

What to Expect: FINRA's Dispute Resolution Process

It is rare for most investors to find themselves in a dispute with a securities firm or individual broker that escalates to a point where FINRA's dispute resolution services are needed. But, this can happen on occasion. This resource guide should help prepare you for what to expect from FINRA's dispute resolution process.

It is typically less costly and faster to use arbitration or mediation as a way to settle a dispute than to take a case to court. In arbitration, a single arbitrator or panel of three arbitrators—depending on the amount of money in controversy—hears all sides of the issues, studies the evidence, and then decides how the matter should be resolved. In mediation, a mediator facilitates negotiations between disputing parties to help them develop and agree on a resolution.

FINRA operates the largest securities dispute resolution forum in the world, and has extensive experience providing a fair, efficient and effective place to handle a securities-related dispute. Investors and parties in the securities industry can all resolve disputes by arbitrating or mediating through FINRA's dispute resolution forum.

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FINRA's dispute resolution forum is neutral. Staff members who coordinate the process are FINRA employees, but they are not involved in rendering judgments, and are separate from FINRA's Examination and Enforcement departments. FINRA cannot offer legal advice or legal representation to anyone.

Investors can file an arbitration claim or request mediation through FINRA when they have a dispute involving the business activities of a brokerage firm or one of its brokers. Generally, for consideration in the FINRA arbitration forum, your claim must be about an incident that took place within the last six years. FINRA's website contains resources to help you determine if FINRA can administer your case.

Some investors are confused about the difference between resolving monetary disputes through arbitration or mediation and filing an investor complaint. These are independent and unrelated. If you want to make FINRA aware of any potentially fraudulent or suspicious activities by brokerage firms or brokers, you should use FINRA's Investor Complaint Center. If you want to recover damages, like money or securities, then filing an arbitration or a mediation case offers you a way to seek damages. You can choose to file a complaint through FINRA's Investor Complaint Center, and file a separate arbitration or mediation case through FINRA's Dispute Resolution program. You can pursue all of these options, or none of them. It is up to you.

Arbitration

Arbitration is similar to going to court, but is usually faster, cheaper and less complex. The parties present the issues through the use of witness testimony and documentary evidence much as they would in court. Instead of a judge, there is either a single arbitrator or a panel of three arbitrators. The arbitrator or panel studies the evidence and decides how to resolve the matter much as a judge makes a ruling in a court case, but the legal rules of what evidence may or may not be presented in a hearing do not strictly apply in arbitration. Arbitrators are guided by the underlying policies of the law but can interpret legal concepts with more flexibility than judges.

The arbitration process differs depending on the claim size, which is the amount of money you are seeking in the case. Larger claims involve an in-person hearing decided by a panel of three arbitrators, with one serving as the chair. Smaller claims are decided by one arbitrator. The smallest claims may be decided through a Simplified Arbitration Process. This is when the arbitrator decides the case by reading all of the materials provided by the parties without an in-person hearing.

Arbitration cases that settle are typically resolved in just over a year. When an arbitration case goes to hearing, it typically takes 16 months. In either case, arbitration is usually faster than most court cases. One reason is that the process of exchanging documents and identifying witnesses—called discovery—is much more limited in arbitration. Another reason is that the ability to appeal arbitration decisions—to have a higher court reconsider them—is extremely limited. As a result, the related costs, such as attorney fees and other expenses, are typically lower in arbitration than in cases that go to court.

The first step for investors who want to file an arbitration is to submit the required documents to FINRA. One document we require is the Statement of Claim. The person starting the arbitration submits a Statement of Claim, which includes a description of the dispute, the parties involved and the amount of money you seek. It is your first chance to explain your side of the story, and it helps if you explain the events clearly, in chronological order. If you refer to documents that support your claim, you should attach them and also provide the names and addresses of the people or firms that you name as parties in the case.

Another document FINRA requires is the FINRA Submission Agreement, previously known as the Uniform Submission Agreement. This lists the parties in the arbitration case and confirms that FINRA will administer it. It also establishes that, if the case ends with a hearing, the parties agree to abide by the arbitrators' decision. FINRA also requires that the claimant, who is the person who files the claim that starts the case, submit the appropriate filing fees to begin the case.

Requirements for Filing an Arbitration

- ▶ Statement of Claim
- ▶ FINRA Submission Agreement
- ▶ Filing Fees

You can find all of the necessary forms for filing a claim, along with the applicable rules, and an explanation of the fees associated with filing an arbitration claim or pursuing mediation on FINRA's website. You can file your claim either by mail or online. The site also includes a fee calculator to help you estimate the initial fees for filing an arbitration. Be aware that there may be additional fees as your case progresses.

