

This Order has been published by the NASDR Office of Hearing Officers and should be cited as OHO Order 00-03 (C9A990007).

**NASD REGULATION, INC.
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,	:	
	:	
Complainant,	:	Disciplinary Proceeding
	:	No. C9A990007
v.	:	
	:	Hearing Officer - JN
	:	
	:	
	:	
Respondent.	:	

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

Enforcement requests an order allowing _____ (counsel for three named witnesses) to observe their testimony at the hearing in this matter. Respondent opposes this request, voicing concern, inter alia, that the presence of counsel could “result in an orchestration of the testimony of these witnesses” (Opposition, p. 1).

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.” 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 of the hearing. There is no basis, however, to presume that a witness’s counsel will behave improperly. If a concrete problem arises during the course of the hearing, the Hearing Officer retains authority to address it.

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The Hearing Officer hereby grants the request, a result consistent with that reached by another Hearing Officer in an analogous situation. As noted, however, the role of such an attorney will be limited. As stated in the Department's Motion, this attorney will not "ask questions, interject objections, or otherwise participate in the hearing;" he will "be present strictly as an observer" (Motion, p. 2). In addition, any consultations between this attorney and his clients shall occur outside the hearing room. During the hearing, Respondent's counsel may direct the Hearing Officer's attention to any circumstances which, in counsel's view, suggest orchestration.

SO ORDERED.

Jerome Nelson
Hearing Officer

Dated: Washington, DC
 January 31, 2000