



# SECURITIES ARBITRATION ALERT

**SECURITIES ARBITRATION ALERT 2021-15 (4/28/21)**

*George H. Friedman, Editor-in-Chief*

## **SPECIAL ISSUE**

*A MESSAGE FROM THE EDITOR: The COVID-19 pandemic hit all Americans in many ways, and the legal and alternative dispute resolution systems were no exceptions. About a year ago the Alert surveyed the major national ADR institutions to gather information on how they were coping. With the vaccination program well under way, we thought it was a good time to check back in, with a focus on the future.*

### **COVID-19'S CONTINUED IMPACT ON ADR PROVIDERS. THE KEY INSTITUTIONS UPDATE US ON PLANS FOR THE FUTURE.**

Hard to believe but it's been over a year since the major ADR organizations participated collectively in a survey that resulted in our blog post, [Coronavirus and the ADR Providers – What You Need to Know](#) (Mar. 25, 2020). As we hopefully progress toward the pandemic's resolution, we've checked back in to focus on where things stand today and plans for the future. Sharing information with the *Alert* this time around are leaders from the American Arbitration Association-ICDR ("AAA"), the International Institute for Conflict Prevention & Resolution, Inc. ("CPR"), FINRA Dispute Resolution Services ("FINRA DRS"), and JAMS: AAA – **Christine L. Newhall**, Senior Vice President; CPR – **Helena Tavares Erickson**, SVP, Dispute Resolution Services; FINRA Dispute Resolution Services – **Rick Berry**, Executive Vice President and Director of Arbitration; and JAMS – **Kimberly Taylor**, President. We've organized the responses – lightly edited for style – by subject.

#### *Administrative Offices*

#### **Are your administrative offices open and staffed?**

**AAA:** Yes. We have resumed limited on-site operations with strict safety protocols in place, and where state and local guidelines permit either regular or business essential activities. Office locations where on-site work is being performed include the following: New York City (3 offices), Atlanta, Boston, Buffalo, Charlotte (NC), Chicago, Dallas, Detroit, Fresno, Houston, Los Angeles, Miami (FL), Minneapolis, Philadelphia, Johnston

(RI), San Francisco, Somerset (NJ), Voorhees (NJ), and Washington DC (21 out of 28 offices).

**CPR:** Our office is not physically open to the public but we have been fully functional remotely since the start of the pandemic. Cases can continue to be filed easily via email. We do recommend payment by credit card or wire to expedite the process, as checks are collected weekly.

**FINRA DRS:** We have one FINRA DRS employee working onsite in Boca Raton. All other staff are working remotely.

**JAMS:** Administrative offices are opened and staffed in markets where in-person proceedings are taking place. Currently, the locations in the chart appearing below in “Hearings” with onsite offerings also have administrators working onsite:

**Roughly what percentage of staff are telecommuting?**

**AAA:** Approximately 84%.

**CPR:** 100%. Our staff has been able to seamlessly transition into a fully remote system, allowing us to focus on the health and safety of our staff without causing any disruptions in case administration.

**FINRA DRS:** 99%.

**JAMS:** Currently, the majority of our staff are telecommuting, although we provide onsite support for those ADR hearings that are going forward in person. We are following social distancing and other safety protocols, including wearing face coverings at all times.

**Describe any plans to resume in-person office operations.**

**AAA:** The AAA plans to fully resume in-person operations in phases based on our ability to do so safely, in conformance with state and local guidelines, and employee readiness and ability to return to on-site work. We are continuously evaluating the most effective way to accomplish this goal.

**CPR:** Our physical office is scheduled to reopen in **September 2021**.

**FINRA DRS:** No date has been set for resumption of in-person office operations. We are data-driven versus date-driven.

**JAMS:** JAMS is taking a phased and gradual approach to resuming in-person office operations, in accordance with local government regulations and guidance issued by the Centers for Disease Control, and to allow us to implement proper health and safety protocols in our resolution centers.

**Do you see telecommuting continuing at least in part?**

**AAA:** Occasional telework was in place pre-pandemic, and we are evaluating whether to modify or expand telework post-pandemic.

**CPR:** Yes. We appreciate the flexibility and expanded reach that remote platforms provide.

**FINRA DRS:** Yes.

**JAMS:** Yes. We anticipate continued flexibility with our workforce, including implementing hybrid schedules. We are in the process of developing guidelines for remote and hybrid work.

*Hearings*

**Are in-person hearings being held? If not, please indicate the date through which in-person hearings are cancelled.**

**AAA:** AAA/ICDR hearing rooms are currently closed through **May 15, 2021**; however, hearing rooms in certain offices are available on a case by case basis prior to this date.

**CPR:** Some of our neutrals are conducting in-person hearings and mediations. Those who are not ready to proceed in person can continue to take advantage of *CPR's Annotated Model Procedural Order for Remote Video Arbitration Proceedings*. While we ourselves do not have hearing facilities, we have arrangements with various organizations to facilitate identifying and using hearing space.

