

**UNITED STATES OF AMERICA
DEPARTMENT OF THE TREASURY
OFFICE OF THE COMPTROLLER OF THE CURRENCY**

In the Matter of

Carrie Tolstedt, Former Head
of the Community Bank

OCC AA-EC-2019-82

Claudia Russ Anderson,
Former Community Bank Group Risk
Officer

OCC AA-EC-2019-81

James Strother, Former General
Counsel

OCC AA-EC-2019-70

David Julian, Former Chief
Auditor

OCC AA-EC-2019-71

Paul McLinko, Former
Executive Audit Director

OCC AA-EC-2019-72

Wells Fargo Bank, N.A.
Sioux Falls, South Dakota

ALJ McNeil

**ORDER REGARDING ENFORCEMENT COUNSEL'S MOTIONS TO QUASH
HEARING SUBPOENAS DIRECTED TO CERTAIN OCC PERSONNEL AND STRIKE
THEM FROM RESPONDENTS' WITNESS LISTS AND FOR ORDER TO SHOW
CAUSE**

The evidentiary hearing requested by the Respondents in this administrative enforcement action is scheduled to begin on September 13, 2021 in Sioux Falls, South Dakota. By an Order issued on July 20, 2021 partial summary disposition in Enforcement Counsel's favor was granted, determining the merits of those factual issues and claims that were based on uncontroverted facts.¹ Controverted facts were identified and the parties

¹ Order Regarding Enforcement Counsel's Motions for Summary Disposition issued on July 20, 2021 at 748.

were put on notice that determinations regarding those facts would be made through the presentation of evidence during the hearing.²

In preparation for the evidentiary hearing, the parties were directed to submit prehearing statements that would identify the witnesses each party intended to call, and would identify the documents (by exhibit number and page number) the party intended to present to the witness. For each of these witnesses, the party offering the witness was required to provide the name and address of the witness along with a summary of the witness's expected testimony.³

The March 17, 2020 prehearing order directed the following disclosures:

5. Information (if not already provided in prior submissions) regarding each witness, including fact, hybrid fact/expert, and expert, who may be called to testify, including:

- a. The name and address of each witness;
- b. A short summary of the expected testimony of each witness, e.g., "This witness will testify that . . ." Note that during the evidentiary hearing, witness testimony in the party's case in chief will be limited to the descriptions provided in this summary. In order to ensure the efficient and orderly presentation of witness testimony, the parties are directed to identify, in their prehearing submissions, by exhibit number or numbers, and page number or numbers, the documents relied upon by each witness being called by the party. During the hearing and absent sufficient cause to vary from this provision, only those exhibits and page numbers identified in this prehearing submission may be presented to the witness by the party calling the witness.

The disclosure requirement pertaining to witnesses was reiterated in an Order issued on August 2, 2021 following the issuance of the Order regarding summary disposition.⁴ Through the August 2, 2021 Order, the parties were directed thus: "As already noted in the orders regarding prehearing submissions, any party seeking to introduce a document during the hearing will need to submit a prehearing statement identifying the proposed exhibit. The prehearing submission also must disclose which document (and which pages of each document) will be presented to each witness."⁵

² Order Regarding Enforcement Counsel's Motions for Summary Disposition at 74. See also, Excerpts Identifying Controverted Facts to be Presented and Supplemental Prehearing Order, issued July 28, 2021.

³ Notice of Hearing, Scheduling Order, and Supplemental Prehearing Orders issued March 17, 2020 at 2.

⁴ Supplemental Order Regarding Order Determining the Merits of Enforcement Counsel's Motions for Summary Disposition, issued August 2, 2021.

⁵ Supplemental Order Regarding Order Determining the Merits of Enforcement Counsel's Motions for Summary Disposition at 4.

The disclosure requirement was also addressed in an Order issued on July 28, 2021, which identified the remaining controverted factual claims and required the parties to identify the witnesses and documents they will present regarding each such controverted claim.⁶

The disclosure requirement was also addressed in an email from this Tribunal, which is appended as an attachment to the Supplemental Prehearing Statements submitted on behalf of each Respondent.⁷

The relevant part of that email is as follows:

For the benefit of all counsel of record, I would draw attention to the following language in the Order that determined the merits of Enforcement Counsel's motions seeking summary disposition:

Given the substantial determinations reflected above, the parties are directed to submit supplemental prehearing statements that take into account the matters that have now been determined, as further evidence will not be taken with respect to claims that have been determined through this Order.

