

Guide: Disciplinary Hearing Procedures

Office of Hearing Officers
Financial Industry Regulatory Authority
1735 K Street, N.W.
Washington, DC 20006
(202) 728-8008

About This Guide

All persons named as respondents in a disciplinary proceeding brought by the Financial Industry Regulatory Authority (FINRA) have the right to a hearing. The purpose of this “Guide: Disciplinary Hearing Procedures” is to assist you in understanding FINRA’s disciplinary hearing procedures.

Guide

This Guide summarizes some of the rules in the Code of Procedure (Rules or Code). The Guide is not an interpretation of or substitute for the Rules; nor does it provide legal advice. Read the Rules carefully, and consult your own advisors as appropriate. ***This Guide is not a substitute for legal advice; you are encouraged to consult an attorney of your choice.***

Code of Procedure

The Code of Procedure contains the rules that govern the disciplinary hearing process. The Code is available on FINRA’s website, at www.finra.org/rules.

If you have questions about procedures, call the Office of Hearing Officers at (202) 728-8008 and ask to speak to the Case Administrator assigned to your case.

GUIDE TO DISCIPLINARY HEARING PROCEDURES

DISCIPLINARY PROCEEDINGS

The By-Laws of FINRA provide that formal disciplinary actions involving members and associated persons charged with violations of FINRA Rules, the federal securities laws and the regulations thereunder, and the rules of the Municipal Securities Rulemaking Board be resolved by disciplinary hearing proceedings. Filing a Complaint with the Office of Hearing Officers commences a disciplinary hearing proceeding, and the conduct of the proceeding is governed by the Code. *See Article XII, By-Laws; Rules 9110, 9211.*

After the Complaint is filed, either a Hearing Panel or an Extended Hearing Panel shall be appointed by the Chief Hearing Officer, or his or her delegate, to conduct the hearing and issue a decision. Each Hearing Panel and Extended Hearing Panel has three members. Hearing Panels are chaired by a Hearing Officer, who is an attorney employed by FINRA. The criteria for the selection of the panelists are set forth in Rules 9231 and 9232. *See Rules 9231, 9232.*

The Hearing Officer and the panelists are independent from the Department of Enforcement (or other FINRA department initiating the proceeding); they are not responsible for investigating possible misconduct or instituting disciplinary actions. Furthermore, neither the Office of Hearing Officers nor the panelists were or are involved in deciding whether investigations should be conducted or whether disciplinary proceedings should be brought. *See Rule 9144.*

Representation

Individuals may appear on their own behalf, or they may be represented by an attorney. A partnership may be represented by a member of the partnership or an attorney. A corporation, trust, or association may be represented by an officer of that corporation, trust, or association, or it may be represented by an attorney.

If you choose to be represented, you must advise the Department of Enforcement and the Office of Hearing Officers of your representative's address, telephone number, and e-mail address. *See Rule 9141.*

Ex Parte Communications

Neither you nor your representative may communicate with a Hearing Officer, panelist, or FINRA Board member regarding the merits of a disciplinary proceeding unless all parties receive prior notice and have the opportunity to participate in the communication, or to the extent permitted by Rule 9270 for the submission and consideration of offers of settlement. Violation of the rule against ex parte communications may result in remedial action against you that could adversely affect your claims, defenses, and interests in the proceedings. *See Rule 9143.*

Settlement

You may propose a written offer of settlement at any time after you have been notified that a disciplinary proceeding has been instituted against you. All settlement offers must comply with Rule 9270; they may not be made frivolously or propose a sanction inconsistent with the seriousness of the violation. *See Rule 9270.*

If the Department of Enforcement agrees with your offer of settlement, and the hearing has not yet begun, the offer shall be transmitted to the National Adjudicatory Council (NAC) for acceptance or rejection. Uncontested offers of settlement that are made after the hearing has begun first must be approved by the Hearing Panel or Extended Hearing Panel before they are sent to the NAC. *See Rule 9270(e).*

