

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. AWA 15-0086

USDA
OALJ/OHC

2016 JUN 23 PM 1:37

RECEIVED

In re:

THE UNIVERSITY OF LOUISIANA
AT LAFAYETTE, a public educational
institution doing business as NEW IBERIA
RESEARCH CENTER,

Respondent.

**ORDER HOLDING RULING IN ABEYANCE REGARDING MOTION TO SEVER AND
SETTING DEADLINES FOR SUBMISSIONS**

This is a disciplinary proceeding under the Animal Welfare Act, as amended (7 U.S.C. § 2131 *et seq.*) [“AWA” or “Act”], and the regulations issued thereunder (9 C.F.R. § 1.1 *et seq.*) [“Regulations and Standards”]. The Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [“Complainant”], instituted this proceeding against the University of Louisiana at Lafayette, a public educational institution doing business as New Iberia Research Center [“Respondent”], by filing a complaint alleging that Respondent had committed numerous violations of the Act.

Procedural History

On March 9, 2015, Complainant filed with the Hearing Clerk, Office of Administrative Law Judges [“OALJ”] for USDA, a Complaint against Respondent alleging violations of the AWA. The allegations of the Complaint relate to at least five (5) separate and unrelated incidents that allegedly occurred over an almost two-year-period between September 13, 2012 and June 10, 2014. Specifically, the Complaint includes allegations regarding the cleaning of housing facilities,

the containment of animals in primary enclosures, the handling and veterinary care of animals, and duplicate experiments. (Compl. ¶¶ 3-8).

On April 1, 2015, Respondent filed a Motion for Extension of Time to File Responsive Pleadings. By Order issued April 6, 2015, Administrative Law Judge Jill S. Clifton extended Respondent's time to file an answer through April 30, 2015. On April 9, 2015, Respondent filed a second Motion for Extension of Time to File Responsive Pleadings. On April 30, 2015, Respondent filed an Answer.

On March 8, 2016, Complainant filed a "First Amended Complaint" against Respondent. The Amended Complaint added allegations to those set forth in the original Complaint. The allegations relate to five (5) additional incidents that allegedly occurred between November 12, 2013 and May 21, 2015. Specifically, the Amended Complaint includes claims relating to the care and handling of animals, compliance with minimum standards for housing facilities, construction of primary enclosures, qualifications of personnel, and the design and structure of housing facilities. (First Am. Compl. ¶¶ 9, 11-14).

Respondent subsequently filed three Unopposed Motions for Extension of Time to Respond to Amended Complaint.¹ The first two Motions were granted; however, Respondent answered the Amended Complaint before a ruling was issued on the third Motion.

On May 11, 2016, Respondent filed an Answer to Amended Complaint. Also on May 11, 2016, Respondent filed a Motion for Separate Hearings (Motion to Sever) requesting that I enter an order granting separate hearings on the claims made against Respondent.² On the same date,

¹ The Motions were filed on March 24, 2016; April 27, 2016; and May 6, 2016.

² Specifically, Respondent requests that I order "separate hearings on each set of claims, grouped by date, as alleged in the Complaint and Amended Complaint." (Mem. in Support of Mot. for Separate Hr'gs at 1).

Respondent filed a Memorandum in Support of Motion for Separate Hearings [“Memorandum in Support”] and Proposed Order. Complainant has yet to file a response to the Motion.

I. RULING ON MOTION TO SEVER HELD IN ABEYANCE

Respondent asserts that it will be unduly prejudiced by a single hearing on the “unrelated claims” alleged in the Complaint and Amended Complaint (Mem. in Support of Mot. For Separate Hr’gs at 3). Respondent contends that “[a]most all of the claims asserted by APHIS against NIRC are significantly different from one another” and “will require the testimony of different witnesses and different documentary proof.” (Mot. for Separate Hr’gs at 1). Accordingly, Respondent moves for a separate hearing on each set of claims, grouped by date, as alleged in the Complaint and Amended Complaint.

The Rules of Practice expressly authorize an Administrative Law Judge (ALJ) to hold conferences to “expedite” the proceedings. . . and to consider “matters as may expedite and aid in the disposition of the proceeding.” *Tim Gray v. USDA*, 65 Agric. Dec. 1 132 (2006). However, because the parties have not exchanged either exhibits or lists of anticipated witnesses, it is unclear if separate hearings will expedite and aid in the disposition of this proceeding; therefore, I will hold my ruling on the merits of the Motion to Sever in abeyance until such time as the parties have complied with the exchange of their evidence and submissions in accordance with the following schedule.

II. DEADLINES FOR SUBMISSIONS

A. Pre-Hearing Evidence Exchange and Submissions

The parties are directed to cooperate with each other in exchanging evidence, pursuant to the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by

the Secretary, USDA, found at 7 C.F.R. Part 1, §§1.130 through 1.151 (“the Rules”). The Rules may be accessed electronically at <http://www.dm.usda.gov/oaljdecisions/RulesofProcedure.htm>. The parties shall proceed in a timely fashion so as to meet the deadlines imposed herein. Failure to file the lists identified infra, as directed, without good cause, may constitute grounds for excluding an exhibit or testimony.

