

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

KYLE P. HARRINGTON
(CRD No. 2282328),

and

LINDA C. MILBERGER
(CRD No. 4939206),

Respondents.

Disciplinary Proceeding
No. 2015047303901

Hearing Officer–MAD

CASE MANAGEMENT AND SCHEDULING ORDER

The Hearing Officer held the Initial Pre-Hearing Conference on August 16, 2017, in accordance with FINRA Rule 9241. This Order sets the schedule and requirements for this proceeding.¹

If the parties have any questions about this order or the conduct of this proceeding, they should contact Mariam Lisker, the Case Administrator assigned to this proceeding. Ms. Lisker's email address is Mariam.Lisker@finra.org and her telephone number is 202-728-8004.

I. Hearing and Final Pre-Hearing Conference

A. Hearing

By agreement the hearing shall be held from **June 11–15, in Los Angeles, California**. The Office of Hearing Officers will send a notice with the hearing location at a later date.

¹ The parties also should consult the Series 9000 Rules of FINRA's Code of Procedure, which are available at www.finra.org/industry/finra-rules.

B. Final Pre-Hearing Conference

The Final Pre-Hearing Conference shall be held by telephone on **May 30, 2018, at 2:00 p.m., Eastern Standard Time**. The Office of Hearing Officers will send instructions for participating in the conference call.

II. Schedule

August 28, 2017	Deadline for Enforcement to complete production of documents for inspection and copying under Rule 9251.
October 2, 2017	Deadline for Respondents to file and serve motions relating to Enforcement's production of documents under Rule 9251 and witness statements under Rule 9253.
October 16, 2017	Deadline for Enforcement to file and serve oppositions to Respondents' discovery motions.
October 30, 2017	Deadline for Respondents to file and serve requests pursuant to Rule 9252. ²
November 30, 2017	Deadline for Enforcement to file and serve responses to Respondents' Rule 9252 requests.
January 4, 2018	Deadline for the parties to file and serve motions for summary disposition pursuant to Rule 9264. Deadline for the parties to file and serve motions for leave to permit expert testimony.
January 16, 2018	Deadline for the parties to file and serve responses to motions for summary disposition. Deadline for the parties to file and serve oppositions to motions to permit expert testimony. ³
January 18, 2018	Case Management Conference

² If Enforcement does not oppose Respondent's requests, a motion and order are not necessary.

³ If permission to call an expert witness is granted, the opposing side shall have 14 days from the date of that order to file a motion to call a counter-expert witness. Papers filed in support of a motion to permit counter-expert testimony shall conform to the requirements for a motion to permit expert testimony. Objections to this motion shall be filed within seven calendar days following the filing of the referenced motion.

March 30, 2018	Deadline for parties to exchange (but not file with the Office of Hearing Officers) proposed stipulations as to relevant undisputed facts, including authenticity, content, and admissibility of specified documents.
April 30, 2018	Deadline for the parties to file and serve the following pre-hearing submissions in accordance with Rule 9242 and the requirements of this order: ⁴ <ul style="list-style-type: none">• pre-hearing briefs;• witness lists;• exhibit lists, including a list of joint exhibits;• copies of proposed exhibits marked for identification, including transcript designations, and summary and demonstrative exhibits; and• stipulations.
May 14, 2018	Deadline for the parties to file and serve objections to proposed witnesses and exhibits. Deadline for parties to file and serve motions for leave for specific witnesses to testify by telephone. Deadline for the parties to file and serve motions <i>in limine</i> .
May 21, 2018	Deadline for the parties to file and serve responses to objections to proposed witnesses and exhibits, and to all outstanding motions relating to the conduct of the hearing.
May 30, 2018	Final Pre-Hearing Conference.
June 11–15, 2018	Hearing in Los Angeles, California.

III. General Requirements for Motions and Other Papers

A. Method of Filing and Service

All papers shall be served and filed by email unless a party lacks the capability to send and receive emails or the filing exceeds 80 pages in length. All papers filed by email shall be sent in Portable Document Format (PDF) to OHOCASEFILINGS@FINRA.ORG.

⁴ Filings that do not comply with the requirements set forth in this Order may be rejected.

Documents that are filed by email must be received by 11:59 p.m. (Eastern Time) on the due date.⁵ The subject line of the email shall include the case name and the title of the filing. The Office of Hearing Officers' electronic filing system will generate a confirmation of receipt.

If the papers to be filed either exceed the size limit for filing by email or a party lacks the capability to file papers by email, the papers shall be filed by first-class mail or one of the other methods specified in Rule 9134.

