

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

D. ALLEN BLANKENSHIP
(CRD No. 2842335),

Respondent.

Disciplinary Proceeding
No. 2019064333401

Hearing Officer—RES

**ORDER GRANTING DEPARTMENT OF ENFORCEMENT'S MOTION
TO PERMIT TESTIMONY BY VIDEOCONFERENCE OR TELEPHONE**

This FINRA disciplinary proceeding concerns Respondent D. Allen Blankenship's alleged unsuitable recommendations of mutual fund investments, his alleged circumvention of employer firm policy, and his alleged mismarking of orders. Respondent denies these allegations and denies that he violated FINRA Rules. The hearing is scheduled to be held July 15-19 and July 22-24, 2024, in Philadelphia, Pennsylvania.

The Department of Enforcement has filed a motion to permit videoconference or telephone testimony of two witnesses, Jonee Powell and Richard Mireles. In support of its Motion, Enforcement states that even though these witnesses are subject to FINRA Rule 8210, good cause exists for permitting them to testify by videoconference or telephone. Ms. Powell lives in North Carolina, and Enforcement expects her direct examination to take an hour. If Ms. Powell were compelled to testify in person, she would miss two workdays in travel. Mr. Mireles lives in San Diego, California, and Enforcement expects his direct examination to take two to three hours. Mr. Mireles would miss two workdays in travel. Respondent opposes Enforcement's Motion.

For the reasons stated below, the Motion is **GRANTED**.

Videoconference or telephone testimony is accepted in FINRA disciplinary proceedings and has been upheld by the Securities and Exchange Commission.¹ Such testimony does not deprive a respondent of a fair hearing provided he has an adequate opportunity to cross-examine

¹ OHO Order 24-04 (2018057297102) (Jan. 17, 2024), at 2, https://www.finra.org/sites/default/files/2024-05/OHO_Order_24-04_Kolta_2018057297102.pdf; see *Gerald E. Donnelly*, Exchange Act Release No. 36690, 1996 SEC Lexis 89, at *9 n.16 (Jan. 5, 1996).

the witness.² I find it would be unreasonable to compel Ms. Powell to miss two workdays and travel from North Carolina to Philadelphia for what is expected to be one hour of direct testimony. Requiring Mr. Mireles to miss two workdays and travel from San Diego to Philadelphia for in-person testimony would cause both financial and personal hardship. Mr. Mireles has child-care responsibilities that would be impacted if he had to travel for the hearing. These facts show good cause for allowing videoconference or telephone testimony.

This Order is without prejudice to Respondent's right to object to the witnesses' testimony on relevance or other grounds; the Order is limited to allowing the witnesses to testify by videoconference or telephone rather than through in-person testimony in the hearing.

These are the protocols, deadlines, and requirements for telephone testimony:

- On or before **July 3, 2024**, Enforcement shall file notarized declarations from the witnesses stating their videoconference or telephone testimony will be truthful. After the videoconference or telephone testimony, the witnesses' declarations will be marked as exhibits,³ entered into evidence, and be part of the record.
- On or before **July 8, 2024**, Enforcement shall identify to Respondent the exhibits Enforcement intends to use for the witnesses.
- On or before **July 10, 2024**, Respondent must identify to Enforcement the exhibits Respondent intends to use for the cross-examination of the witnesses.
- On or before **July 11, 2024**, Enforcement shall send to the witnesses, by overnight delivery, all exhibits intended to be used in the witnesses' direct examination and cross-examination. Enforcement shall instruct the witnesses **not** to open the package containing the exhibits until they enter the virtual hearing room and are ready to testify. At that time, they will be directed to open the package.
- Enforcement must ensure the witnesses agree and undertake to destroy or return all exhibits after the witnesses' testimony.

² OHO Order 23-16 (2021070337501) (May 26, 2023), at 3, https://www.finra.org/sites/default/files/2023-9/oho_order_23-16_2021070337501_venturino.pdf.

³ As directed in the Case Management and Scheduling Order dated January 23, 2024.

- Enforcement shall ensure the witnesses will be available by videoconference or telephone in blocks of time when it is reasonable to expect the witnesses will be called to testify.

SO ORDERED.


Richard E. Simpson
Hearing Officer

Dated: July 1, 2024

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