of the panel and forum.
- It also helps protect the finality of the Award by providing a basis on which a court may uphold the decision if a motion to vacate is made on the grounds that a party was prejudiced by the panel's decision on a motion to postpone.
- If the panel denies the request, include the panel's decision and reason on the Award Information Sheet.
- If granted, remember to address all issues concerning postponement in an order submitted on the DR Portal, such as scheduling and allocation of any postponement fee.

**Slide 20:**

- Test your knowledge now by responding to the following questions.

**Slide 21:**

- **Question:** During an evidentiary hearing:
  - A. Postpone the hearing, in the interest of fairness, and then determine whether the claim was properly served and notice of the hearing was properly given.
  - B. Grant all the claimant's relief requests.
  - C. **Before deciding how to proceed, determine if jurisdiction has been established. Then determine whether there is evidence the claim was properly served and notice of the hearing was properly given.**

**Slide 22:**

- **Question:** For postponement requests, the panel should consider:
  - A. Whether the postponement would cause a burden to the panel.
  - B. **The consent or objection of the opposing party.**
  - C. Whether postponement would inconvenience the panel and DRS staff.

**Slide 23:**

- This concludes Module 7. Module 8 will cover guidelines for evidentiary presentations.
- Continue at your own pace and proceed to Module 8 whenever you are ready.
- To exit this module and continue with the course, close the browser window, and click "Go to Class" in the top right to return to the main course page.

**MODULE 8: Guidelines for Evidentiary Procedures**

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**Slide 1:**

- Welcome to Module 8, which discusses guidelines for managing evidentiary procedures.
- Some topics have been discussed in other modules, but this lesson provides additional information.

**Slide 2:**

- This module prepares you to:
  - Exhibit and model appropriate demeanor as chairperson.
  - Advise other panel members on demeanor.
  - Respond appropriately to disruptive participant conduct.
  - Appropriately tailor the order of evidentiary presentations and closing arguments.

- Lead the panel in deciding the admissibility of evidence and objections to testimony.
- Understand what minor evidentiary or procedural issues the panel can authorize the chairperson to decide.
- Conduct executive sessions for more significant objections.
- Consider objections to evidence not exchanged.
- Consider admitting evidence of prior proceedings.
- Manage hearings involving pro se parties.

**Slide 3:**

- As discussed in Module 6, appropriate demeanor is essential during every phase of arbitration.
- Evidentiary hearings can pose particular challenges to maintaining decorum.
- Your demeanor helps set the tone for the hearing and serves as a model for the panel and participants.
- You must show genuine interest, no matter the time of day or length of the hearing, while demonstrating neutrality.
- You must avoid any reactions, comments, questions, sounds, facial expressions, or body language that might indicate bias.
- Use executive sessions to give participants, including yourself, time to cool off during tense or escalating situations.
- During executive sessions advise other panel members on their demeanor, if needed, and stress the vital role of arbitrator cohesiveness in resolving all issues.

**Slide 4:**

- It is vital that the entire panel convey professionalism and neutrality throughout the proceeding.
- This includes avoiding being overly familiar or friendly with the parties and counsel.
- Arbitrators with legal experience may sometimes begin to slip into the role of litigator or judge.
- If necessary, remind the arbitrator that the roles are different.
- An arbitrator must remain neutral and allow parties to present their cases and evidence.
- An arbitrator cannot conduct independent research or advocate for any party.

**Slide 5:**

- It's equally important that arbitrators avoid the role of mediator.
- Arbitration and mediation are distinct and separate processes.
- Mediation is a non-adversarial process in which a mediator facilitates negotiations between the disputing parties.
- Arbitration is a method of dispute resolution where the parties agree to abide by the decisions of the arbitrators.
- After they hear the evidence, arbitrators issue a final and binding award.

**Slide 6:**

- Module 6 discussed expectations for the conduct of panel members.
- Let's look at issues with participant conduct.
- A chairperson can usually manage a disruptive participant through occasional direction or breaks during hearings.
- If applicable, remind parties that they should address the panel and not each other.
- Remind participants to remain civil during the proceeding.

**Slide 7:**

- If inappropriate behavior persists, call an executive session to discuss the problem with the other panel members.
- If a party, representative, or witness continues to be disruptive, caution on the record that disruptive behavior will not be tolerated and advise them of the consequences of continued misconduct.
- However, if a represented party or witness is disruptive, address their counsel.
- After providing such a caution, take a break to allow the clients and counsel to digest the panel's message, prior to continuing the hearing.
- Remind the participants that you expect all participants to behave in a civil and professional manner during the proceedings.
- Caution that if the disruptive behavior continues, the panel will consider sanctions to maintain order.