All offers of settlement that are opposed by the Department of Enforcement first must be approved by the Hearing Panel or Extended Hearing Panel before they are sent to the NAC for acceptance or rejection. If the Hearing Panel or Extended Hearing Panel rejects an offer of settlement, it is not transmitted to the NAC for consideration. *See Rule 9270(f).*

By submitting an offer of settlement, you waive your right to claim bias or prejudice of the Chief Hearing Officer, Hearing Officer, Hearing Panel, Extended Hearing Panel, General Counsel of FINRA, or NAC based on the consideration or discussion of the offer of settlement. In addition, if the offer of settlement is accepted, you waive any right to a hearing on the charges against you and waive any right of appeal, including your right to contest the validity of the order issued after the settlement is accepted. *See Rule 9270(d).*

COMMENCING PROCEEDINGS

Complaint

A disciplinary proceeding begins when the Department of Enforcement or the Department of Market Regulation (collectively referred to as the Department of Enforcement in this Guide) serves the Complaint on the Respondent and files the Complaint with the Office of Hearing Officers. The Complaint identifies the charges and defines the claims to be decided by the Hearing Panel or Extended Hearing Panel. *See Rules 9131, 9211, 9212(a).*

The Complaint may be amended during the course of the proceedings. If the Complaint is amended, you must file and serve an Amended Answer. *See Rules 9212(b), 9215(e).*

Answer and Affirmative Defenses

An Answer is the document responding to the allegations in the Complaint. Each Respondent must file an Answer and one copy thereof with the Office of Hearing Officers and must serve a copy on the Department of Enforcement and any other Respondent in the proceeding. *See Rule 9215. See “Service of Papers Other Than the Complaint” at page 7 of this Guide.*

You have 25 calendar days from the date the Complaint is served on you to file your Answer and serve a copy on all of the other parties pursuant to Rules 9133 and 9134. Requests for additional time to file your Answer must be made by filing a written motion with the Office of Hearing Officers. *See Rule 9215.* The exact date your Answer must be received by the Office of Hearing Officers will depend on how the Department of Enforcement served the Complaint. If personal service or service by commercial courier or express delivery is effected, service is complete upon delivery of the Complaint. If the Complaint is served by U.S. Postal Service first-class, certified, or registered mail, three additional days are added to the prescribed period for response. *See Rules 9138, 9134(b)(3).*

In addition, with your Answer, you may file a Motion for a More Definite Statement of the facts and law alleged in the Complaint. The motion must state the basis for your request as to each matter you want to be made more definite. *See Rule 9215(c).*

If you fail to file your Answer within the time required, you will be sent a second notice requiring that you file your Answer within 14

calendar days after service of the second notice, or within such longer period as the Hearing Officer may order. If you fail to file your Answer within the time required by the second notice, the allegations in the Complaint may be considered admitted and a default decision may be issued against you. A default decision results in a finding that you committed the violations charged in the Complaint and imposes sanctions. *See Rules 9215(f), 9269.*

Your Answer must specifically admit, deny, or state that you do not have enough information to admit or deny each allegation in the Complaint. If you deny only part of an allegation, you must specify which part is admitted and deny only the remainder. Your Answer also must state all of your affirmative defenses to the allegations in the Complaint; omitted affirmative defenses may not be considered in the proceeding. An affirmative defense is a matter constituting a defense to all or a portion of the Complaint assuming the facts alleged in the Complaint are true: an affirmative defense attacks the legal grounds for the Complaint, not the truth of the claim. *See Rule 9215(b).*

Amendments to Answer and Affirmative Defenses

Once your Answer is filed, you can only amend your Answer with the permission of the Hearing Officer, unless an Amended Complaint has been filed. To obtain permission, you must file a written motion with the Office of Hearing Officers. Permission to amend your filed Answer will not be granted if another party would be unfairly prejudiced by the proposed amendment. *See Rule 9215(d).*