B. Signatures on Documents Filed in PDF Format

A document filed by email that is dated and has a scanned image of a handwritten signature shall satisfy the requirements of Rule 9136(b) and shall be deemed to have been signed by the party, the party's attorney, or the party's authorized representative for all purposes under Rule 9137.

Unless otherwise ordered by the Hearing Officer, the filing party shall maintain all original signed documents filed by email until final disposition of the case and the expiration of all appeal opportunities.

C. Format of Pleadings

All pleadings filed with the Office of Hearing Officers must comply with the requirements of FINRA Rule 9136, except that (1) the body of each pleading shall be in Times New Roman 12-point font, double-spaced, and (2) footnotes shall be in Times New Roman 10 or 12-point font, single-spaced.

Except for motions for summary disposition under Rule 9264, or as otherwise ordered by the Hearing Officer, motions and oppositions shall not exceed ten double-spaced pages (exclusive of pages containing any table of contents, table of authorities, or addenda).

Pleadings and other documents filed in paper format must be double-sided. If documents are filed in three-ring binders, the binders must not be wider than three inches.

No party shall file motions or other pleadings in letter format. No party shall send copies of its correspondence with another party to the Office of Hearing Officers.

D. Meet and Confer Requirement

Motions must include a certification that the moving party has made a reasonable, good-faith effort to meet and confer with the opposing party to resolve each issue in the motion informally. Motions that do not contain this certification may be rejected.

⁵ After the specified due date, the parties may not file motions, oppositions, or other papers without first moving for an extension of time. Any party requesting an extension of time must (1) discuss the extension request with all other parties; (2) include in the request proposed alternative dates; and (3) take steps to ensure, to the extent possible, that the alternative due dates are agreeable to all parties.

E. Replies

A moving party may not file a reply to any opposition to a motion without the Hearing Officer's permission.

F. Oral Argument

Motions usually will be decided based on the papers the parties file without oral argument. A party may request oral argument in a motion or opposition.

IV. Requirements for Specific Motions

A. Motions to Allow a Witness to Testify by Telephone or Videoconference

Motions for permission to offer live testimony by telephone or videoconference shall include the following information: (1) the name of the proposed expert; (2) the witness's identity; (3) the witness's location; (4) a summary of the substance of the witness's expected testimony; (5) the efforts made by the sponsoring party to secure the witness's attendance at the hearing; (6) the reason the witness is unable to appear in person; and (7) whether the witness is subject to FINRA's jurisdiction.

B. Motions for Permission to Offer Expert Testimony

A party may not offer expert testimony (including expert testimony by FINRA staff) without the Hearing Officer's approval. Expert testimony will not be allowed unless the moving party establishes that the witness's opinion will help the Hearing Panel understand the evidence or determine a fact in issue.

Motions for permission to offer expert testimony must identify the witness and include the following information: (1) a statement of the witness's qualifications; (2) a summary of each opinion the witness is expected to express; (3) a list of other proceedings in which the witness has given expert testimony in the last four years; (4) a list of publications the witness authored or co-authored in the last ten years; (5) a statement establishing that the witness's opinion will help the Hearing Panel understand the evidence or determine a material fact in issue; and (6) if the witness is a former FINRA officer, a statement that the witness is not subject to the restriction imposed by Rule 9141(c).

When expert testimony is permitted, the parties should expect that the expert's report will serve as part of the witness's direct examination and that the presiding Hearing Officer may limit the amount of time for the witness's direct and cross-examination.

C. Motions for Summary Disposition

1. Requirements in Support of Motion

With each motion for summary disposition filed under Rule 9264, the moving party shall serve and file (1) a supporting memorandum of law; (2) a statement of material facts as to which the moving party contends there is no genuine issue and that entitle the moving party to summary disposition as a matter of law; and (3) affidavits or sworn declarations that set forth relevant facts that would be admissible at the hearing and show that the affiant is competent to testify about them.

The statement of material facts shall set forth, in numbered paragraphs, each material fact about which the moving party contends there exists no genuine issue. Each fact listed shall set forth a specific reference to the record where the fact is established.

2. Requirements in Opposition to Motion

Each party opposing a motion for summary disposition shall serve and file (1) a supporting memorandum of law; (2) opposing affidavits or sworn declarations; and (3) a concise response, in matching numbered paragraphs, admitting or denying each statement of material fact and, in case of any disagreement, that includes specific references to the affidavits, sworn declarations, parts of the record, or other materials relied upon to support the opposition.

