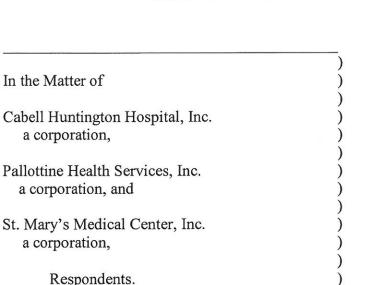
UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION OFFICE OF ADMINISTRATIVE LAW JUDGES



PUBLIC O3 11 2016 581681 SECRETARY

DOCKET NO. 9366

ORDER ON COMPLAINT COUNSEL'S UNOPPOSED MOTION FOR ISSUANCE OF SUBPOENA AD TESTIFICANDUM

On March 10, 2016, pursuant to Rule 3.36 of the Federal Trade Commission's Rules of Practice, Federal Trade Commission Complaint Counsel ("Complaint Counsel") filed an unopposed motion for an order authorizing the Secretary of the Commission to issue a subpoena *ad testificandum* to United States Congressman Evan Jenkins, an elected official representing West Virginia's Third District ("Motion"). Complaint Counsel represents that Respondents do not oppose Complaint Counsel's request for the issuance of a subpoena, but take no position on the contents of the Motion.

Rule 3.36(b) requires the party seeking issuance of a discovery subpoena requiring the appearance of an official or employee of another governmental agency to make a showing that: the material sought is reasonable in scope; the material is within the limits of discovery under Rule 3.31(c)(1); and the information or material sought cannot reasonably be obtained by other means. 16 C.F.R. § 3.36(b). Complaint Counsel states that because Respondents have placed Congressman Jenkins on their Final Proposed Witness List, Complaint Counsel has met the Rule 3.36(b) requirements to obtain a subpoena for deposition testimony from Congressman Jenkins that is relevant to the proposed acquisition of St. Mary's Medical Center by Cabell Huntington Hospital, Inc. Complaint Counsel states that it does not seek any documentary discovery from Congressman Jenkins and has limited the scope of discovery to deposition testimony. The only reason asserted by Complaint Counsel for seeking the deposition subpoena for Congressman Jenkins is that Respondents have named Congressman Jenkins as a proposed witness expected to testify about Respondents' defenses. However, it is not apparent that Respondents will, in fact, call Congressman Jenkins as a witness at the evidentiary hearing. Moreover, whether or not Respondents meet the requirements of Rule 3.36(b) for compelling a witness to appear at the evidentiary hearing, which requires the movant to show "a compelling need for the testimony," has not been raised in the instant Motion. Under these circumstances, Complaint Counsel has not met the requirements of Rule 3.36(b) at this time.

Accordingly, Complaint Counsel's Motion is DENIED WITHOUT PREJUDICE. Should it become apparent that Congressman Jenkins will be appearing as a witness at trial, Complaint Counsel may refile a motion pursuant to Rule 3.36 to request the deposition of Congressman Jenkins prior to his testimony.

ORDERED:

D. Michael Chappell

D. Michael Chappell Chief Administrative Law Judge

Date: March 11, 2016

I hereby certify that on March 11, 2016, I filed an electronic copy of the foregoing Order on Complaint Counsel's Unopposed Motion for Issuance of Subpoena Ad Testificandum, with:

D. Michael Chappell Chief Administrative Law Judge 600 Pennsylvania Ave., NW Suite 110 Washington, DC, 20580

Donald Clark 600 Pennsylvania Ave., NW Suite 172 Washington, DC, 20580

I hereby certify that on March 11, 2016, I served via E-Service an electronic copy of the foregoing Order on Complaint Counsel's Unopposed Motion for Issuance of Subpoena Ad Testificandum, upon:

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