

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

KEITH C. BARON
(CRD No. 3231494),

Respondent.

Disciplinary Proceeding
No. 2022073772701

Hearing Officer—RES

**ORDER GRANTING DEPARTMENT OF ENFORCEMENT'S
CONSENT MOTION FOR WITNESS SEQUESTRATION**

The hearing in this disciplinary proceeding is scheduled for August 19 - 23, 2024, in New York. This Order governs the sequestration of witnesses in the hearing.

I. The Requested Sequestration

Enforcement has moved for the sequestration of witnesses. This would prevent any witness from attending the hearing except for when the witness is testifying.¹ All hearing participants would be prohibited from disclosing any part of a witness's testimony to any other witness during the hearing.² In support of its Motion, Enforcement states that a FINRA Hearing Officer may order sequestration and take other measures to prevent witnesses from learning the testimony of other witnesses.³ According to Enforcement, sequestration is routinely granted in FINRA disciplinary hearings.⁴ Respondent consents to Enforcement's request for sequestration.⁵ For the reasons stated below, I grant the request.

As the Hearing Officer, I may order the sequestration of witnesses and prevent anyone from revealing the substance of a witness's testimony to other witnesses while the hearing is

¹ Department of Enforcement's Consent Motion for Witness Sequestration dated August 5, 2024 ("Mot.") 1.

² Mot. 1.

³ Mot. 1.

⁴ Mot. 2.

⁵ Mot. 1

ongoing.⁶ Sequestration is commonly used in hearings and trials to ensure a witness's testimony is not influenced by the testimony of other witnesses whom the witness has heard while sitting in the hearing room or courtroom, and or by conversations with other hearing participants in breaks, adjournments, and recesses.⁷ Testimony that is a witness's own, not influenced by others, promotes fairness to the parties and accuracy in the truth-seeking process.⁸ Sequestration discourages fabrication, collusion, and tailoring of testimony.⁹

II. The Requested Exemption from Sequestration

The Motion requests that Ryan Akers, Enforcement's Principal Investigator, be exempt from sequestration and allowed to be present in the hearing even though he will be a witness. Enforcement states that in disciplinary proceedings, case agents and investigators are routinely exempt from sequestration, consistent with the case agent exception of the Federal Rules of Evidence.¹⁰ Enforcement expects Akers will testify about: regulatory investigations and findings related to Respondent; Respondent's background and alleged disciplinary history; exhibit authentication and foundation; evidence in the investigative file; and the contents and preparation of Enforcement's summary exhibits.¹¹ Respondent does not object to exempting Akers from sequestration. For the reasons stated below, I grant Enforcement's request for a case agent exception from sequestration as to Akers.

Although the Federal Rules of Evidence do not apply to FINRA proceedings, Hearing Officers may rely on these Rules for guidance.¹² Rule 615 identifies the categories of witnesses who may be exempt from sequestration. These include a party; an officer or employee of a party that is not a natural person; a person whose presence a party shows to be essential to presenting

⁶ FINRA Rule 9235(a) (the Hearing Officer "shall have authority to do all things necessary and appropriate to discharge his or her duties"); *accord* OHO Order 21-10 (2016048837401) (July 1, 2021), at 2, https://www.finra.org/sites/default/files/OHO_Order_21-10_2016048837401.pdf; OHO Order 19-28 (2016049321302) (Sept. 19, 2019), at 1, https://www.finra.org/sites/default/files/2019-10/OHO_Order_19-28_2016049321302.pdf.

⁷ A request for the sequestration of witnesses is so well known that counsel routinely call on a court or administrative adjudicator to "invoke the Rule." OHO Order 06-53 (EAF0300770001) (Nov. 9, 2006), at 1, https://www.finra.org/sites/default/files/OHODecision/p018443_0.pdf.

⁸ OHO Order 19-01 (2016050938301) (Jan. 9, 2019), at 1, https://www.finra.org/sites/default/files/2019-10/OHO_Order_19-01_2016050938301.pdf.

⁹ OHO Order 18-08 (2014039775501) (May 3, 2018), at 2, https://www.finra.org/sites/default/files/OHO_Order_18-08_2014039775501.pdf; OHO Order 16-24 (2014043020901) (Aug. 30, 2016), at 2, https://www.finra.org/sites/default/files/OHO_Order16-24_2014043020901.pdf.

¹⁰ Mot. 2.

¹¹ Mot. 3.

¹² OHO Order 16-14 (2015044379701) (Mar. 25, 2016), at 3, https://www.finra.org/sites/default/files/OHO_Order16-14_2015044379701_0_0_0.pdf.

the party's claim or defense; and a person authorized by statute to be present.¹³ And according to the Senate Judiciary Committee Notes to the Rule, there is a case agent exception for employees of government litigants:

[m]any district courts permit government counsel to have an investigative agent at counsel table throughout the trial although the agent is or may be a witness. The practice is permitted as an exception to the rule of exclusion and compares with the situation defense counsel finds himself in—he always has the client with him to consult during the trial. The investigative agent's presence may be extremely important to government counsel, especially when the case is complex or involves some specialized subject matter.¹⁴

Hearing Officers frequently exempt FINRA case agents and investigators from sequestration in disciplinary proceedings.¹⁵ The case agent exception has been made for FINRA employees for at least 20 years and, as far as I know, in no proceeding has the exception adversely affected the fairness of the hearing.¹⁶

III. Conclusion

For the reasons stated above, it is **ORDERED** that all third-party witnesses shall be sequestered and must not discuss with anyone their testimony or the facts of this proceeding until the hearing is concluded. This prohibition includes discussions with counsel for Respondent, counsel for Enforcement, and any employee of Enforcement. Individuals on the parties' witness lists shall not be allowed in the hearing room while other witnesses are testifying, must not discuss their testimony with other witnesses, and must not follow the hearing by reading transcripts of the hearing. The parties must instruct the witnesses to refrain from conferring with other witnesses about their testimony until the hearing is concluded. Respondent and Principal Investigator Akers are exempt from sequestration and are permitted in the hearing room.

SO ORDERED.



Richard E. Simpson
Hearing Officer

Dated: August 14, 2024

¹³ Fed. R. Evid. 615(1) - (4).

¹⁴ Fed. R. Evid. 615 Notes, Notes of Committee on the Judiciary, Senate Report No. 93-1277.

¹⁵ OHO Order 18-08, at 3.

¹⁶ OHO Order 17-16 (2016051925301) (Sept. 5, 2017), at 1 (“there is precedent for excluding Enforcement staff investigators from sequestration at hearings, and that doing so is consistent with Federal Rule of Evidence 615”), https://www.finra.org/sites/default/files/OHO_Order_17-16_2016051925301.pdf.

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