## **ORIGINAL**

## UNITED STATES OF AMERICA BEFORE THE FEDERAL TRADE COMMISSION

	In the matter of	)		PUBLIC	
	Inova Health System Foundation,	)	Docket No. 9326		
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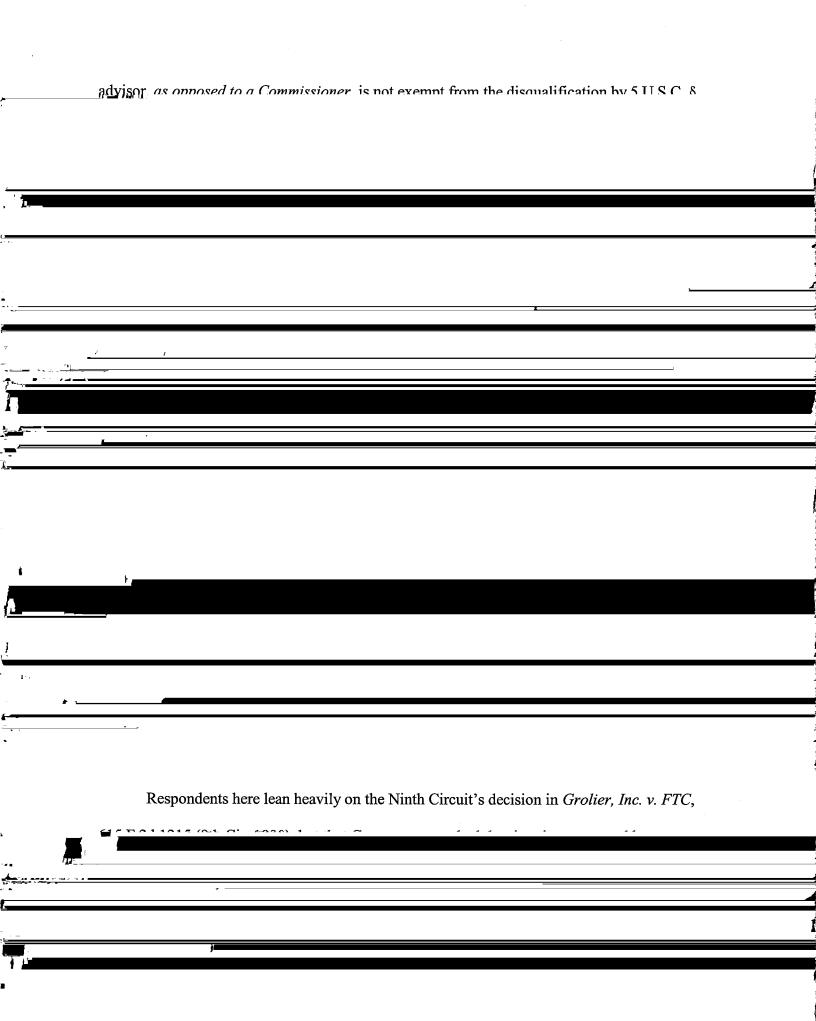
COMPLAINT COUNSEL'S RESPONSE TO RESPONDENTS' MOTION FOR RECUSAL OF COMMISSIONER ROSCH

In contrast to Complaint Counsel's opposition to Respondents' motion to stay the

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. § 2,42(a)). Indeed, Borney Judge 1, 2,42 (a) and 1,42 (b) and 1,42 (codified at 16 C.F.R. § 2,42(a)). Indeed, Borney Judge 1,42 (codified at 16 C.F.R. § 2,42(a)). Indeed, Borney Judge 1,42 (codified at 16 C.F.R. § 2,42(a)). Indeed, Borney Judge 1,42 (codified at 16 C.F.R. § 2,42(a)). Indeed, Borney Judge 1,42 (codified at 16 C.F.R. § 2,42(a)).

that the appointment of a Commissioner as a hearing officer is not expressly authorized under

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



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

the conflict inherent in every proceeding before the members of an administrative body which both votes out and adjudicates complaints. Unlike in the routine case, where the Commissioners ultimately rule on the complaint they vote out, Commissioner Rosch did not vote on the complaint here. To credit Respondents' arguments, one must disregard a clear and long-standing FTC rule authorizing appointments like this, an explicit exemption for Commissioners from the cited provision of the Administrative Procedure Act, and routine Commission practice.

Respondents' arguments do not warrant recusal of Commissioner Rosch in this matter, or any future Commissioner appointed to sitas presiding official in an adjudicative proceeding under

circumstances similar to those presented here.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

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-	I HEREBY CERTIFY that on May 27, 2	008, I served the attached Response to	
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	H-159		
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	Washington, DC 20580		

Administrative Law Judge H-528

Hon Commissioner I Thomas Rosch