

Order

IN THE MATTER OF

**EVANSTON NORTHWESTERN HEALTHCARE
CORPORATION**

**ORDER GRANTING IN PART AND DENYING IN PART
JOINT MOTION FOR EXTENSION OF TIME AND
LENGTH OF APPEAL BRIEFS**

Respondent Evanston Northwestern Healthcare Corporation and Complaint Counsel have filed a Joint Motion for Extension of Time and Length of Appeal Briefs (October 28, 2005) (hereinafter “Joint Motion”) requesting that the Commission extend the time for the filing of briefs on the appeal and the cross-appeal in this matter, and enlarge the word limits to which the briefs are subject. For the reasons discussed below, the Commission grants the parties’ motion for an extension of time and denies their motion for an enlargement of the word limits.

1. Enlargement of Time

Chief Administrative Law Judge McGuire filed his Initial Decision and Order in this matter on October 17, 2005. Respondent filed a timely Notice of Appeal on October 26, 2005, and Complaint Counsel filed a timely Notice of Cross-Appeal on October 28, 2005. Pursuant to Commission Rule 3.52(g), 16 C.F.R. § 3.52(g) (2005), Respondent is deemed the Appellant and Complaint Counsel are deemed the Cross-Appellants/Appellees. Because Respondent was served with the Initial Decision on October 24, 2005, Respondent must currently file its Appeal Brief on or before November 23, 2005. Commission Rule 3.52(b), 16 C.F.R. § 3.52 (b). If service of that and subsequent briefs is effected on the opposing parties on the date on which each brief is due, and if Complaint Counsel perfect their cross-appeal,¹ then

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For purposes of this Order, Complaint Counsel’s cross-appeal will be deemed to have been perfected if their initial brief contains

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Complaint Counsel's Answering and Cross-Appeal Brief would be due on or before December 27, 2005; Respondent's Reply and Answering Brief would be due on or before January 26, 2006; and Complaint Counsel's Rebuttal Brief would be due on or before February 6, 2006.

The time periods prescribed by the Commission Rules of Practice ordinarily should afford parties to Commission proceedings sufficient time to file pleadings and briefs of sufficient quality and detail to aid in the preparation of Commission opinions and orders. The proximity of the current briefing schedule to the Thanksgiving, Christmas, Chanukkah, and New Year's holidays, however, may interfere with that process. Accordingly, the Commission grants the portion of the Joint Motion requesting an extension of time within which to file the appellate briefs in this matter.

2. Enlargement of Word Count Limits

As the Commission has previously stated, the prescribed word limits should afford parties to Commission proceedings sufficient space to file pleadings and briefs of sufficient quality and detail to aid in the preparation of Commission opinions and orders. *See, e.g., In the Matter of North Texas Specialty Physicians, Docket No. 9312, Order Denying Motion for Extension of Word Count Limits* (December 21, 2004). Commission Rule 3.52(k), 16 C.F.R. § 3.52(k), expressly provides that “[e]xtensions of word count limitations are disfavored, and will only be granted where a party can make a strong showing that undue prejudice would result from complying with the existing limit.” In support of their motion, the parties simply state that an extension of the word counts is warranted because of the “lengthy trial record and complex underlying issues,” and because of the size of some of

their “arguments as to any issues [Complaint Counsel] is raising on cross-appeal . . .” Commission Rule 3.52(c), 16 C.F.R. § 3.52(c).

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the prior pleadings and Judge McGuire's decision. Joint Motion at 3-4. These facts, offered without any elaboration as to the nature of the complexity of the issues, do not by themselves constitute the necessary strong showing to warrant extending the word count limitations. Therefore, the Commission denies the portion of the Joint Motion requesting an enlargement of the word limits prescribed by Commission Rule 3.52, 16 C.F.R. § 3.52.

Accordingly,

IT IS ORDERED THAT (1) Respondent shall file its Appeal Brief on or before December 16, 2005, and (2) the appeal of Respondent shall be deemed perfected "by the timely filing of an appeal brief," for purposes of Commission Rule 3.51(a), 16 C.F.R. § 3.51(a), if Respondent files its Appeal Brief by that date. Respondent's Appeal Brief shall not exceed 18,750 words in length.;

IT IS FURTHER ORDERED THAT (1) Complaint Counsel shall file their Answering and Cross-Appeal Brief on or before February 3, 2006, and (2) Complaint Counsel's cross-appeal shall be deemed perfected "by the timely filing of an appeal brief" if Complaint Counsel file their Answering and Cross-Appeal Brief by that date, whether or not Respondent has previously perfected its appeal. Complaint Counsel's Answering and Cross-Appeal Brief shall not exceed 26,250 words in length.;

IT IS FURTHER ORDERED THAT Respondent shall file its Reply and Answering Brief on or before March 15, 2006. Respondent's Reply and Answering Brief shall not exceed 18,750 words in length.;

IT IS FURTHER ORDERED THAT Complaint Counsel shall file their Rebuttal Brief on or before April 5, 2006. Complaint Counsel's Rebuttal Brief shall not exceed 11,250 words in length.; and

IT IS FURTHER ORDERED THAT all of the foregoing

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Briefs shall in all other respects conform to the requirements of
Commission Rule 3.52, 16 C.F.R. § 3.52.

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IN THE MATTER OF

**EVANSTON NORTHWESTERN HEALTHCARE
CORPORATION**

**ORDER GRANTING EXPEDITED MOTION AND
PERMITTING ENLARGEMENT OF LENGTHS OF
APPEAL BRIEFS**

Respondent Evanston Northwestern Healthcare, Inc. has filed an Expedited Motion for Extension of Length of Initial Appeal Brief (“Expedited Motion”), requesting leave to file an opening brief not to exceed 24,000 words in length. This amount is a 28 percent increase over the 18,750 word limitation prescribed by Commission Rule 3.52(b)(2). For the reasons set forth below, the Commission grants the Expedited Motion, and also enlarges by the same percentage amount the word limitations for the other three briefs that may be filed by the parties in this appeal.

This is the second motion for an extension of the word limitations filed by Respondent. By Order dated November 18, 2005, the Commission denied the portion of a previous Joint Motion filed by Respondent and Complaint Counsel that requested that the Commission enlarge the word limitations for all of the briefs by 60 percent. Commission Rule 3.52(k) expressly provides that “[e]xtensions of word count limitations are disfavored, and will only be granted where a party can make a strong showing that undue prejudice would result from complying with the existing limit.” In their Joint Motion, however, the parties based their request to extend the word limitations only on their assertions that the case involved “complex underlying issues” and on the length of the trial record, the prior pleadings, and the Initial Decision. Joint Motion at 3-4. The Commission denied the parties’ request because “[t]hese facts, offered without any elaboration as to the nature of the complexity of the issues, [did] not by themselves constitute the necessary strong showing to warrant extending the word count limitation.” November 18 Order at 2. Many of the Commission’s matters involve complex