3. Form and Filing Requirements

Unless the file size exceeds 80 pages or the parties lack the capability to send and receive emails, all papers in support of and opposition to a motion for summary disposition shall be filed by email in PDF format sent to OHOCASEfilings@FINRA.org. When a party is unable to file by email, the documents shall be filed in paper in the format specified below.

Each memorandum of law must not exceed 35 double-spaced pages (exclusive of any table of contents, table of authorities, or addenda) in Times New Roman 12-point font. Long quotations may be single spaced, and footnotes may be single-spaced in Times New Roman 10 or 12-point font.

Paper documents that cannot be stapled conveniently must be submitted in three-ring binders that are not wider than three inches.

An opposing party may refer to documents submitted by the moving party rather than submitting additional copies of the same documents.

Exhibits and other attachments shall be separately tabbed and marked for identification in the manner specified below in Part V(D), governing hearing exhibits.

V. Pre-Hearing Submissions

Each party shall submit (1) a pre-hearing brief; (2) a list of witnesses who will testify on its behalf; and (3) a list and copies of exhibits it intends to introduce at the hearing.

A. Pre-Hearing Briefs

Pre-hearing briefs should include a narrative summary of the facts and the legal theories upon which the party relies, as well as a discussion of sanctions. Briefs shall not exceed 35 double-spaced pages unless otherwise permitted by the Hearing Officer.

B. Witness Lists

Witness lists shall include the names and addresses of all prospective witnesses, their occupations, and a summary of the substance (not simply the subject) of their anticipated testimony.

C. Exhibit Lists

Exhibit lists shall include all documents that a party expects to use at the hearing for any purpose, including documents that are relevant only for impeachment purposes. Exhibit lists shall include a description of each exhibit and a brief statement of the purpose for which the exhibit will be offered in evidence.

When a party files its pre-hearing submissions with the Office of Hearing Officers, it should send a duplicate copy of its exhibit list in Microsoft Word format to OHOCASEFILINGS@FINRA.ORG.

D. Hearing Exhibits

The parties shall submit to the Office of Hearing Officers—in paper format—four sets of all exhibits they intend to introduce at the hearing.⁶ The parties also shall bring to the hearing a copy of their exhibits in paper format for the witnesses' use during their testimony.

1. Exhibit Binders

Paper exhibits shall be submitted in three-ring binders that do not exceed three inches in width, and shall be organized and numbered as provided below. Each exhibit binder shall be labeled on the cover and the spine, indicating the submitting party and the range of exhibits included in the binder.

The parties must ensure that each exhibit is legible. When it is necessary to offer a poor quality copy, the offering party must note on the exhibit that it is the "best available copy."

⁶ Under FINRA Rule 9261(a), proposed exhibits will not be included in the record unless the Hearing Officer or the Hearing Panel orders otherwise.

2. Exhibit Numbers

Exhibits must be sequentially numbered and labeled in a manner that identifies the party offering the exhibit. For multiple-page documents, each page shall be marked with the exhibit number followed by the page number and the total number of pages in the exhibit. For example, if Enforcement's first exhibit is a ten-page document, it should be marked as follows: CX-1, Page 1 of 10; CX-1, Page 2 of 10, etc. Similarly, if Respondent's first exhibit is a five-page document, it should be marked RX-1, Page 1 of 5; RX-1, Page 2 of 5, etc. Joint exhibits shall be labeled and numbered in a similar manner using the prefix "JX." Enforcement shall mark and submit joint exhibits.

3. Summary Exhibits

The parties shall use summary exhibits in place of voluminous collections of data, writings, or recordings. A party intending to offer a summary exhibit must provide the underlying source documents to all opposing parties when exchanging pre-hearing submissions unless the source documents were provided at an earlier date during pre-hearing discovery. All proposed summary exhibits shall be submitted with the other pre-hearing submissions. Summary exhibits shall reference the underlying source documents. When identifying a summary exhibit in the exhibit list, the party must use the following format: SUMMARY EXHIBIT: (title of exhibit).

4. Objections to Exhibits

Prior to serving objections to proposed exhibits or witnesses, the parties shall confer to attempt to resolve the objections. No party may file an objection unless the objecting party certifies in writing that the objecting party has attempted to resolve the objection with the opposing party.

Objections not made by the deadline in the pre-hearing schedule may be deemed waived.

E. Stipulations

The parties are expected to stipulate to facts that cannot reasonably be contested and to the authenticity of documents that are expected to be offered in evidence, unless they have a good-faith basis to question the genuineness of the documents. Enforcement shall initiate the discussion of stipulations and the parties shall cooperate fully to reach stipulations consistent with the spirit of this Order.