By not later than **4:30 p.m. E.S.T., on July 26, 2016**, Complainant shall file with the Hearing Clerk a list of exhibits and witnesses that Complainant expects to rely upon to establish its case. The witness list should include a short statement describing the nature of the witness’ anticipated testimony. Complainant’s counsel shall also deposit for next day business day delivery to Respondent or Respondent’s counsel, by commercial carrier such as Fed EX, UPS, or other comparable service, copies of the exhibits and list.

By not later than **4:30 p.m. E.S.T., on September 26, 2016**, Respondent shall file with the Hearing Clerk a list of exhibits and witnesses that Respondent expects to rely upon on defense. The witness list should include a short statement describing the nature of the witness’ anticipated testimony. Respondents shall also deposit for next day business day delivery to Complainant’s counsel, by commercial carrier such as Fed EX, UPS, or other comparable service, copies of Respondent’s exhibits and the list filed with the Hearing Clerk.

Exhibits shall be denoted on the lower right corner, as CX-#1 et seq. for Complainant and RX-# 1 et seq. for Respondent. Multi-page exhibits shall be paginated with numbers placed at the bottom of the pages.

B. Hearing Date and Location

Within thirty (30) days of the last exchange due date, the parties will be contacted to schedule a **telephone conference** with me to discuss the merits of the Motion to Sever, as well as

place(s) and dates for the hearing(s) and the procedures we will follow to prepare for the hearing(s). The parties may use a “reply all” email group to advise my staff as to what days and times you are available for a telephone conference, the **telephone number** where you will likely be reached, and your time zone.

The parties should be prepared to discuss the following issues:

- (a) what good faith settlement efforts have been made to resolve the issues in dispute;
- (b) the merits of the pending motion to sever;
- (c) preferred hearing dates in 2016 (please specify the number of days that the hearing is expected to continue);
- (d) preferred hearing location(s); and
- (e) preferred means (audio-visual telecommunication or in person, face-to-face).

C. Disposition Without Hearing

The parties may agree to request a Decision on the Record without hearing by the date of the deadline for submitting stipulations. The parties may enter into a consent decision at any time. In addition, all dispositive motions shall be entertained if filed.

D. Administrative Information

Contact with my office should be made by email to my Executive Assistant, Diane Green, at diane.green@dm.usda.gov, or by facsimile at 202-690-0790. Ms. Green may be reached by telephone at 202-720-6383. In exigent circumstances, the parties may contact my Legal Assistant, Marilyn Kennedy at 202-720-8423.

The Hearing Clerk’s address is:

Hearing Clerk, Office of Administrative Law Judges
United States Department of Agriculture
South Building, Room 1031-S, Washington, DC 20250


E. Subpoenas and Discovery

The parties are encouraged to familiarize themselves with the Rules regarding subpoenas, 7 C.F.R. § 1.149. The parties are cautioned not to rely upon opposing counsel producing every witness identified in a witness list. If a party requires the appearance of opposing party's witness, the use of subpoena is advised. (7 C.F.R. § 1.149).

In addition, the parties are hereby noticed that discovery is very limited. Depositions may be requested under certain circumstances (7 C.F.R. § 1.148). Written statements by an investigating agent may be divulged upon request after the direct testimony pursuant to the Jencks Act. 1.141(h)(1)(iii). Accordingly, Complainant's counsel shall have available at the hearing any statements that meet this description.

Copies of this Order shall be served upon the parties and counsel by the Hearing Clerk.

So ORDERED this 23rd day of June, 2016, in Washington, D.C.


Bobbie J. McCartney
Chief Administrative Law Judge

CERTIFICATE OF SERVICE

The University of Louisiana at Lafayette, d/b/a New Iberia Research Center, Respondent
Docket: 15-0086

Having personal knowledge of the foregoing, I declare under penalty of perjury that the information herein is true and correct and this is to certify that a copy of the foregoing has been furnished and was served upon the following parties on June 24, 2016 by the following:

USDA (OGC) - Electronic Mail

Colleen A. Carroll, OGC
Colleen.Carroll@ogc.usda.gov
Ada Quick
Ada.Quick@ogc.usda.gov

USDA (APHIS) - Electronic Mail

Felicia L. Hubb, APHIS
Felicia.L.Hubb@aphis.usda.gov
Teresa M. Lorenzano, APHIS
Teresa.M.Lorenzano@aphis.usda.gov

Respondent(s) - Regular Mail

Jacqueline Stump, Esq.
Suite 400, Gordon Square
100 East Vermilion Street
Lafayette, LA 70501

Respectfully Submitted,



Eliuth Morón
Legal Assistant
USDA/Office of Administrative Law Judges
Hearing Clerk's Office
1400 Independence Ave., SW, Room 1031-S
Washington, DC 20250-9203
Phone: 202-720-4443