

This Order has been published by NASD's Office of Hearing Officers and should be cited as OHO Order 06-42 (E8A2003091501).

**NASD OFFICE OF HEARING OFFICERS**

---

DEPARTMENT OF ENFORCEMENT,	:	
	:	
	:	
Complainant,	:	Disciplinary Proceeding
	:	No. E8A2003091501
v.	:	
	:	
	:	Hearing Officer - RSH
	:	
	:	
	:	
	:	
Respondent.	:	

---

**ORDER GRANTING MOTION FOR TO PERMIT CERTAIN WITNESSES TO HAVE COUNSEL PRESENT**

Enforcement requests an order allowing Teresa J. Rooney, counsel for [Firm], to be present during the testimony of certain current and former [Firm employees] at the hearing of this matter. Enforcement states that “Counsel for the Member understands and agrees to comply with the limitations of their roles and authority at the Hearing.” Respondent does not oppose the request.

NASD proceedings are generally non-public, but the Code of Procedure does not address whether counsel for a witness may attend the hearing while the witness is testifying. Instead, the issue falls within the Hearing Officer’s general authority under Rule 9235(a) (2) to “regulat[e] the course of the hearing.” A witness may not be aware of the operation of certain legal privileges, such as the attorney-client privilege and may unwittingly waive the privilege by divulging protected communications. Thus, in the interest of fairness, such witnesses should be allowed to have counsel present while they testify. Of course, the role of a witness’s counsel during a hearing is quite narrow, and the counsel cannot be allowed to exceed that role and interfere improperly in the conduct

**This Order has been published by NASD's Office of Hearing Officers and should be cited as OHO Order 06-42 (E8A2003091501).**

of the hearing.<sup>1</sup>

The Hearing Officer hereby grants Enforcement's request. As noted, however, the role of [the Firm's] attorney will be strictly limited. The attorney may attend the hearing as an observer of the testimony of current and former Intersecurities employees, except for that of Respondent. The attorney may not ask questions or otherwise participate in the hearing, **except** to raise objections to questions that may elicit privileged information, e.g., attorney-client communications or material protected by the attorney work product doctrine. The [Firm's] attorney, not Enforcement attorneys, will protect [the Firm's] rights and privileges; Enforcement attorneys may only raise objections that protect its rights, e.g., relevance or reliability. The [Firm's] attorney may not collaborate or consult with Enforcement attorneys during witness testimony. In addition, any consultations between the Intersecurities attorney and the witnesses shall occur outside the hearing room.

**SO ORDERED.**

---

Rochelle S. Hall  
Hearing Officer

Dated: Washington, DC  
September 28, 2006

---

<sup>1</sup> OHO Order 00-03 (C9A990007), Jan. 31, 2000.