

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

Respondent.

Disciplinary Proceeding
No. 20070077587

Hearing Officer – AWH

RULINGS ON PRE-HEARING MOTIONS AND NOTICE OF HEARING

Pursuant to notice, a final pre-hearing conference was held on February 28, 2008, during which the following rulings were made on pending motions:

1. Respondent's Motion in Limine to preclude, in its entirety, the testimony of Enforcement's expert witness, JJ, M.D., or, in the alternative, to preclude evidence of the analysis of psychologist DS, Ph.D., upon which Dr. JJ relied in his report, is *denied*. As an expert in the area of forensic psychiatry, Dr. JJ is entitled to rely on a psychologist for assistance, incidental to the preparation of his expert opinion and testimony. That opinion and testimony is subject to cross-examination. Upon due consideration of the evidence, the Extended Hearing Panel will determine the weight to be given to the opinion and testimony of the expert.¹
2. Enforcement's objection to Respondent's Exhibit 2 is *sustained*. The exhibit consists of notes, taken by a person who will not be a witness in the proceeding, of a purported conversation with a person who will be a witness in this proceeding. There is no foundation for the exhibit to assure its reliability. Moreover, Respondent may

¹ Federal Rule of Evidence 703.

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- adduce any relevant testimony from the witness when she appears at the hearing.
3. Enforcement's objection on grounds of relevance to two pages of Respondent's Exhibit 3, excerpts from Respondent's on the record interview, is *overruled*. The evidence has relevance to the background of FINRA's investigation into the allegations in the Complaint.
 4. Enforcement's objection to Respondent's Exhibit 9 is *sustained*. The exhibit is Respondent's original Answer to the Complaint which is already in the record. Moreover, Respondent has filed an Amended Answer which is not part of the exhibit.
 5. Enforcement's objection to Respondent's Exhibit 10, the FINRA Sanction Guidelines, is *overruled*. Although the Extended Hearing Panel may take official notice of the Sanction Guidelines, the exhibit will put a copy of the relevant portions of the Sanction Guidelines before the Extended Hearing Panel and will not prejudice either party.
 6. Enforcement's objection to the testimony of RK is *sustained*. RK is Respondent's father. His testimony is offered to corroborate the testimony of Respondent's expert witness and to present character evidence on behalf of Respondent. RK is not an expert in forensic psychology, nor has Respondent's expert relied upon him for any assistance in the preparation of his expert report. The type of character evidence sought from the witness is not relevant to the issues to be decided in this proceeding.
 7. Enforcement's objection to the testimony of either NN or DT as repetitious of the other's is *overruled*. Although each witness will testify on the same issue, the testimony of one may or may not corroborate the other's. Their testimony will allow the Extended Hearing Panel to determine the reliability and weight to be given it and

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is relevant to an issue in the proceeding. In any event, the testimony of these two witnesses will not unduly prolong the hearing or result in any prejudice to Enforcement.

8. Enforcement's objection to Respondent's intended designation of prior testimony of NN and DT is *sustained*. Respondent has not specified what specific portions of prior testimony he wishes to present, nor has he produced pertinent excerpts of the transcripts from that testimony. When those witnesses are called by Respondent, he may adduce from them whatever evidence is relevant and material to the issues in this proceeding.
9. Enforcement's unopposed Motion for Sequestration of Witnesses is *granted*. With the exception of Respondent, FINRA's lead investigator Christopher Neidlinger, FINRA paralegal Richard Waldrop, and expert witnesses Dr. R and Dr. JJ, no witness shall be present in the hearing room during other witnesses' testimony, nor shall any witness subject to sequestration discuss his or her testimony with any other witness until both have finished testifying.

The hearing in this disciplinary proceeding will be held on *March 11-14, 2008*, starting at *9:00 a.m., Eastern Daylight Time*. The hearing will be held at the offices of FINRA, One Liberty Plaza, Conference Room 4804, 48th Floor, 165 Broadway, New York, NY. To clear security, the parties and all witnesses must go through screening in

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the building lobby and with FINRA on the 48th Floor. The telephone number for this location is (212) 858-4000.

SO ORDERED.

Alan W. Heifetz
Hearing Officer

Dated: February 29, 2008