FINRA Investor Education FOUNDATION

Northwestern Law

Guidelines for Establishing a Law School Investor Advocacy Clinic

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Foreword

Several law schools have established securities advocacy clinics.

Such a program fills a gap for schools with no separate course in securities law, and provides an experiential component for schools already offering courses in that area of law. In addition, it enables schools to teach students about arbitration and mediation in a live client setting. Such a program will, therefore, enrich the curriculum in these important areas of the law, make students' educational experience more closely aligned with the kind of work they will do on graduation from law school, and provide a way in which the law school can contribute to the needs of the community.

The purpose of these Guidelines is to provide practical information to law schools interested in establishing such a program based on the actual experience of Northwestern University School of Law and other schools already operating such clinics.

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Messers. Tenenbaum and Morsch are members of the faculty at Northwestern. Professor Tenenbaum is the founder and director of Northwestern's Investor Protection Center. Professor Morsch is an experienced commercial arbitrator and the founder and director of Northwestern's Small Business Opportunity Center (providing legal assistance to small business owners, entrepreneurs and nonprofit organizations).

These Guidelines were made possible by a grant from the FINRA Investor Education Foundation. The Foundation, established in 2003, supports innovative research and educational projects that give investors the tools and information they need to better understand markets and the basic principles of saving and investing. For further information about the Foundation, visit *www.FINRAFoundation.org*.

The authors would like to thank FINRA senior staff members John Gannon, Kenneth Andrichik, Christine Kieffer and Gena Lai, and clinic directors past and present, including: Barbara Black (Cincinnati), Jill Gross (Pace), Alice Stewart (Duquesne) and William Jacobson (Cornell) for their assistance and encouragement. David Ruder, also a member of the Northwestern Law faculty and a former Dean of the Law School, has provided valuable suggestions to the authors. Mr. Ruder served as Chairman of the U.S. Securities and Exchange Commission from 1987 to 1989, and Chairman of the NASD Arbitration Policy Task Force. The report of the task force, published in January 1996, represented the most comprehensive revamping of securities industry arbitration since it was established to resolved investor disputes more that a century ago.

Updated as of December 2013. 13_0488.1

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Introduction

Contractual relationships between investors and broker-dealers generally provide for arbitration of disputes regarding investor accounts. For many years, arbitrations were administered by the National Association of Securities Dealers (NASD) and the New York Stock Exchange (NYSE). In July 2007, the NASD and the member regulation, enforcement and arbitration functions of the NYSE were consolidated to form the Financial Industry Regulatory Authority (FINRA), a nonprofit organization with its own independent board of directors. FINRA, through FINRA Dispute Resolution, now administers the arbitration and mediation programs previously handled by the NASD and NYSE as well as other stock exchanges.

FINRA has adopted a comprehensive Code of Arbitration Procedure, including a Mediation Code, which governs filing and pre-hearing procedures, fees, the appointment of arbitrators and mediators, the conduct of hearings and the issuance of awards. The procedures are intended to resolve investor claims fairly and in a prompt and inexpensive manner.

Unfortunately, investors with relatively small claims, *e.g.*, less than $100,000, find it difficult to identify lawyers willing to represent them or to pay the fees of lawyers whom they are able to identify.

To fill this gap, as well as enhance the legal educational experience, a number of law schools have established securities advocacy clinics. In the academic year 2007-2008 such programs were being offered at the following schools.[1]

- Albany
- Brooklyn
- Cardozo
- Cornell
- Duquesne
- Fordham
- Hofstra
- New York Law
- Northwestern
- Pace
- Syracuse
- St. John's
- University of San Francisco

Pace Law School established the first such clinic in 1997. Arthur Levitt, then chairman of the Securities and Exchange Commission, had encouraged law schools in the Northeast to establish clinical programs that could provide legal assistance to small investors. Professor Barbara Black, then teaching corporate and securities law at Pace, took up the challenge, and an Investors' Rights Clinic was added to Pace's other clinical programs. Pace describes this first of its kind program as follows:

> Under faculty supervision, student attorneys handle mediations and arbitrations before the FINRA Dispute Resolution on behalf of small investors of modest means who have arbitrable disputes with their securities brokers. Students will work on critical lawyering skills including client interviewing and counseling, fact investigation, claim evaluation, participating in discovery, legal research, preparation of legal memoranda, and possibly working with experts who serve as financial consultants to SAC, conducting an arbitration or mediation, or negotiating a settlement. Student attorney teams meet regularly and frequently with each other and with the clinical faculty throughout the year. Students may also participate in investor education programs, draft comment letters on SEC or FINRA rule proposals, and publish scholarly position papers as part of the investor justice component of the clinic.

1 See detailed listing of current clinical programs in Appendix A.

Fordham University School of Law, which formed its Securities Arbitration Clinic shortly after Pace,[2] describes its program as follows:

> This clinic allows students to represent clients in securities arbitrations at the Financial Industry Regulatory Authority (FINRA). FINRA was created in July 2007 through the consolidation of National Association of Securities Dealers (NASD) and the member regulation, enforcement and arbitration functions of the New York Stock Exchange (NYSE). Students are given the opportunity to advocate for clients at arbitrations, negotiate with opposing counsel, participate in mediations, prepare witnesses to testify, including expert witnesses, interview prospective clients, analyze stockholder and investment documents, counsel clients, draft legal documents and develop their advocacy skills while deepening their substantive knowledge of securities laws and becoming acquainted with the functioning of the securities industry.

In late 2004, the Bluhm Legal Clinic at Northwestern University School of Law rectified the lack of a securities advocacy clinic in the Midwest. With a grant from FINRA Investor Education Foundation, Northwestern set up an advisory board and made preparations for its new Investor Protection Clinic to open for business in September 2005. Experienced securities litigation specialist J. Samuel Tenenbaum, who was already directing a complex litigation clinic at Northwestern, was appointed Director, and a class of second and third year students joined Professor Tenenbaum in the clinic.

In Northwestern's Investor Protection Center, students conduct client interviews, participate in mediations, file arbitration demands, and take cases to hearing. This is done with supervisor presence and approval, to ensure that students have appropriate guidance and direction as they embark into the field of securities arbitration.

The purpose of these Guidelines is to provide information regarding Northwestern's start-up experiences, data regarding other securities advocacy clinics, and sample forms and sources of support that will be of assistance to law schools that are considering the establishment of such a program.

2 Fordham and Brooklyn opened their clinics in 1998, and Buffalo became the fourth securities advocacy clinic in 1999. The Buffalo clinic is currently inactive.

Section 1: Getting Started

Schools that are already operating live-client clinics are familiar with the start-up requirements. The most important of these are set forth in summary fashion in the paragraphs that follow, with more detailed information in other sections of the Guidelines and in the Appendices.

Identifying a Clinic Director or Instructor

At Northwestern and other schools with securities advocacy programs, the clinic Directors are full-time, residential faculty members, some tenured and some on short-term, renewable appointments. In a few cases, there is a second instructor in the clinic who may be another faculty member helping out on a part time basis, a visiting professor from another law school or an attorney with an active outside practice. Faculty members who direct securities advocacy clinics, like Professor Black (while at Pace) and Professor Tenenbaum at Northwestern, frequently teach another clinical section or a doctrinal or clinical course such as Corporations, Securities Regulation or Litigation.

If there is sufficient funding and strong student interest in the program, a full-time, residential Director is obviously desirable. Theoretically, a clinical program could be directed by an adjunct instructor on a schedule that matches student demand with the adjunct's other professional obligations. In fact, the live-client component could be operated off-campus if the instructor's office is near the law school, as long as the instructor is available to meet with students as a group on the law school campus at least once a week. No law school has yet done so on a permanent basis.

If the program is heavily doctrinal or traditional in nature with few live clients, the instructor should be familiar with corporate and securities law. However, if the bulk of the work is representing real clients, with real claims, it is probably more important that the instructor has experience handling arbitration, mediation or litigation. Experience in each area of the law is, of course, ideal.

Developing the syllabus or course description

Ideally, law schools will establish programs in which the primary focus is the provision of legal assistance to real clients. In such a case, the syllabus will be relatively easy to develop since live-client programs typically do not involve extensive outside readings, research assignments or examinations. In fact, the regular weekly meeting of the clinical instructor and students will most often involve a roundtable discussion by the group of their clients and client-related events during the preceding week, although early sessions should address (a) how the clinic functions and what students are expected to learn, (b) a general introduction to alternative dispute resolution, (c) the FINRA Code of Arbitration Procedure, and (d) what kind of investor claims are most likely to succeed. At Northwestern, these subjects are normally presented by the Director, a visiting plaintiff's securities lawyer and a visiting financial investments expert during the first three weeks of the semester.

If the program is more doctrinal in nature, or involves simulated interviews or hearings, or pursues other forms of advocacy with relatively few live clients, the syllabus will include a natural progression of research and reading assignments, visiting experts, student exercises, and drafting assignments similar to those encountered in a normal law school seminar.

An excellent syllabus from Pace Law School for the two semesters of academic year 2007-2008, which combines doctrinal instruction with skills training, appears in Appendix B. Information regarding credit hours, pre-requisites, grading, and the student enrollment process is set forth in more detail in Section 5, Student Participation.

There is no single textbook covering securities arbitration issues directed toward student clinical programs. However, Professor William Jacobson, Director of the Cornell Securities Law Clinic, is developing a substantive clinical text for securities arbitration clinics, which should be ready by the 2009-2010 academic year.

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Encouraging student participation

The success of the program depends to a large extent on student demand. Normal enrollment would be 6-8 students per instructor. An effort should be made to publicize the program, in the weeks preceding registration, on the law school website or at a special workshop session at which interested students are given an opportunity to ask questions and obtain additional information.

Since a live-client program could require students to participate in daytime arbitration and mediation sessions, it may be difficult to offer it to evening division students, although there are clinics that allow such students to apply for enrollment if they can convince the Director that they will be available to handle a daytime hearing if and when such a hearing is scheduled. An alternative for evening division students is to work on hypothetical arbitrations along with other skills-enhancing projects like the drafting of amicus briefs, the preparation of statements on proposed SEC or state regulatory rule making, and community outreach activities. In fact, several programs (*e.g.*, Cornell) expect full-time day students to undertake projects of this type along with direct client representation.

Clientele

The life blood of a good clinical program is a constant flow of new clients. Each student will probably be asked to review and evaluate several requests for assistance and to take on 2-3 arbitrations
or mediations per term, usually alone or on a two-student team if the matters are particularly complicated. It is good to generate many more requests for assistance than the clinic is able to handle since a large percentage of prospective clients will turn out to be "no-shows" or persons without viable claims. Moreover, even perfectly good cases may become inactive for a period of weeks due to circumstances outside the control of the clinic. An inventory or backlog of prospective client assignments is needed to fill these gaps. Finally, the review and analysis of incoming matters provides a valuable educational experience for students.

Having an adequate number of clients is a challenge for any clinical program. Establishing good working relationships with senior citizen centers, bar association referral services, regulatory agencies and members of the plaintiffs' securities bar can help to ensure that there will be enough requests for assistance for review and analysis and produce at least some matters that students can actually submit to mediation or arbitration in each academic term.

Those who are responsible for developing the intake program should pay close attention to client eligibility, case eligibility, and student practice rules. The latter can have a substantial bearing on whether the law school is in a position to establish an effective, live-client clinic because it may be impossible to represent "middle class" clients, who are most likely to have securities claims, if the applicable student practice rule precludes students from participating in adversary proceedings involving clients not deemed to be "indigent". For a further discussion, see Section 6, Clients and Case Selection.

Start-up Funding

The minimum start-up cost will vary from as low as $5,000 - $10,000 per year if the law school relies upon an adjunct instructor,[3] to $100,000 or more if the Director is asked to take on the securities advocacy clinic as a full-time assignment. The cost could vary significantly from these levels depending on local market conditions, the kind of support staff and facilities devoted to the program, and which costs are routinely included in the general law school budget. At Northwestern, the law school underwrites the cost of office and student work space, secretarial support, office equipment and furnishings, internet and telephone connections, and numerous indirect expenses. The Director is responsible for securing funding for faculty salaries and fringe benefits (for the Director and other instructors) and minor operating expenses.

Outside support may be available from the Investor Protection Trust that oversees the disbursement of funds from the settlement of SEC civil actions in 2003 or from state agencies that regulate the securities industry (*e.g.* Secretary of State, Securities Commissioner or Attorney General) as in New York and Pennsylvania. Other prospects for funding include the state legislature, IOLTA (Lawyers Trust Fund) organizations, charitable foundations, the plaintiffs' securities bar, cy pres awards by courts in securities class actions, and the many law school alumni who will be enthusiastic about
a program of this type. See expanded discussion of funding in Section 8, below.

Start-up funding was provided to Northwestern's Investor Protection Clinic by the FINRA Investor Education Foundation. Grant guidelines are available at *http://www.finrafoundation.org/guidelines.asp*. The FINRA Foundation has also funded Pace University Law School to develop a dispute resolution guide for small investors.

3 Most adjunct instructors at Northwestern volunteer to teach without compensation although a $2,500 stipend per semester is provided in some cases. The stipend for a demanding clinical appointment like securities arbitration would probably be greater.

Section 2: Staffing and Outside Resources

The Clinical Director or Instructor

As indicated in "Getting Started", the clinic will probably be under the direction of a full-time, resident instructor. The Director's time commitment depends on the clinic's caseload. If the caseload is light, the Director can expect to spend 8-10 hours per week preparing for class, editing and grading student work, encouraging or organizing community outreach activities, and interacting with persons who may be invited to visit the law school to share their experiences and expertise with students.

As the clinic's caseload grows, the Director's time commitment will expand to a minimum of 25-30 hours per week, consisting of an hour or two in a regularly scheduled group meeting and the balance working with students on client matters and community outreach activities. If a case actually proceeds to mediation or arbitration, the Director can expect to devote almost full time on days when hearings are scheduled. The mediation or arbitration hearing may have to take precedence over other professional matters in which the Director is involved. Consequently, an adjunct professor with a significant private practice may not be a good choice for a live-client clinic except for a very small (3-4 student) program.

Another model is to appoint a full-time member of the residential faculty as program Director and to encourage that person to invite members of the legal community to help out as adjunct instructors or as part of their pro bono obligations as lawyers.

Clinical Staff

Obviously, staff support is helpful. An administrative assistant or paralegal can assist faculty and students in filing, correspondence, and other administrative duties. Such persons are often invaluable sources of information about both clinical and forum procedure for students as they are more permanent fixtures at the clinic than the students themselves. An individual with shared responsibility for other clinical faculty or programs should be quite adequate. This appears to be the approach followed at most schools that have securities advocacy clinics. It may be possible to negotiate an arrangement whereby the salary of the administrative assistant or paralegal assigned to the securities advocacy clinic is paid by the law school and not charged to the program budget. This is the case at Northwestern.

If the law school is unable or unwilling to bear the expense of an administrative assistant or paralegal, and funds are not otherwise available, the clinical instructor should be able to discharge the instructor's obligations without having any assistant other than student interns – but under these circumstances, the clinic may not be able to handle as many students and clients as it might otherwise accommodate.

Unlike many clinical programs, no docket clerk is required to file papers or keep a court calendar because even fully contested arbitration proceedings move forward in a relatively straightforward and foreseeable manner, and papers can be filed by mail or as email attachments.

Clinic Students

Students can do many things in the clinic in addition to evaluating incoming matters and representing live clients. At Northwestern, for example, they regularly check the dedicated telephone and email facilities for incoming messages, handle all of their own filing and document production, and help arrange and conduct outreach activities. Other Northwestern legal clinics have "student boards" made up of students who volunteer (without academic credit) to maintain websites, write newsletters, arrange conferences and workshops, and even assist the Director in fund raising efforts.

Advisory Board and other Forms of Outside Support

Advisory boards, planning committees, and professional roundtables are helpful in providing strategic direction to the clinic. Members of these groups may be drawn from academia, the private sector, and the public sector to help develop the long-term goals of the clinic. Participants should include practitioners in both the legal and securities professions and those with plaintiff-specific and defendant-specific litigation experience. The Advisory Board at Northwestern has provided case specific advice (with appropriate confidentiality safeguards), and suggestions regarding fundraising, community outreach and the development of client and case eligibility standards.

Public Investors Arbitration Association (PIABA)

PIABA is an association of plaintiffs' securities lawyers with a special interest in arbitration and mediation. The Association publishes the PIABA Bar Journal, has copies of briefs and other legal materials, maintains an e-mail listserv to assist students in productive dialog, sponsors a writing competition for 2nd and 3rd year students, and has recently opened its membership to clinic instructors and students. See Appendix K for detailed information regarding PIABA.