**Slide 8:**

- Arbitrators cannot sanction a representative directly, but a party can be held responsible for their representative's disruptive conduct.
- Rule 12212 gives arbitrators wide discretion to sanction a party for failing to comply with any panel or arbitrator order.
- The panel may dismiss a claim, defense, or arbitration with prejudice, if they determine a failure to comply with an order is material and intentional and prior warnings or sanctions have not been effective.
- This option is used only as a last resort.
- The panel may also refer a member firm or associated person, even if they weren't a party, for possible discipline for their disruptive conduct.
- A referral may also be made to report the disruptive conduct of a party's counsel.
- FINRA will forward the referral to the appropriate authority.
- As with other procedural decisions, ensure the panel's decision and reasoning are made part of the hearing record.
- Describe, in the Award Information Sheet, the panel's actions to obtain compliance with its orders and the reasons for its actions.

**Slide 9:**

- The claimant presents evidence first.
- If, during the claimant's presentation, a respondent requests that one of their witnesses be allowed to testify for the convenience of the witness or to alleviate expenses, the panel may permit this deviation from the usual witness order.
- If granted, make it clear that the panel will consider the claimant's reasonable request to recall the respondent's witness at a later time or date.

**Slide 10:**

- The claimant gives their closing argument first and is allowed to make a rebuttal argument.
- The claimant may reserve their entire closing for rebuttal.
- However, the hearing procedure may be varied in the discretion of the panel, provided all parties are allowed a full and fair opportunity to present their respective cases.
- In the interest of fairness, the panel should generally give the claimant an opportunity to have the last word.

**Slide 11:**

- During the hearing, a party may object to the introduction of any evidence.
- The panel must allow parties a fair and full opportunity to present their evidence.
- However, the panel is not obligated to admit every document or all testimony offered, even if there was previously an order for the document to be produced or the witness to appear.

**Slide 12:**

- Neither the Code nor the courts provide specific guidelines on admissibility for arbitrators.
- However, the chairperson should share the following considerations with other arbitrators when discussing objections to evidence:
  - State and federal rules of evidence do not govern arbitration, but they can provide practical guidance.
  - Relevant evidence tends to prove or disprove claims and defenses.
  - Arbitrators should consider fairness and the perception of fairness above all else when deciding objections to evidence.
  - Arbitrators should make even-handed and consistent evidentiary rulings.
  - When ruling on admissibility, they should be aware of their previous rulings and apply the reasons behind those rulings consistently.
  - If arbitrators remain uncertain, they should err on the side of admitting the documents or testimony into evidence.

**Slide 13:**

- This schematic depicts how a panel might work through key considerations in order to reach a decision, including:
  - Whether the evidence proves or disproves the claim.
  - Whether it related to the credibility or validity of other evidence.
  - Fairness.
  - Consistency with prior rulings.
  - Again, if arbitrators remain uncertain, they should err on the side of admitting documents or testimony into evidence.

**Slide 14:**

- Generally, the chairperson is not required to explain the panel's evidentiary rulings.
- However, if the parties don't understand the ruling or an explanation could guide the parties as to future evidence or questioning, the chairperson may provide an explanation.
- In particular, if the panel decides not to admit evidence that a party insists is crucial, the panel should state the decision on the record, along with the reasons, and include the decision and reasons in the Award Information Sheet.

**Slide 15:**

- Module 5 discussed that the panel may authorize the chairperson to decide minor issues, which may include:
  - For Examiners:
    - Argumentative questions.
    - Leading questions.
    - Questions already asked and answered.
    - Questions that are convoluted or in an improper form.

- Abusive questions.
- Questions that assume facts not yet in evidence.
- Questions that mischaracterize testimony.
- For Witnesses:
  - Answers that are not responsive to questions.
  - Testimony provided without questions, or volunteered.
  - Witness arguments with the examiner or another participant.
  - Witness questions to the examiner.
- For Opposing Counsel:
  - Speaking objections, when opposing counsel makes an improper speech or argument during an objection.

**Slide 16:**

- The panel should consider more significant objections in executive sessions.
- If an arbitrator disagrees with a prospective ruling in an executive session, the chairperson should:
  - Discuss the reasons for the disagreement, and
  - Ensure the dissenting arbitrator understands the reasons for the majority view.
  - If disagreement remains, the chairperson may suggest the panel reserve decision on the objection until later in the proceeding.
  - If deferring the decision is not possible, the chair should remind the other arbitrators that, to preserve panel unity, the ruling will be announced as a panel ruling.

