

CLIMBING THE ADR NEUTRAL LADDER

A NEXT STEPS GUIDE FOR NEUTRAL OPPORTUNITIES IN NEW YORK CITY

BY: M. SALMAN RAVALA, ESQ. This guide is prepared to assist newly trained neutrals in navigating mediator and arbitrator opportunities in New York City. The opportunities relate primarily to commercial and employment law and are outlined here for information purposes only. Please verify final information directly with the court-annexed ADR program, ADR institution or provider. For updates to this document or to report an inactive weblink, please contact the author at SRavala@lawcrt.com.

FINRA

FINRA has opportunities to serve as both Mediator and Arbitrator in areas serving investors, brokerage firms, and brokers in the securities industry. The Mediation roster is small compared to the Arbitration roster and it is therefore more selective, requiring significant mediator training and experience.

Mediation

Candidates must possess mediator experience and securities knowledge or expertise. One of the requirements for FINRA mediators is that they have significant, relevant mediation experience and subject matter knowledge in securities. The program requires pre-qualification and then completion of an application. For the application and more information, see: <https://www.finra.org/arbitration-and-mediation/become-a-mediator>.

FINRA prefers multi-day mediator training that includes role-playing techniques; certifications or membership on other mediator rosters; relevant experience as a mediator in ten to fifteen mediations in business related disputes; and four letters of reference to be supplied with the mediator's application and from parties or attorneys who have mediated with the applicant and can attest to the applicant's skills and experience as a mediator.

Arbitration

FINRA has two classifications of arbitrators: public and non-public. Public arbitrators are select individuals who are not required to have knowledge of the securities industry. Non-public arbitrators have a more extensive securities industry background. Unless waived by FINRA at its discretion, the program requires candidates to have a minimum of five years of paid work experience—inside or outside of the securities industry. For the application and more information, see: <https://www.finra.org/arbitration-and-mediation/apply-now>.

Background checks and employment verification will be conducted as part of the application review process. Expect some back and forth to clarify your entries in the application

and a final approval between 60-90 days of submission of your application. Upon approval, Arbitrators must attend FINRA specific arbitrator training and pass an exam.

NYS PART 137 FEE DISPUTE PANEL

Mediation

Neutrals on the Part 137 panel generally serve as arbitrators but may also be called to serve as mediators.

Arbitration

Administrators manage local programs in various Districts across New York State. For New York and Bronx Counties, the 1st and 12th Districts, the Administrator is NYCLA. For a list of other Districts and to contact their Administrators, see https://www.nycourts.gov/admin/feedispute/local_programs.shtml.

There are two components to the Part 137 training. The first is to watch an online orientation video and the second is to obtain arbitration training offered by the NYS Office of ADR. No online orientation is required if the candidate's arbitration training is the actual Part 137 Fee Dispute Panel specific arbitrator training, which is six hours long. While other arbitration training may qualify on a case by case basis in lieu of the Part 137 specific training, the Part 137 specific arbitration training is highly recommended as it reviews core principles and comes with a Part 137 training book which provides sample forms and essential guidance on issues that regularly come up during Part 137 arbitrations. For more information, see <http://ww2.nycourts.gov/admin/feedispute/faqs.shtml#arbitrator>.

For a list of upcoming trainings, see the NYCLA calendar of events or see New York State ADR Training website at <https://www.nycourts.gov/ip/adr/Training.shtml>. You may contact NYCLA Fee Dispute Program Administrator, Elizabeth Biberman, at Phone: 212-267-6646, ext. 207 or E-mail: EBiberman@nycla.org.

Once training is completed, candidates must submit a bio; resume; and Oath of Arbitrator. A complete submission packet

should be sent to the Fee Dispute Program Administrator in the candidate's District for formal submission to the New York State Office of Court Administration Attorney Client Fee Dispute Program Board of Governors for approval.

CIVIL COURT OF THE CITY OF NEW YORK

Mediation

Mediators are experienced volunteers who have training in civil court dispute resolution. Candidates, including lawyers, are required to obtain formal mediation training. Mediation training can be obtained via the Peace Institute. To become certified, candidates must complete the five-day formal training; a three-month, once a week, apprenticeship; pass a video course; and obtain an additional one-day civil court training, which is also provided by the Peace Institute. A six-week mentorship at the Civil Court is also required. Mediation takes place at Court or at a local community dispute resolution center, depending on where the action is brought. For more information, see: For more information, see <https://www.nycourts.gov/ip/adr/NYCCivil.shtml>.