**FINRA DRS:** FINRA DRS has administratively postponed hearings set through **July 2, 2021**. If all parties and arbitrators agree to proceed in-person based on their own assessment of public health conditions, the case may proceed provided that the in-person hearing participants comply with all applicable state and local orders related to the COVID-19 pandemic. FINRA DRS will waive postponement fees when parties stipulate to postpone in-person hearing dates scheduled through **September 30, 2021**.

**JAMS:** The status of in-person hearings across the markets that JAMS serves is contingent on local guidelines and regulations in each region. The chart below outlines the status for in-person and virtual hearings for JAMS' locations.

<b>Location</b>	<b>Service Status</b>
California (all locations)	Virtual and onsite offering, excluding Sacramento (virtual only)
Atlanta, Georgia	Virtual and onsite offering
Boston, Massachusetts	Virtual and onsite offering
Chicago, Illinois	Virtual and onsite offering
Dallas, Texas	Virtual and onsite offering
Detroit, Michigan	Virtual and onsite offering
Washington, D.C.	Virtual and onsite offering
Las Vegas, Nevada	Virtual and onsite offering
Miami, Florida	Virtual and onsite offering
Minneapolis, Minnesota	Virtual and onsite offering
New York, New York	Virtual and onsite offering
Philadelphia, Pennsylvania	Virtual and onsite offering
St. Louis, Missouri	Virtual and onsite offering
Seattle, Washington	Virtual and onsite offering

**Describe any plans to resume in-person hearings.**

**AAA:** The AAA has a plan in place for all offices that have hearing rooms available to maintain the safety of all that may attend hearings. This includes safety protocols and procedures to be followed by all hearing attendees and staff. Hearings may also take a hybrid approach, where some arbitrators, parties, representatives, and others appear in person while others participate virtually. The AAA-ICDR is prepared to assist with these alternative hearing arrangements.

**CPR:** While we do not provide hearing space, we continue to be available to support our administered cases in any way they feel comfortable proceeding and can refer parties to companies providing remote video support services if needed. Parties and neutrals that are ready to resume in-person hearings can do so.

**FINRA DRS:** We are monitoring each of our [69 hearing locations](#) across the United States to assess when public health conditions would permit a general resumption of in-person arbitration and mediation proceedings in the location. FINRA DRS has established a process for determining when local public health conditions could permit in-person hearings to resume in a location, and has developed safety protocols for in-person hearings. With the increasing availability of COVID vaccines, FINRA Dispute Resolution Services is actively reviewing conditions in its hearing locations and expects to resume in-person hearings in at least some locations in the near future. The safety and well-being of parties, arbitrators, witnesses and other participants remains of paramount importance to us.

**JAMS:** JAMS plans to continue the phased and gradual reopening of JAMS Resolution Centers in accordance with local government regulations and guidance issued by the Centers for Disease Control to meet all necessary precautions and safety measures. JAMS will continue to offer virtual proceedings for those who prefer this option. As we begin to resume more in-person hearings, we'll also be offering hybrid options, which allows for more flexibility in terms of location and scheduling.

### *Neutrals*

**Assuming in-person hearings resume in some cities, will arbitrators be permitted to participate virtually if they are not yet comfortable doing so in person?**

**AAA:** Each case will be handled in accordance with the parties' and arbitrator(s)' needs and if there is a need to have an arbitrator participate virtually with parties in the hearing room, all these arrangements will be worked on a per case basis.

**CPR:** This will be agreed between the parties and the neutrals.

**FINRA DRS:** Arbitrators, absent the agreement of the parties, will be expected to appear in-person once we resume in person hearings.

**JAMS:** Yes. Part of our commitment to providing leading ADR services includes continued flexibility with in-person and virtual hearings that prioritizes the safety and comfort of all parties involved, including JAMS neutrals.

### *The Future*

**What pandemic-caused changes do you see carrying over when things return to normal? In other words, describe the "new normal."**

**AAA:** As we transition to a post-pandemic environment, we anticipate that strategies and solutions implemented during the pandemic may continue, such as an increased reliance on technology to facilitate remote capabilities for some or all of traditional ADR processes (e.g., virtual preliminary and administrative conferences to save time and money, hybrid evidentiary hearings where some attendees are virtual and others attend in person, etc.), expansion of remote workforces, and new types of disputes that will arise from a post-pandemic economy.

**CPR:** We foresee that many prehearing conferences and potentially post-hearing arguments will be conducted remotely via videoconference. End user clients (i.e. in-house) have indicated they may default to remote mediations as it allows them to participate more fully. Based on these comments, CPR continues to innovate solutions, such as our partnership with FTI and Legal Innovators to offer the Integrated Resolution Program, a fixed fee program that brings together mediation services, a forensic valuation

(from FTI) and legal analysis of the matter for the mediator (from LI) to assist the parties and mediator in a cost effective resolution of the dispute.