**Slide 17:**

- Rule 12514 requires parties to serve copies of documents and other materials they intend to use at the hearing that have not already been produced, as well as their witness lists, at least 20 calendar days before the first scheduled hearing date.
- The panel may exclude from evidence any documents or materials that were not exchanged, and any witnesses not identified in accordance with the rule. The requirement does not apply to documents or witnesses used for rebuttal or impeachment purposes based on developments during the hearing.

**Slide 18:**

- As an example, a claimant may object to admitting documents that were never provided.
- The respondent may argue the documents are relevant and material, or important to prove facts in the case.
- In deciding the admissibility of the evidence, the panel should consider:
  - The nature of the non-compliance. Were the documents exchanged late and, if so, how late?
  - The reason for non-compliance. When did the non-complying party obtain the evidence?
  - After it was obtained, how quickly was it exchanged?
  - Most importantly, what is the relevance of the evidence and the risk of prejudice to the objecting party?
  - How might the panel eliminate the risk of prejudice?

**Slide 19:**

- If the panel decides the evidence is relevant and material, it may adjourn the hearing to provide the objecting party a reasonable opportunity to examine, evaluate, and prepare to address the evidence.
- If the panel decides the non-compliance wasn't justified, the panel may assess the adjournment fee, forum fees, and other appropriate costs to the party who did not comply.
- This type of situation is why the chairperson should emphasize the importance of complying with Rule 12514 to ensure a fair proceeding.
- As discussed in Module 2, during the IPHC, you should state the panel's expectation that all parties will fully comply with discovery and the 20-day exchange requirement or risk sanction.

**Slide 20:**

- When requested to admit evidence of a prior proceeding, the panel should consider the following:
  - Are the parties identical?
  - Are the issues identical?
  - Was there a final order or was the matter appealed?
  - Is the evidence helpful in resolving any material issues?

**Slide 21:**

- To rule fairly, the panel must understand the purpose of the evidence:
  - Is the evidence being offered to prove a claim?
  - Is the evidence being offered to prove a pattern of conduct necessary to establish a claim?
  - Is the evidence being offered to establish a defense?
  - Is the evidence being offered to challenge the credibility of documentary evidence?
- Once the panel understands the purpose of the evidence, arbitrators should discuss its relevance and value, measured against the risk of any unfairness to the objecting party.
- Note that information obtained during a mediation cannot be disclosed during an arbitration pursuant to Rule 14109 unless authorized in writing by all mediating parties or compelled by law.

**Slide 22:**

- As discussed in Module 2, the panel must ensure that all parties - those who have a lawyer and those who do not - are treated fairly in fact and in appearance.
- The chairperson should lead the panel in determining the most appropriate way to assist a pro se party in experiencing a fair hearing.
- You may be able to gauge the relative sophistication of pro se parties by how they handle prehearing conferences or evidentiary hearings.
- Be flexible in offering assistance, based on the party's participation during the hearing.
- Consult regularly with other panel members for their ideas and consult DRS staff when appropriate.

**Slide 23:**

- A pro se party will likely not be experienced in litigation or arbitration and will usually need some procedural guidance.
- Before providing procedural guidance to a pro se party, explain on the record the purpose and propriety of the guidance.

- This will help preserve panel fairness, particularly if the participants are not familiar with the arbitration process.
- Arbitrators should provide procedural guidance, when necessary, in a neutral fashion.
- The procedural guidance should be in the form of neutral, clear, understandable, sensitive explanations provided throughout the proceeding.

**Slide 24:**

- Examples of procedural guidance include:
  - Explaining the purpose and content of an opening statement.
  - Assisting the pro se party in maintaining proper focus during the hearing.
  - Explaining when actions will occur during the hearing.
  - Explaining the procedures for offering and admitting documents or testimony into evidence.
  - Reminding the pro se party that cross examination should consist of specific questions.
  - Ensuring that the pro se party has had an opportunity to present all evidence.
  - The differences between the production, admission, and weight of the evidence.
  - Explaining the purpose and content of closing arguments.

**Slide 25:**

- Test your knowledge now by responding to the following questions.

**Slide 26:**

- **Question:** When there are objections to admitting documentary evidence or testimony:
  - A. The Code and the Arbitrator’s Guide provide specific guidance on admissibility.
  - B. Consider relevance, fairness, and the perception of fairness above all else.**
  - C. If the evidence doesn’t prove or disprove claims or orders, err on the side of not admitting it.