Request for Hearing

You have the right to a hearing on the allegations in the Complaint. ***If you want a hearing, you must request it in your Answer, but a hearing may nevertheless be ordered by the Hearing Officer.*** In your Answer you may also propose an appropriate location for the hearing. *See Rule 9221.*

In addition, if the Complaint charges a violation relating to the quotation of securities, the execution of transactions, the reporting of transactions or other trading practices specified in Rule 9120(u), you may propose that at least one panelist be a current or former member of the Market Regulation Committee. *See Rules 9221(a), 9231.*

If you do not request a hearing, and a hearing is not otherwise ordered, the Hearing Officer will establish a date for the submission of any additional documentation you want the Hearing Panel or Extended Hearing Panel to consider. The Hearing Panel or Extended Hearing Panel will render a decision in the disciplinary proceeding based on the documents admitted in evidence.

FILING AND SERVICE OF PAPERS

Filing Procedure

All papers required to be filed in a disciplinary proceeding and all notices of appeal or cross-appeal, shall be filed with the Office of Hearing Officers, FINRA, 1735 K Street, N.W., Washington, DC 20006. You may also file papers electronically by emailing a .pdf file to OHOCasFilings@finra.org. *See Rule 9135(a), (b).*

Unless otherwise ordered, a signed original and one copy of all papers must be filed with the Office of Hearing Officers accompanied with a certificate of service. *See Rules 9135(c), 9136(c), 9137.*

Papers that are required to be filed with the Office of Hearing Officers within a time limit specified in the Rules or in an order issued by the Hearing Officer, Hearing Panel, or Extended Hearing Panel are deemed timely filed if **received** within the specified time limit. *See Rule 9135(a).*

Form of Papers

The Code contains specific requirements that must be observed for papers filed with the Office of Hearing Officers. *See Rules 9136, 9137.*

Signing a filing certifies that the filing complies with the requirements in Rule 9137. If a filing is not signed, the filing may be stricken from the record and not considered. *See Rule 9137(b).*

Service of Complaint

The Complaint may be served on you in any one of the following three ways: (1) personal service; (2) U.S. Postal Service first-class certified mail or Express Mail; or (3) commercial courier service that generates a written confirmation of receipt or attempts at

delivery. Personal service and service by commercial courier or express delivery are complete upon delivery. Service by mail is complete upon mailing. *See Rules 9131, 9134.*

Service of Papers Other Than the Complaint

Throughout the proceeding you, the Department of Enforcement, and the other Respondents, if any, are required to “serve” papers on each other. “Service” is the act of providing copies of the papers to all of the other parties in the proceeding. The Rules include specific requirements regarding service of papers that must be met each time you serve papers. Personal service and service by commercial courier or express delivery are complete upon delivery. Service by first-class mail is complete upon mailing. *See Rules 9130, 9133, 9134.*

Unless otherwise directed by the Hearing Officer or agreed by the parties, all papers other than the Complaint may be served in any of the following ways: (1) personal service; (2) first-class mail, first-class certified mail, first-class registered mail, or Express Mail through the U.S. Postal Service; (3) commercial courier service that generates a written confirmation of receipt or attempts at delivery; or (4) by electronic mail. *See Rule 9134.*

Certificate of Service

Whenever you serve papers upon the other parties in a proceeding, you must file a Certificate of Service with the Office of Hearing Officers identifying the documents served, the name of each person served, the date on which service was made, the method of service, and if service is not being made in person, the address at which service is being made. If different methods of service are used for different parties, the Certificate of Service must also state the reason differing methods of service were used. The certificate must be signed by the person who caused the service to be made and be attached to a copy of the papers that you served. *See Rule 9135(c).*

Addresses for Service

The address for service on the Department of Enforcement is stated in the Complaint; the address for service on the other parties is governed by Rule 9134. If you choose to have an attorney or other person represent you in the proceeding, your representative will be served with all papers. *See Rules 9132(c), 9133(d), 9134, 9141.*

