

July 21, 2006

I am writing to comment on the NASD's proposed amendments to Rule 10322 of the NASD Code of Arbitration Procedure (SR-NASD-2005-079). I am an attorney in private practice in McLean, Virginia and the majority of my practice involves representing public customers in NASD arbitration.

I support the amendments to the Rule which require subpoenas to be issued by arbitrators rather than attorneys. This amendment allows all parties to review the subpoena prior to its issuance and note objections to the subpoena or its scope to the arbitrator prior to its issuance.

I strongly disagree with the provision, however, which would require parties who did not request issuance of the subpoena to pay the party that did request issuance for copies of documents produced pursuant to the subpoena. In my experience, Respondents in customer cases (Broker-Dealers and Registered Representatives) typically issue multiple broad subpoenas to other broker-dealers with whom the customer has had contact, resulting in the production of voluminous amounts of documents. Respondents issue the subpoenas with the intent of using the documents at the hearing, and Claimant's counsel therefore must request and review the documents beforehand to properly represent his client. Requiring a Claimant (who often is in a difficult financial position as a result of the Respondents' actions) to incur significant copy costs as a result of Respondents' decision to issue multiple broad subpoenas would be fundamentally unfair. If a party chooses to issue subpoenas, it should be responsible for paying the costs of sending a copy to the opposing party.

Additionally, a requirement of payment for copy costs would further delay the production of copies of subpoenaed documents to all parties. This delay would be especially prejudicial if the subpoenas are issued close to the hearing date.

For these reasons I oppose the inclusion of the final sentence in the proposed Rule 10322(e).

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