**Slide 27:**

- **Question:** In managing a hearing involving a pro se party, it’s important to:
  - A. Assume the party knows nothing about the arbitration process and explain everything in simple language.
  - B. Be sensitive to a pro se party, while maintaining neutrality and fairness.**
  - C. Direct the pro se party to use the DRS website for resources to self-educate on the arbitration process.

**Slide 28:**

- This concludes Module 8. Module 9 will cover post-hearing procedures. Continue at your own pace and proceed to Module 9 whenever you are ready.
- To exit this module and continue with the course, close the browser window, and click “Go to Class” in the top right to return to the main course page.

**MODULE 9: Post-Hearing Procedures**

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**Slide 1:**

- Welcome to Module 9, which discusses arbitrator procedures at the conclusion of an arbitration that is going to Award.

**Slide 2:**

- This module will prepare you to:
  - Decide requests to reopen the record prior to the final award being served.
  - Manage panel deliberations.
  - Promote teamwork among panel members.
  - Properly complete the Award Information Sheet.
  - Understand when a disciplinary referral is appropriate.

**Slide 3:**

- The panel decides when the record is closed, and no further submissions will be accepted from any party.
- Generally, if a hearing is held, the record is closed at the end of the last hearing session, unless the panel requests or agrees to accept additional submissions.
- Occasionally, after the panel has closed the record, a party will request permission to make additional submissions.
- The panel may reopen the record, so long as the request is made before the signed Award is served.

**Slide 4:**

- Contact your co-panelists for their views on reopening the record.
- Discuss and assess the relevance of the proposed submission.
- If the submission is relevant, suggest reopening the record to accept the submission and allow the respondent to submit a response.

**Slide 5:**

- When practical, arbitrators should commence deliberation immediately after the hearing has concluded and the parties have left the room.
- It is often convenient because the panel is already assembled, and the case evidence and recordings are at hand.
- If the panel can't deliberate immediately after the meeting, schedule a deliberation as soon as possible while the hearing events are still fresh.
- Notify DRS staff of the date and time, and they will make the meeting arrangements for you.
- Although deliberations may begin immediately, they must not be rushed.
- The panel must engage in full and fair discussions of the issues the parties raised.
- You have an obligation to resolve all issues submitted and complete the Award Information Sheet, as detailed later.

**Slide 6:**

- It is important that the views of all panel members be considered.
- The chairperson must emphasize teamwork.
- Ask the other panel members to speak their views freely and candidly on the issues before you give your views.
- It is important to look at the case from each party's perspective, to bounce ideas back and forth among the panel, and to play devil's advocate.
- It is appropriate to challenge ideas, but not one another.
- Strive to use phrases such as "please explain" and to ask about "what evidence supports that idea?"

- You can prompt discussion with questions such as:
  - What relief is the claimant requesting?
  - What elements of the claim would the claimant have to prove to be granted that relief from the respondent?
  - Did the claimant prove the necessary elements of the claim and respondent's liability?
  - If the panel determines that there is liability, next determine the amount of any damages.
  - Did the claimant prove their damages?
  - Did the respondent establish defenses that reduced or eliminated their liability?
  - Consider the same questions for any other party's claims.

**Slide 7:**

- The panel documents its final decisions on what, if anything, is to be awarded to any party and how fees are allocated in the Award Information Sheet.
- This is not the final Award that goes to the parties, but the document that DRS staff uses to draft the Award.
- Because arbitration is a matter of contract, the claims and valid amendments set the limits of a panel's decision-making authority.
- A decision should only be rendered on the claims or defenses submitted by the parties.
- An award that exceeds these limits provides a legal basis for vacatur.
- For example, suppose a claimant's claim is failure to execute a trade.
- The panel may believe the trade was unsuitable given the claimant's education, sophistication, and stated objective, but the panel should not award damages based on a cause of action that was not submitted.
- This would be unfair to the respondent, who did not have an opportunity to defend against the unsubmitted claim.

**Slide 8:**

- An award that fails to resolve all submitted issues also provides a legal basis for being vacated.
- It is vital for the panel to be aware of all claims and defenses and dispose of all matters.

**Slide 9:**

- If the panel grants a motion to dismiss during the case and dismisses with prejudice, instead of denying the claims after a full hearing, the decision must be made in the form of an Award and explain the panel's reasoning.
- If the decision is made after a prehearing conference, the chairperson must submit an order with a statement explaining why the motion is granted.
- If the decision is made at the hearing after the claimant presents their case-in-chief, the chairperson must submit an Award Information Sheet with a statement explaining why the motion is granted.
- The explanation will facilitate the claimant's understanding of the dismissal.
- Also, include a statement on how the arbitrators complied with legal standards before dismissing the claim. This helps avoid potential motions to vacate an award.

