

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JOHN LOWRY  
(CRD No. 4336146),

and

KIM MONCHIK  
(CRD No. 2528972),

Respondents.

Disciplinary Proceeding  
No. 2022075597101

Hearing Officer–BDC

**ORDER GRANTING IN PART AND DENYING IN PART MOTION TO  
ENFORCE WITNESSES' RIGHTS AND DENYING MOTION  
FOR LEAVE TO FILE REPLY BRIEF**

**I. Background**

The hearing in this disciplinary proceeding is currently scheduled for October 9–17, 2025. On September 25, 2025, counsel for ██████████ ██████████ and ██████████ ██████████, former FINRA registered representatives who are on the Department of Enforcement's witness list, filed a motion to enforce witnesses' rights (the "Witnesses' Motion").

In essence, the witnesses are requesting that they be permitted to have their attorney, ██████████ ██████████, represent them when they testify at the hearing to ensure that privileged communications are not inadvertently disclosed during their testimony. However, ██████████ represents that he is unavailable to attend the hearing on any of the scheduled dates due to a family vacation in Arizona from October 9 through October 21. Thus, he proposes that I require Enforcement to call ██████████ and ██████████ out of turn on a date after October 21, 2025 when ██████████ will be available (the hearing is scheduled to end on October 17, 2025). Alternatively, he requests that I enter an order precluding the witnesses from being compelled to testify. Counsel contends that since both ██████████ and ██████████ previously provided on-the-record testimony under oath in this matter, Enforcement can rely on the transcripts from their testimony.

Enforcement opposes the Witnesses' Motion ("Opposition"). Enforcement contends that ██████████ and ██████████ have no absolute right to be accompanied by counsel when they testify in this

case. But even if they are permitted to have counsel, Enforcement argues it would be inappropriate to allow ██████ to do so for several reasons. First, Enforcement contends ██████ and ██████ have not demonstrated any real risk of any privilege being inadvertently disclosed.<sup>1</sup> Enforcement also contends that ██████ is a potential witness for Respondents in this proceeding and is therefore subject to the sequestration order issued in this case.<sup>2</sup> Finally, Enforcement argues that allowing ██████ to serve as both a witness and counsel to other witnesses raises potential ethical considerations.<sup>3</sup> Enforcement notes it would have no objection to ██████ and ██████ being represented by other counsel, including other attorneys at ██████ law firm.

Enforcement further contends that, if ██████ is permitted to accompany ██████ and ██████ if they testify, the hearing should not be delayed by requiring the parties and the Hearing Panel to reconvene to allow ██████ and ██████ to testify after ██████ returns from his vacation. And Enforcement argues that precluding Enforcement from calling the witnesses would be unfairly prejudicial.<sup>4</sup>

## II. Discussion

FINRA’s Code of Procedure does not give guidance on whether a witness may, on request, be permitted to be accompanied by counsel when testifying. However, FINRA Rule 9235 authorizes a hearing officer “to do all things necessary and appropriate” to discharge the duty to regulate the course of a hearing.<sup>5</sup> This includes the authority to allow counsel to accompany a non-party witness testifying at a hearing.<sup>6</sup> In the interest of fairness, because a witness may be unaware of the operation of the attorney-client privilege and, without counsel, unwittingly waive it by divulging protected communications, allowing counsel to accompany the witness may be appropriate.<sup>7</sup>

In this case, ██████ and ██████ are being compelled to appear and testify pursuant to FINRA Rule 8210. Their request to be accompanied by counsel for a narrowly limited purpose is

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<sup>1</sup> Opposition at 5.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* Enforcement, citing ABA Model Rule of Professional Conduct 3.7, contends a lawyer is generally prohibited from acting as an advocate and witness in the same proceeding.

<sup>4</sup> On September 30, 2025, counsel for ██████ and ██████ filed a letter with the Office of Hearing Officers requesting permission to file a reply to Enforcement’s Opposition, which I treated as a motion for leave to file a reply pursuant to FINRA Rule 9146(h). As addressed herein, the motion is denied.

<sup>5</sup> FINRA Rule 9235(a)(2).

<sup>6</sup> *See, e.g.*, OHO Order 25-03 (2020065599103) (Mar. 7, 2025), at 4, <https://www.finra.org/sites/default/files/2025-05/25-03-2020065599103-Cacace-20250307.pdf>; OHO Order 19-23 (2016051493704) (June 25, 2019), at 11, [https://www.finra.org/sites/default/files/2019-10/OHO\\_Order\\_19-23\\_2016051493704.pdf](https://www.finra.org/sites/default/files/2019-10/OHO_Order_19-23_2016051493704.pdf).

