

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

MATTHEW NEMER
(CRD No. 2813102)

Respondent.

Disciplinary Proceeding
No. 2016051925301

Hearing Officer — MAD

**ORDER GRANTING MOTION TO PERMIT WITNESS COUNSEL TO BE PRESENT
DURING TESTIMONY**

On September 1, 2017, Enforcement filed an unopposed motion for leave permitting its Wells Fargo-associated witnesses, Todd Wickwire and Scott Friedman, to be accompanied by Wells Fargo's in-house counsel during their testimony at the hearing of this matter. According to the motion, Wickwire and Friedman are currently employed by Wells Fargo, Respondent's former employer firm.


FINRA's disciplinary proceedings are not public proceedings. FINRA's Code of Procedure does not specifically address whether testifying witnesses, upon request, may be accompanied by counsel. The Hearing Officer, however, has general authority under FINRA Rule 9235(a)(2) to regulate the course of the hearing. In appropriate cases, Hearing Officers have allowed counsel to accompany testifying witnesses.¹ Because a testifying witness may not be aware of the operation of certain legal privileges, such as attorney-client privilege, and may unwittingly waive the privilege by divulging protected communications, in the interest of fairness, such a witness may be allowed to have counsel present during his testimony.

The Hearing Officer grants Enforcement's request to allow the Wells Fargo-associated witnesses to be accompanied by counsel during their testimony subject to the following restrictions. Wells Fargo's in-house counsel may attend the hearing only during the Wells Fargo-associated witnesses' testimony as an observer of their testimony. Counsel may not ask questions or otherwise participate in the hearing. Counsel may raise objections to questions that may elicit privileged information, such as attorney-client communications or material protected by the attorney work product doctrine.

¹ See OHO Order 11-01 (2008014621701) (Jan. 28, 2011) <http://www.finra.org/sites/default/files/OHODecision/p123463.pdf>; OHO Order 16-23 (2014043090201) (Aug. 24, 2016) http://www.finra.org/sites/default/files/OHO_Order16-23_2014043020901.pdf.

Counsel for the Wells Fargo-associated witnesses may not consult or collaborate with Enforcement, Respondent, or Respondent's counsel during witnesses' testimony. Furthermore, the Wells Fargo-associated witnesses and their counsel may not consult with each other during their testimony unless specifically allowed by the Hearing Officer.

SO ORDERED.


Maureen A. Delaney
Hearing Officer

Dated: September 5, 2017

Copies to:

Peter R. Boutin, Esq. (via email and first-class mail)
Edwin T. Aradi, Esq. (via email and first-class mail)
Jeffrey D. Pariser, Esq. (via email)