**FINRA DRS:** We will continue to offer Zoom arbitration and mediation as one option (in addition to in-person and telephonic proceedings) available to participants.

**JAMS:** The transition to virtual proceedings has offered a variety of benefits, including less travel and flexibility with time and scheduling. ADR is already a cost effective approach to dispute resolution, and this reduces those costs even more. While our neutrals were experienced in virtual ADR at the beginning of the pandemic, this has accelerated the adoption for all neutrals, as well as attorneys and their clients who may have been skeptical. Our success rate with helping parties reach resolutions and settlements has been unwavering since transitioning to virtual ADR, and we absolutely believe it is here to stay. In the “new normal,” we expect that there will continue to be a virtual component to many proceedings, whether they are fully virtual to accommodate parties across time zones, or a hybrid of in-person and virtual to accommodate busy schedules.

### *General*

**Is there a signup area to get updates? If yes, please give the URL(s).**

**AAA:** Yes. Visit our Website, [www.adr.org](http://www.adr.org).

**CPR:** Yes. Visit our Website, [www.cpradr.org](http://www.cpradr.org), and “[File a Case](#)” for any specifics on filing cases. To sign up for CPR’s general mailing list visit <https://www.cpradr.org/subscription-center>.

**FINRA DRS:** Yes. Visit our FINRA DRS Website at: <https://www.finra.org/rules-guidance/key-topics/covid-19/hearings/impact-on-arbitration-mediation>.

**JAMS:** Yes. Visit [https://www.jamsadr.com/news/2020/coronavirus-\(covid-19\)-advisory-for-jams-visitors#updates](https://www.jamsadr.com/news/2020/coronavirus-(covid-19)-advisory-for-jams-visitors#updates) and <https://www.jamsadr.com/blog/category/virtual-remote-adr>.

**Anything else you would like our readers to know?**

**AAA:** Not at this time.

**CPR:** We are and will continue to be fully functional. In addition to administering an increased caseload during the pandemic, we also have been busy generating innovative work product to guide participants in our services: we have released an *Annotated Model Procedural Order for Remote Video Proceedings*, a *Model Concurrent Mediation Arbitration Clause*, a *Model Clause Allocating Responsibility for Jurisdictional Issues*,

*Fast Track Administered Arbitration Rules (domestic and international), Employment Administered Arbitration Rules and an updated version of our Employment-Related Mass Claims Protocol – all available on our Website [www.cpradr.org](http://www.cpradr.org).*

**FINRA DRS:** We have Zoom stats on our webpage:

*Virtual Arbitration Hearing Statistics:* <https://www.finra.org/arbitration-mediation/dispute-resolution-statistics#virtual> and *Result of Customer Claimant Arbitration Award Cases--Awards on the Merits by Zoom and In Person:* <https://www.finra.org/arbitration-mediation/dispute-resolution-statistics#resultscustomerclaimantheating>.

**JAMS:** Over the past year, JAMS and our neutrals have not only risen to the challenge of moving to fully virtual proceedings, but we have also invested tremendously to ensure that the transition has been seamless and that the level of service provided continues at the quality attorneys and their clients expect from JAMS. Each remote case management team includes a JAMS Virtual Moderator to greet parties and provide tech support throughout the process. This assistance also includes a Virtual Tech Support Hotline. Last year, JAMS also rolled out JAMS Access, an online case management platform, that is accessible 24/7 for parties to access files and safely share documents on a centralized platform. JAMS neutrals have also received ongoing, comprehensive training on how to optimize the use of all virtual platforms.

### **Postscript**

Just as we were finalizing this *Alert* came word that PIABA had sent to FINRA an **April 26 letter** urging the authority to resume in-person hearings – currently administratively postponed nationally through **July 2**. The letter, which was announced in a [Press Release](#), also covered other issues related to the current suspension of in-person hearings, such as PIABA’s research showing that courts and other ADR providers have at least partially resumed in-person hearings, or plan to do so soon. The letter concludes: “FINRA needs to address the challenges that have been tackled by courts and other arbitration forums across the country to allow the dispute resolution process to move forward in-person. It is not an easy task, but if FINRA doesn’t move forward, it will ensure that investors will continue to languish without justice.” For more, see the **April 27 InvestmentNews story**, [FINRA Suspension of In-person Arb Hearings Harms Investors, PIABA Says](#).

*(ed: \*We thank these leaders for helping us keep our mutual constituents informed and up-to-date! \*\*We look forward to our next survey, which we’ll title in advance, The COVID-19 Pandemic is Thankfully Behind Us: Which ADR Changes will be Lasting? \*\*\*We will track whether FINRA responds to PIABA, which we are certain it will. We’ll also look for FINRA’s next update to its July 2 “administratively postponed” date, which typically happens the first week of the month.)*

[return to top](#)

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