If you are experiencing financial difficulties, you can request a waiver of some of the fees. FINRA will require you to submit specific documentation to support your application, such as a copy of your recent tax return, pay stubs or other evidence of financial hardship. If you are elderly, or have a serious health issue, you can request an expedited arbitration proceeding, which can significantly reduce the amount of time it takes to complete an arbitration.

When FINRA receives the required documents and fees, they will analyze the claim, looking for things like the claim's size to decide how many arbitrators will be needed, the nature of the dispute and the type of securities involved. Then, FINRA assigns a case number and tells the parties how to contact FINRA staff about the case.

Usually, the hearing will take place at the FINRA hearing location nearest to where you lived at the time of the original dispute. If the parties agree on a different hearing location, FINRA attempts to accommodate the request. There is at least one, and as many as three, hearing locations in every state, plus the District of Columbia, Puerto Rico and London—over 70 in total.

A respondent is a firm or person against which you've filed your case. FINRA notifies each respondent of your case by sending—or serving—they a case packet by mail. If the respondent is registered with FINRA, then the respondent must arbitrate with you. The respondent's case packet has a copy of the Statement of Claim, information about the rules of FINRA's forum, and a FINRA Submission Agreement for each respondent to complete and return to FINRA.

A respondent has 45 days to research the claim and to prepare and serve a response. In it, the respondent can outline the defenses the firm or broker plans to argue and any exhibits that support this position. Once FINRA receives this information, it will be analyzed to see if there are counterclaims (which are claims by the respondent against you) or cross claims (which are claims by the respondent against another respondent). If so, FINRA will check to make sure the parties submitted the right fees and will look for any newly named parties.

Then, the parties select their arbitrators. FINRA provides identical lists of possible arbitrators for the case to both sides of the dispute. A computer generates the names randomly. FINRA also provides a detailed report on each arbitrator's background—a disclosure report—to both sides. The disclosure report is basically like a résumé, and includes the arbitrator's employment background, education and training. FINRA provides a list of cases in which each of the arbitrators has issued a final decision, called an award. You can view awards for free on FINRA's website or obtain them from FINRA in hard copy.

Both sides are allowed to remove or strike some of the arbitrators on the list from consideration and to rank the remaining names in order of their preference. This process gives both parties a say over who the arbitrators will be.

Arbitrators are not FINRA employees but work on a case-by-case basis as contractors. They must apply to be arbitrators, and FINRA evaluates their education, professional licenses and employment. They also must take required training. FINRA divides arbitrators into two categories: those who have a connection to the securities industry and those who do not. FINRA refers to the arbitrators who have no connection as public arbitrators and the others as non-public arbitrators. FINRA strives to include people who represent different professions and backgrounds for both categories of arbitrators. FINRA requires people who chair arbitration panels to be public arbitrators in investor cases, and they must have special training and experience on previous arbitrations.

A public arbitrator serves as the sole arbitrator on smaller claims involving customers. A three-arbitrator panel hears the larger customer claims. Customers in cases that proceed with three arbitrators have the option to have an all-public arbitration panel or a majority-public panel decide their claim.

In all cases, arbitrators are required to make decisions based on the facts and merits of the cases they hear, and they take an oath to remain neutral. FINRA is constantly monitoring arbitrators to ensure that they meet necessary standards and, if they fail to meet them, they are removed from FINRA's pool of arbitrators.

Once the parties select their arbitrators, the panel holds an initial pre-hearing conference with the party representatives—typically over the telephone. The parties are usually represented by an attorney, but some parties choose to represent themselves. During the call, the arbitrators and party representatives (usually lawyers) discuss procedural issues, the mediation alternative and the scheduling of the in-person hearing. So, at this conference, FINRA recommends that the representatives have their calendars available. They should also raise any issues that they think the arbitrators will need to address at this time.

The next stage is Discovery. This is when the parties exchange documents and identify their witnesses. FINRA's website contains detailed rules for parties and their representatives to follow during the discovery process. Also, all parties in a customer case should be familiar and comply with a document called the Discovery Guide. It lists the documents that should be exchanged by claimants and respondents in customer arbitrations, depending on the types of issues.

Once the parties complete the Discovery phase of the case, it is time for the in-person hearings. This is when each party presents its case to the arbitrators.