For a list of upcoming trainings, see <http://nypeace.org/basic-mediation-training/>. You may contact Mediation Services Coordinator, Eddy Valdez, at Phone: 646- 386-5417 or E-mail: mediationcivil@courts.state.ny.us.

Arbitration

Not Applicable

NYS SMALL CLAIMS PART

Mediation

Neutrals on the Small Claims Part panel generally serve as arbitrators but may also be called to serve as mediators.

Arbitration

The only court-annexed arbitration program in New York State Courts is the Small Claims Part Arbitration, which is cited by many as an excellent way to get actual arbitrator training. The program runs throughout the five boroughs of New York City. The scope is limited to small claims cases under \$5000.00.

To become an arbitrator and hear cases before the Small Claims Part, a candidate must be licensed to practice law in the State of New York for five or more years; complete Small Claims court arbitration training, which is two hours long; and observe at least two arbitrations in the program. Once training and observations are completed, the candidate will be sworn in and may choose the county in which he or she wishes to serve as an arbitrator. For more information, see: https://www.nycourts.gov/courts/nyc/smallclaims/sc_volunteer_opps.shtml.

For a list of upcoming trainings, see the New York State ADR Training website at <https://www.nycourts.gov/ip/adr/Training.shtml>. You may also contact New York County Small Claims Part administrator, Ananias Grajales, at Phone: 646.386.5730 or E-mail:

agrajale@nycourts.gov.

NY COUNTY COMMERCIAL DIVISION

Mediation

Cases are referred to the Program by Order of reference of the assigned Commercial Division Justice or authorized non-Division Justice. Mediators provide three hours of actual mediation at no charge to the parties but are paid at the rate of \$400.00 per hour thereafter.

Candidates must have at least ten years of experience as a practitioner of commercial law and have the requisite forty hours of Part 146 approved mediation training, with at least twenty-four hours in basic mediation training and at least sixteen hours in commercial mediation techniques. Training in arbitration does not suffice. Prior experience as a mediator is not required, but is strongly preferred. Candidates must submit a completed application, resume; cover letter; and satisfactorily complete an interview in order to join the roster. Candidates that are added to the roster are required to be available to handle at least three mediations each year for the Commercial Division. Candidates are also required to attend at least six hours of additional training in commercial law every two years. For the application or more information, see:

<https://www.nycourts.gov/courts/ComDiv/NY/PDFs/ADR-NeutralAp.pdf>.

A recommended training is NYSBA's 3-day commercial mediation training but for a list of upcoming trainings, see the New York State ADR Training website at <https://www.nycourts.gov/ip/adr/Training.shtml>. You may contact New York County, Commercial Division ADR Program administrator, Simone Abrams, at Phone: 212-256-7986 or E-mail: sabrams@nycourts.gov.

Arbitration

Not Applicable

U.S. DISTRICT COURT, SDNY & EDNY

Mediation

Any individual may apply to serve as a mediator if he or she satisfies the following criteria, as outlined in the Mediation Program Procedure: 1) member in good standing of any US District Court; 2) with substantial exposure to mediation in federal court or mediation in other settings; 3) provides letter of reference from a party, training provider, judge, court administrator, or ADR institution that addresses the applicant's mediation process skills including their ability to listen well, facilitate communication, and assist with settlement discussions; and 4) is willing to participate in training, mentorship programs, and ongoing assessment. Those that join the roster are required to be available to handle at least two mediations.

Mediators in the SDNY serve without compensation but qualify for *pro bono* service hours. For the application and more information, see:

<http://www.nysd.uscourts.gov/docs/mediation/Mediation%20Program%20Volunteer%20Application/Mediation%20Program%20Volunteer%20Application.5.25.17.pdf>.

Mediators in the EDNY provide four hours of actual mediation at no charge but are paid at the rate of \$300.00 per hour thereafter. For the application and more information, see: <https://img.nyed.uscourts.gov/files/forms/adrapplicationsandycases.pdf>.