Other Bar Associations and Law Firms

Other bar associations and organizations concerned with securities law or alternative dispute resolution are sources that the securities advocacy clinic can look to for client referrals, classroom speakers or expert assistance on specific cases (subject to appropriate confidentiality safeguards). For example, arbitration clinics located in New York receive many referrals from the Bar of the City of New York.

Many of the legal clinics at Northwestern have established "partnership" arrangements with Chicago-area law firms that are anxious to enlarge their pro bono programs. These are good sources for expert assistance and occasional financial support as well. On several occasions law firms have assigned first or second year associates for a year or more to one of the Northwestern legal clinics as a way in which to support the clinical missions and to give young lawyers a taste of public service law.

Section 3: Facilities and Equipment

Space Needs

Like other live-client clinics, there must be an office for the instructor, a private location where prospective clients may be interviewed in confidence, and space for case files. If space limitations are a concern, as they are in most law schools, case files can be lodged in a faculty office, and classrooms can be reserved for meetings with clients (which will probably occur no more than 4-5 times per term). A student work area may also be required, although the widespread use by students of wireless laptop computers may make this less of a necessity than in the past.

If there are already other clinics in operation at the school, the newly created securities advocacy clinic can be tied into the existing infrastructure. Programs may be able to share telephone lines, file cabinets, a client interview room, and student work space.

In a case where a non-resident adjunct instructor is responsible for the program, the logistics become more complicated. A school with such an arrangement will want to keep case files on campus where they are available to student interns. This may require the adjunct to keep copies of some basic documents in the adjunct's own office files. Probably a more "modern" and satisfactory solution is a system whereby all significant documents and client contact information are posted to a secure on-line depository where students and instructor alike have access to them. That is the system used at Northwestern.

Website

A well-designed website can serve as a repository of information for students, a portal through which prospective clients can contact the clinic, and an effective way in which the clinic can communicate its goals and achievements to the general public.

All of the securities advocacy clinic websites provide information to their students including biographical information on the clinic Director or instructor, how to enroll in the program and credit hours offered. Buffalo, when active, went further and provided to students the required time sheet, a standard form of arbitration claim with citations to authorities, a form letter for students to use requesting broker disciplinary histories from the Office of the New York Attorney General, and comprehensive information and links regarding the SEC and the FINRA arbitration and mediation process.

Although most clinics obtain their clients through word of mouth, local publicity, presentations to community organizations and referrals, several law schools use their web sites to reach out to prospective clients. The Cornell website invites prospective clients to submit their names and contact information so that they can be contacted by students for an initial telephone interview. Northwestern, St. John's and Pace ask them to complete and submit on-line questionnaires describing their claims in considerable detail. See samples in Appendix D.

Eligibility criteria such as family income, net worth, place of residence, and size of the claim can also be made known through the clinic website. See Section 6, Clients and Case Selection.

Cornell has done a particularly good job of informing both the university community and the public at large of its clinical achievements and developments in the area of securities law and investing. See *http://www.lawschool.cornell.edu/academics/clinicalprogram/securities-law/*.

Telephones and Other Equipment

It is desirable to route incoming telephone calls and email messages through a designated person or location. If the securities advocacy clinic is part of a larger clinical program, the clinic receptionist and clinic email address can be used. Alternatively, the securities clinic may elect to use an email address routed to the Director, and the Director's telephone number with a recorded message that doubles as the investor protection clinic's main line. This procedure, which is used by several Northwestern clinics, places some burden on the Director but gives the Director the advantage of being able to screen incoming calls and messages from prospective clients and to decide how each should be handled.

As far as other equipment is concerned, the Director's office will have to be equipped with a personal computer or laptop connection and telephone, along with ready access to a facsimile station and printer. Presumably these items and services will be built into the program budget unless the Director is successful in having them paid for by the law school as part of its institutional commitment to the program.

Section 4: Course Content and Description

The main part of the clinic program is, of course, the investor grievances that the clinic handles, unless the law school is unable for one reason or another to adopt the live-client model, in which case the clinic will more nearly resemble a traditional law school seminar.

Several law schools encourage students to enroll in the securities advocacy clinic for two academic terms, the first of which is largely doctrinal and the second more focused on providing hands-on assistance to real clients with real claims.

Even in a very active live-client clinic, the instructor may feel that students' work with clients should be augmented by exposing students to basic securities law, investor protection theories, and alternative dispute resolution. To that end, the instructor should consider how much time students should spend on casework and how the remaining time should be allocated among roundtable discussions, research and drafting assignments, and lectures by the instructor and an occasional visitor. At Northwestern, where the first three weeks are devoted to basic instruction about securities arbitration, there are continuing discussions throughout the term of legal and strategic considerations, but normally in the context of how a particular claim should be handled.

Most of these non-casework activities will take place weekly at a regularly scheduled, group meeting. Such meetings can be utilized to demonstrate the importance of sharing what students have done on their cases and to provide a vehicle for instruction. When students share case notes and observations, the weekly meeting operates as a collaborative session, whereby both students and instructor may offer their suggestions and input on each of the open cases. This roundtable discussion can segue into impromptu lectures on important legal topics or related ethical concerns. Many clinical students describe their weekly meetings as one of the best aspects of clinical education. Although students are bound by confidentiality requirements, intra-clinic conversations among the instructor and students often yield new insights to solving problems.

Some other activities that might take place at the weekly group meeting are:

- Formalized lectures can be presented on topics like effective legal and factual research, investigative skills, discovery problems and case handling in general.
- Students can be asked to present reports on new legal and financial industry developments.
- Portions of meetings can be devoted to mock arbitration practice such as opening and closing statements, as well examination of witnesses.
- Interviewing techniques can be demonstrated by having a student interview a visitor or some other person taking on the role of client, and then critiquing the process.
- Guest lecturers, securities practitioners, expert witnesses, and FINRA personnel can be utilized to discuss various important aspects of the securities mediation and arbitration process. By way of example, a practitioner can lecture on how to investigate a case. An expert can explain how financial analysis is done. FINRA personnel, if located near the law school, are more than willing to provide their expertise to enhance the educational process.

The arbitration clinic listserv, *NATIONALSAC-L @list.pace.edu*, available by contacting Professor Jill Gross at Pace, the Clinical Legal Education Association (CLEA) website, *http://cleaweb.org*, and Clinical Law Review are excellent sources of teaching materials, pedagogical theory and tips/ideas for instructors who have not had prior experience teaching in a law school classroom or legal clinic. The articles by Professors Black, Gross, Gardner and Katsoris, cited in Appendix G, provide particularly helpful information about their experiences in establishing securities advocacy clinics. For a primer on the substantive law of securities arbitration and mediation, see Constantine N. Katsoris, "Roadmap to Securities ADR", 11 FORDHAM J. CORP. & FIN. LAW, 413 (2006) as well as the upcoming textbook by Professor Jacobson at Cornell.

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Community Outreach and Education

Legal clinics exist not only to provide education for their students and to serve individual clients but also to reach out to the community-at-large. Classes or training sessions held for the community can supplement the clinical experience, as well as spread word of the clinic's availability and services. Securities advocacy clinics should consider making an effort to educate the public on potential steps that investors can take if they feel that they have been defrauded, as well as providing practical tips on choosing a broker and being an informed investor. Presentations can be made by students after some rehearsal with their instructor.

At Cornell a group of students enrolled in the Securities Law Clinic has conducted an in-service training session on investment fraud prevention as part of the university's extension activities. The students also produced written materials for distribution to the public. In June 2008, the Securities Arbitration Clinic at St. John's co-sponsored with its Elder Law Clinic a public program called "Protecting Your Financial Future".

Public libraries and other places open to the public are excellent places in which to disseminate information of this type. The FINRA Investor Education Foundation has provided grants to libraries to encourage the development of investor education programs. Retirement homes and senior citizen centers are other obvious locations at which presentations might be made.

Section 5: Student Participation

Each clinic must decide for itself how many students it can admit to the program during a given academic term. Factors, such as the targeted faculty-student ratio, the number of cases the clinic expects to take on, and space constraints will play a role when making this decision. Additionally, the Director must decide what qualities are most desirable in student participants (*e.g.*, willingness to commit time and energy to client matters, grade point average, previous experience, etc.).

About one-half of the schools with securities advocacy clinics require or encourage students to enroll for a full year. At others, the enrollment is normally for one semester with a second semester at the Director's option. The number of students per instructor is generally in the range of 6-10 depending on how the instructor's time is allocated between academic work and client representation and what other teaching obligations the instructor may have.

The Student Selection Process

Clinics employ different vetting processes, each with its own advantages and disadvantages.

- Most clinics require prospective students to submit a transcript and resume or writing sample and to schedule a face-to-face interview with the Director to evaluate their writing ability and their level of enthusiasm for working with real clients in an arbitration and mediation program. Syracuse and Cornell take the additional precaution of asking applicants to submit conflict of interest statements to be sure that a prior employment or clerkship does not conflict with any client work the student may undertake in the clinic. The Cornell conflict of interest form can be found in Appendix C, Student Materials.
- At Northwestern, all second and third year law students are eligible to bid for seats in its Investor Protection Clinic. Students are admitted by the number of pre-assigned "points" they see fit to bid. This system works well since there is a high demand and it is felt that a bidding system provides the fairest method of student placement in all law school courses. On the other hand, it means that admission to the Investor Protection Clinic is dependent on the student's skill in handling the bidding process, rather than the student's particular attributes and qualifications.
- Some law schools employ a lottery system in which the required number of student names is "pulled out of a hat". This has many of the same advantages and disadvantages as Northwestern's bidding system.
- If it is felt that the work will be particularly challenging, it may be desirable to require applicants to have a specified grade point average. The Investor Justice Clinic at the University of San Francisco has done so. This also guarantees that there is prestige attached to the clinical appointment. On the other hand, a high grade in doctrinal classes is only one predictor of how well the student will do in an arbitration and mediation clinic.
- The clinic should consider the need for an academic prerequisite or co-requisite, although such a requirement may limit student demand due to course availability. At Cornell, Northwestern and Pace, there are no prerequisites. At Fordham, all clinical students are required to take a course in Fundamental Lawyering Skills where interviewing skills and sensitivity to ethical issues are developed. Other law schools have these pre-requisites or co-requisites:

SCHOOL	PRE- OR CO-REQUISITES
Albany	Securities Regulation or equivalent experience
Brooklyn	Securities Arbitration Workshop (one hour)
Cardozo	Corporations and Securities Regulation
Duquesne	Securities Arbitration Seminar (one hour)
Hofstra Business	Organizations or Securities Regulation
New York	Corporations
Syracuse	Professional Responsibility

Credit Hours

The person designing the securities advocacy clinic must decide at the outset, in consultation with the Registrar or Academic Dean, how many credit hours will be awarded to students who participate in the clinic.

Most clinics award 3-4 credit hours per term to student participants. Schools where the number of credit hours is greater tend to divide them between the clinical work and a required securities arbitration seminar or workshop. At Northwestern, which operates on a semester basis, clinical students receive 3 or 4 credit hours per term depending on whether they are second or third year students (the latter being eligible for a license under the Illinois student practice rule). At Albany, students can enroll for 3, 4, 5 or 6 hours per semester with more client work being required of those with higher credit hours. Pace has a similar option.

Each school has its own traditions regarding the number of hours that students are expected to devote to client matters and out-of-class preparation in relationship to the credit hours awarded. The target most often cited is 4 hours of work per week for each credit hour. If the class is worth 4 credits, 16 hours of clinic work per week would be expected. That would normally mean one or two hours in the weekly meeting with the remainder devoted to casework.

Students in Fordham's Securities Arbitration Clinic receive 5 credit hours per term, which translates into 2 hours in the weekly meeting and 15 hours per week doing casework. Northwestern also expects its clinical students to spend at least 3 hours a week in addition to the weekly meeting for each credit hour earned.

If the clinical model selected does not involve the representation of live clients, the credit hours and total hours per week inside and outside the classroom are likely to be the same as the standards applied to traditional law school courses.

In clinics where students are responsible for handling real problems for real clients, the Director should make clear that students are expected to perform in a vigorous and professional manner, just as if they were licensed attorneys. Students should understand that time commitments on a particular case may be in excess of the law school's benchmarks for out-of-class work. It should also be made clear to students that they will have to manage their time in order to complete assignments in other classes without detracting from their casework in the clinic. This will help them in the long run as it will prepare them for what they will encounter when they become practicing lawyers with multiple and simultaneous demands on their time.

Grades

At the majority of schools that have securities clinics, student work is graded on an alphabetic scale from A to F, sometimes, but not often, with a mandatory curve. A few schools grade on a pass/fail or optional pass/fail basis up to a designated limit on the number of courses a student may opt to take on that basis. Northwestern grades on an A+ to D basis with no mandatory curve. Grades reflect the substantive quality of a student's work, the time invested, passion and dedication to client problems, journals, and participation at weekly clinical meetings.

Confidentiality

Students working together in a legal clinic are like partners and associates at a law firm. Accordingly, they are free to discuss client matters among themselves and with the instructor. Clients should be advised in the Retainer Agreement that such discussions will take place.

On the other hand, client confidences should never be disclosed outside the confines of the clinical program. This requirement should be emphasized at the very first class. The instructor should also make clear that there will be appropriate security placed on both electronic and hard copy files. It should be pointed out that this is not just a matter of law school policy, but is mandated by the Code of Professional Responsibility. Client confidentiality policies may well lead into a fruitful discussion of legal ethics.

If the client or the case is to be identified on the clinic website or in promotional material, the client's consent should be obtained.

Student Journals

Some clinics, including Northwestern, require all clinical students to maintain journals. Students turn in their journals periodically during the term, allowing the Director to review a student's individual progress and encouraging the student to reflect on the educational experience. A journal also provides feedback on case activity and teaching effectiveness, and can supply ideas for course improvement. As indicated, at Northwestern, the effort that a student puts into his or her journal is one factor taken into account in determining the student's grade.

Student Feedback and Reviews

Clinical instructors at Northwestern have found that the most valuable feedback an instructor can supply to clinical students is commentary on specific matters as they occur. Experience has shown that immediate and spontaneous feedback, even if it makes the instructor uncomfortable, is the most effective teaching methodology in a law firm, a corporate legal department, a government agency or a law school clinic.

For example, when papers submitted to the Secretary of State by a student in Northwestern's Small Business Opportunity Clinic were rejected because a required exhibit was not attached, the instructor was able to point out that the client should be immediately notified of the rejection and resulting delay in processing the papers even though the student was tempted to rectify the error without telling the client what had happened.

More formal mid-term reviews are of considerable value to student participants. It is difficult to be completely candid with a student whose work is sub-par, but it is the Director's responsibility to explain in a positive manner what the student can do to improve his or her performance during the balance of the term, and to compliment the student on jobs well done. It is also important to ask the student to evaluate his or her own clinical experience. A candid appraisal of the student's performance, by both instructor and student, can also defuse objections by the student who later receives a "low" grade but was never warned that it was coming.

End-of-term interviews with individual students provide valuable feedback on the strengths and weaknesses of the clinic. This feedback is most crucial in the first few years after the clinic's inception as it provides the Director with suggestions for future years. Exit interviews also allow for a smooth transition of ongoing cases. For a sample of the exit interview form used at Northwestern, see Appendix C, Student Materials. Another possibility is to ask students at the last weekly meeting of the term to discuss, within the group setting, areas in which clinical procedures might be improved, modified or eliminated.

Case Management

Since one of the principal goals of a clinical class is for students to assume the role of lawyers for their clients, albeit under the supervision of an experienced instructor, the student must be aware of, and must abide by, the state's rules of professional conduct and should be expected to follow normal office procedures which might include:

- Keeping time sheets and file activity reports. *See http://www.law.buffalo.edu/Academics/clinic/securities/fileactivitysheet.pdf* for a sample.
- Sending the Director a monthly time report or work-to-be completed report.
- Storing documents and drafts of documents in a neat and logical fashion where they will be easily accessible to others at the clinic (such as on a network hard drive).
- Keeping clients abreast of case progress.
- Conducting any needed investigative or legal research.
- Drafting necessary paperwork (Statement of Claim, briefs, client correspondence, etc.).
- Working with opposing counsel on discovery issues.
- Conducting a financial analysis as appropriate.
- Preparing for mediation and arbitration hearings.

Section 6: Clients and Case Selection

The demise of company-sponsored retirement plans, increased longevity, and other factors require individuals to exercise more responsibility for their own retirement savings. These factors combined with greater ease and access to investment opportunities leads more persons than ever to entrust their savings to the stock market and other investment vehicles. Though the regulation of the stock market is vigorous, small investors are still more likely to be targeted by unscrupulous brokers and investment firms.

Furthermore, since many small investors are not investment savvy, they often feel that the losses they suffer are a natural condition of the market and not a creation of unscrupulous stockbrokers. Even when small investors realize they have potential claims, they frequently lack the resources to obtain legal representation.

