

**UNITED STATES DEPARTMENT OF AGRICULTURE**  
**BEFORE THE SECRETARY OF AGRICULTURE**

Docket No. 09-0064

In re:

COY MICHAEL ELLIS (a/k/a “Mike Ellis”);  
JOHN LAMONT TUDOR; PAM ELLIS; and  
JOHN TUDOR STABLES,

Respondents

**ORDER SETTING LIVE HEARING IN LEXINGTON, KENTUCKY**

On April 12, 2011, I held a telephone conference with representatives for the parties in this matter in order to determine a date, time and place for hearing. Counsel for the United States Department of Agriculture (USDA), requested that the hearing proceed through the use of audio-visual equipment. Cognizant of the cost of using private audio-visual services, I sought to solicit counsel’s assistance in helping me to identify a USDA owned and operated audio-visual facility accessible to Respondents<sup>1</sup>. In the alternative, I directed USDA’s counsel to prepare a comparison of the cost of using private audio-visual services and a live hearing in order to accommodate counsel’s request.<sup>2</sup>

On June 30, 2011, in compliance with my Order issued April 13, 2011, counsel for USDA filed what I construe to be an objection<sup>3</sup> to my Order directing her to assist in identifying

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<sup>1</sup> I assumed that comity would motivate compliance with my instruction. In addition, I presumed that counsel would have more access and familiarity with her client agency’s resources than would I. Further, although 7 C.F.R. §1.151 would not strictly prohibit me from contacting agency personnel, I strive to avoid the appearance of impropriety, and would not be comfortable contacting agency employees who have the potential of being involved in the substantive underpinnings of this matter, even about this procedural matter.

<sup>2</sup> Audio-visual hearings are preferred by the regulations, unless a live hearing would be less expensive. 7 C.F.R. §1.141(b)(iii).

<sup>3</sup> The pleading was filed too late to be considered a request for reconsideration under 7 C.F.R. §1.141(b)(ii).

government owned audio-visual facilities.<sup>4</sup> Despite the implication that my Order constitutes a derogation of my responsibilities under 7 C.F.R. § 1.141(b)(3), counsel complied with my request in a pro forma fashion. Counsel advised that her witnesses could travel to government audio-visual facilities, but failed to identify the location of those facilities. Counsel cited the hourly rate for the use of private facilities, but did not locate one near Respondents' witnesses. Although counsel provided the hourly rate for the use of a privately operated audio-visual service, she did not estimate the duration of the hearing<sup>5</sup>, and therefore I have no meaningful way to compare the costs of paid audio-visual services against the estimate provided by counsel for a live hearing.

As I have not been provided with sufficient information regarding the location of government facilities with audio-visual capability or the costs of using a private vendor, I find it appropriate to set the hearing to commence **in person in Lexington, Kentucky, on the date previously stated, August 31, 2011.**

So ORDERED this \_\_\_\_\_ day of July, 2011, in Washington, D.C.

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Janice K. Bullard  
Administrative Law Judge

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<sup>4</sup> Counsel did not directly raise an objection, but rather took the opportunity to define for me the limits of my authority with respect to “delegating” my “responsibilities”. See, Response at page 2.

<sup>5</sup> In a “status report” filed on June 27, 2011, counsel identified four witnesses whose testimony was anticipated at the hearing, in addition to potential rebuttal witnesses; however, this information is not adequate to assess the duration of the hearing, as Respondents have not yet filed witness lists.