PRE-HEARING PROCEDURES

Scheduling

Unless the Hearing Officer determines that it is unnecessary or premature, an initial pre-hearing conference shall be held within 21 days after your Answer is served, or, if there are multiple respondents, within 21 calendar days after the last timely Answer is filed. *See* “Pre-hearing Conferences and Submissions” at p. 11 of this Guide. At the conclusion of the initial pre-hearing conference, the Hearing Officer may enter an order setting a date for the hearing and dates for the submission of pre-hearing materials. *See Rule 9241.*

When a hearing date is set, the Hearing Officer will serve a notice on all parties stating the date, time, and place of the hearing and whether it will be heard by a Hearing Panel or an Extended Hearing Panel. The notice will be served upon the parties at least 28 days before the hearing unless (1) all parties waive the notice period, or (2) the Hearing Officer determines that extraordinary circumstances require a shorter notice period. *See Rule 9221(d).*

Motions

A “motion” is a request to obtain a ruling or order about some aspect of the proceeding. Motions may be made orally or in writing, but the Hearing Officer may require that an oral motion be set forth in writing. All motions must state the specific relief requested along with the basis for the request. A Party may file a written response opposing a motion. In some cases, the Hearing Officer may allow oral argument in favor of and in opposition to a motion. All motions, responses, replies, and supporting briefs must comply with the Rules’ formal requirements. *See Rules 9133-9137, 9146.*

Motion for a Protective Order

Subject to the limitations in Rule 9146(k), you may move for an order limiting or prohibiting the disclosure of confidential information to other parties, witnesses, or other persons except the Department of Enforcement and FINRA staff. The Hearing Officer may issue a protective order only upon a finding that the harm resulting from disclosure would outweigh the benefit of disclosure. *See Rule 9146(k).*

Motion for Summary Disposition

One or all of the charges (causes) in a Complaint may be summarily disposed of without a hearing. This could happen if there is no genuine issue in dispute with regard to any material fact, and the issues may be decided as a matter of law. *See Rule 9264.*

Pre-hearing motions for summary disposition may be filed after you file your Answer and Documents have been made available to you for inspection and copying pursuant to Rule 9251. Unless an earlier time is ordered by the Hearing Officer, pre-hearing motions for summary disposition must be filed at least 21 days before the hearing, and any opposition or response must be filed at least seven days before the hearing. *See Rule 9264(a).*

Once a hearing on the merits has begun, a motion for summary disposition may only be filed with the prior permission of the Hearing Officer. *See Rule 9264(b).*

Unless otherwise directed by the Hearing Officer, a motion for summary disposition must be accompanied by: (1) a statement of undisputed facts; (2) a supporting memorandum, not longer than 35 pages, addressing the legal authority upon which you rely; and (3) affidavits or declarations setting forth the admissible facts upon which you rely. *See Rule 9264(d).*

Modification of Deadlines and Schedule

Before a decision is issued, you may request that any time limit be extended or shortened. Such requests must be made by filing a written motion stating the reason for the request. Generally, postponements, adjournments, or extensions of time for filing documents will not exceed 28 days unless the Hearing Officer finds that a longer period is necessary. *See Rule 9222.*

Discovery of Documents

Unless limited by the Hearing Officer or the Rules, you are entitled to inspect and copy Documents prepared or obtained by Interested FINRA Staff in connection with the investigation that led to the proceeding. The term “Document” includes more than a writing; it also refers to any other physical thing, such as a photograph or data stored by computer. Rule 9251(a) lists typical Documents that may be relevant to your proceeding. The term “Interested FINRA Staff” is defined in Rule 9120(t). *See Rules 9120(h), 9120(t), 9251(a).*

Documents that are to be made available for inspection and copying are defined in Rule 9251(a). The Department of Enforcement is obligated to begin making discoverable Documents available to you not later than 21 days after you serve your Answer or, if there are multiple respondents, not later than 21 days after the last timely answer is filed.

