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## Mission Statement

We publish *The Neutral Corner* to provide arbitrators and mediators with current updates on important rules and procedures within securities dispute resolution. FINRA's dedicated neutrals better serve parties and other participants in the FINRA forum by taking advantage of this valuable learning tool.

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## The 20-Day Exchange: Identification of Expert Witnesses

By Ryan K. Bakhtiari and Greg Curley



**Rule 12514** of the Code of Arbitration Procedure for Customer Disputes requires parties, at least 20 days before the first hearing, to serve on each other copies of documents that they intend to present at the hearing and to identify witnesses they intend to call, including expert witnesses. FINRA staff sends the witness lists to the arbitrators to review prior to a hearing. FINRA asks arbitrators to look for any potential conflicts when reviewing names on the witness lists.

It has come to our attention that some expert witnesses have been designated as witnesses on a 20-day list when in fact they have not actually been retained. This practice has a number of potential adverse consequences. A phantom listing can lead to unnecessary arbitrator recusals. Such practice can also lead counsel to retain a rebuttal expert unnecessarily or perhaps to prepare for the examination of a witness that will never testify at the actual arbitration hearing. Phantom listings can also contribute to the miscalculation of the duration of the hearing and cause the scheduling of witnesses to be more burdensome and difficult than necessary.

The phantom designation of an expert witness in a FINRA arbitration compromises the integrity of the process. We remind parties that best practices dictate that a party only identify and designate expert witnesses that a party has retained. Arbitrators should be aware of this practice. FINRA has updated the [Initial Prehearing Conference Script](#) for arbitrators to remind parties to identify only those expert witnesses they have actually retained. FINRA has also updated the letter that notifies parties of the location of the hearing to remind them of best practices in connection with the designation of expert witnesses.

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### Comments, Feedback and Suggestions

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