

Updated as of September 13, 2023



Initial Prehearing Conference Script for Single Arbitrator Cases

[Information in bold is intended for organizational purposes only and does not need to be read to the parties. Italicized information in brackets is intended to clarify a point for you and does not need to be read to the parties.]

The arbitrator must be prepared for the conference and have their calendar available. Please join a few minutes before the Initial Prehearing Conference (“IPHC”) is scheduled to begin. The arbitrator is expected to have their camera turned on for the entire duration of any prehearing conferences held by videoconference, absent technical difficulties or extenuating circumstances. It is permissible for the arbitrator to turn off their camera for breaks.

The arbitrator has the responsibility to record the agreements reached during the IPHC in the IPHC Scheduling Order. The arbitrator should submit the IPHC Scheduling Order on the DR Portal within 48 hours.

Before the IPHC begins, the arbitrator may request that participants turn on their cameras. It is within the arbitrator’s discretion to require video participation. It is also within the arbitrator’s discretion to ask any participant to remove or cover any distracting background items and/or to disable background screens.

During the IPHC, if the participants are unable to agree to any date or deadline, it is within the arbitrator’s discretion to set that date or deadline.

A Dispute Resolution Services (“DRS”) staff member should begin by stating the case caption and introducing the arbitrator. However, the arbitrator may perform this function.]

A. Introduction of the Participants:

I will begin with brief introductions. While one participant is speaking, I ask that everyone else mute their audio to minimize the background noise and distractions. Also, please note that participants are prohibited from recording

this conference.

As a reminder, I was selected to serve as a neutral arbitrator to hear and decide this matter. FINRA makes this arbitration forum available —pursuant to rules approved by the SEC—but has no part in deciding the award.

Will the parties or their representatives introduce themselves and any others who are present with them?

For a Special Proceeding (Rule 12800(c)(3)(B)/13800(c)(3)(B)):

The hearing in this matter will be conducted as a Special Proceeding via audio conference. The following hearing procedures will be followed:

- Claimants, collectively, and respondents, collectively, each have two hours to present their cases and one-half hour for rebuttal and closing statements;
- The hearing will be completed in one day with no more than two hearing sessions;
- The parties may not question or cross-examine the opposing parties' witnesses; and
- The parties may not call an opposing party as a witness.

For a Case Proceeding Under the Expedited Procedures for Senior or Seriously Ill Parties Program:

I was informed that this is an expedited case involving a senior or seriously ill party. Hearing dates should be scheduled to expedite the process but still provide a reasonable amount of time for case preparation.

B. Disclosures:

[If any disclosure was not previously contained in the Arbitrator Disclosure Report, disclose it now.]

Do any of the parties and representatives in this matter know of any potential conflicts between me and any party, representative, or witness in this matter?

C. Confirmation of the Arbitrator:

Do the parties confirm acceptance of me as the sole arbitrator?

D. Oath of Arbitrator:

I confirm that I have executed my oath and submitted it on the DR Portal.

[If you have not, disclose whether you read and reviewed the DRS Temporary and Permanent Arbitrator Disqualification Criteria, the Arbitrator Disclosure Checklist, and your Arbitrator Disclosure Report. If you have not reviewed the above items, you are not permitted to rule on any item on today's agenda.]

[If you have reviewed the items, then administer the oath as follows:]

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

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

I swear or affirm that, based on FINRA DRS' Temporary and Permanent Arbitrator Disqualification Criteria, I am not temporarily or permanently disqualified from being a DRS arbitrator.

Having reviewed the *Arbitrator Disclosure Checklist*, I certify that I have made all disclosures of items on the Arbitrator Disclosure Checklist.

I swear or affirm that my *Arbitrator Disclosure Report* is accurate, current, and up to date and that I have no additional disclosures to make.

[Make sure that your oath is executed in writing and submitted on the DR Portal for completion of the case file.]

E. Pleadings:

I acknowledge and identify that the following pleadings have been filed by the

parties and I have read them: *[list documents]* _____.

[Acknowledge any outstanding deficiencies (e.g., undated Submission Agreement, unpaid fees, or failure to file proof of service) and set a deadline for parties to cure such deficiencies. Remind the filing party that if they do not correct the deficiency by the deadline, you will proceed as though the deficient document had not been filed.]

[If one of the parties has failed to submit a signed Submission Agreement, also state the following:]

Any party that has not yet filed a signed Submission Agreement or otherwise objected to jurisdiction must do so within 30 days or may be subject to sanctions as provided in the Codes of Arbitration Procedure.