You may also request copies of these Documents, in which case you will be responsible for the copying costs, at a rate to be established by FINRA staff, unless otherwise ordered by the Hearing Officer. *See Rules 9251(d), 9251(f).*

Not all Documents prepared or obtained by the Department of Enforcement during an investigation are subject to disclosure. Generally, the Department of Enforcement may withhold Documents that: (1) are privileged or constitute attorney work product; (2) were prepared by a FINRA employee but will not be offered in evidence in the disciplinary proceeding; or (3) may disclose a technique or guideline used in examinations, investigations, or enforcement proceedings; or disclose the identity of a confidential source. *See Rule 9251(b).*

If the Department of Enforcement fails to make available all of the Documents which you are entitled to inspect pursuant to Rule 9251, you may file a motion asking the Hearing Officer to order the Department of Enforcement to disclose the Documents. An order requiring disclosure may be entered when the Hearing Officer finds that the nondisclosure was unjustified.

Requests for Information

Subject to the limitations in Rule 9252, you may request that FINRA use Rule 8210 to compel the production of Documents or testimony at the hearing from persons over whom FINRA has jurisdiction. Such requests must be made in writing no later than 21 days before the scheduled hearing date. At a minimum, the motion must: (1) describe with specificity the Documents, including their category or type, or testimony requested; (2) state why they are material to the proceeding; (3) describe your efforts to obtain the Documents or testimony by other means; and (4) state whether each proposed witness and the custodian of each Document is subject to FINRA's jurisdiction. *See Rule 9252.*

Production of Witness Statements

You may file a written motion with the Office of Hearing Officers requesting that the Department of Enforcement produce for inspection and copying pertinent written statements of witnesses whom the Department of Enforcement has called, or is expected to call, to testify in the proceeding. Discoverable statements are limited to those that the Hearing Officer finds pertain to the witnesses' direct testimony in the proceedings, including statements covered by the Jencks Act, 18 U.S.C. § 3500. *See Rule 9253.*

Pre-hearing Conferences and Submissions

The Hearing Officer may hold one or more pre-hearing conferences, the purposes of which are to focus the proceeding by having the parties agree on the undisputed facts and issues to be decided and to establish procedures to manage the proceedings efficiently. The following subjects among others may be considered: (1) simplification and clarification of issues; (2) exchange of witness and exhibit lists; (3) exchange of exhibits; (4) stipulations, admissions of fact, and stipulations concerning the content, authenticity, or admissibility of Documents; (5) production of Documents and witness statements; (6) filing and service of papers by the parties; (7) scheduling of the filing and exchange of pre-hearing motions and briefs; (8) scheduling of hearings; (9) amendments to the Complaint or Answer(s); (10) designation of relevant portions of transcripts from investigative testimony or other proceedings and the inclusion of an index for such testimony; and (11) proof of facts at the hearing and consideration of matters which may be admitted into evidence by Official Notice, which is described in Rule 9145(b). In addition, the Hearing Officer may consider other matters that may help in managing the proceedings. If the Hearing Officer does not require a pre-hearing conference, you may ask for one by filing a written motion with the Office of Hearing Officers. *See Rule 9241.*

The Hearing Officer may require the parties to exchange and file pre-hearing submissions. In addition to any other information the Hearing Officer considers appropriate, pre-hearing submissions may include: (1) a narrative summary of your defenses; (2) the legal theories upon which you intend to rely at the hearing; (3) a list and copies of documents that you intend to present at the hearing; (4) a list of witnesses you expect to call with a summary of their expected testimony; and (5) a list of experts you expect to call as witnesses, with a statement of each expert's qualifications,

prior experience, publications, and copies of each expert's publications that are not readily available. *See Rule 9242(a)*.

Failure to Appear at Pre-hearing Conferences

If you or your representative fails to appear at a scheduled pre-hearing conference, the Hearing Officer may find that you are in default and deem admitted the allegations against you in the Complaint. In addition, the Hearing Officer may order you to pay the costs incurred by the other parties in connection with their appearance at the pre-hearing conference. *See Rules 9241(f), 9269*.