Supplemental prehearing statements will be timely if filed by August 6, 2021. The deadline for final prehearing motions, including motions in limine based on the determinations reflected above, is amended from July 30, 2021 to August 23, 2021, with responses due not later than August 30, 2021.

The language quoted above is intended to reflect that most of the issues raised in the Notice of Charges have now been determined through the summary disposition process. Evidence regarding matters that have now been determined will not be permitted during the hearing. Any proposal to introduce testimony or documents at the evidentiary hearing set for September 2021 must be set forth in the supplemental prehearing submission. If the proposed evidence relates to issues that have been determined through the summary disposition process, such proposal will be subject to either motions *in limine* or the *sua sponte limine* order of this Tribunal.

The parties' supplemental prehearing statements should establish that any testimony to be presented during the hearing will relate to issues that have not yet been determined through the summary disposition process. Any proposal to present testimonial or documentary evidence will identify by specific reference to the Statement of Material Fact number associated with

⁶ Excerpts Identifying Controverted Facts to be Presented and Supplemental Prehearing Order issued July 28, 2021 at 19.

⁷ Respondent Claudia Russ Anderson's Supplemental Prehearing Statement at Exhibit A; Respondent David Julian's Supplemental Prehearing Statement at Exhibit A; Respondent Paul McLinko's Supplemental Prehearing Statement at Exhibit A.

the proposal. Any documents that are to be presented must relate to issues that have not yet been determined through the summary disposition process. The supplemental prehearing statements should identify which disputed Statement of Material Facts such testimony relates to, for each proposed witness, and for each document the party intends to present to the proposed witness.⁸

The July 20, 2021 Order directed the parties to submit supplemental prehearing statements that take into account the matters that have now been determined. Further, the parties were informed that further evidence will not be taken with respect to claims that have been determined through the July 20, 2021 Order.⁹ Supplemental prehearing statements containing the above-referenced disclosures were due on August 6, 2021.¹⁰

Each Respondent filed timely supplemental prehearing statements. Among the 21 present and former OCC employees identified by Respondents in their respective August 6, 2021 supplemental prehearing statements for whom hearing subpoenas have been issued are Valerie Adams, Mark Dey, Patricia Miller, and Paige Nicholson.¹¹ On August 9, 2021 Enforcement Counsel moved for an order quashing these four hearing subpoenas and striking the witness's names from the Respondents' witness lists.¹² Upon the premises advanced through Enforcement Counsel's Motion, and upon finding cause has not been shown for requiring the testimony of the four named witnesses, Enforcement Counsel's Motion to Quash is granted and the witnesses are stricken from Respondents' list of hearing witnesses.

The above finding follows my consideration of the factual and legal premises presented by the Respondents in their jointly-filed Opposition to Motion to Quash,¹³ and my review of the supplemental prehearing statements Respondents separately filed on August 6, 2021, and the previously prehearing statements Respondents separately submitted on June 25, 2021. Through the two prehearing statements, the parties were to

⁸ Email to the parties dated July 27, 2021 re: OCC/Tolstedt, et al. – Direction to Confer at 1, attached as Exhibit A to Respondent Claudia Russ Anderson's Supplemental Prehearing Statement; Respondent David Julian's Supplemental Prehearing Statement at Exhibit A; and Respondent Paul McLinko's Supplemental Prehearing Statement at Exhibit A.

⁹ Order Regarding Enforcement Counsel's Motions for Summary Disposition at 748.

¹⁰ Order Regarding Enforcement Counsel's Motions for Summary Disposition at 748.

¹¹ Respondent Russ Anderson's Witness List and Exhibit Disclosures at 3-4, 27-28, 73, 78-79; Respondent Julian's Witness List and Exhibit Disclosures at 2, 25, 69-70, 74-75; and Respondent McLinko's Witness List and Exhibit Disclosures at 3, 26-27, 74-75, 79-80, filed June 25, 2021, each filed June 25, 2021.

