

# ORIGINAL

## UNITED STATES OF AMERICA BEFORE THE FEDERAL TRADE COMMISSION

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In the matter of )  
)  
)

PUBLIC

**Inova Health System Foundation,** )

Docket No. 9326

\_\_\_\_\_  
a corporation. )  
)  
)

### COMPLAINT COUNSEL'S RESPONSE TO RESPONDENTS' MOTION FOR RECUSAL OF COMMISSIONER ROSCH

In contrast to Complaint Counsel's opposition to Respondents' motion to stay the administrative proceeding, we do not take a formal position. Respondents' motion to stay the

proceedings could not be clearer. Rule 3.42(a) states plainly that: "Hearings in adjudicative proceedings shall be presided over by a duly qualified Administrative Law Judge or by the Commission or one or more members of the Commission sitting as Administrative Law Judges[.]" 16 C.F.R. § 3.42(a). Far from being a process created for the instant matter, the rule authorizing the appointment of "one or more members of the Commission" to hear adjudicative proceedings has existed in largely the same form as when it was first implemented more than 40 years ago. *See* Rules of Practice for Adjudicative Proceedings, 32 Fed. Reg. 8,449, 8,451 (June 13, 1967) (codified at 16 C.F.R. § 3.42(a)). Indeed, Respondents do not even attempt to argue that the appointment of a Commissioner as a hearing officer is not expressly authorized under the rules. Rather, they attempt to impose conditions on that appointment that do not exist in the

relevant rules, the applicable statutory authority, or in the past.

advisor, as opposed to a Commissioner, is not exempt from the disqualification by 5 U.S.C. § 8

Respondents here lean heavily on the Ninth Circuit's decision in *Grolier, Inc. v. FTC*,



issued, he (along with the other Commissioners) would ultimately perform a de novo review of any resultant administrative proceeding.

~~It is explained that the complaint is~~

parte communications are then prohibited. 16 C.F.R. § 4.7(b). This prohibition applies equally to ALJs and Commissioners. *Id.* For this reason, after a Part III complaint is voted out, the



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on May 27, 2008, I served the attached Response to

Office of the Secretary  
Federal Trade Commission  
H-159  
600 Pennsylvania Avenue, N.W.  
Washington, DC 20580

Hon. Commissioner J. Thomas Rosch

Administrative Law Judge  
H-528