While the need, therefore, is great, a securities advocacy clinic must exercise care in taking on new clients and new cases. Some of the criteria applied in making these decisions are set forth below.

Published Eligibility Standards

Client eligibility standards should be determined early on and announced to the public through the clinic's website, promotional literature and responses to inquiries. Standards may include financial limitations or limitations intended to weed out individual claimants who cannot be effectively represented by the securities advocacy clinic.

Eligibility standards are partly a matter of choice for the sponsoring law school (depending on its concept of the kind of persons whom the clinic should assist), partly a matter of complying with state student practice rules, and partly determined by the terms set by those who provide financial support to the clinic. For instance, some clinics (*e.g.*, Northwestern and St. John's) will not handle claims in excess of $100,000. Others may (*e.g.*, University of San Francisco) set the claim limit at $35,000.

As to individual claimants, limitations are usually applied in terms of household income and the claimant's net worth, *e.g.*:

- Household income limitations (Northwestern - $100,000, University of San Francisco - $50,000).
- Net worth limitations (St. John's – no major assets other than car and home).

St. John's limits representation to New York residents. Northwestern and University of San Francisco express preferences for residents of Illinois and California respectively. Many clinics give preference to senior citizens. Cornell will take cases where private counsel is not available either because of the size of the claim, the limited resources of the client or the unavailability of counsel in the area where the client resides. Most schools give the Director discretion to waive limitations in particular cases.

Student practice rules can be particularly problematical. These vary from state to state. In Illinois there is no financial limitation on matters that a properly licensed law student can handle. In Florida the rule allows a certified law student to appear in any state court or other tribunal "on behalf of an indigent person", Rule 11-1.2, Rules Regulating the Florida Bar. In Massachusetts the comparable rule refers to "indigent parties in civil proceedings". Rule 3:03, Rules of the Supreme Judicial Court of the Commonwealth of Massachusetts. But questions arise: what is meant by "indigent" and does the rule apply to private arbitrations? These are matters that the clinic will have to consider at the outset when it establishes its client eligibility standards.

Other intake requirements which a particular clinic may employ should be made known to prospective clients at an early stage of the application. These could include:

- The respondent must be a licensed broker (in order to have a basis for a FINRA arbitration);
- The claim must involve a U.S. brokerage account; and
- The claim must be asserted by an investor and not by a person having some other grievance with a brokerage firm such as a disgruntled employee.

Other Eligibility Considerations

There are other considerations on client acceptance that can best be evaluated after the prospective client has submitted an intake application form or has been interviewed by telephone or in person.

For example, Rule 12206 of FINRA's Code of Arbitration Procedure provides that "No claim shall be eligible for submission to arbitration where six years have elapsed from the occurrence or event giving rise to the claim". Interpretation of the rule requires a full appraisal of the facts and relevant documentation to determine when the occurrence or event giving rise to the claim occurred.

Likewise, a prospective client may have no real basis for a claim, but this cannot be determined until some factual review (and possibly some legal research) has been undertaken. The review process itself is a valuable learning experience for students and provides a public benefit in that it screens out of the legal system claims that have little merit.

In some cases representation of a prospective client may create a conflict of interest situation for the clinic. It is probably a poor idea to represent a prospective client who is a student or member of the law school faculty or staff. A claim against a brokerage firm or bank whose president sits on the university's board of trustees, or who is a prominent alumnus, is another claim that the clinic may not wish to handle. A different kind of conflict of interest may exist if one of the clinical students has been clerking at the law firm that represents the accused brokerage firm.

Although these are examples of claims that the securities advocacy clinic may wish to decline, there are others to which it may wish to give priority such as (a) claims of certain classes of investors (*e.g.*, minority or the elderly), (b) situations in which the broker blatantly violated his fiduciary duties to the prospective client, and (c) claims that involve repetitious conduct by a broker-dealer against numerous clients.

In most cases, the clinic director will want to have the final say on which clients should be accepted and which should be rejected.

Initial Intake Forms

As indicated, the claim review and intake procedure may be one of the most valuable learning experiences for the clinical student. It requires the student to critically review facts and documents, to conduct necessary legal and factual research regarding the securities market, to reflect on the strengths and weaknesses of mediation and arbitration versus traditional litigation, and to interview a real client about a claim.

Most clinics begin the process by asking the prospective client to complete and submit some kind of intake form or questionnaire or to provide relevant information through a preliminary telephone interview.

The submission of a standard form either on-line or by mail, like those collected in Appendix D, is an efficient way in which to obtain basic information about the case. It also provides the clinic with a uniform standard against which to screen claims and, if the clinic decides to investigate the claim further, basic information is already available. However, there are drawbacks with on-line forms. A majority of the clients the clinic was created to serve may have difficulties accessing an Internet form. Even clients who are able to access the form may not fully understand what information is being requested. Students, therefore, must be briefed on this problem and be ready to verbally assist prospective clients and to gather information from prospective clients by telephone or otherwise.

The clinic should have a system in place to acknowledge receipt of an intake form, questionnaire or request for assistance. The reputation of the clinic and the law school depends on replying to requests in an expeditious manner. If the form has been submitted on-line, an on-line acknowledgement is probably satisfactory. If it is received by mail, a form acknowledgement letter may be used.

One note of caution involving client and case selection: The Model Rules of Professional Responsibility and rules in effect in many individual jurisdictions forbid real-time solicitation of clients (in-person, by phone, or via electronic message). It is up to the prospective client to initiate contact with the clinic, and not the other way around.

Common Claims

On the merits, students should be taught to look for cases that involve (a) investments that are clearly too speculative or otherwise unsuitable for a particular investor, (b) excessive trading or "churning" of an account, (c) failure to execute the client's instructions, (d) unauthorized trading, or (e) an unreasonable delay or failure to invest the claimant's funds or to provide information regarding the claimant's account.

Supporting Documentation

If the claim described on the intake form or developed by a student through an initial telephone conference appears to have sufficient merit to justify a further investigation, it is important for the clinic to obtain additional documentation from the prospective client. This does not mean – and it must be made clear to the potential client – that the clinic has agreed to take the case. The clinic should take pains to make the claimant understand that only after the client and the clinic jointly sign a Retainer Agreement or engagement letter will an attorney-client relationship exist. But the clinic needs these documents and probably additional information to evaluate the claim.

The documents obtained at this stage of the intake process may include evidence that the prospective client falls within the clinic's eligibility standards, including any household income or net worth limitation. Tax returns or bank statements may be acceptable forms of proof, although there are instances in which the clinic may not require such evidence because the prospective client is so obviously indigent and in need of help.

It is a good safeguard for students to simultaneously check the prospective client's previous litigation history. This will help to ensure that the clinic will not be surprised or embarrassed by something in the client's past like an unreasonable number of prior claims, a felony conviction or other troubling information. Google, Westlaw, and Lexis-Nexis are excellent research tools for this task.

Follow-up Interviews

Once the underlying documentation and background information has been assembled, a personal interview is in order. This gives the clinical instructor and students an opportunity to learn about the prospective client as a unique individual rather than just knowing the claimant's financial history and grievance. This means that interviews should ideally be done in person.

If a prospective client can be interviewed only by telephone during the early stages of the evaluation process, it would be quite reasonable for the clinic to require at least one face-to-face meeting with the prospective client (and perhaps the client's spouse as well) before agreeing to take the case. In fact, the student's clinical experience will be incomplete if the student does not have an opportunity to meet the prospective client and to develop basic interviewing skills. In the process, the student should be encouraged to:

- Set the tone.
- Engage the client in the discussion.
- Make the client feel comfortable.
- Explain the attorney-client privilege.
- Ask open-ended questions
  (rather than questions that may be answered with a simple "yes" or "no")
- Avoid leading questions.
- Be a good listener.
- Recognize cultural differences.

Another point to keep in mind: it is often what the client doesn't say that is most important. Experience has shown that many clients do not understand their rights and obligations, potential claims or the prerequisites for a cause of action. In addition, there may be serious comprehension problems (due to age, infirmity, language barriers, etc.). Therefore, whenever possible, in-person interviews are recommended. FINRA has produced a podcast, available at its website, about dealing with elderly investors, titled "Considerations for Working with Seniors: Diminishing Capacity and Suspected Financial Abuse." It is available at *http://www.finra.org/podcasts/*.

The student should be encouraged to understand why a successful interview ought to be a two-way process. It is imperative that the prospective client actually understands and is able to verbalize what will happen if the clinic takes the case. Clients may decide that FINRA mediation or arbitration proceedings (which are often the first strategies a securities clinic pursues) are not sufficiently aggressive and that a lawsuit or criminal complaint is a more appropriate course of action (even though the latter is unlikely to result in any financial recovery for the client). If the prospective client feels that way, it is better to deal with the client's articulated concerns immediately rather than after a mediation or arbitration concludes in an unsatisfactory manner.

Retainer Agreements or Engagement Letters

There will come a time when the securities advocacy clinic must either accept or decline the representation. If a case is declined, the prospective client should be advised in writing that the clinic is unable to pursue the claim and all documentation obtained from the prospective client should be returned. If this is not done, there is a possibility that the prospective client may not fully understand what has happened and may express concern about the treatment received from the clinic. See sample letter in Appendix D, Client Intake Materials.

On the other hand, if the clinic decides to represent the prospective client, a Retainer Agreement or engagement letter should be signed by both the prospective client and a representative from the clinic (usually the instructor rather than the student whose professional standing and ability to bind the law school clinic might be questioned).

See Appendix E for samples of the Retainer Agreements used at Northwestern and Pace (which has also prepared a Spanish language version). If the clinic and its client agree that a traditional fee for services or a contingent fee will be charged, or if there are limitations on what the clinic is willing to do for the client, that information must be added to the Retainer Agreement. For a discussion on such fees, see Section 8, Funding Sources.

Obtaining Documents from the Broker

Although the prospective client will have provided the clinic with basic information and documentation about the claim, the clinic instructor and students will have to go beyond the information the client has provided. This usually means requesting information directly from the brokerage firm. See Northwestern's Release of Information Form in Appendix D.

One inexpensive pre-filing option is to file a Request for Mediation on-line with FINRA pursuant to its Code of Arbitration Procedure. There is no filing fee or other cost to the client at the time of filing. If the broker or brokerage firm agrees to mediation, a filing fee must be paid but this generally means that the broker is willing to pay something to dispose of the claim. If the respondent is unwilling to mediate, as will frequently be the case, the Request for Mediation nevertheless signals to the respondent that the client is serious about pursuing the claim and that the securities advocacy clinic is actively involved. This step may well facilitate voluntary production of documents - and possibly settlement negotiations – without ever having to submit a Statement of Claim to FINRA.

Alternatively, the clinic may write directly to the legal department or chief compliance officer at the brokerage firm branch office at which the client's account has been maintained. If a certified letter has been sent and nothing has been heard back from the firm, the clinic may file the letter with FINRA as part of its Statement of Claim along with other required filing documents. If the branch office fails to respond, the clinic may also write to the main office.

Expert Review

As is obvious from these Guidelines, the pre-filing investigation and procedures can be at least as complex and time consuming as the actual arbitration or mediation. Another particularly complex issue is retaining a financial investments expert and working with the expert in the investigative and hearing stages, particularly if it is decided that expert testimony is required.

The decision to use an expert is not one to make lightly, and each case is different. Generally, the student and the instructor will be in close consultation with one another throughout this decision-making process. Cost is always a consideration. Experts on securities and investments are expensive and legal clinics are usually unable to pay witness fees. But experts occasionally donate their time to clinics. For example, in a Northwestern securities case, an expert who is a member of the Securities Experts Roundtable (see *http://www.securitiesexpertsroundtable.com*), has volunteered to create a hypothetical illustration of what would have happened to a client's investment had brokerage firm fraud not occurred. The Securities Experts Roundtable has urged its members to provide similar pro bono support to other law schools. See SER Bulletin dated July 2008 in Appendix J.

In the alternative, MBA students from an allied business school within the university can provide free expert support. Some securities advocacy clinics work together with business school programs to give MBA students experience analyzing investment losses and serving as experts. For example, the UB Securities Clinic at Buffalo (currently inactive) was a joint program of the law school and the graduate school of business. Pace has experimented with a collaborative program between the law school and the business school. See Jill I. Gross and Ronald W. Filante "Developing a Law/Business Collaboration through Pace's Securities Arbitration Clinic", FORDHAM J. CORP & FIN. LAW, 57 (2005).

One novel approach: if there are no funds available to hire an expert, and no volunteer can be identified, the clinical instructor or her student may themselves be able to present evidence on behalf of the client. Since most investor claims will be resolved through mediation or arbitration, where strict compliance with restrictive rules of evidence is not required, it is quite possible that either the instructor or one of the clinical students will be allowed to provide evidence regarding the client's claim and the loss suffered. There are even practicing lawyers in some communities who have had extensive experience with commercial arbitrations who may be willing to consult on how a lawyer can become his or her own expert witness.

Section 7: Case Handling

Now that the case been carefully investigated, and the Retainer Agreement has been signed, it is time to move forward with the claim. While the pedagogical objective is to give the clinical student substantive responsibility for the case, some parts of the process – depending on student practice rules and the complexity of the case – may require the instructor to assume a leading role. In such a case, the instructor can still make sure students remain engaged in the case via communications between the clinic and the client, legal research, drafting claims, preparing exhibits and group and one-on-one meetings with the instructor.

Each case may take a slightly different path, but in the sections that follow, the normal path or combination of paths is described. Opportunities for student involvement will be apparent.

Negotiate, Mediate, Arbitrate or Litigate?

Normally, an attempt should be made to resolve a case through informal settlement negotiations before proceeding further. However, the negotiation is unlikely to produce a satisfactory result unless the instructor and students are ready to take the next step and can demonstrate to the respondent that they are fully prepared to do so. There is also an element of client education involved in negotiating a settlement inasmuch as the client must be made aware of the odds of prevailing on the claim, the amount likely to be recovered, the time, effort and emotional stress involved in prosecuting the claim, and the out-of-pocket expenses the client will have to bear.

If the claim appears to be meritorious and informal attempts to resolve it have been unsuccessful, the clinic would likely proceed with the claim. The threshold questions are where should the claim be filed and what dispute resolution procedure should be employed?

Arbitration and mediation claims are usually filed with FINRA although another alternative dispute resolution service may occasionally be identified in the broker's customer agreement. Depending on the wording of the customer agreement and applicable state law, claims (*e.g.*, class actions, cases under the State's Blue Sky Law) may occasionally be filed in a state court. This is likewise the case where there is no customer agreement or the agreement contains no arbitration provision. It is the responsibility of the clinic students and their instructor to determine which forum is most advantageous giving due regard to issues such as:

- The arbitration provisions in the brokerage agreement.
- The nature of the conduct at issue.
- Speed of process.
- Need for special expertise by the adjudicator or mediator.
- Available remedies in each forum.
- Costs.
- The clinic's policies regarding litigation.[4]

4 Customer agreements usually mandate arbitration. The rare case that allows litigation could involve the clinic in a considerable more adversarial and extensive enterprise on the client's behalf than the normal mediation or arbitration proceeding. This is something which a clinic may, or may not be prepared to undertake.

In addition, the clinic can assist its clients in submitting complaints to the SEC *(http://www.sec.gov/complaint/select.shtml)* or to FINRA *(http://www.finra.org/complaint)*. Clients should understand that any investigation that arises from such a complaint is regulatory in nature and is unlikely to result in monetary recovery by the client, even if the regulator takes disciplinary action and imposes sanctions. Clients should not close other avenues of redress by waiting for the outcome of any investigation.

For purposes of these Guidelines, it is assumed that the clinic and client will normally decide to proceed by way of arbitration or mediation. The sections that follow describe and contrast these procedures and the costs related to each. If another dispute resolution agency is involved, or if the decision is made to file a lawsuit, the clinic will have to consult the procedural rules applicable in the selected forum.

Initiating a FINRA Mediation or Arbitration Proceeding

In each case the client, instructor and assigned clinical students will have to decide if it is worthwhile to request mediation of the claim before demanding arbitration. Mediation is a proven way in which to resolve disputes and can be an effective tool for an investor if the broker can be convinced that it is in the broker's best interest to mediate and settle the claim. 80 percent of the securities claims that brokers agree to mediate are successfully resolved. Brokers may be more likely to mediate if there has been blatant misconduct, or if the individual within the respondent firm who dealt with the client is viewed by his employer as being a "rogue broker", or if the claim has the potential of expanding into a government investigation or class action. If both sides are not ready to consider settlement, mediation may not be as successful. Also, mediation is not certain to resolve the dispute so the client must understand the possibility of an added expense or delay in pursuing this non-binding process.