HEARING

The hearing gives you the chance to present the evidence and arguments supporting your defenses to the allegations in the Complaint.

Presentation of Evidence

Each party's case is presented by the submission of relevant documents and the testimony of witnesses. An oath or affirmation is administered to each witness, and testimony is elicited by asking questions of the witness. Any witness may be questioned by the other parties, the Hearing Officer, and the panelists. *See Rules 9261, 9262, 9263*.

The Hearing Officer will allow the presentation of evidence and argument that is relevant and material to the disputed issues in the proceeding, but may exclude all offered evidence that is irrelevant, immaterial, unduly repetitious, or unduly prejudicial. Formal rules of evidence do not apply, but the Hearing Officer may look to the Federal Rules of Evidence as a guide in making evidentiary rulings. If you object to any evidence offered by another party, you must succinctly state the grounds for your objection on the record. *See Rule 9263*.

Transcript of Hearing

All hearings will be recorded and transcribed by a court reporter. Unless otherwise ordered by the Hearing Officer, pre-hearing conferences will also be recorded and transcribed. You may purchase a transcript of any recorded hearing or pre-hearing conference from the court reporter. In addition, a witness may

purchase a transcript of his or her own testimony from the court reporter. *See Rule 9265.*

A party or witness may seek to correct his or her recorded testimony prior to the filing of post-hearing submissions or within such shorter time as set by the Hearing Officer. Proposed corrections of the transcript must be submitted to the Hearing Officer by affidavit. The affidavit should inform the Hearing Officer whether or not the parties agree with your proposed corrections. After notice to all parties, the Hearing Officer may order corrections to the transcript. *See Rule 9265(c).*

Failure to Appear at Hearing

If you fail to appear at a hearing, you may be deemed to be in default. As a consequence, the allegations of the Complaint may be deemed admitted and a default decision entered against you. In addition, you may be ordered to pay the costs incurred by the other parties in connection with their appearance at the hearing. *See Rule 9269.*

POST-HEARING PROCEDURES

Post-hearing Submissions

Following the hearing, the Hearing Officer may require the parties to file proposed findings of fact and conclusions of law, and post-hearing briefs. All proposed findings of fact and factual assertions in post-hearing briefs must be supported by specific references to the record of the proceeding. Unless the Hearing Officer orders otherwise, post-hearing submissions shall be filed no later than 60 days after the conclusion of the hearing and shall not exceed 25 pages in length, exclusive of cover sheets, tables of contents, and tables of authorities. *See Rule 9266.*

Decision

The Hearing Panel or Extended Hearing Panel will issue a written decision after the hearing is ended and the post-hearing submissions, if any, have been filed. The decision is determined by majority vote of the Hearing Panel. Any member of the panel may dissent from the decision of the majority and issue a separate opinion. *See Rule 9268.*

The Office of Hearing Officers will serve a copy of the decision on the parties, publish notice of the decision in the Central Registration Depository, and send a copy of the decision to each member of FINRA with which the Respondent is associated. *See Rule 9268(d).*

The decision of the Hearing Panel or Extended Hearing Panel becomes final if the decision is not timely appealed pursuant to Rule 9311 or timely called for review pursuant to Rule 9312. *See Rule 9268(e).*

Appeal

Either you or the Department of Enforcement may appeal to the NAC. In addition, the NAC may call a disciplinary proceeding for review on its own motion. To appeal, you must file a written notice of appeal with the Office of Hearing Officers and serve a copy of the notice on all other parties. The notice of appeal must be filed within 25 days after you are served with a copy of the decision. *See Rule 9311.*

There are formal requirements for the notice of appeal, and your failure to meet the requirements of the Rules will result in a loss of your right to have the decision reviewed. These requirements and the procedures governing the appeal process are beyond the scope of this Guide. ***To preserve your right to appeal, carefully read and follow the requirements in the Code of Procedure. See Rule 9300 Series.***