<sup>7</sup> OHO Order 17-17 (2016051925301) (Sep. 5, 2017), at 1, [https://www.finra.org/sites/default/files/OHO\\_Order\\_17-17\\_2016051925301.pdf](https://www.finra.org/sites/default/files/OHO_Order_17-17_2016051925301.pdf).

reasonable.<sup>8</sup> But the witnesses' request that Enforcement be required to call them on a date when [REDACTED] is available to appear in person at the hearing or be precluded from calling them as witnesses is not reasonable.

[REDACTED] and [REDACTED] argue the requested accommodations are reasonable because Enforcement did not contact them to determine their availability before agreeing to the October hearing dates. But both [REDACTED] and the witnesses were advised of the October hearing dates on or about July 10, 2025.<sup>9</sup> There is no evidence that the witnesses ever notified Enforcement that they had personal reasons preventing them from appearing in New York during the October hearing dates or that their attorney would be unavailable during the entire hearing. And while [REDACTED] did inform Enforcement on July 10, 2025 that he would be "traveling out of state in October" and would let Enforcement know those dates at some point,<sup>10</sup> there is no evidence that he ever provided those dates to Enforcement. Indeed, it was not until September 8 when Respondent Lowry filed his motion to postpone the hearing that Enforcement (and the Hearing Officer) learned of [REDACTED] unavailability.

Furthermore, there are other, less disruptive ways to allow [REDACTED] and [REDACTED] to be represented by counsel during their testimony. First, they could retain other counsel, including another attorney in [REDACTED] firm.<sup>11</sup> And if they wish to continue to be represented by [REDACTED],<sup>12</sup> he could do so by videoconference while he is in Arizona. Enforcement represented in its Opposition that, if it calls [REDACTED] and [REDACTED], their testimony would be short, and Enforcement is willing to work with [REDACTED] to minimize the disruption to his vacation and with the witnesses to accommodate their personal obligations.

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<sup>8</sup> While it is true, as Enforcement argues, that [REDACTED] is subject to the sequestration order, he will not be present for the testimony of Respondents or any other witnesses except [REDACTED] and [REDACTED]. Moreover, as [REDACTED] acknowledges in the Witnesses' Motion, his role in representing [REDACTED] and [REDACTED] at the hearing will be "strictly limited to safeguarding the confidentiality of privileged communications and preventing the inadvertent disclosure of protected information in response to questions posed during the hearing." Witnesses' Motion at 4.

<sup>9</sup> See Witnesses' Motion, Exhibit B (July 10, 2024 email from Michelle Galloway, Esq.), at 1–2; Witnesses' Motion, Exhibit C ([REDACTED] Certification), at 2; Witnesses' Motion, Exhibit D ([REDACTED] Certification), at 2.

<sup>10</sup> Witnesses' Motion, Exhibit B, at 1.

<sup>11</sup> [REDACTED] and [REDACTED] contend that retaining new counsel would be expensive and require the new attorney to spend many hours preparing. See Witnesses' Motion, Exhibit C, at 3; Witnesses' Motion, Exhibit D, at 3. But that seems unlikely since counsel's role at the hearing would be strictly limited to protecting against the inadvertent disclosure of privileged communications.

<sup>12</sup> Should [REDACTED] also testify as a witness for Respondents in this proceeding, he should consider whether serving as both a witness and counsel for [REDACTED] and [REDACTED] at the hearing is consistent with the applicable rules of professional conduct.

### III. Order

For the reasons addressed above, the Witnesses' Motion is **GRANTED IN PART**. The witnesses may be represented by counsel if they testify in this proceeding—with the following conditions and restrictions:

- Counsel representing the witnesses must file a notice of intent to represent the witnesses with counsel's contact information by October 7, 2025.
- [REDACTED] and [REDACTED] will be required to testify on one of the scheduled hearing dates.
- Counsel may attend the hearing only during [REDACTED] and [REDACTED] testimony.
- Counsel may not ask questions or otherwise participate in the hearing except to raise objections only to questions that reasonably may elicit privileged information, such as attorney-client communications.
- Counsel may not consult or collaborate with the parties, or counsel for the parties, during the hearing. Furthermore, [REDACTED] and [REDACTED] may not consult with their counsel during their testimony unless specifically allowed to do so and may not discuss their testimony with anyone until after the hearing has concluded.

The witnesses' request that I require Enforcement to call them out of turn on a date after October 21, 2025, when [REDACTED] will be available to appear in New York or, alternatively, that I preclude the witnesses from being compelled to testify is **DENIED**. In light of this order, [REDACTED] motion to file a reply to Enforcement's Opposition is also **DENIED**.

**SO ORDERED.**



Brian D. Craig  
Hearing Officer

Dated: October 1, 2025

Copies to:

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