Arbitration Hearing Process

After all the parties arrive, the arbitrators invite the parties, their counsel and witnesses into the hearing room. There may be two types of witnesses: fact witnesses and expert witnesses. Fact witnesses testify to facts related to the matter, but do not give their opinions. Expert witnesses, on the other hand, have technical or other specialized knowledge that enables them to interpret and express their opinions about the facts of a case. The arbitrators may ask fact witnesses to wait in a waiting room until they are called in to provide testimony. Expert witnesses generally remain in the hearing room.

The arbitrators sit at the head of the table, and claimants and respondents sit with their groups on opposite sides. The arbitrators usually reserve seats near them for witnesses. It will take a little while for everyone to bring in all of their materials and to get set up. While everyone gets settled, the parties should not have conversations with the arbitrators.

Once everyone is ready, the chairperson will call the hearing to order. The arbitrators will identify themselves, and then so will everyone else in attendance. The chair will then swear in all of the parties and witnesses in attendance who will testify. The claimant's side is given the opportunity to make an opening statement, followed by a statement from the respondent's side. These statements provide a brief outline of the issues and what the party will try to prove.

After the opening statement, the claimants present evidence, that is, the details of their case. For example, they present witnesses and introduce any relevant documents. If the arbitrators did not swear a witness in at the beginning of a hearing, they will administer the oath before that person testifies. The other side can cross-examine any witness who testifies, which means they can ask the witness questions. The arbitrators can ask the witness questions, as well. After the claimant's side has completed presenting its case, then it is the respondent's turn.

Each party can object to any evidence being presented before the arbitrators receive it. Following an objection, the arbitrators will decide if they will accept the evidence. You should also know that hearings are digitally-recorded, usually on a device operated by the arbitrators. And, sometimes a party will arrange for a court reporter to be present at the hearing.

Once the parties have offered all witnesses and evidence, they present closing arguments. This gives them an opportunity to summarize what they believe they have proven. Either side can then rebut the other side's closing arguments, if they choose.

Post Hearing

After the hearing, the arbitrators consider the evidence and make a decision on the case—also called rendering an award—typically within 30 days. All of the arbitrators have an equal vote, with the majority deciding the outcome. However, most awards in the FINRA forum are unanimous.

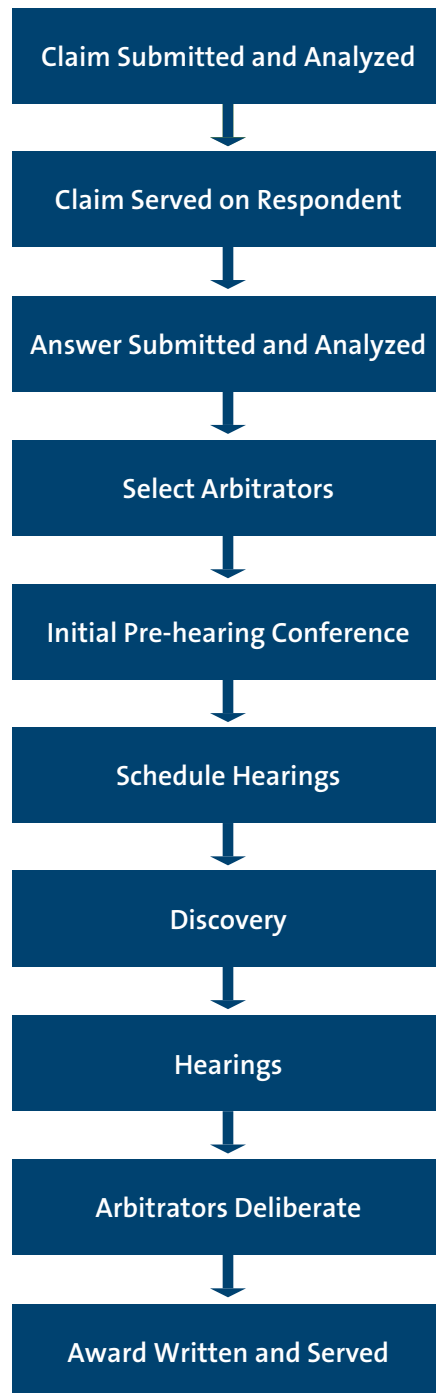
The decision is put in writing and is signed by the arbitrators, and is then sent to the parties. In the award, the arbitrators decide the claims and counterclaims presented by the parties, and will also decide how to allocate FINRA forum fees. Once the panel renders an award, it is legally binding and final unless there is a court challenge, which is described later in this guide. But there is no internal appeals process at FINRA.