[If a party has failed to submit an answer (an unresponsive party), DRS staff will provide you with a review of the service history. You will decide whether service is complete and sufficient upon the unresponsive party and the case can proceed to hearing.]

F. Mediation:

[This section does not apply to requests for expungement of customer dispute information filed by a claimant against a member firm.]

I want to remind the parties that DRS has a successful, voluntary mediation program. Mediation is an informal process in which a mediator facilitates negotiations between disputing parties. The mediator's role is to help the parties find a mutually acceptable solution to the dispute. On average, parties who mediate at this forum reach a settlement in more than 85% of cases.

DRS mediators are trained and experienced in helping parties resolve their disputes. Many are experienced arbitrators, attorneys, and securities industry professionals, knowledgeable in employment and securities issues.

The mediation process is designed to proceed on a parallel track with arbitration, so it does not interfere with the scheduled hearing dates or other matters agreed to during this IPHC. If you are interested in mediation, contact the DRS staff member assigned to this case for more information. They will have a Mediation Administrator contact the parties to discuss mediation further and help assist with scheduling the mediation.

G. Additional Guidance for Cases Involving Pro Se Parties or Pro Se Customer Non-Parties:

Since there are participants appearing without representation in this matter, I want to provide background on the arbitration process. As an arbitrator, my ultimate responsibility is to resolve all claims in a fair and just manner. To the extent ethically permissible, I will provide participants with procedural guidance and direction to ensure a fair hearing. However, I will not and cannot be an advocate for any participant, nor can I offer legal advice or recommend a specific course of action. If a participant needs legal advice at any time during this case, I recommend that they consult with an attorney. Please note that FINRA rules provide participants with the right to be represented by an attorney at any time in the proceeding.

Are there any questions?

[The IPHC procedures set forth below should be followed but may, in your discretion, be varied to allow all parties (and any customer non-party participating in a case involving customer dispute expungement, pursuant to Rule 13805 (effective October 16, 2023)) a full and fair opportunity to present their respective positions. It is within your discretion to determine the order in which scheduling hearings or setting deadlines is discussed.]

H. Party and Arbitrator Communication:

I remind the parties that they may not communicate with me, except in the presence of all parties or representatives.

Generally, all correspondence and pleadings must be filed on the DR Portal for forwarding to me. Would the parties like to agree to direct communication shortly before a scheduled hearing, solely to alert me that the parties have settled the case, the claimant has withdrawn their claim, or the parties jointly agreed to postpone the hearings?

[If you and the parties agree to direct communication, state the following:]

All parties must be included on the direct communication and a copy of the direct communication must be filed on the DR Portal. These procedures will prevent me from unnecessarily appearing for a cancelled hearing, while ensuring that the record is preserved and hearing arrangements are cancelled.

I. Postponements and Cancellations of Hearings:

Before we schedule the hearing date(s), please keep in mind that DRS charges a postponement fee for a postponed hearing that is equal to the applicable hearing session fee. DRS will not charge this fee, if the parties advise that they have reached a final settlement and the case can be closed.

In addition, if a hearing is postponed or otherwise cancelled within 10 days before a scheduled hearing date, there is an additional fee of \$600. This late cancellation fee applies even if a hearing is cancelled due to a final settlement and case closure.

J. Selection of a Hearing Date for a Special Proceeding (Rule 12800I(3)(B)/13800(c)(3)(B)):

[During the IPHC, a hearing date should be set regardless of a participant's failure to prepare for date selection.]

Expeditious resolution of disputes is one of the goals of arbitration. Since this is a Special Proceeding, DRS recommends setting the hearing date within four months from today's conference. There may be times when this is not feasible. However, the commencement of hearings more than four months after this conference should be the exception for a Special Proceeding.

I promise to avoid causing postponements, absent a genuine emergency. I also pledge to be prepared and on time for all conferences and hearings. In exchange, I expect the parties and representatives to avoid unnecessary postponements, to be prepared, and to be on time for all conferences and hearings.

Have the parties agreed to any hearing dates for my consideration?

[For cases filed on or after October 16, 2023, if a respondent has requested expungement of customer dispute information, state the following:]

Please do not provide expungement hearing dates at this time. We will schedule a separate expungement hearing after an award is issued on the merits of the claims. Regardless of the decision on the merits of the claims, I encourage Claimant(s) to attend and participate in the expungement hearing and submit their position on expungement in writing.

[If yes, consider the proposed dates.]

[If no, request the parties' availability for the hearing, on a month-by-month basis, until a date has been selected.]