Thus, there are cases in which it may be better to proceed immediately with arbitration, keeping mediation in mind as an alternative at any point in the arbitration, if pre-hearing discovery and motion practice produce new information that allows the parties to reconsider their settlement posture. Additionally, there is no requirement to put on hold a parallel FINRA arbitration so parties can minimize the risk of delay.

Mediation pursuant to FINRA's Code of Mediation Procedure is initiated by submitting an on-line Request for Mediation. See *https://apps.finra.org/Mediation_&_Arbitration/med_form.asp* for a sample of the form. Upon receipt of the request, FINRA contacts the other party to the dispute and asks if it is willing to mediate the claim. If so, the claimant must pay a filing fee that ranges from $50 to $300, depending on the amount claimed and whether an arbitration already has been initiated. As with FINRA arbitration, investors may apply for a waiver of the mediation filing fee. A schedule of those filing fees is found in the Mediation Code.

When a mediator has been agreed upon by the parties, the claimant will become responsible for his share of the mediator's professional fees which vary from case to case depending on the mediator's individual fee schedule. Most of FINRA's mediators have agreed to a fee of $50 per hour for cases involving claims under $25,000, and FINRA makes efforts to recruit mediators generally who may waive their fees.

Binding arbitration pursuant to FINRA's Code of Arbitration Procedure is initiated by submitting a FINRA Submission Agreement, a Statement of Claim, whatever supporting documentation the claimant elects to submit at this stage of the proceeding and the required filing fee. The FINRA Submission Agreement is a document that parties must sign at the outset of an arbitration in which they agree to submit to arbitration under the Arbitration Code. See Appendix F, Case Handling, for a sample Statement of Claim submitted in a Northwestern case.

Filing fees for investors in arbitration range from $50 to $1,250, depending on the size of the claim. See Rules 12900 and 12902 in the Customer Code section of the Arbitration Code for schedules of fees applicable to investors, including hearing fees. The investor may request that the filing fee be waived at the time the Statement of Claim is filed. See Appendix F for a sample letter requesting that the FINRA filing fee be waived. For more on initiating and responding to claims, see Rules 12300-12314 of the Arbitration Code.

Note that Rule 12307 describes what may constitute deficient pleadings. It also provides that deficient statements of claim and Submission Agreements that are not corrected in a timely manner may result in FINRA's closing the case refunding part of any filing fees as provided for in Rule 12900(c).

Simplified versions of FINRA procedures that can be furnished to the client are reproduced in Appendix F. For particularly helpful information see *http://www.finra.org/ArbitrationMediation/Parties/Overview/OverviewOfDisputeResolutionProcess/index.htm*. Information about the FINRA arbitration and mediation procedures may also be obtained by contacting the regional FINRA office in New York City, Boca Raton, Florida, Chicago or Los Angeles. These procedures are explained briefly in the sections that follow.

The FINRA Voluntary Mediation Process

Mediation is a voluntary, informal, and non-binding process that helps the parties at odds with one another reach a mutually satisfactory goal. The basic components of a mediation conducted pursuant to FINRA Code of Mediation Procedures are set forth below.

1. Prior to the mediation session, a Mediation Submission Agreement must be signed by all parties, the attorneys, and the mediator. The form is available *http://www.finra.org/web/groups/ ArbitrationMediation/@arbmed/@party/documents/ArbMed/P018658.pdf*.
2. The parties select a mediator from a list provided by FINRA. Both parties must agree on the mediator. Mediators are not FINRA employees; however, they must meet FINRA qualification requirements. *See http://www.finra.org/ArbitrationMediation/Neutrals/Education/ArbitratorTraining/index.htm*.
3. The Mediation Case Summary is a confidential document submitted directly to the mediator by each party. FINRA recommends that it include the following:
   - Identification and analysis of the key factual and/or legal issues.
   - A history of settlement discussion, including the last demand/offer.
   - The underlying interests and needs of both parties.
   - A list of what a party asserts to be its factual and legal strengths.
   - The party's view on past and current barriers to settlement.

Highlighted copies of the key documents and a summary of any other information that will assist the mediator in working with the parties may also be submitted.

The client will not be compelled to produce any evidence or other documentation in addition to the Mediation Case Summary. The client should be warned, however, that in order to work out a satisfactory settlement of the claim, it may be necessary to provide information about the client and about the client's investments to the mediator and to the brokerage firm that the client would prefer to keep confidential. In other words, the client should be prepared to present whatever available evidence is helpful to reaching a settlement.

Mediation sessions involve the parties and the mediator. The lawyers are present, but mediation is designed for the parties themselves to speak to one another or to the mediator in an informal manner.

Instructors with experience in settlement negotiations before a trial judge will have no problem understanding how the FINRA mediation process works. In the normal case, the mediation session will continue for no longer than one working day, although there are sometimes follow up settlement negotiations and drafting sessions that may require another appearance before the mediator.

If the voluntary mediation session does not resolve the dispute, the client will normally wish to proceed with binding arbitration.

The FINRA Binding Arbitration Process

The procedures in a FINRA arbitration are similar to those employed by the American Arbitration Association and other alternative dispute agencies, but there are enough differences that the instructor will want students to read through the entire Code of Arbitration Procedure before drafting the Statement of Claim and completing the FINRA Submission Agreement. The Submission Agreement and other filing documents can be found on-line at *www.finra.org/ArbitrationMediation/Parties/ArbitrationProcess/*. Users will click on the "Arbitration Process" link, and then the "Materials to Initiate an Arbitration Claim" link.

The Statement of Claim has no required format but generally should state the basic facts of the dispute, the names of the parties involved, and the remedies sought, including monetary damages. A description of common theories of damages proposed in arbitration may be found in Appendix I.

The instructor and students should take note of Rules 12300-12302, which cover the filing and service of initial documents. Also, as noted earlier, Rule 12307 covers deficient claims, which, among other things, include statements of claim that fail to specify the home address of the client at the time the disputed events took place and the current address of the client or client's representative. Deficient claims also include filings that lack a properly completed Submission Agreement or the appropriate filing fee. If deficient claims are not corrected within 30 days of the client receiving notification, the case will be closed, and any filing fees that have been paid will not be refunded.

Upon receipt of the Statement of Claim and FINRA Submission Agreement, FINRA will supply copies to the brokerage firm, which must file an Answer to the Statement of Claim. Parties will then have the opportunity to exchange additional pleadings according to deadlines outlined in Rules 12303-12306.

FINRA will select the hearing location, which generally will be the one closest to the customer's residence at the time of the events causing the dispute. Before the arbitrator selection process begins, however, the parties may agree in writing to a hearing location other than the one FINRA selects. The selection of a hearing location is governed by Rule 12213 of the Arbitration Code.

Approximately 30 days after the Answer is due, FINRA will begin the neutral arbitrator selection process, as outlined in Rules 12400-12410 of the Arbitration Code. FINRA will send randomly generated lists of arbitrators to the parties, in which parties are instructed to strike and rank names on those lists based on any perceived or real conflicts of interest and the parties' preferences. FINRA will then combine the results and appoint the applicable number of arbitrators to the panel.

The number of arbitrators on the panel is governed by Rule 12401. Typically, claims of $50,000 or less will be decided by a single arbitrator "on the papers," under the simplified arbitration procedures outlined in Rule 12800. Claims of more than $50,000 and up to $100,000 will be heard by one arbitrator, unless the parties agree in writing to three arbitrators. Claims of above $100,000 will be heard by three arbitrators, unless the parties agree in writing to one arbitrator*. The number of arbitrators on the panel and the size of the claim will determine the hearing fee, which is outlined in Rule 12902 of the Arbitration Code. The hearing fee ranges from $50 to $1,000 per hearing and may be assessed during the course of the arbitration, or when the award is issued.

Shortly after the arbitrator panel is assembled, FINRA will arrange for a pre-hearing conference usually in the form of a telephone conference but occasionally face-to-face. Purposes of the conference include scheduling the hearing, making arrangements for the exchange of documents prior to the hearing date, deciding whether briefs will be submitted, and if so, when, and handling other issues the parties may raise, such as motions.

Although the amount of pre-hearing discovery is strictly controlled by the panel and will not be as extensive as in court, most of the clinic's time and energy between the date of the pre-hearing conference and the hearing itself will involve the exchange of documents required under the mandatory Document Production Lists, as provided by the Arbitration Code. Depositions are strongly discouraged in securities arbitrations but may be authorized by the panel upon motion of a party, particularly in circumstances outlined in Rule 12510 of the Arbitration Code. Examples of these circumstances are to accommodate an essential witness who is outside the jurisdiction where the hearing is to occur and not subject to being subpoenaed, to preserve the testimony of a witness who is in ill health, and to expedite a case that is large or complex.

For the Document Production Lists and other discovery rules see Rules 12506-12514 of the Code of Arbitration Procedure. In addition to the Code, students should be instructed to consult the FINRA Discovery Guide, a helpful publication that spells out exactly which documents must be produced by the parties depending on the claim asserted by the investor. See *http://www.finra.org/ArbitrationMediation/Rules/ RuleGuidance/DiscoveryGuide/index.htm.*

The Arbitration Hearing

As noted, Rule 12800 of the Code of Arbitration Procedure provides that claims for $50,000 or less may be submitted to the arbitrator "on the papers", i.e., without an evidentiary hearing, unless demanded by the investor. This is a particularly attractive option in cases where the client is unable to pay the costs associated with a full evidentiary hearing or resides outside the area in which the clinic and the arbitrator are located. A law school clinic may find that many of its claims can be disposed of in this manner. At Northwestern, for example, at least 3 of every 4 claims are submitted under the simplified procedure. The same is true at other securities advocacy clinics. In fact, if the parties and the arbitrator agree, any claims in any amount can be submitted and disposed of in this manner.

On the other hand, there are securities clinic directors like Professor Alice Stewart who feel that students are deprived of a good clinical experience if there are not at least some cases that are pursued through the adversary hearing process.

* As of January 31, 2011, a customer may elect in writing a panel of three public arbitrators under Rule 12403.

For those cases in which a hearing is required, procedures for the hearings and presentation of arguments and evidence may be found in Rules 12600-12609. Although the panel has the discretion to vary the order in which the hearing is conducted, provided that each party is given a fair opportunity to present its case, the hearing often proceeds as follows:

- First the panel asks all those in the hearing room to identify themselves, and asks the parties if there are logistical matters to be resolved before the formal hearing begins. Such matters may include excluding witnesses from the hearing room, deciding when the lunch break should occur and what time in the afternoon the hearing should end, and how exhibits should be marked and presented.
- Each side makes a short opening statement.
- The claimant's attorney puts on witnesses, and introduces documents in an attempt to establish the broker's liability. The witnesses usually include the claimant, the broker (as an "adverse witness") and someone who can explain how the claimant's losses have been calculated.
- Each witness called by the claimant will be subject to cross examination at the end of his or her direct testimony, unless the respondent decides to postpone its cross examination of a witness for the claimant until it puts on its defense.
- Next the broker or brokerage firm's attorney puts on witnesses, possibly including those who have already testified but from whom other testimony may be elicited.
- The panel is allowed to (and usually does) question witnesses.
- The formal Rules of Evidence do not apply. The panel determines the admissibility of evidence and testimony and will rule on any objections.
- Closing arguments are presented.

The hearing in a "typical" arbitration could take anywhere from one-half day to several days. The length of the hearing may be extended if either party calls a large number of witnesses. If the parties and the panel have agreed that briefs will be submitted, that must be done before the hearing is deemed "closed." Once the hearing is closed, the panel takes the case under advisement and issues an award.

The Award

The arbitrator has wide flexibility to determine awards. The award must be in writing but need not follow any specific form. It may be as simple as "All claims are herby denied" or "Claimant is awarded $15,000 in full satisfaction of his claim"; or it may be a "reasoned award" in which the arbitrator explains why the dispute has been resolved in a particular way. Rule 12904 of the Arbitration Code governs awards.

The grounds for appealing or vacating an arbitration award are contained in Section 10 of the Federal Arbitration Act. They are interpreted very narrowly—making it extremely difficult to vacate an award. Moreover, any attempt to do so must be initiated within a narrow three month window following issuance of the award. The caution to the clinic is to spell out, or negate, its obligation to continue representing the client if an attempt is made by either party to overturn the award. Defending or attempting to set aside an arbitration award in court could be a worthwhile learning experience for the students involved, but may be a more extensive, costly and adversarial proceeding than the clinic may be willing to undertake.[5]

5 Another matter to consider at the outset and to address in the Retainer Agreement is the clinic's obligation to collect a judgement or award against the broker. THis can be a very onerous undertaking, and the clinic may wish to specifically exclude any such obligation.

Closing Client Interview

After the case is resolved, favorably or unfavorably, it is well for the Director to meet with the client and ask for a candid evaluation of what has taken place. This is an invaluable tool to evaluate the students' work, gauge client satisfaction, and provide an opportunity for improvement. Ideally, the interview should obtain client feedback on a variety of issues, such as the students' level of commitment to the case and to the client, communication between the assigned student and the client, the client's satisfaction with the outcome, and the client's opinion about how the case was presented.

Summer and Term Break Activities

The Director should seek to plan clinic activities and cases on a time schedule that matches the academic schedule. Matters under the Director's control such as case evaluations and the acceptance or rejection of new clients can be completed by the end of an academic term.

Nevertheless, there will always be matters that require the Director's continuing attention even though the student-support team may be unavailable for a period of weeks or months. For example, cases should be monitored in the event that FINRA's six-year "eligibility rule" may apply to preclude the hearing of claims not timely filed. In addition, there may be matters pending before the arbitrator when the term ends which cannot be delayed without prejudicing the client's rights. If the Director is facing a deadline, or is unable to continue a matter until the clinical students return, the Director will have to handle the matter personally.

A prudent Director will explore, several months in advance, what assistance might be available when clinical students are not available. Among the possibilities are work-study students from the law school, students without summer employment who are looking for volunteer opportunities, students enrolled in law school externships programs who might be assigned to the securities clinic for the summer, and attorneys from the community who are seeking pro bono opportunities.

Section 8: Funding Sources

Let us assume for the sake of discussion that the cost of establishing a securities advocacy clinic with a mature and experienced, full-time, resident Director, including salary and benefits, stationery, supplies, a personal computer and telephone line, and some miscellaneous expenses is budgeted at $125,000 for the first year of operations.[6] The question, then, is where does the law school find the initial $125,000 and the funds required to carry on the program after the first year?

The FINRA Investor Education Foundation has established a grant program that provides start-up funding for law schools interested in opening a securities advocacy clinic. You can learn more at *http://www.finrafoundation.org/org/grants/general/guidelines*. In addition, grant opportunities may be available from the Investor Protection Trust (IPT), an independent nonprofit organization that works directly with state securities regulators on statewide, local and community investor education initiatives. Guidelines for grant proposals to the IPT can be found at *http://www.investorprotection.org*. Both organizations received funds from the 2003 Global Research Analyst settlement (see SEC v. Bear Stearns, & Co. Inc., 03 CV 2937 (WHP) SDNY) in which seven of the ten major investment banking firms that settled with the SEC paid $80 million to fund and promote investor education. $55 million of the settlement proceeds was subsequently awarded to the FINRA Investor Education Foundation (then the NASD Foundation) and $30 million to a trust fund overseen by the IPT.

Securities Regulators, State and Local Governments and Courts

Although regulators generally cannot provide direct funding for clinics, they may be able to direct awards in civil actions against brokers to the law schools as was the case with the Research Analyst litigation. As an example, the State of New York has funded investor protection clinics with so-called Spitzer Grants, out of payments recovered by the New York Attorney General in settlement of civil actions against telecom executives allegedly involved in illegal activities in connection with initial public offerings. Each of ten law schools in the State of New York initially received $200,000 for the purpose of supporting a securities advocacy clinic. An additional $500,000 was subsequently made available to each New York law school that demonstrated a continuing interest in operating such a clinic.

Duquesne received support from the Pennsylvania Securities Commission including a five-year grant. Its clinic was, in fact, considered to be a “program of the Pennsylvania Securities Commission”.

In addition to individual state regulators, it might also be worthwhile for the sponsor of a proposed clinic to contact the organization of state securities regulators, the North American Securities Administrators (NASAA). NASSA has sponsored a variety of programs to help small investors avoid securities fraud and was an important voice in determining how the proceeds of the Global Research Analysts litigation should be distributed.

State legislatures, which have considerable autonomy when it comes to dispensing funds for education and consumer protection purposes, and other departments within state or local government, should also be considered, particularly those that are charged with protecting the rights of the elderly.

6 This may be on the high side if the Director is also teaching another course at the law school and if, say, 50 percent of the Director’s salary and benefits can be charged to the other program.

