

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

ORIGINAL



In the Matter of _____
ProMedica Health System, Inc., _____
Respondent. _____

DOCKET NO. 9346

ORDER DENYING RESPONDENT'S MOTION TO SET HEARING LOCATION

I.

On March 7, 2011, Respondent filed a Motion to Set Hearing Location ("Motion"). Complaint Counsel filed its Opposition on March 16, 2011 ("Opposition"). For the reasons set forth below, Respondent's motion is DENIED.

II.

Respondent seeks an order setting the location of the hearing in part in Toledo, Ohio, or another reasonably convenient location in Northwest Ohio. According to Respondent, of the 89 witnesses identified on Complaint Counsel's Preliminary Witness List, 83 are located in Ohio or Michigan, and these witnesses include ProMedica's employees, as well as witnesses from health insurance companies, competing hospitals, and local employers. Respondent argues also that the administrative hearing should be held, at least in part, in or near Toledo, Ohio because the hospitals that are the subject of the joinder agreement at issue in this case are located in Toledo, Ohio. Respondent posits that any inconvenience to the Commission associated with holding the hearing in Northwest Ohio would be reduced by the fact that a federal courthouse and other federal offices are located in Toledo, and the fact that the Federal Trade Commission ("FTC") has a regional office in Cleveland, Ohio.

Complaint Counsel contends that holding the hearing in Washington, D.C. is administratively efficient because the Administrative Law Judge ("ALJ"), the Commission's headquarters, its usual hearing room, Complaint Counsel, its support staff, and many of Respondent's outside counsel are located in Washington, D.C. Complaint Counsel argues that greater convenience for certain witnesses is not a sufficient reason to relocate all or part of the hearing to Ohio. Complaint Counsel further argues that holding even part of this matter's hearing in Ohio would be financially burdensome to the Commission.

III.

Respondent brings its motion pursuant to Commission Rule 3.41(b)(1), which states: “[h]earings shall proceed with all reasonable expedition, and, insofar as practicable, shall be held at one place. . . .” 16 C.F.R. § 3.41(b)(1). In addition, “[t]he Administrative Law Judge may order hearings at more than one place. . . .” 16 C.F.R. § 3.41(b)(1). For support, Respondent cites *In re North Texas Specialty Physicians*, in which the hearing was held in Fort Worth, Texas. *In re North Texas Specialty Physicians*, Docket No. 9312, available at <http://ftc.gov/os/adjpro/d9312/031016aljschedulingorder.pdf> (Administrative Law Judge D. Michael Chappell presiding).

The decision in *In re North Texas Specialty Physicians* is not controlling and is easily distinguished from the circumstances presented here. There, a change of location requested by Respondent was permitted where: counsel were in a location other than Washington, D.C.¹; all fact witnesses were located in or near Fort Worth, Texas; both parties agreed that it was more practicable to hold the hearing in Fort Worth, Texas; the request was made at the initial scheduling conference, well in advance of trial; and the Administrative Law Judge’s obligations in other cases then pending in Part III adjudication permitted such a change in hearing location. Because that request was made and agreed upon early on in the proceedings, it was possible to make arrangements with the federal courthouse in Fort Worth, Texas to secure a courtroom and judge’s chambers. Respondent has made no such representation that it would be able to secure the use of a federal or other courthouse and judge’s chambers in or near Toledo, Ohio.

Under the Commission’s Rules, the Administrative Law Judge, “may order hearings at more than one place,” and thus has discretion to hold hearings in a location other than Washington, D.C. The Commission Rule requires that the hearing “shall be held at one place,” insofar as practicable. An overriding consideration in exercising the discretion granted to the Administrative Law Judge under the Commission Rule is whether setting the hearing in more than one place, away from the location set by the Commission in the Complaint, will allow the hearing “to proceed with all reasonable expedition.” 16 C.F.R. § 3.41(b)(1). Thus, administrative efficiency must be considered.

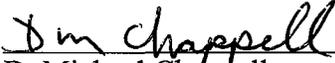
Changing the hearing location would require the undersigned to travel to Northwest Ohio for the duration of the testimony to be presented by witnesses located in that area. In addition, the impact of the Administrative Law Judge’s absence from other cases on the Administrative Law Judge’s Washington, D.C. docket must also be considered. Trial in this matter has been set by the Commission to begin on May 31, 2011. Trial in another matter pending before the undersigned has been set by the Commission to begin on May 24, 2011. A change in the location of this hearing scheduled to begin May 31, 2011 would require the Administrative Law Judge to spend significant time away from Washington, D.C. in the week immediately after the start of

¹ FTC attorneys prosecuting that case were predominantly from the FTC’s New York Office.

another hearing. For all these reasons, holding the hearing in part or in whole in Northwest Ohio is not practicable and not in the interest of administrative efficiency.

For the above stated reasons, Respondent's motion is DENIED.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: March 29, 2011