Once the Hearing Date Has Been Selected:

The hearing in this matter is scheduled to be audio only. However, the parties may jointly agree to conduct the hearing on video, if they wish to do so.

Please remember that the parties have until 10 days before *[insert the first scheduled hearing date]* _____ to advise DRS of a postponement or cancellation and avoid incurring a late cancellation fee.

K. Selection of Arbitration Hearing Dates for a Non-Expedited Case:

[During the IPHC, hearing dates should be set regardless of a participant's failure to prepare for date selection.]

Expedition resolution of disputes is one of the goals of arbitration. Therefore, the commencement of evidentiary hearings within nine months after this conference is the goal of DRS and my goal. There may be times when this is not feasible. However, the commencement of hearings more than nine months after this conference should be the exception.

Also, to avoid delay in the arbitration process, it is best to set aside extra hearing dates. Absent exceptions agreed to between us, it is expected that hearings will be scheduled for at least eight hours on each date, such as beginning at 9:00 A.M. and ending at 5:00 P.M.

I promise to avoid causing postponements, absent a genuine emergency. I also pledge to be prepared and on time for all conferences and hearings. In exchange, I expect the parties and their representatives to avoid unnecessary postponements, to be prepared, and to be on time for all conferences and hearings.

Have the parties agreed to any hearing dates for my consideration?

[If yes, consider the proposed dates.]

[If no, find out how many days will be required. Continue by requesting the parties' availability for the hearings, on a month-by-month basis, until sufficient dates have been selected.]

Once Hearing Dates Have Been Selected:

FINRA DRS is primarily an in-person forum, and in-person participation is expected at most hearings. However, unless prohibited by a rule, parties may agree to have a Zoom hearing or a hybrid hearing (which is when some participants are on Zoom and others are in person). If the parties can't reach an agreement, a motion may be filed. I will decide the issue.

[For cases filed on or after October 16, 2023, if a respondent has requested expungement of customer dispute information, state the following:]

The associated person and the party requesting expungement on behalf of an unnamed person or the party's representative must appear in person or by videoconference at the hearing. Customers and witnesses may appear by telephone, in person, or by videoconference at the hearing.

Please remember that the parties have until 10 days before *[insert the first scheduled hearing date]* _____ to advise DRS of a postponement or cancellation and avoid incurring a late cancellation fee.

L. Selection of Arbitration Hearing Dates for a Case Proceeding Under the Expedited Procedures for Senior or Seriously Ill Parties Program:

[During the IPHC, hearing dates should be set regardless of a participant's failure to prepare for date selection.]

Expeditious resolution of disputes is one of the goals of arbitration. As this is a case involving a senior or seriously ill party, DRS recommends setting the first hearing date within six months after this conference. There may be times when this is not feasible. However, the commencement of hearings more than six months after this conference should be the exception when there is a senior or seriously ill party.

Also, to avoid delay in the arbitration process, it is best to set aside extra hearing dates. Absent exceptions agreed to by us, it is expected that hearings will be scheduled for at least eight hours on each date, such as beginning at 9:00 A.M. and ending at 5:00 P.M.

I promise to avoid causing postponements, absent a genuine emergency. I also pledge to be prepared and on time for all conferences and hearings. In exchange, I expect the parties and their representatives to avoid unnecessary postponements, to be prepared, and to be on time for all conferences and

hearings.

Have the parties agreed to any hearing dates for my consideration?

[If yes, consider the proposed dates.]

[If no, find out how many days will be required. Continue by requesting the parties' availability for the hearings, on a month-by-month basis, until sufficient dates have been selected.]

Once Hearing Dates Have Been Selected:

FINRA DRS is primarily an in-person forum, and in-person participation is expected at most hearings. However, unless prohibited by a rule, parties may agree to have a Zoom hearing or a hybrid hearing (which is when some participants are on Zoom and others are in person). If the parties can't reach an agreement, a motion may be filed. I will decide the issue.

[For cases filed on or after October 16, 2023, if a respondent has requested expungement of customer dispute information, the associated person and the party requesting expungement on behalf of an unnamed person or the party's representative must appear in person or by videoconference at the hearing. Customers and witnesses may appear by telephone, in person, or by videoconference at the hearing.]

Please remember that the parties have until 10 days before *[insert the first scheduled hearing date]* _____ to advise DRS of a postponement or cancellation and avoid incurring a late cancellation fee.

M. For Videoconference Hearings Only:

I am expected to have my camera turned on for the entire duration of all prehearing conferences and evidentiary hearings held by videoconference, absent technical difficulties or extenuating circumstances. I will have my camera on while on the record. It is permissible for me to turn off my camera for breaks.