¹² Motions to Quash Hearing Subpoenas Directed to Certain OCC Personnel and Strike them from Respondents' Witness Lists and for Order to Show Cause, dated August 9, 2021.

¹³ Respondents' Opposition to Enforcement Counsel's Motions to Quash Hearing Subpoenas Directed to Certain OCC Personnel and Strike Them from Respondents' Witness Lists and for Order to Show Cause, dated August 17, 2021.

identify the controverted material facts the proposed hearing witness would testify to, and identify any documents the witness would be shown during such testimony. For example, in the Appendix to her Supplemental Prehearing Statement (August 6, 2021), Respondent Russ Anderson identified Statement of Material Fact (Russ Anderson) No. 41 and indicated Ms. Adams would be called to testify about that Statement. That Statement averred thus: “The root cause of sales practices misconduct was the Community Bank’s business model, which imposed undue pressure on employees to meet unreasonable sales goals.”¹⁴

In her Supplemental Prehearing Statement, Respondent Russ Anderson identified Ms. Adams as a potential witness who would testify about this Statement of Material Fact, along with 78 other potential witnesses who also would be called to testify about this same Statement.¹⁵ Nothing differentiated the testimony these 79 witnesses would provide, and as such it is impossible to conclude from this submission whether the testimony being sought from Ms. Adams was or was not duplicative or repetitious. Moreover, it is not clear from the August 6, 2021 submission, when read in conjunction with Russ Anderson’s June 25, 2021 submission, that Ms. Adams has any information relevant to the factual claims presented in (Russ Anderson) Statement of Material Fact No. 41.

In describing the scope of Ms. Adams’ anticipated testimony, Respondent Russ Anderson incorporated by reference the prehearing submissions she filed on June 25, 2021.¹⁶ Included in the June 25, 2021 submission was a description of testimony she anticipates taking from Ms. Adams.¹⁷ Also supplied on June 25 and incorporated on August 6, 2021 was a list of over 2,300 documents Russ Anderson proposed to present to Ms. Adams during her testimony.¹⁸

The June 25, 2021 submission predated the determinations made through the summary disposition process (which concluded with the issuance of the Order on July 20, 2021). By incorporating the June 25, 2021 description of the scope of Ms. Adams’ testimony, and by incorporating the document list that accompanied the June 25, 2021 prehearing submission, Respondent Russ Anderson made no attempt to conform to the

¹⁴ Order Regarding Enforcement Counsel’s Motions for Summary Disposition at 190.

¹⁵ See Appendix to Respondent Claudia Russ Anderson’s Supplemental Prehearing Statement (August 6, 2021), incorporating by reference Respondent Russ Anderson’s Witness List and Exhibits Disclosures (June 25, 2021) at 3; and Appendix A to Respondent Russ Anderson’s Witness List (June 25, 2021) (containing, inter alia, Appendix A-2 (Exhibits to be presented during the testimony of Valerie Adams)).

¹⁶ Respondent Claudia Russ Anderson’s Supplemental Prehearing Statement at 19. See also Respondents’ Joint Preliminary Fact Witness List at 2, 56, 63 (Aug. 4, 2020).

¹⁷ Respondent Russ Anderson’s Witness List and Exhibits Disclosures (June 25, 2021); Appendix A to Respondent Russ Anderson’s Witness List (June 25, 2021) (containing Appendices A-01 through A-34, A-36 through A-56, A-58 through A-64, and A-67 through A-83

¹⁸ Respondent Russ Anderson’s Witness List and Exhibits Disclosures (June 25, 2021); Appendix A to Respondent Russ Anderson’s Witness List at Appendix A-2.

requirement that the supplemental prehearing submissions take into account the findings presented in the July 20, 2021 Order. Separately, Respondent Russ Anderson then declared that “[b]y listing a witness herein, Respondent Russ Anderson does not concede that such witness is able to provide admissible testimony”.¹⁹

Respondent Russ Anderson’s failure to recognize the factual findings that were presented in the July 20, 2021 Order appears to be deliberate and tactical. She argues that notwithstanding that the findings that are now of record, she is “entitled to put forth evidence that directly refutes the claims in the Notice of Charges” regardless of any determinations made through the July 20, 2021 Order.²⁰ This argument is without merit and is rejected.