If the award requires a respondent firm or a broker to take any action—like making a payment to the claimant—then the respondent must comply and make the payment within 30 days. Firms or brokers who do not comply in a timely manner risk suspension from FINRA. If that happens, then they cannot sell securities to the public until they comply with the award.

A party can challenge an arbitration decision in court by making a motion to vacate or a request of the court to set the award aside as void. These motions must typically be made within 90 days of the award, but a respondent can move to vacate before the payment is due. However, judges only overturn arbitration awards in very limited situations.

You can find all of the arbitration awards from FINRA's forum, as well as from the forums whose arbitration programs FINRA administers, on FINRA website.

Arbitration Case Flow



Mediation

While arbitration is a fast, economical, and fair way to resolve disputes, it is not the only way. Mediation is another way that you can resolve a dispute. If you are involved in an arbitration, you can request or agree to mediation at any time before the arbitrators issue an award. You can also try to mediate a securities dispute before you file an arbitration case. Just remember that mediation is voluntary, so you can only mediate if both sides agree to the process.

A mediator does not act like a judge or an arbitrator. Instead, the mediator is a facilitator who helps the parties negotiate an agreed-upon solution. Mediation is a voluntary process, so either party can decide to stop at any time. However, over 80 percent of mediations end up with a settlement.

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To mediate through FINRA's program, one or both parties will first tell FINRA staff that they are interested in mediation. Then, FINRA will contact the other side to see if they agree to mediate the dispute. However, if you do not want FINRA to tell the other side that you expressed interest in mediation, FINRA staff will see if they are interested in mediation without revealing any interest by the opposing party. FINRA staff members also contact parties in some cases from the arbitration docket to elicit interest in mediation.

If both parties agree to mediation, FINRA's mediation administrators can assist in the selection of a mediator. FINRA provides a list of mediators to choose from along with a disclosure report for each mediator. The parties have full say in who their mediator is and select a mediator that they all agree to work with.

Like arbitrators, mediators are not FINRA employees. FINRA carefully screens them, and they represent a cross-section of diverse people. Many mediators have extensive knowledge of the securities laws and industry practices. And, like arbitrators, they are required to follow ethical standards.

Once the parties agree on a mediator, FINRA staff sends a Mediation Submission Agreement to the parties that indicates the terms for the mediation. All parties, their representatives and the mediator must sign it before the mediation can take place. The purpose of the Mediation Submission Agreement is to protect the parties involved and prevent any misunderstandings about the process. It includes the requirement that everything that takes place in mediation remain confidential. It also shows the mediator's fees and how the parties will divide those fees. FINRA's mediation administrators can work with both parties to find mutually agreeable conditions for the mediation.

Before mediation starts, most mediators will ask the parties to provide a written statement with their side of the story. Mediators indicate up front whether they will share this statement with the other side or keep it confidential.

The mediator may ask you or your representative to indicate what you hope to get out of the process. It is important for you to think about what you want to achieve and what you would like to ask for in order to resolve the case before you go to the mediation. If you think about a range of possible solutions and know your bottom line, it will help you prepare for mediation. If you have an attorney or representative, that person can help you with this process.

FINRA staff will help you schedule the mediation date and coordinate the location.

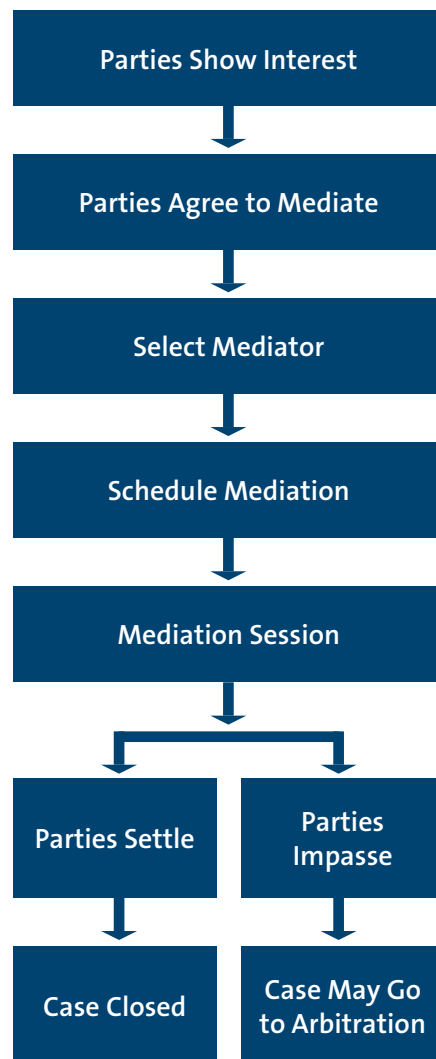
Then the actual mediation session for the parties to work toward a possible settlement occurs. The location of these sessions is selected in the same way as arbitration hearing locations are selected.

