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FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. BRIAN J. PAVELKO (CRD No. 6347352), Respondent.	Disciplinary Proceeding No. 2020066757804 Hearing Officer–LOM

ORDER DENYING RESPONDENT'S MOTION
TO APPEAR BY VIDEOCONFERENCE

The hearing in this case has been scheduled for months for April 9, 2026. That date was jointly proposed by the parties in mid-November and incorporated into a Case Management and Scheduling Order ("CMSO") I issued on November 26, 2025. Roughly four months later, and a little over two weeks before the hearing, Respondent filed a motion on March 25, 2026, to testify at the hearing by videoconference rather than in person ("Motion"). The Motion was accompanied by Respondent's declaration ("Declaration"). The Department of Enforcement takes no position on the Motion. For the reasons discussed below, the Motion is **DENIED**.

I. Respondent's Motion

Respondent asserts that he "inadvertently" forgot a family gathering that is scheduled to occur "around" the same day as the hearing.[1] He says that attending the hearing in person would render him unable to attend the family gathering.[2] On the day of the hearing, he proposes to give what he expects to be about an hour of testimony by videoconference.[3] Counsel for Respondent plans to appear in person at the April 9 hearing.[4]

[1] Motion at 1, ¶ 2; Decl. ¶ 4.

[2] Decl. ¶ 5.

[3] Decl. ¶ 6.

[4] Motion at 3, ¶ 3.

II. Discussion

Respondent's Motion is untimely. The hearing in this matter has been scheduled for months, as Respondent knows. The parties submitted a joint proposed schedule on November 11, 2025. In their joint proposal, the parties requested April 9, 2026, as the hearing date. On that basis, I set April 9, 2026, as the hearing date in the CMSO I issued on November 26, 2025. Thus, April 9, 2026, was a hearing date that Respondent joined in choosing, and it was set months ago. Although other dates for pre-hearing activities have changed, the hearing date has never changed from the time it was set.

In the last four months, I have held two pre-hearing conferences, one on February 3, 2026, and the other on March 19, 2026.

At the February 3 pre-hearing conference, I deferred ruling on the parties' motions for summary disposition. I made it clear to the parties that the hearing remained scheduled for April 9.[5] I then altered some pre-hearing deadlines but preserved the April 9 hearing date.[6] Respondent could have (through counsel) requested that the hearing date be altered. He did not.

At the March 19 pre-hearing conference, I discussed the procedures to be followed at the hearing. Again, Respondent could have raised the issue (through counsel) at that time. He did not.

Respondent's Motion is not only untimely, the Motion falsely assumes that it makes no difference whether Respondent attends the hearing in person or not.[7] He asserts that all relevant facts are the subject of stipulations.[8] As I stated at the February 3, 2026 pre-hearing conference, regardless of the parties' motions for summary disposition, relevant unresolved facts exist in this case, and an evidentiary hearing would provide a better foundation for the decision.[9] At evidentiary hearings, Hearing Panels value in-person testimony. The Hearing Panel in this case cannot simply accept Respondent's word that all relevant facts have been established by stipulation. The Hearing Panel will determine what facts are relevant and which facts are established at the hearing.

Respondent's Motion also fails to understand the importance of his appearance throughout the hearing. In his Motion, Respondent proposes to testify by videoconference, which his counsel estimates will take about an hour.[10] Respondent says, "I can appear for that amount

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[5] February 3, 2026 Transcript ("Tr.") 11, 20–22.

[6] Tr. 20–22.

[7] Motion at 2, ¶ 5; Decl. ¶ 6.

[8] Motion at 2, ¶ 5.

[9] Tr. 15–20.

[10] Decl. ¶ 6.

of time by videoconference on April 9….”[11] But adjudicatory proceedings are unpredictable. Respondent’s testimony could take longer than his counsel predicts, and decisions may need to be made in the course of the hearing that only the Respondent can make. Respondent may want to hear what Enforcement has to say and may want to confer with his counsel about it. Respondent’s undistracted attention is required during the hearing.

Even after proposing certain amendments to FINRA’s rules to permit videoconference hearings in extreme circumstances,[12] FINRA has declared that “in-person hearings would remain the default method for conducting hearings.”[13] I see no reason to depart from the default method for conducting this hearing.

III. Conclusion

In sum, Respondent has failed to show good cause to allow him to testify by videoconference. Respondent’s Motion is DENIED.

SO ORDERED.

Lucinda O. McConathy
Hearing Officer

Dated: March 27, 2026

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[11] Decl. ¶ 6.

[12] Respondent argues that in certain circumstances under FINRA Rule 9261(b) hearings can be held, in whole or in part, by videoconference. Motion at 2, ¶ 5. One of the circumstances, he notes, is when proceeding in person “would be impracticable.” Motion at 2, ¶ 5. He contends that in this case it would be “impracticable” for Respondent to attend the hearing in person. Motion at 2, ¶ 5.

FINRA Rule 9261(b) is intended for a different kind of situation. It grew out of temporary amendments that allowed the Office of Hearing Officers to proceed by videoconference based on public health risks related to COVID-19. As explained by the Securities and Exchange Commission (“SEC”) in a release approving certain amendments to FINRA rules to allow hearings by videoconference in circumstances other than COVID-19, a videoconference hearing may be permitted when an in-person proceeding could endanger the health or safety of participants or, alternatively, would be impracticable. The SEC specifically defined “impracticable” to mean “an uncommon situation or extraordinary circumstance such as a natural disaster or terrorist attack that caused travel to be cancelled for an extended period of time.” Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change to Amend FINRA Rules 1015, 9261, 9341, 9524, 9830 and Funding Portal Rule 900 (Code of Procedure) to Permit Hearings Under Those Rules to Be Conducted by Video Conference, Securities and Exchange Commission Release No. 34-98029, Fed. Reg. Vol. 88, No. 149, at 51880 (Aug. 4, 2023). Impracticable does not mean inconvenient for the Respondent.

[13] *Id*. at 51880.

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