Through her June 25, 2021 submission, Respondent Russ Anderson indicated that it was her intention to introduce evidence that appears to lack any indicia of relevance or materiality. For example, it was her stated intention to present Ms. Adams with a document identified as a “2019 Wells Fargo Sales Practices – Litigation Hold.”²¹ Whatever that document contained, there has been no showing that a litigation hold that the Bank put in place in 2019 would be relevant to the testimony as described in the witness list or to the determination of issues or claims remaining in this administrative enforcement action. Similarly and along the same vein, Russ Anderson intended to present to Ms. Adams a copy of Wells Fargo’s 2008 10K report,²² and the 2018 OCC Annual Report.²³ Nothing in the proffered explanation submitted by Respondent Russ Anderson provided a basis for permitting documents from 2008 or 2018.

Having reviewed the entirety of the description provided by Respondent Russ Anderson regarding the testimony she expects to elicit from Ms. Adams,²⁴ I find that there is nothing that provides a basis to conclude that the documents identified in Russ Anderson’s submission relate to any relevant and material issue – and Respondent Russ Anderson has made no proffer establishing the contrary is true. Further, Russ Anderson’s listing of 78 other witnesses (including Mr. Dey, Ms. Miller, and Ms. Nicholson) made no showing that the testimony of this number of witnesses would not be repetitive or duplicative. I find that on its face, Respondent Russ Anderson’s submission gives rise to a

¹⁹ Appendix to Respondent Claudia Russ Anderson’s Supplemental Prehearing Statement (August 6, 2021) at 1.

²⁰ Respondent Claudia Russ Anderson’s Supplemental Prehearing Statement at 18.

²¹ Respondent Russ Anderson’s Witness List and Exhibits Disclosures, Appendix A-2 (Valerie Adams) at 103, citing Resp. Russ Anderson’s Exhibit 18024.

²² Respondent Russ Anderson’s Witness List and Exhibits Disclosures at 3, and at Appendix A-2 (Valerie Adams) at 103, citing Resp. Russ Anderson’s Exhibit 18186, presumably referring to the Bank’s annual report required by the SEC pursuant to Section 13 or 15(d), Securities Exchange Act of 1934.

²³ Respondent Russ Anderson’s Witness List and Exhibits Disclosures at 3, and at Appendix A-2 (Valerie Adams) at 103, citing Resp. Russ Anderson’s Exhibit 19847.

²⁴ Respondent Russ Anderson’s Witness List and Exhibits Disclosures at 3.

rebuttable presumption that when 79 witnesses are called to testify as to a fact, some of that testimony will be repetitive. A similar review of the proposed testimony to be presented on Russ Anderson's behalf by Mr. Dey, Ms. Miller, and Ms. Nicholson on Ms. Russ Anderson's behalf results in the same conclusion, and warrants the same outcome.

The record reflects that Respondent Russ Anderson has retained intact the full universe of factual claims she made prior to the issuance of the July 20, 2021 Order; and that her submissions in support of presenting the testimony of each of the four witnesses identified in Enforcement Counsel's Motion to Quash remain as if the July 20, 2021 Order had no effect in this enforcement proceeding. Even if that legal proposition was valid and the factual claims that were resolved through the summary disposition process had no effect with respect to the presentation of issues during the hearing, Respondent Russ Anderson's prehearing submission would nevertheless have failed to provide the disclosures required under the Tribunal's initial and supplemental prehearing orders.

If, as Russ Anderson argues, the findings presented in the July 20, 2021 Order are of no effect, then the March 17, 2020 Order and those that followed it gave rise to a burden of disclosure that she failed to meet. Finding her prehearing submissions do not conform to the Orders of this Tribunal, and finding the submissions do not support compelling the four witnesses to appear in response to Respondent Russ Anderson's hearing subpoena, the four witnesses' names are stricken from Respondent Russ Anderson's witness list and the four subpoenas directing the witness's attendance at the evidentiary hearing set for September 13, 2021 are quashed.