For continued maintenance of a clinical program, it may be possible to obtain cy pres awards directly from state or federal court judges who control unclaimed funds from class action settlements or decrees. Disbursements of this kind are being made on a frequent basis by state and federal courts around the country. In April 2008, for example a legal service organization in Illinois (not a legal clinic) received three such grants: $169,334, $434,072 and $91,745 – each from a different state court class action settlement. In the case of securities advocacy clinics, the attorneys in the best position to recommend such disbursements may well be plaintiff's securities lawyers who are members of the Public Investors Arbitration Bar Association (PIABA) and who are frequently involved in cases of this type.

Private Sources

Sources within the private sector can also be approached for support. These include individual attorneys, members of the securities or investment banking community, law school alumni, law firms, bar associations, charitable foundations concerned with the elderly, and the local IOLTA (Attorney Trust Fund) organization. PIABA (see above), which has a special interest in a referral service to which its members can send claimants with smaller claims, is another option.

The most difficult, but in the long run, most reliable source of funding is through the general law school budget. Every school has different, school-specific rules for applying for internal school budget funds and there is competition within each school for funding. Key to obtaining such funding is establishing the value of the new clinical offering. There is a movement in legal education to broaden the types of clinical opportunities available to students and to include more "business" related clinical experience. Given the nature of the work, which includes securities regulation and related financial analysis, as well as mediation and arbitration training, a securities advocacy clinic provides a unique opportunity for a law school to expand its business-related, experiential education in a highly visible manner and at a relatively low cost.

Traditional Fees for Services

A dozen or so law schools, including Northwestern, Pennsylvania, Michigan State, Loyola-Chicago, Connecticut and the University of Missouri (Kansas City), charge modest fees for services provided to small business owners, inventors and entrepreneurs through their transactional clinics. Schools that are considering the establishment of investor protection clinics might think about adopting a similar approach – although this raises issues regarding the clinic's educational and charitable mission and the law school's relationship with the local bar. Moreover, small investors may be unable to pay fees, no matter how modest they are. Nevertheless, the possibility of charging agreed-upon fees (*e.g.*, $500 per case) is something that could be considered.

Contingent Fees

Fees payable only if the client prevails in whole or in part on his claim may be more palatable to the client and to the community at large than traditional fees for services.

Currently, one-third to 40 percent of the amount recovered for the client is considered the norm for attorneys' contingent fees in securities fraud cases. However, as clinics are created to help low income investors and to provide a learning experience for students – rather than as a money-making enterprise – asking for a contingent fee may not always be appropriate.

Moreover, it is unlikely that contingency fees can ever totally fund a securities advocacy clinic on an ongoing basis because most claims and most recoveries are too small. Charging contingency fees for typical low income clients could have a substantial adverse impact on the client's remaining net worth. For example, assume that a client loses $20,000 on an investment and the clinic manages to obtain a $10,000 recovery. If $20,000 was the client's entire savings and – except for social security – the only source for living expenses, a contingent fee for the recovery would severely impact this client.

Regardless of whether the clinic is thinking about traditional fees for services or contingent fees, it may have to consider any applicable student practice rules that provide that law students certified to appear in contested matters may not be paid for their time (rules that may be open to some interpretation as applied to fees charged by a clinic for work done in part by certified students).

There is no doubt that a securities advocacy clinic is an excellent addition to any law school curriculum. These Guidelines set forth some of the challenges and opportunities encountered by Northwestern University School of Law and other clinics already in operation that can be drawn upon in designing such a program. Schools exploring the possibility should feel free to contact the authors or the clinic Directors listed in Appendix A.

Name of Institution:	**Benjamin N. Cardozo School of Law**
Program:	Securities Arbitration Clinic
Address:	55 Fifth Avenue, Suite 1116, New York, NY 10003
Phone:	(212) 790-0200, x6646
Website:	*http://www.cardozo.yu.edu/MemberContentDisplay.aspx?ccmd=ContentDisplay&ucmd=UserDisplay&userid=10416*
Director:	Elizabeth Goldman

Name of Institution:	**Brooklyn Law School**
Program:	Investor Rights Clinic
Address:	1 Boerum Place, Room 300, Brooklyn, NY 11201
Phone:	(718) 780-7994
Website:	*http://www.brooklaw.edu/academics/clinicalprogram/clinicsandexternships/clinics.aspx?*
Director:	Joel Bernstein, Mark Arisohn

Name of Institution:	**Cornell University Law School**
Program:	Securities Law Clinic
Address:	Myron Taylor Hall, Ithaca, NY 14853-4901
Phone:	(607) 254-8270
Email:	securitieslawclinic@cornell.edu
Website:	*http://www.lawschool.cornell.edu/academics/clinicalprogram/securities-law/index.cfm*
Director:	William A. Jacobson

Name of Institution:	**Florida International University College of Law**
Program:	Investor Advocacy Clinic
Address:	11200 SW 8th Street RDB1010, Miami, FL 33199
Phone:	(305) 348-7541
Director:	Tony Santos

Name of Institution:	**Fordham University School of Law**
Program:	Securities Arbitration Clinic
Address:	33 West 60th Street, 3rd Floor, New York, NY 10023
Phone:	(212) 636-7059
Director:	Paul Radvany

Name of Institution:	**Georgia State University College of Law**
Program:	Investor Advocacy Clinic
Address:	Urban Life Building, 140 Decatur Street, Suite 326, Atlanta, GA 30303
Phone:	(404) 413-9270; (404) 413-9272 (fax)
E-mail:	InvestorAdvocacy@gsu.edu
Director:	Nicole Gail Iannarone

Name of Institution:	**Hofstra School of Law**
Program:	Securities Arbitration Clinic
Address:	108 Hofstra University, Hempstead, NY 11549-1080
Phone:	(516) 463-5934
Website:	*http://law.hofstra.edu/academics/Clinics/clinic_descriptions.html*
Director:	Curtis Pew

Name of Institution:	**Howard University School of Law**
Program:	Investor Justice and Education Clinic
Address:	2900 Van Ness Street, NW, Washington, DC 20008
Phone:	(202) 806-8082
Director:	Bruce Sanders

Name of Institution:	**Michigan State University College of Law**
Program:	Investor Advocacy Clinic
Address:	610 Abbot Road, East Lansing, MI 48823
Phone:	(517) 336-8088 (ext. 6)
E-mail:	securities.clinic@law.msu.edu
Director:	Benjamin Edwards

Name of Institution:	**New York Law School**
Program:	Securities Arbitration Clinic
Address:	57 Worth Street, New York, NY 10013
Phone:	(212) 431-2338
Website:	*http://www.nyls.edu/academics/jd_programs/lawyering_skills_externships/clinics/securities_arbitration_clinic*
Director:	Howard S. Meyers

Name of Institution:	**Northwestern University School of Law**
Program:	Investor Protection Center
Address:	Bluhm Legal Clinic, 357 E. Chicago Avenue, Chicago, Illinois 60611
Phone:	(312) 503-0210
E-mail:	Investor-Protection@law.northwestern.edu
Website:	*http://www.law.northwestern.edu/investorprotection/*
Director:	J. Samuel Tenenbaum

Name of Institution:	**Pace University School of Law**
Program:	John Jay Legal Services, Investor Rights Clinic
Address:	80 North Broadway, White Plains, NY 10603
Phone:	(914) 422-4333
Website:	*http://www.pace.edu/page.cfm?doc_id=23714*
Director:	Jill Gross

Name of Institution:	**Pepperdine School of Law**
Program:	Investor Advocacy Clinic
Address:	24255 Pacific Coast Highway, Malibu, CA 90265
Phone:	(310) 506-6098
Email:	investoradvocacyclinic@pepperdine.edu
Director:	Robert A. Uhl

Name of Institution:	**St. John's University School of Law**
Program:	St. Vincent De Paul Legal Program, Inc., Securities Arbitration Clinic 8000 Utopia Parkway, 2nd Floor, Jamaica, NY 11439
Phone:	(718) 990-6930
Website:	*http://www.stjohns.edu/academics/graduate/law/academics/clinics/securities*
Email:	securities@stjohns.edu
Director:	Christine Lazaro

Name of Institution:	**Seton Hall School of Law**
Program:	Investor Advocacy Project
Address:	One Newark Center, Room 429, Newark, NJ 07102
Phone:	(973) 642-8084
Email:	investoradvocacy@shu.edu
Director:	David M. White

Name of Institution:	**Syracuse University College of Law**
Program:	Securities Arbitration Consumer Clinic
Address:	P.O. Box 6543, Syracuse, NY 13217-6543
Phone:	(315) 443-5292
Website:	*http://www.law.syr.edu/academics/clinicaleducation/inhouse_clinics.asp*
Director:	Robert Ashford

Name of Institution:	**University of Miami School of Law**
Program:	Investor Rights Clinic
Address:	1311 Miller Drive, Coral Gables, Florida 33146
Phone:	(305) 284-3094
Director:	Teresa Verges

Name of Institution:	**University of Pittsburgh School of Law**
Program:	Securities Arbitration Clinic
Address:	Room 5220, 210 South Bouquet Street, Pittsburgh, PA 15260
Mailing Address:	P.O. Box 7226, Pittsburgh, PA 15213-0221
Phone:	(412) 648-1300
Director:	Alice Stewart

Name of Institution:	**University of San Francisco School of Law**
Program:	Investor Justice Project
Address:	2130 Fulton Street, San Francisco, CA 94117
Phone:	(415) 422-5326
E-mail:	investorjusticeclinic@usfca.edu
Website:	*http://www.usfca.edu/law/investorjustice*
Director:	Robert Talbot

Pace University School of Law
John Jay Legal Services
Investor Rights Clinic

Class Schedule and Syllabus - Fall 2007

Required Text: Krieger & Neumann, Essential Lawyering Skills (Aspen 3d Ed. 2007)

Aug. 27	**JJLS Orientation** [to be scheduled by Florie]
Aug. 28	**Introduction to the clinical experience** **Reading for class:** • *Shearson/American Express, Inc. v. McMahon*, 482 U.S. 220 (1987) • Krieger & Neumann ("KN"), chapters 1-2; and §§ 8.4.1, 16.4 and 22.4 • Notice to Attorneys and Parties Represented by Out-of-State Attorneys, *http://www.finra.org/ArbitrationMediation/Parties/ArbitrationProcess/NoticesToParties/p015666* • Proposed Rule Change and Amendments Nos. 1 and 2 Relating to Representation in Arbitration and Mediation, 72 Fed. Reg. 18703 (NASD Apr. 13, 2007), available at *http://www.finra.org/web/groups/rules_regs/ documents/rule_filing/p018912.pdf* • Award: In the Matter of the Arbitration Between Lombard Secs. Corp. vs. Margaret E. Desmond, Arb. No. 02-04464 (NASD June 30, 2003) (available on FINRA Dispute Resolution website by clicking on "Get Arbitration Awards") **In your JJLS Office Manual:** • JJLS Second Department Student Practice Order • David F. Chavkin, Clinical Legal Education: A Textbook for Law School Clinical Programs (Anderson Publishing 2002), Chapters 1, 2, 3 (II-A) • PIRC Eligibility Criteria and Questionnaire (IV-1) • PIRC "Investigate and Advise" Retainer (IV-9) • PIRC Attorney-Client Retainer Agreement (IV-13) • PIRC Letter Agreement with Financial Expert (IV-19)
Sept. 4	**Broker-Dealer Liability to Customers** **Reading for class:** • FINRA Conduct Rule 2310 (the "suitability rule") available at *http://www.finra.org/nasdmanual/rules/r2310/* • De Kwiatkowski v. Bear Stearns & Co., Inc., 306 F.3d 1293 (2d Cir. 2002) • Baker v. First Montauk Secs. Corp., Arb. No. 03-08630, 2005 WL 1529459 (June 13, 2005) • Statement of Claim and Answer (hand-outs) • Primer on Broker-Dealer Liability (hand-out)
Sept. 10	**Learning Agenda Conferences** • **Learning Agenda Memos due Sept. 7 at 4:00 p.m.**

Assignment for Sept. 11 class: Prepare list of questions for simulated telephone interview

▶ TOC

Sept. 11	**Handling Preliminary Inquiries; The Telephone Interview (Simulation)** **Reading for class:** • Simulated Questionnaire • David Robbins, Securities Arbitration Procedure Manual (5th ed. 2005), "Case Evaluation," sections 5-1 through 5-5d (first part only), and 5-6e. A copy of this book is in the clinic library for your use, and is also available on LEXIS. • MacCrate Report, "Problem Solving," JJLS Office Manual, section 2, pp. 141-151 • KN, chapters 3-4-5
Sept. 18	**Client Interviewing I (The Interview Plan)** **Reading for class:** • KN, chapters 6-7-8 • MacCrate Report, "Communication," JJLS Office Manual, section 2, pp. 172-176

For Sept. 25 class: Prepare outline of interview questions with partner

Sept. 25	**Client Interviewing II (Simulation)**
Oct. 2	**Client Interviewing III (Reflection)**
Oct. 9	**The Arbitration Process** **Reading for class:** • FINRA Code of Arbitration Procedure For Customer Disputes ("Customer Code"), effective April 16, 2007, particularly focusing on Rules 12101, 12200, 12201, 12206-08, 12210, 12212-13, 12300-07, 12401-06, 12500-01, 12503, 12514, 12800, 12900, 12904, available at: *http://www.finra.org/ArbitrationMediation/Parties/Overview/ArbitrationProcedures/index.htm* • FINRA "Arbitration Case Flow," available at *http://www.finra.org/ArbitrationMediation/Parties/ArbitrationProcess/ArbitrationCaseFlow/index.htm* • FINRA "Arbitration Procedures," available at *http://www.finra.org/ArbitrationMediation/Parties/Overview/ArbitrationProcedures/index.htm.* • Jill I. Gross, McMahon Turns Twenty: The Regulation of Fairness in Securities Arbitration, 76 Cinc. L. Rev__(2008) (forthcoming) [hand-out]
Oct. 16	**Writing Professional Letters/Student Collaboration** **Reading for class: Hand-outs**
Oct. 23	**Discovery in Arbitration** Reading for Class • Customer Code 12505-12513 • Discovery Guide for Arbitration Proceedings (new version), available at *http://www.finra.org/ArbitrationMediation/Parties/Overview/Arbitration Procedures/index.htm* • Notice to Parties – FINRA's Discovery Rules and Procedure, available at *http://www.finra.org/ArbitrationMediation/Parties/ArbitrationProcess/NoticesToParties/P009517* • Subpoenas, available at *http://www.finra.org/ArbitrationMediation/Neutrals/Education/InformationAboutSubpoenas/index.htm* • NASD Notice to Members 07-13, available at *http://www.finra.org/web/groups/rules_regs/documents/notice_to_members/p018726.pdf* • 9 U.S.C. § 7 (2006) • Stolt-Nielsen SA v. Celanese AG, 430 F.3d 567 (2d Cir. 2005) [focus on interpretation of FAA § 7]

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Oct. 30	**Fact Analysis; Case Discussions** **Reading for class: KN, chapters 10-14**
Nov. 6	**Fact Investigation; Account Documentation and Investment Products** **Reading for class:** • KN, chapters 15-17 • SIA, "Understanding Your Brokerage Account Statements" (hand-out) • Handouts – Customer Account Agreement • MacCrate Report, "Factual Investigation," JJLS Office Manual, pp. II-163—II-172
Nov. 13	**Damages and Other Relief** **Reading for class:** • B. Black, Primer on Damages in Securities Arbitration • Sawtelle v. Waddell & Reed, Inc., 754 N.Y.S.2d 264 (1st Dept. 2003) • Scalp & Blade, Inc. v. Advest, Inc., 2003 WL 22256089 (Oct. 2, 2003) • Optional: Proving Damages Caused by Securities Broker's Excessive, Unsuitable or Unauthorized Trading, 35 AmJur POF 3d 161 (available on Westlaw)
Nov. 20	**Client Counseling; Case Discussions** **Reading for class:** • MacCrate Report, "Counseling," JJLS Office Manual, pp. II-176—II-184 • KN, chapters 18-22
Sign up for end-of-semester conferences Due Dec. 3: End-of-semester memo	
Dec. 4-5-6:	**End-of-semester conferences**

Pace University School of Law
John Jay Legal Services
Investor Rights Clinic

Class Schedule and Syllabus - Spring 2008

Jan. 15	**Damages and Other Relief** • **Reading for class:** • J. Gross, A Primer on Damages in Customer-Broker Disputes (Jan. 2008), available on TWEN under "Course Materials" • Scalp & Blade, Inc. v. Advest, Inc., 309 A.D.2d 219 (4th Dept. 2003) [damages issue only]
Jan. 22	**Negotiation simulation – planning** • **Reading for next three classes:** • KN, chapters 23-28 • Skill § 7, "Negotiation" from the MacCrate Report (JJLS Manual) • NY DR 7-102; Model Rule of Professional Conduct 4.1 • NASD Notice to Members 03-44, Members' Use of Affidavits in Connection with Stipulated Awards and Settlements to Obtain Expungement of Customer Dispute Information under Rule 2130 • NASD Notice to Members 04-44, Impermissible Confidentiality Provisions and Complaint Withdrawal Provisions in Settlement Agreements (June 2004) • Additional reading assigned in simulation materials
Jan. 29	**No class**
Feb. 5	**Negotiation simulation – execution**
Feb. 12	**Negotiation simulation – reflection**
Feb. 19	**No class: Winter Vacation**
Feb. 26	**No class**
Mar. 4	**Case discussions**
Mar. 11	**No class**
Mar. 17	**No Class: Spring vacation**
Mar. 25	**Securities Mediation** • **Reading for class:** • Simulation materials • FINRA Dispute Resolution website, Mediation Pages, starting at: *www.finra.org/ArbitrationMediation/Parties/MediationProcess/index.htm*

Apr. 1	**No class**
Apr. 8	**Securities Arbitration: The Defense Perspective** • Guest Speaker: Scott I. Bieler, Esq., • First Vice President and Assistant General Counsel, Merrill Lynch • **Reading:** SIFMA, White Paper on Arbitration in the Securities Industry, available at *http://www.sifma.org/regulatory/pdf/arbitration-white-paper.pdf* (Oct. 2007).
Apr. 15	**No class**
Apr. 22	**No Class**
Apr. 29	**Final case discussions and reflections**

End-of-semester memo: due April 29

Final Conferences – Week of April 29

Cornell University Law School
Securities Law Clinic

Student Conflicts Memo

Name:

Year:

Have you ever been employed by or affiliated with a broker-dealer or investment firm? If yes, please list firm, dates, and position held.