Do all of the participants have the necessary technology to fully participate in the videoconference hearing(s)?

[If participants aren't sure or would like additional information, you may inform them, as applicable, of the following:]

- The [Resource Guide for Virtual Hearings](#) and [Arbitrator Training Videos for Virtual Hearings](#) are available on FINRA's website at FINRA.org.
- Prehearing conferences are videoconferences, unless the parties stipulate otherwise or I order otherwise. Information the [Resource Guide for Virtual Hearings](#) is available on FINRA's website at FINRA.org.
- Participants can contact DRS staff to schedule a practice Zoom session before a prehearing conference or the hearing to work out any issues.

N. Discovery:

FINRA rules require you to cooperate in the exchange of documents and information.

[The following two paragraphs are for customer cases with regular hearings only.]

For Customer Cases with Regular Hearings Only:

In customer arbitrations, the parties should carefully review the Discovery Guide, which includes Document Production Lists. The [Discovery Guide](#) can be downloaded from FINRA's website at FINRA.org.

The Discovery Guide provides guidance regarding documents that are presumed discoverable. With few exceptions, these documents should be exchanged automatically without my intervention. The Discovery Guide makes it clear that absent a written and specific objection, or an agreement by the parties to the contrary, parties must exchange documents listed on the Document Production Lists within the specified time frames.

Any written requests for documents or information should be specific and relate to the matter in controversy. If a party objects to producing any requested document or information, the objection must specifically identify which requested document or information is being objected to and the reason(s) for such objection. The objection to a particular request should not delay production of the remaining requests. If a party does not have a specific objection to a particular request, then the document or information should be produced within the applicable deadline.

I will not tolerate any abuse of the discovery process. A party making requests must not abuse the discovery process by making excessive, improper, or overbroad discovery requests. A party responding to requests must not abuse

the discovery process by making frivolous or general objections to discovery requests, ignoring discovery requests or requests to meet and confer, unreasonably delaying their response to discovery requests, or failing to comply with a discovery order.

Discovery abuse undermines the integrity and fairness of the DRS forum. If necessary, I will consider a full range of sanctions to address discovery abuse by any party, such as: issuing monetary sanctions; precluding a party from presenting evidence; making an adverse inference against a party; assessing postponement and/or forum fees; assessing attorneys' fees, costs, and expenses; and making disciplinary referrals at the end of a case. If warnings or sanctions prove ineffective, a claim or defense may be dismissed with prejudice for failure to comply with my order.

What is the status and progress of discovery to date? *[Take this opportunity to encourage the parties to meet and confer and cooperate with each other. If a party intends to seek a confidentiality agreement, urge them to work out an agreement well before the production deadline.]*

Do the parties wish to stipulate to any deadlines or cutoff dates with respect to the filing of discovery requests and responding to discovery requests?

FINRA rules require that the parties meet and confer prior to filing a motion to compel discovery. Do the parties wish to schedule a tentative prehearing conference to address discovery disputes that the parties are unable to resolve on their own?

Are there any issues that need to be resolved concerning the format for production of electronic discovery?

O. Arbitrator Orders and Subpoenas to Non-Parties:

Will the parties agree to a cutoff date (absent extraordinary circumstances) that is *[insert number of days]* _____ days before the first scheduled hearing date, for serving subpoenas and arbitrator orders on non-parties?

P. Motions:

Do the parties intend to file any prehearing motions? If so, please identify which motions you intend to file. Please note that DRS staff will wait for the reply due date before sending motion papers to me for a decision. At that point, staff will send the motion, any response, and any reply to me.

[If the parties indicate that they intend to file prehearing motions, you should remind the parties that the briefing schedule for the motions are provided in the rules. Under Rule 12503/13503, written motions, other than Motions to Dismiss, must be served via the DR Portal at least 20 days before a scheduled evidentiary hearing, unless you decide otherwise. Parties have 10 days to respond to a motion, unless the moving party agrees to an extension or the Director or you decide otherwise. Motions to Dismiss, governed by Rules 12504/13504 and 12206/13206, have different submission and response deadlines.]

Q. Postponed or Cancelled Prehearing Conferences:

Parties are instructed to notify DRS when scheduled prehearing conferences are no longer needed.

Parties who request postponement or cancellation of a prehearing conference within three business days of the scheduled date will be charged a \$100 cancellation fee.

R. Legal Issues and Prehearing Briefs:

Are there any legal issues that warrant the filing of briefs in this case?