As was the case with Respondent Russ Anderson, Respondent Julian responded in his Supplemental Prehearing Statement with the averment that the Summary Disposition Orders of July 20, 2021 "do not limit the scope of the hearing or the evidence that Mr. Julian intends to and should be permitted to proffer in his defense."²⁵ Averring that "nothing in the Summary Disposition Orders can narrow the hearing," Respondent Julian "maintains that he is entitled to offer all arguments and evidence set forth in his previously filed Prehearing Statement, Exhibit List, Information Regarding Each Witness, and Statement of Disputed Issues to be Resolved at Hearing, all of which are incorporated herein by reference."²⁶

As was the case with Respondent Russ Anderson, Respondent Julian has made a strategic and tactical decision to proceed as though the Orders of July 20, 2021 had no effect on this enforcement proceeding. Even if that legal proposition was valid and the factual claims resolved through the summary disposition process had no effect with respect to the presentation of issues during the hearing, Respondent Julian's prehearing submissions would fail to provide the disclosures required under the Tribunal's initial and supplemental prehearing orders.

²⁵ Respondent David Julian's Supplemental Prehearing Statement at 2.

²⁶ Respondent David Julian's Supplemental Prehearing Statement at 12.

Finding his prehearing submissions do not conform to the Orders of this Tribunal, and finding the submissions do not support compelling the four witnesses to appear, the four named OCC witnesses' names are stricken from Respondent Julian's witness list and the four subpoenas directing the witness's attendance at the evidentiary hearing set for September 13, 2021 are quashed.

Respondent McLinko similarly produced a Supplemental Prehearing Statement that was based on his argument that his prior prehearing statement "identified issues that have affected his right and ability to defend himself, and the Summary Disposition Orders have exacerbated rather than cured those issues."²⁷ Using language similar to that relied upon by Respondent Julian, Respondent McLinko averred that the Summary Disposition Orders "cannot and do not limit the scope of the hearing or the evidence that Mr. McLinko intends, and should be permitted, to proffer in his defense."²⁸ In furtherance of this averment, Respondent McLinko "incorporated herein by reference all arguments and evidence set forth in his previously filed Prehearing Statement, Witness List and Exhibit Disclosure (and Appendix A thereto), and Statement of Disputed Issues to be Resolved at the Hearing".²⁹

As was the case with Respondents Russ Anderson and Julian, Respondent McLinko has made a strategic and tactical decision to proceed as though the Orders of July 20, 2021 had no effect on this enforcement proceeding. Even if that legal proposition was valid, Respondent McLinko's supplemental prehearing filing would fail to provide the disclosures required under the Tribunal's initial and supplemental prehearing orders.

Finding his prehearing submissions do not conform to the Orders of this Tribunal, and finding the submissions do not support compelling the four named OCC witnesses to appear, the four witnesses' names are stricken from Respondent McLinko's witness list and the four subpoenas directing the witness's attendance at the evidentiary hearing set for September 13, 2021 are quashed.

In their brief in opposition to Enforcement Counsel's Motion to Quash and Strike, Respondents argue the testimony of the four witnesses is relevant – offering as an example that testimony from Mr. Dey would show that "Mr. Dey was one of the earliest voices within the OCC discussing sales misconduct issues—as early as 2009."³⁰ Nothing in this proffer establishes the proffered testimony would be relevant to any issue material to the determination of the merits of this enforcement action.

Similarly, Respondents argue that testimony from Ms. Adams, Ms. Miller, and Ms. Nicholson would be relevant because "all worked on the Lessons Learned Report that

²⁷ Respondent Paul McLinko's Supplemental Prehearing Statement at 1.

²⁸ Respondent Paul McLinko's Supplemental Prehearing Statement at 1.

²⁹ Respondent Paul McLinko's Supplemental Prehearing Statement at 13.