Do you maintain brokerage or investment accounts (either directly or as a beneficiary) at any broker-dealer or investment firm? If yes, please list firm, type of account and ownership interest.

Have you ever performed paralegal or legal work on behalf of a broker-dealer or investment firm (including work as a summer associate)? If yes, please provide non-confidential details as to name of client, firm you were employed at, and general description of work.

Do you have any other relationships to broker-dealers or investment firms?

TOC

Northwestern University School of Law
Bluhm Legal Clinic
Investor Protection Clinic

Model Exit Interview for Clinic Students

(A) Learning and Academic Value:

1. To what extent have your skills improved, including interviewing and counseling of clients, negotiating, investigation, brief and memo writing, and trial advocacy?
2. Was the Clinic experience valuable to your understanding of the strengths and weaknesses of the justice system?
3. Did the Clinic experience increase your appreciation for the practice of law for the public interest?
4. To what extent did your understanding of professional responsibility and ethics increase as a result of your participation in the Clinic?

(B) Instructor Effectiveness:

1. Were the instructor's instructions and explanations clear?
2. Did the instructor present sufficient background to enable you to effectively address your responsibilities?
3. Was the instructor available and willing to provide assistance when needed?
4. Was the instructor well-prepared and well-organized with respect to assignment and coordination of the cases??
5. Was the instructor knowledgeable about current developments in the field?
6. Did the instructor provide valuable feedback on your performance?

(C) Clinic Assignments:

1. On a scale of 1 to 6, provide an overall rating of the course.
2. On a scale of 1 to 6, provide an overall rating of the instructor.
3. Would you recommend the Clinic practice area on which you worked to other students?
4. Would you take another course from the instructor?

(D) Overall Rating:

1. On a scale of 1 to 6, provide an overall rating of the course.
2. On a scale of 1 to 6, provide an overall rating of the instructor.

(E) Recommend?

1. Would you recommend the Clinic practice area in which you worked to other students?

Northwestern University School of Law
Bluhm Legal Clinic
Investor Protection Center

Client Eligibility Questionnaire

Please complete each of the following sections. If necessary, attach additional sheets with your name at the top of each attached page.

1. **Please provide your contact information.**
   a. Name:
   b. Address:
   c. Daytime telephone:
   d. Evening telephone:
   e. E-mail address:
   f. Are you an Illinois resident? (Yes / No)

2. **Please describe the dispute with your broker-dealer. Provide a short description to answer each of the following questions.**
   a. What is the transaction in dispute?
   b. What is the amount of money involved in the transaction?
   c. What is the timeframe (relevant dates) and circumstances under which the transaction was made?
   d. Where did you live when the dispute arose?
   e. What is the name and address of your broker?
   f. Is your broker registered?
   g. How was you broker dealer involved and what specific complaints do you have against the broker?
   h. What kind of records do you have that relate to the transaction? You may, but need not attach copies of any broker-dealer records that you have. (You will need these records to pursue your claim, so keep in mind that a full documentation is crucial and may include tax records, account statements, confirmations, correspondence.

3. **Have you attempted to contact the broker or brokerage firm to resolve this dispute? If so, what was the result of this contact?**

4. **Which group of investors do you belong to?**

a)	Are you 65 years or older?	☐ Yes	☐ No
b)	Gender	☐ Female	☐ Male
c)	Level of education	☐ High School	☐ College
d)	Novice investor?	☐ Yes	☐ No

5. **Please describe your general investing background. Provide a short description to answer each of the following questions.**

   a. What is you households' annual income according to your most recent federal tax return? (If you are invited to interview at the clinic, you will be asked to provide copies of you federal tax returns for the past two years.)

   b. Do you have any major assets other than your residence and a car? If so,please describe these other assets.

   c. Please describe your trading history. Do you use other accounts? What were your investment objectives in the disputed transaction?

6. **Previous legal counsel involved:**

   a. Have you already consulted attorneys regarding the transaction in dispute who declined to represent you?

   b. Why did these attorneys decline to represent you and your claim? (*e.g.* amount involved, nature of the claim)

   c. Please set forth the names, addresses, and telephone numbers of these attorneys or attorney referral services that you consulted.

7. **What is the source of referral to our Center (e.g. SEC, FINRA)?**

   Please mail the completed Questionnaire to:

   Northwestern University School of Law
   Center for Investor Protection -Securities Arbitration
   Bluhm Legal Clinic
   357 East Chicago Avenue
   Chicago, IL 60611

St. John's University School of Law
St. Vincent De Paul Legal Program, Inc.
Securities Arbitration Clinic

Client Eligibility Questionnaire

Your Name:

Address:

Daytime telephone:

Evening telephone:

E-mail address:

1. Give a brief description of your dispute with your broker-dealer. You may, but need not, attach copies of any broker-dealer records that you have. (You will need these records to pursue your claim, so it is a good idea to gather them now.) If you have attempted to contact the broker or the firm to resolve this dispute, please provide information about this.

(If necessary, attach additional sheets with your name at the top of each attached page.)

2. What is the amount of money that you are seeking from the broker-dealer?

3. What is your household's annual income? (If you are invited to interview at the clinic, you will be asked to provide copies of your federal tax returns for the past two years.)

4. Do you have any major assets other than your residence and a car? If so, please describe them.

5. Please set forth the names, addresses, and telephone numbers of three attorneys whom you have consulted about this claim and who have declined to represent you, because of the amount involved or nature of the claim, or of any referral service that you consulted.

6. Are you 65 or older? ☐ Yes ☐ No

7. Where did you live when you opened your brokerage account?

(a). Are you a New York State resident? ☐ Yes ☐ No

Please mail the completed Questionnaire to:

St. John's University School of Law
St. Vincent de Paul Legal Program, Inc.
8000 Utopia Parkway
Belson Hall Room 2-26
Queens, New York 11439

Northwestern University School of Law
Bluhm Legal Clinic
Investor Protection Center

Client Eligibility Questionnaire

Your name _____

Address _____

Daytime phone _____

Evening phone _____

Cell phone _____

E-mail address _____

1. Give a brief description of your dispute with your broker-dealer. You may, but need not, attach copies of any broker-dealer records that you have. (You will need these records to pursue your claim, so it is a good idea to gather them now.) If you have attempted to contact the broker or the firm to resolve this dispute, please provide information about this.

   _____

   _____

   _____

   _____

   _____

   _____

   _____

   (If necessary, attach additional sheets with your name at the top of each attached page.)

2. What is the amount of money that you are seeking from the broker-dealer?

   _____

3. What is your household's annual income? (If you are invited to interview at the clinic, you will be asked to provide copies of your federal tax returns for the past two years.)

   _____

4. Do you have any major assets other than your residence and a car? If so, please describe them.

5. Please set forth the names, addresses, and telephone numbers of three attorneys whom you have consulted about this claim and who have declined to represent you, because of the amount involved or nature of the claim, or of any attorney referral service that you consulted.

6. Are you 65 or older? ☐ Yes ☐ No

7. Where did you live when you opened your brokerage account?

Please mail the completed Questionnaire to:

Securities Arbitration Clinic
John Jay Legal Services, Inc.
Pace University School of Law
80 North Broadway
White Plains, New York 10603

Northwestern University School of Law
Bluhm Legal Clinic
Investor Protection Center

Letter Declining Representation

September , 2008

Mr. John Doe
Street Address
City, State, Zip Code

Dear Mr. Doe:

Thank you for your interest in the Investor Protection Center. After reviewing the materials and other information you provided, we have concluded that we are not in a position to represent you at this time.

Please note that this decision does not reflect an evaluation of the merits of your claim. Because of outstanding demand for our services, we are only capable of providing assistance to those investors earning less than $100,000 per year. We are committed to providing the highest quality of legal representation for those who cannot otherwise afford an attorney, and for us to take on other clients at this time would be a disservice to the clients whom we currently represent.

For other legal assistance, you may wish to contact the Lawyer Referral Service at the Chicago Bar Association, 312-554-2001. You should do so promptly because there are strictly-enforced time limits on pursuing claims against securities brokers and dealers.

We understand that the materials that you furnished to us are copies of original documents in your possession. If you would like us to return the copies, please let us know.

Very truly yours,

Jane Doe
Law Student

cc: Clinic Director

Northwestern University School of Law
Bluhm Legal Clinic
Investor Protection Center

Standard Form Document Release Authorization

I authorize _____ to release any and all records and documents, including audio tapes and emails, pertaining to my investment history at the above-identified brokerage firm for the following period:_____ to the Northwestern Legal Clinic Investor Protection Center, 357 East Chicago Avenue, Chicago, Illinois 60611. These documents include any and all monthly statements, trading confirmations, and correspondence with the firm.

This consent is valid until revoked.

I understand that the Investor Protection Center and I have the right to inspect and copy the materials to be disclosed.

I understand that I may revoke this consent at any time (revocation must be in writing), but no revocation of this consent shall be effective to prevent disclosure of records and communications until it is received by the person otherwise authorized to disclose records and communications.

I have read this authorization and release prior to the execution, and am fully familiar with its contents.

_____

Customer Signature Date

_____

Social Security Number

Northwestern University School of Law
Bluhm Legal Clinic
Investor Protection Clinic

Legal Representation Agreement

CONFIDENTIAL: ATTORNEY-CLIENT AND WORK PRODUCT PRIVILEGES

THIS AGREEMENT is entered into at Chicago, Illinois between _____ ("Client") and Northwestern University School of Law - Bluhm Legal Clinic ("Counsel").

WHEREAS, Client wishes to employ Counsel, and Counsel is willing to accept such employment on the terms and conditions hereinafter set forth:

NOW THEREFORE, it is agreed as follows:

A. Certain Definitions.

1. "Representation" means Counsel's investigation, negotiation, or prosecution of all claims arising out Client's dealings with _____, which occurred from _____ , _____ to the present, including but not limited to, any and all demands, claims, or causes of action which Counsel deem appropriate to be made or brought on behalf of Client against any individual or entity arising out of or related to actions by the above-named broker/dealer and affiliated parties and individuals in connection with the above referenced events. Counsel agrees to represent Client in this matter provided Financial Industry Regulatory Authority (FINRA) determines Chicago, Illinois as the appropriate venue and location for arbitration.
2. "Recovery" means whatever monetary relief Client may obtain as a result of settlement of Client's claim against the above-named broker/dealer, or affiliated parties and individuals, or as a result of an award or judgment in Client's favor against the above-named broker/dealer or affiliated parties or individuals.

B. Employment of Counsel. Client hereby employs Counsel as his/her sole attorneys for the Representation. Counsel may enter into agreements with local counsel as determined necessary by Counsel. Counsel will be the lead attorneys in the representation and all work conducted by local counsel must be approved by Counsel. Counsel hereby accepts such employment.

C. Compensation of Counsel. Unless other arrangements are set forth in this Agreement or in another written agreement between Client and Counsel, no attorneys fees shall be charged to Client for Counsel's handling of the Representation except such fees as may be awarded to Client by the arbitrator or court in which Client's claim is prosecuted or such attorneys fees as may be agreed to by the above-named broker/dealer or affiliated parties or individuals in settlement of Client's claim.

D. **Expenses.**

1. **Advancement of Expenses by Counsel.** Counsel expect to incur out-of-pocket expenses on behalf of Client, including, without limitation, FINRA filing fees, arbitrator's fees and expenses, court costs, court reporter costs, expert witness fees and expenses, travel expenses, photocopying, telephone and facsimile charges, local and overnight courier services, secretarial overtime, graphic artist, computerized litigation support and legal research (hereinafter, "Expenses"). Counsel will advance all such Expenses on behalf of Client as Counsel deems to be necessary and reasonable under the circumstances. It is understood that prior to the Effective Date of this Agreement, the Clinic has incurred Expenses in the amount of $ _____ in connection with investigating the actions contemplated by this Agreement and all such Expenses heretofore expended shall be considered as Expenses as defined herein.

2. **Reimbursement of Advanced Expenses by Client.** All Expenses advanced by Counsel shall be reimbursed by Client out of any Recovery as defined herein. Client's obligation to reimburse Counsel for Expenses as provided herein shall be in addition to Clients' obligations under Section C of this Agreement regarding Compensation of Counsel.

3. **Order of Payments.** Any Recovery will be applied first toward reimbursement to Counsel of Expenses, prior to any portion or share of said Recoveries being paid as Compensation to Counsel under Paragraph C. In the event the Recovery is insufficient to pay all Expenses advanced by Counsel, Client will [?] be responsible to pay the remaining Expense advance balance to Counsel.

4. **Awarded Expenses.** If the arbitrator or court awards Expenses, or any part thereof, to be paid by the above-named broker/dealer or affiliated parties or individuals, then all such amounts will be paid to Counsel and shall reduce Client's obligation to pay Expenses, as provided herein. The decision of the arbitrator or court not to order some or all Expenses to be paid shall not relieve Client of the obligation to pay all remaining unpaid Expenses, as provided herein.

E. **Premature Termination of Lawsuit or Arbitration.** In the event that prior to the entry of a final order, award or settlement, Client dismisses Counsel as attorneys for the Representation, or Client voluntarily dismisses or fails to pursue the Representation through other attorneys, Client shall pay Counsel based on the principles of quantum merit which Client specifically agrees shall include an appropriate portion of the Compensation referred to in Paragraph C. [Would this amount always be zero under the terms of para. E? Should this paragraph address unpaid expenses instead?]

F. **No Result Has Been Promised.** Counsel has not expressed any opinion nor made any promise or representation as to the value or eventual outcome of Client's claim. Nor has counsel expressed any opinion nor made any promise or representation as to the potential amount of any fees or expenses associated with counsel's representation of client. Client expressly acknowledges that client is not relying on any such promises or representations in entering into this agreement.

G. **Miscellaneous.**

1. **Offer of Settlement.** Client agrees to promptly notify Counsel whenever an offer of settlement is received by Client from the above-named broker/dealer or any affiliated parties or individuals.

2. **Counsel's Right to Withdraw.** Counsel and Client acknowledge and understand that the Representation anticipated by this Agreement involves many risks and unknown factors. In light of these risks and unknown factors, Counsel retains the right, in their sole discretion, to withdraw or limit their Representation of Client at any time, consistent with any applicable Rules of Professional Responsibility.

3. **Counsel's Compensation in the Event of Counsel's Withdrawal.** In the event Counsel withdraws from the Representation, the Compensation of Counsel, and Counsel's right to reimbursement for Expenses advanced by Counsel, shall be determined based on the principles of quantum merit.

4. **Severability.** If any part of this Agreement is deemed by a Court or arbitrator to be invalid, then it is the parties' intention that all other portions of the Agreement shall be fully binding and enforceable.

5. **Document May Be Executed in Counterparts.** This Agreement may be executed in several counterparts, in one or more separate documents, all of which together shall constitute one and the same instrument, and the same force and effect as though all of the parties had executed the same document at the same time.

6. **Effective Date.** The effective date of this Agreement shall be the last date signed by the last party to sign this Agreement.

7. **Agreement May Only Be Amended in Writing.** This Agreement represents the complete agreement of the parties with respect to Counsel's services to the Client related to the representations, and supersedes any prior oral or written statement of Counsel or the Client, but shall not supersede any concurrent or subsequent written agreement regarding the Compensation of Counsel. This Agreement may only be amended by a written contract or letter signed ball parties.