For those interested, observation of an actual SDNY or EDNY mediation is permissible upon identifying a mediator that will allow candidates to sit-in on the mediation. Follow rule 6 (g) of the SDNY Mediation Program Procedures which requires consent of all parties, consent of all attorneys, consent of mediator, and written notice by mediator of the observer to the Mediation Office. Observers must sign the Mediation Confidentiality Agreement.

Both the SDNY and EDNY also have a Pro Bono Mediation Counsel program for *pro se* clients (also referred to as the Mediation Advocacy Program or MAP) which offers a federal employment mediation training free of charge. This is a great way to meet SDNY & EDNY mediators, attend networking events, and get a candidates foot in the door.

You may contact SDNY Mediation Office, Rebecca Price, at Phone: 212-805-0643 or E-mail: mediationoffice@nysd.uscourts.gov. You may contact EDNY ADR Administrator, Robyn Weinstein, at Phone: 718-613-2578 or E-mail: Robyn_Weinstein@nyed.uscourts.gov.

Arbitration

Arbitration in the EDNY is governed by Local Rule 83.7 and is limited to cases under \$150,000.00. Candidates must complete an application; submit a resume; and one letter of reference from a person with direct knowledge of the applicant's experience. For the application and more information, see: <https://www.nyed.uscourts.gov/arbitration>.

You may contact EDNY ADR Administrator, Robyn Weinstein, at Phone: 718-613-2578 or E-mail: Robyn_Weinstein@nyed.uscourts.gov.

AAA

AAA maintains a roster of both mediators and arbitrators. AAA administered disputes typically arise out of contractual conflicts or business disagreements, but stem from a wide range of industries. The AAA only recruits individuals who have expertise in areas that align with the types of cases the AAA administers, because this ensures the candidates are appealing to parties seeking a AAA administered arbitration or mediation.

Mediation

Candidates must have at least ten years of senior level experience in business, industry or profession; an education degree or professional license appropriate to the candidate's

field of expertise; and maintain membership in at least one business, trade, or professional association. The candidate must also complete at least twenty-four hours of training in mediation process skills; and have served as mediator on at least five mediation cases within the last three calendar years.

For the application or more information, see: <https://www.adr.org/aaa-panel>.

A recommended training is AAA's 4-day Mediator Essentials course by Harold Coleman and/or Neil Carmichael but for a list of upcoming trainings, see the AAA's Education Services website at <https://www.adreducation.org/courses>. You may contact AAA, VP of Commercial Division, Jeffrey T. Zaino, at Phone: 212-484-3224 or E-mail: zainoj@adr.org.

Arbitration

Candidates must have at least fifteen years of senior level experience in business, industry or profession; an education degree or professional license appropriate to the candidate's field of expertise; and maintain membership in at least one business, trade, or professional association. Candidate must submit a resume and cover letter to their local AAA office. Upon receipt of the candidate's application, AAA schedules an in-person meeting or a teleconference with the candidate. Thereafter, the candidate is required to submit to the AAA a nomination letter and three letters of reference.

For the application or more information, see: <https://www.adr.org/aaa-panel>.

A recommended training is NYSBA's 3-day Commercial Arbitration Training by Charlie Moxley, Lea Haber Kuck, and Edna Sussman, and AAA's Arbitration Fundamentals & Best Practices for New AAA Arbitrators course by Edna Sussman but for a list of upcoming trainings, see the AAA's Education Services website at <https://www.adreducation.org/courses>. You may contact AAA, VP of Commercial Division, Jeffrey T. Zaino, at Phone: 212-484-3224 or E-mail: zainoj@adr.org.

CPR

CPR maintains a roster of both mediators and arbitrators. To become a neutral with CPR, candidates must submit a completed application; resume; two letters of references; and a processing fee of \$150.00, plus \$50.00 for every specialty panel the candidate is applying for. CPR will consider a candidate's education, commercial experience, ADR training and experience, substantive experience in specific fields, and references, in order to determine whether the candidate will be awarded a position on the CPR neutral roster. For the application and more information, see: <https://www.cpradr.org/neutrals/become-a-neutral>.

You may contact CPR Corporate Secretary, Helena Tavares Erickson, at Phone: 646-753-8237 or E-mail: herickson@cpradr.org.