³⁰ Respondents' Opposition to Enforcement Counsel's Motions to Quash Hearing Subpoenas Directed to Certain OCC Personnel and Strike Them from Respondents' Witness Lists and for Order to Show Cause at 1, 7-8.

criticized the very same Wells Fargo examiners who now serve as Hybrid Experts in this proceeding.”³¹ Apart from the fact that the proffer makes no attempt to establish why having three witnesses testify about the same set of facts is not a duplicative offer, the proffer is devoid of any showing that the testimony would be relevant to any issue material to the determination of the merits of this enforcement action. Contrary to Respondents’ argument that concerns regarding repetitive or duplicative testimony are “premature,” I find the opposite is true: Having advanced the proposition that they would introduce the testimony of 79 witnesses to speak to a single material fact, Respondents have raised a red flag that points to a strategy designed not to adduce material facts, but to introduce tangential, immaterial, irrelevant, and potentially distracting evidence during the hearing they have requested.

Similarly, I find to be without merit Respondents’ argument that testimony from the four witnesses is relevant to the issue of the “bias and credibility” of the hybrid witnesses.³² Without establishing a factual predicate for the claim, Respondents aver that the “facts that Ms. Adams, Miller, and Nicholson will be compelled to provide, and the documents they will authenticate, will demonstrate the bias of the Hybrid Experts.”³³ Without more, there is no showing that the bias and credibility of the three named witnesses would be revealed by the presentation of the documents identified by the Respondents in their respective prehearing statements.³⁴

Respondents posit that the testimony of these witnesses “may be necessary to admit relevant documents into evidence.”³⁵ Having examined the documents identified by the Respondents, and having considered the summaries of testimony set forth regarding each of these four witnesses as reflected in the Respondents’ respective prehearing filings and their response in opposition to Enforcement Counsel’s Motion, I find an insufficient basis has been presented in support of Respondents’ assertion of what documents may be

³¹ Id. at 1, 8-10.

³² Id. at 11-12.

³³ Id. at 11.

³⁴ In their brief, Respondents cite to *In re Kostakopoulos*, No. OCC AA-EC-2013-47, -48, Order Denying Respondents’ Motion to Suppress (Oct. 22, 2015) in support of the proposition that “the principles found in Federal Rule of Evidence 702 assist in guiding [the ALJ] as a gatekeeper with respect to the admissibility of expert witnesses.” In the second prehearing order issued by this Tribunal, the parties were cautioned thus: “Only the applicable regulatory agency may enter final decisions and establish precedential determinations in cases presented to adjudicators at the Office of Financial Institution Adjudication. As such, citations to authority using as precedent orders and recommended decisions from OFIA should be limited to those in which the agency has considered and approved the ALJ’s order or recommended decision.” Order to Attend Scheduling Conference and Supplemental Prehearing Orders, issued on February 13, 2020, at 4. Respondents’ reliance on the Order in *Kostakopoulos* contravened the extant order of this Tribunal, as there was no showing that the Comptroller has ever considered or approved the ALJ’s order. Accordingly, no weight is given this authority.

³⁵ Respondents’ Opposition to Enforcement Counsel’s Motions to Quash Hearing Subpoenas Directed to Certain OCC Personnel and Strike Them from Respondents’ Witness Lists and for Order to Show Cause at 13.

necessary during the hearing.

Having considered and rejected the factual and legal premises advanced by Respondents in their opposition brief, and finding sufficient cause has been shown in support of Enforcement Counsel's Motions to Strike and Quash, those Motions are granted.

Order Regarding Enforcement Counsel's Motion for an Order to Show Cause

In their Motions, Enforcement Counsel identify the exchange among the parties that described Enforcement Counsel's efforts to confer with all parties about their intention to seek orders to quash the subpoenas identified in their Motion.³⁶

In their Response in Opposition, Respondents provided the declaration of Mr. Perla, averring that, without disputing the parties had conferred regarding Enforcement Counsel's intention to seek orders to quash and strike, "Enforcement Counsel's service of the Motion to Show Cause on August 9, 2021, was the first that Mr. Julian's counsel heard of the request for an order to show cause," and that by information and belief this was also the first time counsel for Respondents Russ Anderson and McLinko heard of the order to show cause request.³⁷

Motions presented to this Tribunal are subject to the following:

Before any motion is filed in this proceeding (except dispositive motions, as defined by applicable regulation³⁸) counsel for the moving party shall confer with all other counsel in an attempt to resolve their differences. Only after such efforts have been made may the party move for relief, and in such motion the moving party shall certify in writing the efforts undertaken to resolve the matter. Any motion that does not contain such a certification will be subject to summary denial.³⁹

Finding an insufficient certification that Enforcement Counsel complied with the above-quoted provision, their Motion seeking an Order to Show Cause is summarily denied.