[If so, set deadlines for the submission of the briefs and order the parties to attach all cases, laws, rules, and regulations cited. The briefs should be simultaneously exchanged by the parties and submitted to DRS.]

S. Witness Lists:

The Codes of Arbitration Procedure require the parties to exchange witness lists at least 20 calendar days before the first scheduled hearing date. I request that, concurrent with the parties' timely exchange of the witness lists, the parties file the witness lists with DRS via the DR Portal for forwarding to me. Timely receipt of the witness lists will enable me to review the witness lists in advance of the hearing to determine if the appearance of a witness may create a potential conflict or otherwise trigger additional disclosures.

To assist me in making these conflict checks, the parties should list the business affiliation of each witness or other descriptive information. A party should only identify an expert witness after the expert witness has actually been retained.

T. Hearing Exhibits and Procedures:

The Codes of Arbitration Procedure require the parties to exchange hearing exhibits at least 20 calendar days before the first scheduled hearing date. To conserve hearing time, parties should make an effort, before the hearing, to agree on the admission of hearing exhibits and resolve possible issues about authentication of exhibits and the scheduling of witnesses' testimony.

I request that the parties file all of the exhibits which may be entered into evidence at the hearing with DRS via the DR Portal for recordkeeping purposes by a date agreed upon by all parties, or otherwise determined by me in the IPHC order. *[Discussing the appropriate timing for filing hearing exhibits with the parties is advisable to help ensure compliance with the order.]*

[For cases filed on or after October 16, 2023, state the following:]

Please remember that pursuant to Rule 12604(c) (effective October 16, 2023) a prior expungement award shall not be admissible as evidence.

Virtual and Certain Hybrid Hearings:

[This section will apply to telephonic and videoconference hearings, as well as hybrid hearings in which you or a representative will appear virtually.]

Will the parties agree to file their hearing exhibits on the DR Portal *[insert number of days]* _____ days before the first scheduled hearing date?

Will the parties agree that DRS staff will forward the hearing exhibits to me *[insert number of days]* _____ days before the first scheduled hearing date?

[If you also wish to receive hard copies of the exhibits, determine whether the hard copies should be sent directly to you or to DRS staff for forwarding to you.]

Please remember that the parties should make an effort to organize their exhibits in a single PDF file with a table of contents and label each exhibit. The parties will need to have all exhibits available during the hearing.

In-Person and Certain Hybrid Hearings:

[This section will apply to in-person hearings, as well as hybrid hearings in which you and all representatives will appear in person.]

Will the parties agree to file their hearing exhibits on the DR Portal *[insert number of days]* _____ days after the final hearing date? *[Setting a due date*

shortly after the final hearing concludes is advisable so that the exhibits may be accessible to DRS staff during award drafting.]

Please remember that the parties should make an effort to organize their exhibits in a single PDF file with a table of contents and label each exhibit.

U. For Expungement Requests Only:

For All Requests to Expunge Customer Dispute Information:

To assist in making a decision, I may request from the associated person, or party requesting expungement on behalf of an unnamed person, any documentary, testimonial or other evidence that I deem relevant to the expungement request. *[State any request you may have. For example, you should request a copy of the associated person's current BrokerCheck® Report.]*

[If the customer dispute(s) resulted in a settlement(s), a copy of the settlement documentation must be submitted. If the settlement documentation has not been provided yet, set a date by which the documentation must be submitted.]

Claimant(s) must submit a copy of the settlement documentation by *[insert date]* _____.

For All Intra-Industry Expungement Requests:

[This section applies if any party has requested intra-industry expungement that is not related to customer dispute information. A current Form U5 must be submitted. If the Form U5 has not been provided yet or an updated Form U5 is required, set a date by which the Form U5 should be submitted.]

The party requesting expungement shall submit a current copy of their Form U5 by *[insert date]* _____.

V. Explained Decisions:

The Codes of Arbitration Procedure require arbitrators to provide an explained decision if the parties file a joint request for one at least 20 calendar days before the first scheduled hearing date. The explained decision is a fact-based statement of the general reasons for my decision and does not need to include legal authorities or damage calculations. There is no fee to the parties for an explained decision.

W. Other Matters:

Are there any other matters that need to be addressed before the hearing in this proceeding?

X. Conclusion:

I am submitting an IPHC Scheduling Order that confirms what we have agreed to here today. DRS will provide the Order to all parties or their representatives via the DR Portal. As I read the Order, tell me if any statement is incorrect.

[Read the dates and information you recorded in the Order.]

Please do not expect DRS staff to send letters reminding you of your deadlines or prehearing conferences. Compliance with orders is your responsibility.

Thank you for your participation.