8. **Choice of Law.** This agreement shall be governed by the internal substantive laws of the State of Illinois.

9. **Parties Agree to Arbitration.** In the event that any dispute arises under this Agreement that cannot be amicably resolved by the parties, the parties agree that they will submit the dispute to binding arbitration with the Chicago Bar Association by a single arbitrator in the City of Chicago. Each party will bear its own costs and attorneys' fees in connection with any such arbitration.

10. **Representations and Warranties.** Each party named and signing this Agreement expressly represents and warrants that the person executing the Agreement on her/his behalf is fully and duly authorized to bind the party to all the terms and conditions expressed in this Agreement.

Client	**Northwestern University School of Law**
_____	_____
Client's Signature	By:
_____	_____
Date:	Date:

▶ TOC

PACE University School of Law
John Jay Legal Services, Inc.
PACE Investor Rights Clinic

Attorney-Client Agreement and Client's Consent To Representation

This agreement is effective only if a supervising attorney of John Jay Legal Services, Inc signs it.

_____ (client) and John Jay Legal Services, Inc., agree as follows:

RETAINER AND AUTHORIZATION

Client retains John Jay Legal Services and authorizes John Jay Legal Services and its student attorneys and attorneys to represent client and act on client's behalf in the case described below. John Jay Legal Services agrees to provide the following legal services:

> **[If pending arbitration, provide here the case name and arbitration number If no pending arbitration, summarize here the matter under investigation]**

John Jay Legal Services undertakes to provide legal services only on the matter indicated above. Its obligations under this agreement terminate at the completion of the services indicated above or at the time of termination of its representation, as provided below. Additionally, John Jay Legal Services will not provide representation or assistance in regard to converting an arbitral award into a recognized legal judgment nor will it assist in the collection of any judgment or award.

CLIENT'S CONSENT TO REPRESENTATION BY STUDENT ATTORNEYS

Client understands that student attorneys supervised by experienced attorneys will handle all aspects of representation in this case.

The student attorneys are second-year, third-year, or fourth-year law students at Pace University School of Law. They have been authorized under New York law to advise and represent clients in certain types of cases under the supervision of faculty attorneys.

The student attorneys and faculty-supervising attorneys are providing legal services as part of the educational program of Pace University School of Law. Because individual student attorneys may graduate or change assignments, different student attorneys may be assigned at various times to work on client's case. The supervising attorneys will oversee the work of the student attorneys but will not directly represent client.

STUDENT ATTORNEYS' RESPONSIBILITIES

The student attorneys representing client agree to take the necessary and reasonable steps, based upon their best judgment, to develop client's case and to obtain a decision as soon as possible.

The student attorneys will keep client reasonably informed about the status of client's case and will attempt to provide any information about the case reasonably requested by client.

All documents provided to John Jay Legal Services by client or prepared on client's behalf will be returned to client on request. John Jay Legal Services may make and keep copies of all documents.

▶ TOC

If the claim is denied or an incorrect decision is made, the student attorneys will tell client whether or not they believe the case should be appealed. This agreement does not apply to an appeal. Legal services for appeals are new matters. Client may apply for legal assistance for new matters, but John Jay Legal Services is not obligated to provide such additional services under this retainer agreement.

CLIENT'S RESPONSIBILITIES

Client agrees to cooperate with the student attorneys in the development of the case. Cooperation includes:

- answering questions asked by the student attorneys;
- promptly providing all information and papers requested by the student attorneys;
- attending scheduled appointments and promptly responding to telephone calls and correspondence from the student attorneys;
- appearing at depositions and hearings and testifying when requested by the student attorneys; and
- consulting with the student attorneys before accepting a settlement offer.
- Client agrees to tell the student attorneys if client receives any letters or papers regarding the case.
- Client agrees to tell the student attorneys if there is any significant change in client's medical condition, client's ability to work, or client's income.
- Client agrees to tell the student attorneys if there is any change in client's address or telephone number.
- Client agrees not to write any letters or to make any telephone calls to anyone involved in the case without first discussing such letters or telephone calls with the student attorneys.

Client has retained the student attorneys to be client's representative and to act as an intermediary with opposing parties and their attorneys. If an opposing party or attorney contacts client in person, by telephone, or by letter, therefore, client will not talk with them but will immediately notify the student attorneys.

ATTORNEYS' FEES

John Jay Legal Services, Inc., is a nonprofit, educational clinic supported by Pace University School of Law. No attorneys' fees will be charged to clients for the services of John Jay Legal Services or its student attorneys or attorneys. In some types of cases, the law provides that a client may make a claim against the opposing party — the person or business sued — for the client's attorney fees. The purpose of those laws is to enable people who cannot pay their own attorney to be represented. It is a claim for additional money that a client has only if she or he is represented by an attorney. Client is not required to pay any money to John Jay Legal Services from client's personal funds or property, or from any funds client obtains as relief in this matter. John Jay Legal Services may accept only money received as attorney fees from an opposing party. By signing this agreement, client assigns client's claim for attorney fees to John Jay Legal Services. Client also authorizes John Jay Legal Services to apply for a fee award on client's behalf, and to accept and keep any fee awarded by a court or paid by an opposing party in settlement of a client's fee claim. John Jay Legal Services may seek statutory or other fees from adverse parties, the U.S. Government, or the State of New York.

COSTS AND EXPENSES

Costs and expenses are different from attorneys' fees. Client agrees to pay costs and expenses whether a recovery is obtained or not, unless John Jay Legal Services has agreed to advance those costs and expenses, and in such circumstances, Client will reimburse JJLS for all such costs. The types of costs and expenses which may arise in this case include the following: charges for records or other copying charges, travel costs, long-distance telephone charges, deposition costs, witness fees, and so forth. Additionally, client has agreed to pay all NASD and/or NYSE Arbitration fees directly.

SETTLEMENT OF THE CASE

John Jay Legal Services may take all necessary and appropriate actions in providing legal services to client, including, but not limited to, entering into settlement negotiations. Client, however, must approve any settlement. Client authorizes John Jay Legal Services to receive, on behalf of client, checks or other forms of payment made in satisfaction of client's claims, whether by settlement or judgment.

CLIENT'S AND ATTORNEYS' RIGHTS TO END THIS REPRESENTATION

Client may decide at any time to stop being represented by John Jay Legal Services. If client asks that representation be discontinued, John Jay Legal Services and its student attorneys and attorneys will cooperate reasonably with client and with any new representative during the transfer of representation.

Within the limits established by law and by the Code of Professional Responsibility, John Jay Legal Services reserves the right to withdraw from representation if it becomes unable to continue representing client, if client fails to honor the terms of this agreement, or if John Jay Legal Services is unable to contact client despite conscientious efforts. John Jay Legal Services may be required to withdraw from representation of client if:

- client indicates an intention to give false testimony or is found to have misrepresented or concealed facts concerning the case;
- client directs the student attorneys to file any paper, or insists on advancing any claim or defense, which the student attorneys reasonably believe may subject them to sanctions;
- client refuses to obey a court order which the student attorneys have advised client to obey;
- client's financial circumstances change significantly so as to affect client's eligibility for representation.

QUESTIONS ABOUT THIS AGREEMENT

Client has had an opportunity to discuss this agreement with the student attorneys and to ask any questions client had about the agreement or about representation by John Jay Legal Services. Before signing the agreement, client has been given enough time to read and understand the agreement.

Two copies of this agreement will be made, one for client and one for John Jay Legal Services. If client has any questions about this agreement in the future, John Jay Legal Services and its student attorneys and attorneys will make every reasonable effort to answer client's questions.

COMPLAINTS

If client has a complaint regarding the manner or quality of services being provided by any John Jay Legal Services staff member, client may use the Grievance Procedure for Clients and submit a complaint to the Executive Director. If client is not satisfied with the disposition of the complaint by the Executive Director, client may complain to the Board of Directors. Contact information for both is provided in the Procedure.

Client acknowledges receipt of a copy of Grievance Procedure for Clients.

Date:

Signature of Client:

John Jay Legal Services, Inc.

By:

Student Attorney

By:

Student Attorney

This agreement is effective only if a supervising attorney of John Jay Legal Services, Inc signs it.

Supervising Attorney

PACE University School of Law
John Jay Legal Services, Inc.
PACE Investor Rights Clinic

Grievance Procedure For Clients

You as the client have the right to bring any problem or concern about your representation to the attention of Professor Margaret M. Flint, Executive Director of John Jay Legal Services. Her telephone number is 914-422-4140.

If the problem is not resolved after consultation with Professor Flint, you may then consult Michelle Simon, the Dean of Pace University School of Law, and Chairperson of the Board of Directors of John Jay Legal Services. Her telephone number is 914-422-4407.

We would like to try to resolve your concern about your representation as quickly as possible. To help us do that, please describe in the space below the problem that you have experienced. Be as specific as you can in identifying the people, places, and dates that are related to your complaint. Attach copies of any documents that you think should be considered in reviewing your complaint. Thank you.

CLIENT DESCRIPTION OF GRIEVANCE

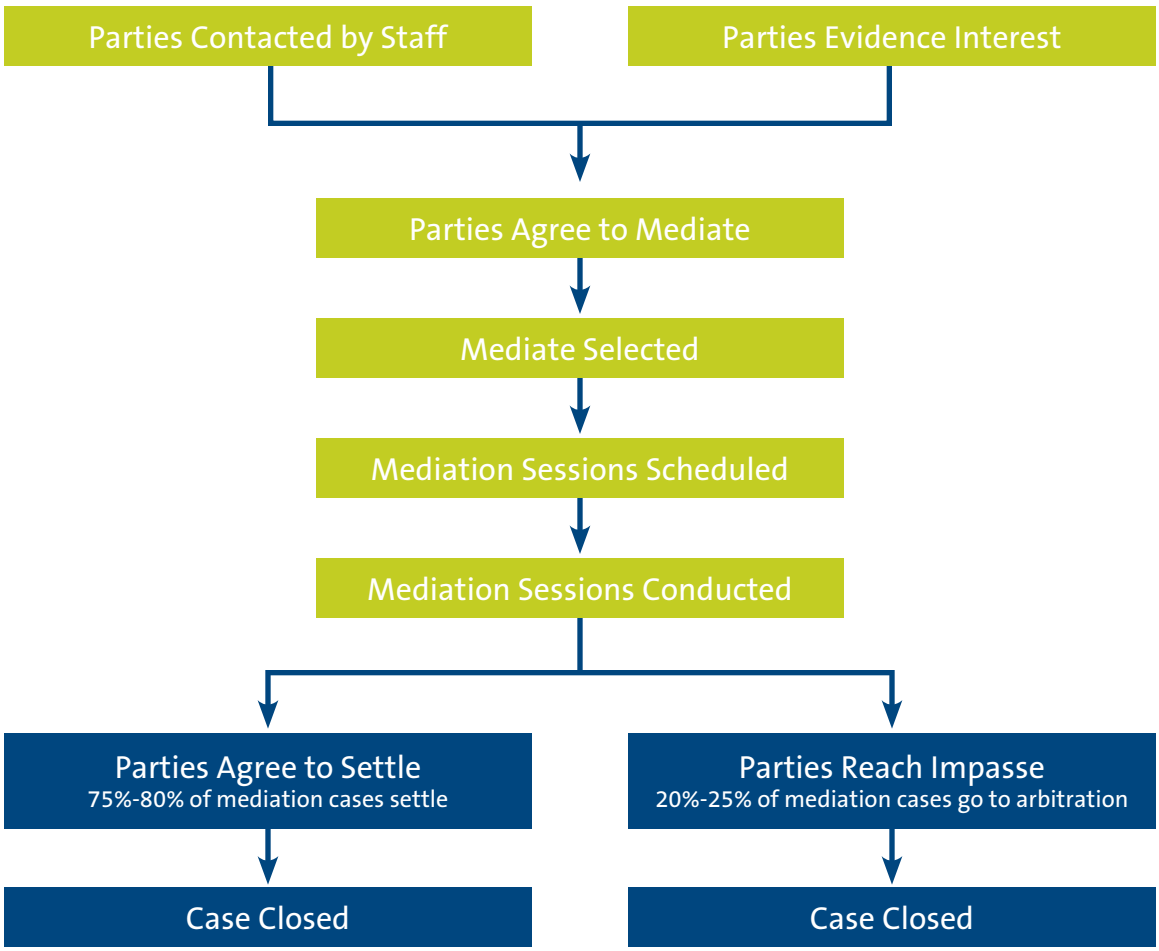
Dated:

Client Signature:

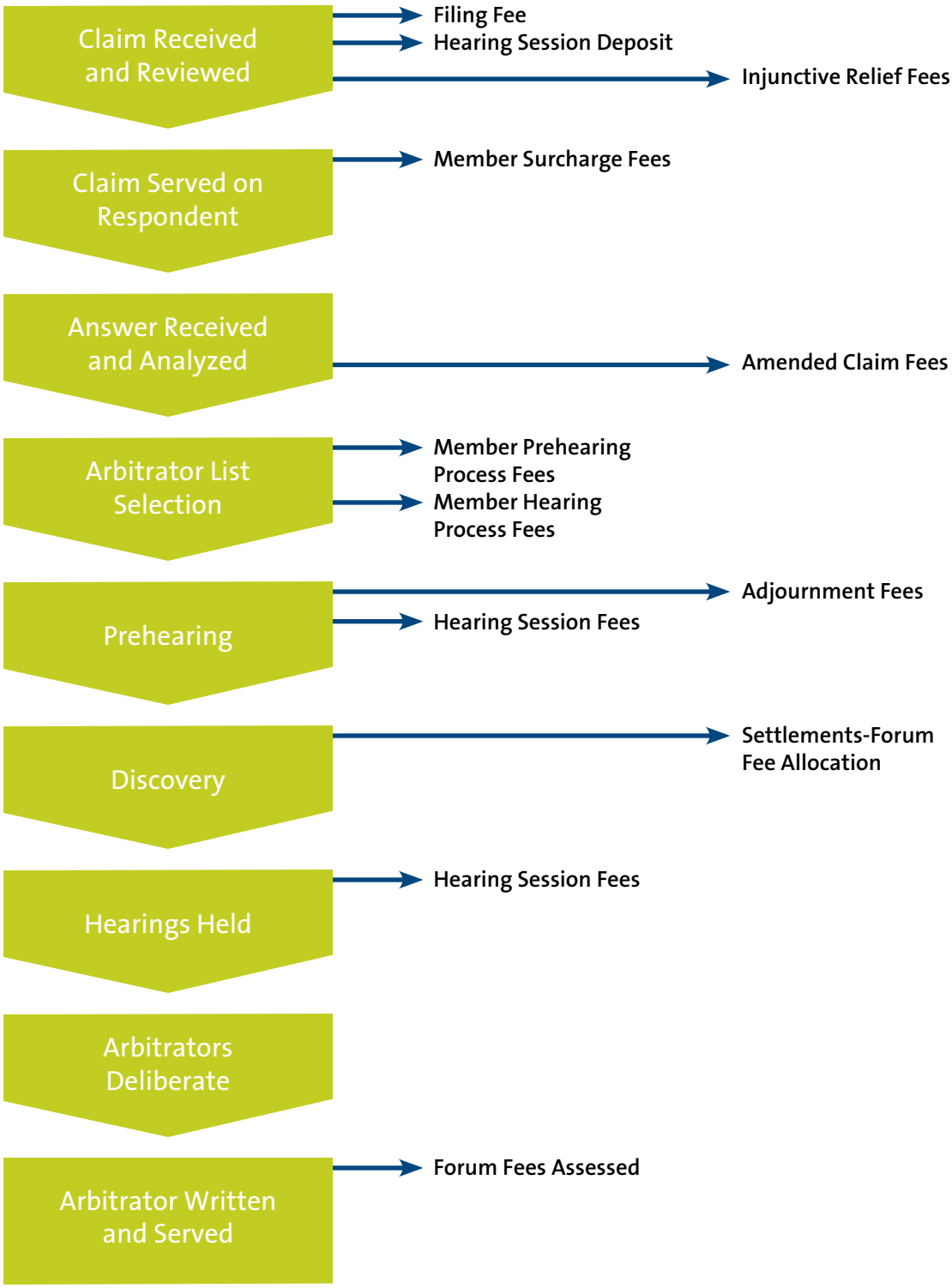
Mediation and Arbitration Processes

FINRA has an excellent comparison guide of the mediation and arbitration processes, *http://www.finra.org/ArbitrationMediation/Parties/MediationProcess/MediationCaseFlow/index.htm*. These flow charts illustrate the processes:

Mediation



Arbitration



Northwestern University School of Law
Bluhm Legal Clinic
Investor Protection Clinic

Sample Statement of Claim - Fictitious Names

THE CLAIMANT

Leslie Goodman is a retired secretary who lives in LaSalle, Illinois. Mrs. Goodman and her husband have a modest annual income from a combination of her disability benefits and his pension. The combination of Mrs. Goodman's age, her health, and her limited education spoke to her lack of future earning potential. Mrs. Goodman is a novice investor; although she has invested a large portion of her savings since 1993, she has always worked with a professional.