Mediation Session Process

The mediator begins the session with introductions. After that, the mediator will make some opening remarks and set the ground rules. Next, the claimant or the claimant's attorney explains the client's position and interests. Then, the respondent's attorney does the same. The parties continue to discuss the issues with the mediator's guidance. At some point, the mediator may meet with each side privately. Sometimes, parties are more open in these separate sessions and the mediator will maintain confidences when asked.

Four out of five times, this process helps the parties to reach a settlement. If the parties agree to settle, their representatives draft an enforceable agreement, which both parties sign. The parties only sign the settlement agreement if they agree with its terms. You can stop the mediation process at any time. If the parties do not reach a settlement, you can still file an arbitration case, or, if one was previously filed, request that it continue.

Mediation Case Flow



Choosing Between Arbitration and Mediation

You might request mediation if you want to quickly resolve a claim. Arbitrations usually take a bit longer than a year to resolve, but most mediations take a little over three months to complete. Arbitration hearings last about four days but mediations are typically resolved in one session that lasts about eight hours. As a result, mediations usually are less costly. Mediation can also be less adversarial and is something to consider if you prefer a less formal setting to resolve disputes. However, choosing to mediate is entirely your decision, and you always have the right to pursue the full arbitration process.

Simply put, you can think of arbitration as presenting your case and having someone else decide it, versus mediation, where someone assists you with negotiating a solution to your case.

Working with an Attorney

Most parties are represented by a lawyer when they are involved in an arbitration or a mediation. Some claimants do not have representatives, but most firms and brokers have attorneys. Representing yourself requires a thorough understanding of the process, whether it is arbitration or mediation, and many skills to successfully navigate each stage of a case. If you think you would find any of the steps challenging or uncomfortable, you may wish to get an attorney to represent you. We realize that you may not know legal counsel with securities arbitration or mediation experience.

As mentioned earlier, FINRA staff does not provide legal advice, and cannot recommend any specific lawyers. However, FINRA can suggest ways to find an attorney.

You can locate and work with legal referral services offered by bar associations to find lawyers who specialize in securities issues. FINRA's website has a link to a nationwide network of legal referral services. It also has information about law schools that offer legal clinics that specialize in securities issues and assist people with smaller claims who are unable to hire a lawyer.

Additional Resources

FINRA Dispute Resolution

www.finra.org/ArbitrationMediation/index.htm

What Disputes Are Eligible for Arbitration?

www.finra.org/ArbitrationMediation/Parties/Overview/ArbitrationProcedures/P009533

Investor Complaint Center

https://apps.finra.org/Investor_Information/Complaints/complaintCenter.asp

Statement of Claim (part of pdf document: "Uniform Forms Guide")

www.finra.org/web/groups/arbitrationmediation/@arbmed/@tools/documents/arbmed/p007954.pdf

FINRA Submission Agreement

www.finra.org/web/groups/arbitrationmediation/@arbmed/@neutrl/documents/arbmed/p009438.pdf

Filing Fee Calculator

apps.finra.org/ArbitrationMediation/ArbFeeCalc/1/

Financial Hardship - Request for Waiver: Online Claim Filing User Guide (p.30):

www.finra.org/web/groups/ArbitrationMediation/@arbmed/@party/documents/ArbMed/P037193.pdf

Expedited Proceedings for Elderly or Seriously Ill Parties

www.finra.org/ArbitrationMediation/Parties/ArbitrationProcess/NoticesToParties/P009636

Dispute Resolution Regional Offices & Hearing Locations

www.finra.org/ArbitrationMediation/Contacts/DRRegionalOfficesHearingLocations/p085899

Awards Database Online

finraawardsonline.finra.org

Notice to Parties – Discovery Rules and Procedures

www.finra.org/ArbitrationMediation/Parties/ArbitrationProcess/NoticesToParties/P009517

Discovery Guide

www.finra.org/web/groups/arbitrationmediation/@arbmed/@arbrul/documents/arbmed/p009420.pdf

Mediation Submission Agreement

www.finra.org/web/groups/arbitrationmediation/@arbmed/@party/documents/arbmed/p018658.pdf

How to Find an Attorney

www.finra.org/ArbitrationMediation/Parties/Overview/HowToFindAnAttorney/index.htm