***Sua Sponte* Order to Show Cause**

As noted above, Respondents' collective and separate prehearing submissions failed to conform to the extant orders of this Tribunal with respect to the disclosures required of all parties. If left unaddressed, the prospect exists of having dozens of

³⁶ Motions to Quash Hearing Subpoenas Directed to Certain OCC Personnel and Strike them from Respondents' Witness Lists and for Order to Show Cause at 2.

³⁷ Perla Decl. ISO Respondent's Opposition to Motions to Quash and Strike and Order to Show Cause, August 17, 2021 at 2.

³⁸ See 12 C.F.R. §§ 19.29-30.

³⁹ Designation Notice and Order Requiring Electronic Filing issued January 23, 2020, at 4.

individuals summoned to a hearing in South Dakota to which they will have no relevant or material evidence to provide. This is an untenable risk, brought about by Respondents' persistent failure to make disclosures required by this Tribunal, in an apparent attempt by Respondents individually and collectively to introduce evidence that is not even potentially admissible.

Given Respondents' failure to provide the disclosures required by this Tribunal, given the averments advanced by each of the Respondents in response to the Orders of July 20 and 28 and August 2, 2021, and given the substantial and material lack of compliance demonstrated in those responses, Respondents are hereby ordered to show cause by 5 p.m. ET August 27, 2021 why the expected testimony of each of the witnesses they intend to call is relevant, material, and not unduly repetitive. This Order is not limited to witnesses who are or were OCC employees, but applies to all witnesses to be called by Respondents.

To achieve this goal and in order to ensure the efficient and orderly presentation of witness testimony, Respondents are required to provide the name and address of each witness they intend to call at the hearing, along with a short summary of the expected testimony of each witness. For each witness, Respondents are to provide sufficient information to permit a preliminary determination of whether the expected testimony is relevant as to time and subject matter, material to determining the facts at issue, and not unduly repetitive.

The disclosure shall include the following:

1. The party or parties calling the witness
2. The witness's name
3. The witness's address
4. A summary of testimony to be presented, with sufficient information to establish that a proper foundation exists for such testimony by such witness
5. A description of any testimony that should be presented in a non-public forum, along with a description of the legal authority for proceeding in a non-public forum notwithstanding the open hearing requirement found in the OCC's Uniform Rules⁴⁰
6. Identify any relevant Statement of Material Fact or Facts (if applicable) the testimony will concern, by providing the Statement number and the text of the Statement as it appeared in Enforcement Counsel's Motions for Summary Disposition
7. Describe each document to be presented to the witness by providing:
 - a. The title of the document
 - b. The exhibit number
 - c. The page number or numbers
 - d. Any Bates number or numbers, if applicable

⁴⁰ See 12 C.F.R. § 19.33 (Public hearings).

- e. State if any page number or numbers presently are maintained under seal

Note that during the evidentiary hearing and absent sufficient cause to vary from this provision, witness testimony in the party's case in chief will be limited to the descriptions provided in this submission.

During the hearing, only those exhibits and page numbers identified in this submission may be presented to the witness by the party calling the witness during that party's case in chief.

It is so ordered.

Date: August 18, 2021

Christopher B. McNeil
U.S. Administrative Law Judge
Office of Financial Institution Adjudication

CERTIFICATE OF SERVICE

On August 18, 2021, I served by email transmission a copy of the foregoing Order Regarding Enforcement Counsel's Motions to Quash Hearing Subpoenas Directed to Certain OCC Personnel and Strike Them from Respondents' Witness Lists and for Order to Show Cause upon:

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