

This Order has been published by NASD's Office of Hearing Officers and should be cited as OHO Order 03-09 (C01020025).

The ____ respondents “move (1) to bifurcate the hearing of this matter so that they may be heard separate and apart from the hearing relating to Respondent _____, and (2) to have their matters finally determined prior to the _____ hearing, or, in the alternative, to have a separate Hearing Panel appointed to determine the issues relating to them.” They argue that the evidence against _____ is “likely to be highly inflammatory and therefore prejudicial to [the ____ respondents, because] in assessing sanctions against [the ____ respondents], it is probable that any Hearing Panel would be unduly influenced by the gravity of the allegations, the testimony and the evidence adduced against _____.”

Although the ____ respondents did not cite Rule 9214 in their motion, in effect they are seeking severance.¹ Rule 9214(d) provides that in deciding whether to sever, the Chief Hearing Officer should consider whether (1) the same or similar evidence reasonably would be expected to be offered at each of the possible hearings; (2) severance would conserve the time and resources of the parties; and (3) any party would suffer unfair prejudice if severance is or is not ordered. In this case, in order to consider the charge that the ____ respondents failed to exercise proper supervision over _____, the Hearing Panel would be required to hear the evidence relating to his alleged misconduct. Even if, as the ____ respondents suggest in their motion, they concede liability, the Hearing Panel would still need a clear understanding of _____ actions in order to determine what sanctions should be imposed against the ____ respondents. See NASD Sanction Guidelines at 108 (2001 ed.) (principal considerations in setting sanctions for failure to supervise include the “nature, extent, size and character of the underlying misconduct”).

Moreover, because substantially the same evidence would be required at both hearings, severing

¹ The ____ respondents argue that the standards applied by courts in determining whether to order “Separate Trials” under Fed. R. Civ. P. 42(b) should be applied here, by analogy. Because NASD has a specific rule governing severance, however, there is no need to look to the Federal Rules.

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the charges against the ____ respondents would not conserve the time and resources of the parties.

The ____ respondents' claim of unfair prejudice must be rejected. NASD Hearing Panels commonly consider both improper supervision charges and underlying misconduct charges against the person supervised in a single hearing, evaluating each charge on its own merits. The ____ respondents have not shown any reason to believe that the Hearing Panel will be unable to do so in this case.

Because the factors set forth in Rule 9214 do not weigh in favor of severance, the ____ respondents' motion is denied.

SO ORDERED

Linda D. Fienberg
Chief Hearing Officer

Dated: April 17, 2003