**Slide 10:**

- A panel may be asked to arbitrate the parties' dispute over a previous settlement agreement or release.

- Regardless of the panel’s decision, the panel should explain the basis for its rulings, if an explanation would be helpful.

**Slide 11:**

- If the arbitration includes a sexual assault, sexual harassment, or statutory employment discrimination claim, per Rule 13802, the Award must include:
  - A summary of the issues, including the type of dispute;
  - The damages or other relief requested and awarded;
  - A statement of any other issues resolved; and
  - A statement regarding the disposition of any claim of sexual assault, sexual harassment, or statutory employment discrimination.
- The panel may award any relief that would be available in court under the law.

**Slide 12:**

- The chairperson must complete the Award Information Sheet after deliberations.
- It is in the DR Portal and can be circulated among the panelists for review in the DR Portal.
- DRS staff uses this information to draft the final Award that will be reviewed and executed by the panel.
- If you have questions about any section of the form, contact DRS for clarification.
- DRS staff will send the draft Award to the panel on the DR Portal.
- All panel members should carefully review the Award, ensuring it includes:
  - All parties;
  - All and only those issues submitted or presented to the panel;
  - Other important issues the panel considered;
  - All panel decisions regarding requested relief; and
  - The panel’s allocation of fees, expenses, and other costs.

**Slide 13:**

- When the panel is deliberating at the conclusion of the arbitration, it is a good time to consider whether a disciplinary referral is appropriate.
- As discussed in Module 8, a disciplinary referral is a recommendation that FINRA Member Supervision investigate to determine if disciplinary action is appropriate.
- During an arbitration, panel members might hear evidence of serious wrongdoing by a FINRA brokerage firm or an associated person.
- Referral is appropriate when an arbitrator has reason to believe the conduct may violate FINRA rules, federal securities laws, or applicable laws.
  - Examples of wrongdoing might include potential Ponzi schemes or money laundering.
- While a single arbitrator may initiate a referral, arbitrators are encouraged to first discuss the matter with the other panel members.
- The referral should only include facts and circumstances pertaining to the referral.
- Complete and submit the online Arbitrator Disciplinary Referral Form.

**Slide 14:**

- Test your knowledge now by responding to the following questions.

**Slide 15:**

- **Question:** When managing the deliberation, the chairperson should:

- A. Provide their views first and then ask the other arbitrators if they agree.
- B. Ask probing questions and challenge the other arbitrators to defend their positions.
- C. Ask the other panel members to speak their views, consider their opinions, and work as a team to reach a decision freely and candidly.**
- D. All of the above.

**Slide 16:**

- **Question:** How do claims and valid amendments limit the panel’s decision-making authority?
  - A. If the panel notices that the claimant forgot to allege a cause of action, the panel can still consider the cause of action as they determine the award.
  - B. Any amendments must be filed within the stipulated time frame or arbitrators may not rule on them.
  - C. A panel must make decisions only on the claims or defenses the parties submitted, even if the panel notices other causes of action during the hearing.**

**Slide 17:**

- This concludes Module 9.
- Module 10 describes next steps, including completing the required course assessment.
- You may review any course content you like prior to proceeding to the assessment.
- To exit this module and access prior course content or Module 10, close the browser window, and click “Go to Class” in the top right to return to the main course page.

## MODULE 10: Conclusion

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**Slide 1:**

- This final module explains how to complete the course training assessment, and what to expect afterwards.

**Slide 2:**

- Congratulations on completing the course!
- The guidelines and procedures in this course should help you facilitate fair and efficient proceedings.
- Chairpersons who use them appropriately can help avoid successful motions to vacate awards, helping preserve award finality.
- Keep in mind there is no “one way” to chair a panel.
- Do what is most comfortable for you.
- However, be mindful that a good arbitrator acts in a way that is above reproach and unimpeachable, and always remains professional.

**Slide 3:**

- To test your understanding of the course material, complete the Chairperson Training Assessment.
- Feel free to review any course material before starting the assessment.
- The assessment includes 25 multiple-choice questions.
- You must score at least 80 percent, or 20 correct questions, to receive credit for the course.
- You may attempt the assessment again if you do not achieve an 80 percent score.
- Test results will be displayed on screen upon completion.

- After you successfully complete the exam, FINRA will update your Arbitrator Disclosure Report to reflect that you have completed this course.

**Slide 4:**

- When you are ready to begin the assessment, close this module window by clicking the “x” in the top right and select the “Go to Class” button to return to the main course page.
- Then launch the Chairperson Training Assessment.

**Slide 5:**

- This concludes module 10.