

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



\_\_\_\_\_)  
In the Matter of )  
)  
Cabell Huntington Hospital, Inc. )  
a corporation, )  
)  
Pallottine Health Services, Inc. )  
a corporation, and )  
)  
St. Mary's Medical Center, Inc. )  
a corporation, )  
)  
Respondents. )  
\_\_\_\_\_)

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  
Chief Administrative Law Judge

Date: March 11, 2016

Notice of Electronic Service

**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:**

Thomas H. Brock  
Attorney  
Federal Trade Commission  
TBrock@ftc.gov  
Complaint

Alexis Gilman  
Attorney  
Federal Trade Commission  
agilman@ftc.gov  
Complaint

Tara Reinhart  
Attorney  
Federal Trade Commission  
treinhart@ftc.gov  
Complaint

Mark D. Seidman  
Attorney  
Federal Trade Commission  
mseidman@ftc.gov  
Complaint

Michelle Yost  
Attorney  
Federal Trade Commission  
myost@ftc.gov  
Complaint

Kenneth Field  
Jones Day  
kfield@jonesday.com  
Respondent

Geoffrey Irwin  
Jones Day  
gsirwin@jonesday.com  
Respondent

Kerri Ruttenberg  
Jones Day  
kruttenberg@jonesday.com  
Respondent

Michael Fried  
Jones Day  
msfried@jonesday.com  
Respondent

Louis Fisher  
Jones Day  
lkfisher@jonesday.com  
Respondent

Tara Zurawski  
Jones Day  
tzurawski@jonesday.com  
Respondent

Douglas Litvack  
Jones Day  
dlitvack@jonesday.com  
Respondent

Aaron Healey  
Jones Day  
ahealey@jonesday.com  
Respondent

Thomas Craig  
Bailes, Craig & Yon, PLLC  
tlc@bcyon.com  
Respondent

James Bailes  
Bailes, Craig & Yon, PLLC  
jrb@bcyon.com  
Respondent

David Simon  
Foley & Lardner LLP  
dsimon@foley.com  
Respondent

H. Holden Brooks  
Foley & Lardner LLP  
hbrooks@foley.com  
Respondent

Benjamin Dryden  
Foley & Lardner LLP  
bdryden@foley.com  
Respondent

Elizabeth C. Arens  
Attorney  
Federal Trade Commission  
earens@ftc.gov

Complaint

Jeanine Balbach  
Attorney  
Federal Trade Commission  
jbalbach@ftc.gov  
Complaint

Stephanie R. Cummings  
Attorney  
Federal Trade Commission  
srcummings@ftc.gov  
Complaint

Melissa Davenport  
Attorney  
Federal Trade Commission  
mdavenport@ftc.gov  
Complaint

Svetlana S. Gans  
Attorney  
Federal Trade Commission  
sgans@ftc.gov  
Complaint

Elisa Kantor  
Attorney  
Federal Trade Commission  
ekantor@ftc.gov  
Complaint

Michael Perry  
Attorney  
Federal Trade Commission  
mperry@ftc.gov  
Complaint

Marc Schneider  
Attorney  
Federal Trade Commission  
mschneider@ftc.gov  
Complaint

Samuel I. Sheinberg  
Attorney  
Federal Trade Commission  
ssheinberg@ftc.gov  
Complaint

David J. Laing  
Attorney  
Federal Trade Commission  
dlaing@ftc.gov  
Complaint

Nathaniel Hopkin  
Attorney  
Federal Trade Commission

nhopkin@ftc.gov  
Complaint

Steve Vieux  
Attorney  
Federal Trade Commission  
svieux@ftc.gov  
Complaint

Lindsey Lonergan  
Jones Day  
llonergan@jonesday.com  
Respondent

Jessica Casey  
Jones Day  
jcasey@jonesday.com  
Respondent

Brett Ludwig  
Foley & Lardner LLP  
bludwig@foley.com  
Respondent

Max Meckstroth  
Foley & Lardner LLP  
mmeckstroth@foley.com  
Respondent

Timothy Patterson  
Foley & Lardner LLP  
tpatterson@foley.com  
Respondent

Philip Babler  
Foley & Lardner LLP  
pcbabler@foley.com  
Respondent

Miriam Carroll  
Foley & Lardner LLP  
mcarroll@foley.com  
Respondent

Emily Brailey  
Foley & Lardner LLP  
ebrailey@foley.com  
Respondent

Matthew McDonald  
Attorney  
Federal Trade Commission  
mmcdonald@ftc.gov  
Complaint

Jeanne Liu Nichols  
Attorney  
Federal Trade Commission  
jnichols@ftc.gov

Complaint

Sergio Tostado  
Jones Day  
stostado@jonesday.com  
Respondent

Benjamin Menker  
Jones Day  
bmenker@jonesday.com  
Respondent

Devin Winklosky  
Jones Day  
dwinklosky@jonesday.com  
Respondent

Debra Belott  
Jones Day  
dbelott@jonesday.com  
Respondent

Lynnette Pelzer  
Attorney