VI. Restrictions on the Submission of Personal Confidential Information and Personal Sensitive Information

A Protective Order Governing Personal Confidential Information ("PCI") has been entered in this proceeding that governs the production, handling, and use of PCI. The parties also

shall comply with the following restrictions on the submission of PCI and Personal Sensitive Information ("PSI") to the Office of Hearing Officers.

A. Hearing Exhibits

Where practical, the parties shall remove (redact) the following PCI from exhibits submitted to the Office of Hearing Officers, unless the information is necessary for the determination of the issues in this disciplinary proceeding:

- Social Security numbers;
- taxpayer identification numbers (last four digits allowed);
- passport numbers (last four digits allowed);
- driver's license numbers (last four digits allowed);
- state-issued identification numbers (last four digits allowed); and
- financial account numbers (including checking and savings account numbers, credit card numbers, debit card numbers, or any other numbers or information that can be used to access the person's financial resources) (last four digits allowed).

By producing a non-redacted exhibit or exhibits, the submitting party represents that it is impractical to remove the foregoing PCI and acknowledges that the exhibit(s), including PCI, may be further disseminated to the other parties in the proceeding.

B. Pleadings and Other Submissions Prepared by the Parties

Also, the parties shall not include the foregoing PCI or any of the following PSI in motions, briefs, memoranda, pleadings, and other written submissions prepared by the parties, and shall not refer to this information in testimony, arguments, or statements on the record:

- home address (other than city and state);
- personal telephone numbers;
- date of birth (other than year);
- names and initials of minor children; or
- sensitive health information identifiable by individual (such as an individual's medical records).

VII. The Hearing

A. Examination of Witnesses and Order of Proof

Enforcement presents its evidence first because it bears the burden of proof. Nonetheless, the parties may request permission to proceed in another manner either to accommodate a witness's schedule or to avoid the need to have a witness testify multiple times. Such joint proposals must be made at or before the final pre-hearing conference. Also, to aid in the orderly and expeditious disposition of the proceeding, the Hearing Officer may require the parties to call non-party witnesses only once.

B. Prior Sworn Investigative Testimony and Statements

1. Non-Party Witnesses

The Hearing Officer will entertain—but not automatically grant—a motion to admit a non-party's prior sworn investigative testimony or other sworn statement if the evidence is admissible under Rule 9263(a) and one of the following:

- (a) The witness is unavailable to testify in person or by telephone at the hearing, unless it appears that the absence of the witness was procured by the party offering the prior sworn testimony or sworn statement;
- (b) The Hearing Officer determines in the interests of justice that it would be appropriate to allow the use of the prior sworn testimony or sworn statement;
- (c) The witness's prior testimony is shown to be inconsistent with the witness's hearing testimony; or
- (d) The parties have stipulated to accept the prior sworn testimony or statement in lieu of live testimony.

2. Respondents

A party may use a Respondent's prior sworn investigative testimony or statement for any purpose if it is otherwise admissible under Rule 9263(a). The Hearing Officer may nonetheless require the Respondent to testify at the hearing.

3. Introducing Transcripts of Prior Sworn Testimony

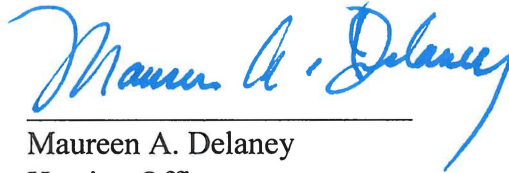
If a party intends to offer a witness's prior sworn testimony for any purpose, the transcript shall be included as a proposed exhibit on the party's exhibit list. The exhibit should include only the portions of the transcript that the party intends to offer as evidence, together with the pages identifying the caption of the proceeding, the date on which the testimony was given, the identity of the witness, and the court reporter's certification. The Hearing Officer may

require that all relevant portions of the testimony or statement be introduced. The Hearing Officer also may require that irrelevant portions be excluded.

VIII. Evidence Relevant to Sanctions

The Hearing Panel will not hold a separate hearing to determine the appropriate remedial sanction if a violation is found. Thus, all evidence bearing on both liability and sanctions must be presented at the hearing, including, if applicable, detailed financial information in support of an individual respondent's claim of financial hardship that would prevent the payment of a monetary sanction.

SO ORDERED.



Maureen A. Delaney
Hearing Officer

Dated: August 22, 2017

Copies to: David A. Schrader, Esq. (via email and first-class mail)
Linda C. Milberger (via email and first-class mail)
Brody Weichbrodt, Esq. (via email and first-class mail)
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