RESPONDENT #1 MORTON STEINHAUSER, INC.

Morton Steinhauser, Inc. ("Morton Steinhauser") is a brokerage firm headquartered in Chicago, Illinois. Its CRD number is 9856.

RESPONDENT #2 GEORGE TOTTON

George Totton was at all times during the incidents leading to this dispute an agent of Morton Steinhauser. Mr. Totton's registration with the National Association of Securities Dealers ("NASD") was terminated on August 22, 2005. His CRD number was XXXXXX. He worked out of the Morton Steinhauser office located at 70 W. LaFonte Street, St. Louis, Missouri 63102.

FACTS

In 2002, Mrs. Goodman was contacted by George Totton, a financial advisor with Morton Steinhauser. Mr. Totton arranged a meeting with Mrs. Goodman, at which time he reviewed her current investments and discussed her investment goals. Mrs. Goodman told Mr. Totton she wanted her money in a safe investment and she wanted to be able to access the money. Mr. Totton encouraged her to transfer her investments to Morton Steinhauser, where he claimed he would diversify her portfolio and improve her investments.

In May 2002, Mrs. Goodman followed his recommendation and opened Morton Steinhauser account number YYY YYYYYYYY YY. At the time Mrs. Goodman opened the account, she held five mutual funds [specify]—which totaled $19,818.60 in assets. Over the next several years, Mr. Totton made small changes to Mrs. Goodman's account, primarily investing her in additional mutual funds similar to those she owned.

In March 2004, Mr. Totton recommended a drastic change in Mrs. Goodman's investments. He recommended she invest all her assets in C&A bonds. Mr. Totton assured Mrs. Goodman these bonds were safe and would bring a 10% return. He did not inform her that these bonds were callable bonds, nor did he tell her that investing all of her assets in such a manner was not an investment strategy endorsed by Morton Steinhauser. Notably, Mr. Totton did not tell Mrs. Goodman that, at the time of investment, the bonds were B1, classifying them as "junk bonds." Mrs. Goodman questioned why he had originally suggested she diversify and now wanted to place all her assets in one type of bond; he only once more assured her it was a safe investment. Mrs. Goodman, not having the knowledge to contradict him nor the sophistication to know which questions to ask, agreed.

▶ TOC

Mr. Totton sold virtually all of Mrs. Goodman's assets and invested $24, 274.15 in C&A bonds. After the transaction was complete, these bonds represented 94% of her portfolio. The bonds were purchased for $100.375. The bonds were due on April 15, 2006, and were callable for $100 on June 2, 2004. These bonds were sold in September 2004 for $100; the same number of C&A bonds was purchased a few days later for $105.37. These new bonds were due December 31, 2011, and they were callable for $105.37 on December 31, 2006. Mr. Totton did not inform Mrs. Goodman this transaction; she first learned of it when she saw her account statement. When she questioned Mr. Totton, he only told her not to worry about the transaction and did not explain it. She expressed concern about the accessibility of her money now that she owned bonds not due until 2011.

In January 2005, the price of the C&A bonds began to fall. Mrs. Goodman was alarmed at the declining price, and Mr. Totton counseled her to hold the investment. The price continued to sink, and C&A filed bankruptcy in May 2005.

In May 2005, Mr. Totton called Mrs. Goodman and recommended she sell immediately. She sold the bonds for $32, culminating in a total sale of $8,309.40. Between March 2004 and May 2005, Mrs. Goodman lost $15,964.75 from her investment in C&A bonds.

CAUSES OF ACTION

BREACH OF FIDUCIARY DUTY

Morton Steinhauser and its agent George Totton owed Leslie Goodman a fiduciary duty, and that duty was breached. Mrs. Goodman placed confidence and trust in Mr. Totton to recommend her investments suitable for her investment needs. Mr. Totton breached this duty by recommending Mrs. Goodman place 94% of her assets in C&A bonds. This investment strategy was not suitable for Mrs. Goodman, and it was not in line with the "recommended Conservative Allocation Model" endorsed by Morton Steinhauser. Morton Steinhauser, through its agent, breached its fiduciary duty to Mrs. Goodman by failing to ensure the recommended investment was suitable for her. These breaches of fiduciary duty were to Mrs. Goodman's detriment.

NEGLIGENCE AND NEGLIGENT SUPERVISION

Morton Steinhauser and its agent George Totton owed Leslie Goodman a duty to use reasonable care in the conduct of its affairs, which includes Morton Steinhauser's supervision of Mr. Totton. Morton Steinhauser and Mr. Totton breached those duties as previously described, and those breaches were the proximate cause of Mrs. Goodman's damages.

VIOLATIONS OF THE ILLINOIS SECURITIES LAW OF 1953

Morton Steinhauser and George Totton violated the Illinois Securities Law of 1953 ("Illinois Securities Act"). Regulation 130.850 states, "No dealer or salesperson shall effect transactions for any customer's account which are excessive in size or frequency or unsuitable in view of the financial resources of the customer." Investing 94% of Mrs. Goodman's assets in the C&A bonds was not a suitable investment, given Mrs. Goodman's investment goals and lack of earning potential. Mr. Totton was aware of this and should have known this investment was inappropriate.

It is a violation of the Illinois Securities Act "[t]o obtain money... through the sale of securities by means of... any omission to state a material fact necessary in order to make the statements made... not misleading." 815 ILCS 5/12 (2007). Material facts are those that a reasonable and prudent investor would find important in making a decision. A reasonable and prudent investor would consider the callable nature of the C&A bonds and their status as junk bonds to be important factors. George Totton and Morton Steinhauser, through its agent Mr. Totton, violated the Illinois Securities Act by not informing Mrs. Goodman of the callable nature of the bonds.

BREACH OF CONTRACT

Morton Steinhauser, through its agent George Totton, breached its contract with Leslie Goodman by flouting numerous FINRA Rules and industry standards and by dealing with Mrs. Goodman in bad faith. The elements of a breach of contract cause of action are (1) that a contract existed between the parties and (2) that a breach of one or more of the contractual terms occurred. Mrs. Goodman entered into a contract with Morton Steinhauser which provided that Morton Steinhauser and its agents would supply brokerage services in a legal, ethical, and professional manner and in accordance with applicable rules and regulations of the securities industry. Respondents breached these applicable rules and regulations.

A. BREACH OF VARIOUS FINRA RULES

The contract between Morton Steinhauser and Mrs. Goodman entitled Mrs. Goodman to the protection of numerous FINRA Conduct Rules. The behavior of Morton Steinhauser and its agent Mr. Totton violated a number of these rules, including:

1. **FINRA Rule 2010**
   The conduct of Morton Steinhauser and Mr. Totton constituted a willful violation of Section 2110 of the FINRA Conduct Rules in that, in connection with the purchase or sale of securities, respondents had the responsibility to observe high standards of commercial honor and just and equitable principles of trade. Respondents engaged in practices and courses of business which operated as a breach of such responsibility.

2. **FINRA Rule 2020**
   The conduct of Morton Steinhauser and Mr. Totton constituted a willful violation of Section 2120 of the FINRA Conduct Rules in that, in connection with the purchase and sale of securities, they, individually and/or collectively, had the responsibility not to effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive, or fraudulent device or contrivance. Morton Steinhauser through its agent Mr. Totton engaged in acts, practices, and courses of business which operated as a breach of such responsibility.

3. **FINRA Rule 2111**
   Morton Steinhauser and Mr. Totton violated Rule 2310 which provides that "in recommending to a customer the purchase, sale, or exchange of any security a member shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of facts available, including other security holdings, financial situation, and needs." Mr. Totton violated his responsibility for fair dealing by recommending an investment clearly unsuitable for Mrs. Goodman and her investment goals.

4. **FINRA Rule 3010**
   It is apparent from the conduct of Mr. Totton in dealing with Mrs. Goodman's account that he received no meaningful supervision. Mr. Totton engaged in gross negligence and failed to competently assess the suitability of the investment for Mrs. Goodman, which caused her financial harm. Furthermore, Morton Steinhauser asserted Mr. Totton committed no wrongdoing when questioned by Mrs. Goodman.

RESPONDENT SUPERIOR

The conduct of George Totton was performed within the scope and course of his employment as an agent of Morton Steinhauser in that, in connection with the purchase and sale of securities, he directly and/or indirectly performed services on behalf of Morton Steinhauser. Moreover, Morton Steinhauser directly and/or indirectly induced the acts set forth above. Furthermore, all of the services were performed in the scope and course of his employment. Thus, Morton Steinhauser is liable under the common law and statutory law of the State of Illinois.

DAMAGES

As a result of the damages suffered by Leslie Goodman through the acts, omissions, breaches of duties, and negligence of Morton Steinhauser and George Totton, Mrs. Goodman requests an award against the Respondents in an amount that includes the following:

1. Actual damages of $15,964.75;
2. Attorney fees and costs of arbitration;
3. Lost interest at the statutory rate, as specifically authorized under Illinois law;
4. Pre and post award interest at the statutory rate; and
5. Punitive damages

CONCLUSION

George Totton, agent of Morton Steinhauser, caused Leslie Goodman to engage in an investment strategy that was clearly unsuitable for her financial situation. Because of the Respondents' actions, omissions, negligence, breaches of duties, and failure to properly supervise, Respondents have become liable to Mrs. Goodman on a number of legal grounds, including, but not limited to, the following:

1. breach of fiduciary duty;
2. negligence and negligent supervision;
3. violations of the Illinois Securities Act;
4. breach of contract, including:
    a. failure to observe high standards of commercial honor and just and equitable principles of trade
    b. inducing the purchase of security by manipulative, deceptive, or fraudulent device or contrivance
    c. sale of unsuitable investments, and
    d. failure to supervise

The Claimant does not request a hearing, and requests that one arbitrator review this claim. Claimant also requests in the enclosed letter that any fees be waived.

We appreciate your immediate attention to this matter and if you should have any questions, please do not hesitate to contact me.

Very truly yours,

Law Student
Investor Protection Center
Bluhm Legal Clinic
Northwestern University School of Law
State of Illinois Temporary Law License # 2007LS00754
J.D. Candidate, 2008

Northwestern University School of Law
Bluhm Legal Clinic
Investor Protection Clinic

Sample Request for Waiver of FINRA Filing Fee

February 13, 2008

Mr. George Friedman
Director of Dispute Resolution
FINRA Dispute Resolution
165 Broadway, 27th Floor
New York, NY 10006

Subject: Fee Waiver for Leslie Goodman v. Morton Steinhauser and George Totton

Dear Mr. Friedman:

Please allow this letter to serve as a request for a fee waiver for our client, Leslie Goodman whose Statement of Claim is being concurrently submitted to FINRA .

Mrs. Goodman is retired. She and her husband take in approximately $70,000 annually through a combination of her disability payments and his pension. Attached please find a copy of Mrs. Goodman's 2006 tax return.

Thank you. If you should have any questions, please do not hesitate to contact me.

Very truly yours,

Law Student

Investor Protection Center
Bluhm Legal Clinic
Northwestern University School of Law
State of Illinois Temporary Law License #2007LS00754
J.D. Candidate, 2008

- **Barbara Black**, *Brokers and Advisors – What's in a Name?* 9 Fordham J. of Corp. & Fin. L. 31 (2005).
- **Barbara Black and Jill Gross**, *The Explained Award of Damocles: Protection or Peril in Securities Arbitration*, 34 Sec. Reg. L. J. 17 (2006).
- **Bernstein**, *View from the West – Unpaid Securities Arbitration Awards: Proposed Solutions to the Problem*, PIABA Bar Journal, Spring 2004 (35-50).
- **Government Accounting Office**, *Securities Arbitration: How Investors Fare* (GAO/GGD-92-74) (1992).
- **Jill I. Gross & Ronald W. Filante**, *Developing a Law/Business Collaboration Through Pace's Securities Arbitration Clinic*, 9 Fordham J. of Corp. & Fin. L. 57 (2005).
- **Jill I. Gross**, *Securities Mediation: Dispute Resolution for the Individual Investor*, 21 Ohio St. J. on Disp. Resol. 336 (2006).
- **Constantine N. Katsoris**, *Roadmap to Securities ADR*, 9 Fordham J. of Corp. & Fin. L. 416 (2006).
- **Joseph C. Long**, *From the Professor: Statutes of Limitations Don't Apply in Arbitration*, PIABA Bar J., Spring 2005, at 2.
- **David E. Robbins**, *Securities Arbitration Procedure Manual* (Lexis Pub. 5th ed. 2001).
- **Frederick Rosenberg**, *The Financial Plan: A Target Rich Environment*, PIABA Bar J., Spring 2005, at 18.
- **Bette J. Roth, Esq.**, *Mediating Securities Disputes: Ten Tips for a Successful Negotiation*, PIABA Bar J., Spring 2005, p. 60-64.
- **Philip G. Schrag**, *Constructing a Clinic*, 3 Clinical L. Rev. 175 (1996).
- **Russell C. Weigel III**, *Preserving Claims or Attorney Fees in NASD Dispute Resolution Arbitrations*, PIABA Bar J., Spring 2005, at 54.

The newly-appointed Director of the securities advocacy clinic can obtain helpful background information and make contacts with faculty at other law schools through a variety of symposia and other events. Some of these are set forth below.

- ☐ Securities Clinics Annual Roundtable (sponsored by the National Association of Securities Arbitration and Mediation Clinics and hosted by Fordham University School of Law)
- ☐ Investor Rights Symposium (sponsored by Pace Law School)
- ☐ Mediation Settlement Day (sponsored by the New York City Bar Association)

The Practicing Law Institute offers an audio version of "Securities Arbitration 2007: Arbitrators and Mediators – Winning Their Hearts and Minds".

Arbitration – Damage Theories

- ☐ **Out-of-Pocket Damages –** This damage award is the difference between the price the claimant paid for the investment and its current value.
- ☐ **Consequential Damages –** This type of damage is often sought in addition to out-of-pocket damages. The definition of consequential damages is broad but may include lost dividends, taxes paid by the investor in connection with a fraudulent investment, and other expenses the investor incurred as the investor is seeking to mitigate losses.
- ☐ **Market-Adjusted Damages –** This remedy seeks to make the client whole by awarding the claimant the amount the investment would have been worth absent wrongdoing on the part of the broker. This is one of the more speculative damage theories due to its highly hypothetical nature. See Daniel J. Morrissey, "After the Ball is Over: Investor Remedies in the Wake of the Dot-Com Crash & Recent Corporate Scandals", 83 Neb. L. Rev. 732 (2005).
- ☐ **Rescission –** This remedy would require the broker to disgorge unjust enrichment or undo transactions.
- ☐ **Interest –** Simple or compound interest on the amount awarded may also be sought. Most arbitrators follow the pre-award interest guidelines set by individual states' securities acts.
- ☐ **Attorney's Fees –** The investor may seek to recover attorney's fees, especially when such an award is needed to put the investor back in the position in which he would have been had the wrongdoing not happened.
- ☐ **Arbitration Costs –** The investor may request that the panel require the other party to reimburse all or a portion of FINRA filing fees, hearing session fees and other arbitration expenses, consistent with the Arbitration Code and any provisions there are in the arbitration agreement on these matters.
- ☐ **Punitive Damages –** The United States Supreme Court has allowed punitive damages to be awarded, regardless of any pre-arbitration agreement forbidding it. See Mastrobuono v. Shearson Lehman Hutton, Inc., 512 U.S. 52 (1994).
- ☐ **State Law Remedies –** State securities laws may provide remedies that would not otherwise be available to a claimant under federal law.

The Securities Industry Roundtable (see *http://www.securitiesexpertsroundtable.com*), has urged its members to provide pro bono support to law school legal clinics. See SER Bulletin, July 2008.

Appendix K—Public Investors Arbitration Bar Association

Public Investors Arbitration Bar Association

Established in 1990, the Public Investors Arbitration Bar Association (PIABA) is a national bar association with members in 44 states and Puerto Rico. It is an educational and networking organization for securities arbitration attorneys who represent public investors in securities disputes. PIABA's mission is to promote the interests of the public investor in securities and commodities arbitration by protecting public investors from abuses in the arbitration process, such as those associated with document production and discovery; making securities and commodities arbitration as just and fair as systematically possible; and creating a level playing field for the public investor in securities and commodities arbitration.

In January 2008, PIABA announced the creation of a new "Student Membership" available to both law school Securities Arbitration Clinic students and law school students that are working with PIABA members. Visit *www.PIABA.org* to learn more about the Association and current membership requirements