

This Order has been published by NASD's Office of Hearing Officers and should be cited as OHO Order 06-53 (EAF0300770001).

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

Respondent.

Disciplinary Proceeding
No. EAF0300770001

Hearing Officer – AWH

ORDER FOR SEQUESTRATION OF WITNESSES¹

On November 3, 2006, the Department of Enforcement filed a motion seeking an order excluding certain witnesses so that they cannot hear the testimony of other witnesses. Enforcement represents that it has conferred with Respondent's counsel who does not oppose the motion.

The motion seeks to invoke a process well known in federal, state, and administrative adjudication, and embodied in Federal Rule of Evidence 615. A request for the exclusion of witnesses is so well known that counsel routinely call upon a court or administrative body simply to "invoke the Rule." Excluding witnesses from the hearing, except when they are testifying, and preventing prospective witnesses from consulting with each other, discourages fabrication, collusion, and inaccuracy of testimony.

An order invoking "the Rule" exempts an officer or employee of a corporation who is designated as its representative by its attorney, and generally exempts expert

¹ This Order also grants Respondent's unopposed motion to delete from the caption the name of an individual respondent who has settled the case against him. The caption now reflects the deletion.

This Order has been published by NASD's Office of Hearing Officers and should be cited as OHO Order 06-53 (EAF0300770001).

witnesses who would be testifying as to their opinion based on facts or data in the proceeding.

Enforcement has shown good cause for invoking the Rule, and its motion is *granted*. Accordingly, all witnesses, with the exception of William D. Park, Enforcement's case-agent witness; Robert M. Axelrod, Enforcement's proposed expert witness; and any single corporate officer or employee designated as Respondent's representative, are excluded from the hearing except when they testify, and are precluded from conferring with any other witness about the subject matter of any other witness's testimony.

SO ORDERED.

Alan W. Heifetz
Hearing Officer

Dated: November 9, 2006