

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	AWA Docket No. 03-0034
)	
MARTINE COLETTE, an individual;)	
WIDLIFE WAYSTATION, a)	
California corporation; and)	
ROBERT H. LORSCH, an individual)	
)	RULINGS
Respondents)	

Three Motions are pending before me in this matter. In this document I (1) deny Respondents Motion to Strike First Amended Complaint, (2) deny Respondents Wildlife Waystation and Robert H. Lorsch’s Motion for Production, and (3) grant Respondents Wildlife Waystation and Robert H. Lorsch’s Motion for a More Definite Statement.

Motion to Strike First Amended Complaint

Citing the procedural rule that once a motion for a hearing has been filed, amendment of the complaint may only be by consent of the parties or upon a finding of good cause by the judge, Rules of Practice, §1.137(a), Respondents argue that their request for a hearing, filed as part of their Answer to the original Complaint, triggers the good cause requirement. However, the Rules distinguish between a party requesting to exercise its right to a hearing from a party actually filing a “motion . . . that the matter is at issue and is ready for hearing.” §1.141(b)(1). While Respondents clearly preserved their right to a hearing by their request in their Answers, the Motion contemplated by Rule 141(b)(1) is more concerned with timing—whether the case has progressed to the point where it is

appropriate to schedule a hearing. No such Motion has been made in this case, and therefore there is no bar on Complainant's filing of an amended complaint. In re Paul L. Meacham and Terry Meacham, 47 Agric. Dec. 1708 (1988).

Motion for Production

The Rules of Practice set up a specific and limited system of discovery. Respondents' Requests—both under Brady and under the Rules of Practice—fall well outside the discovery contemplated by the Rules. The Agency, echoing the rulings of other agencies and the federal courts, has ruled specifically and repeatedly that the Brady rule, designed to protect criminal defendants from prosecutorial misconduct, does not apply to administrative proceedings under its various statutes. See, cases cited at footnote 13 of Complainant's Response. There is no reason for me to revisit this longstanding interpretation in this case.

Likewise, the Rules of Practice set up a very limited discovery process. The principle "discovery" device contemplated by the Rules is the exchange of witness lists, summary of witness testimony, and exhibits customarily ordered by the administrative law judge after the prehearing conference which normally occurs after there is a Motion for Hearing. Presumably, such a Motion will eventually be filed in this case by one of the parties, we will have our conference, and I will issue my customary order. At this time, however, the Request for Production is denied.

Motion for a More Definite Statement

I agree with Respondents that the Complaint frequently fails to provide specific factual allegations that would give Respondents notice of exactly what specific conduct of

Respondents are the basis for Complainant's allegations of violations. Section 1.135(a) of the Rules of Procedure provides, among other things, that the complaint "shall state briefly and clearly . . . the legal authority and jurisdiction under which the proceeding is instituted, the allegations of fact and provisions of law which constitute a basis for the proceeding, and the nature of the relief sought." While the Rules do state that matters shall be stated "briefly" there must be sufficient specificity with regard to factual allegations so that a respondent has a reasonable idea as to what exactly it did wrong. While Counsel for Complainant suggested during a telephone conference that Respondents were effectively asking Complainant to do their discovery work for them, that is far from the case. Although I have not closely examined every allegation in the initial and amended complaints, there is considerable validity to Respondents' claim that Complainant frequently stated that on a certain date, or range of dates, one or more of the Respondents violated a particular violation, which is essentially quoted at length, without there being any specific identification of what it was that the Respondent did that was in violation. While pleadings are not intended to be detailed, they must at least hone in on the specific conduct that is claimed to violate the statute or regulations involved. In the instant complaint, Complainant has frequently failed to "state . . . clearly . . . the allegations of fact . . . which constitute a basis for the proceeding." §1.135(a). I am accordingly directing that Complainant provide a more definite statement of the facts that are the basis for this proceeding, either by issuing a second amended complaint or by another document which would serve the same purpose, within twenty days from the date this Ruling is served. Respondents will have twenty days from receipt of service to file their response.

I agree with Complainant that the Amended Complaint contains a sufficient jurisdictional statement. Complainant's jurisdictional statement clearly apprises Respondents of the issues in controversy and, in conjunction with the opening paragraph, provides enough information concerning statutory and regulatory authority, to meet the requirements of §1.135(a).

Likewise, I decline to find that the Animal Welfare Act and the regulations thereunder are vague or ambiguous. I do not believe it is within my authority as an administrative law judge to declare a statute or a regulation unconstitutional. See, e.g., Jerry Goetz d/b/a Jerry Goetz & Sons, 61 Agric. Dec. 282, 287, and cases cited at footnote 5. I also believe it is outside of my authority to strike a statute or regulation down for being vague or ambiguous. Additionally, these regulations and statutes have been sustained administratively and in the courts for decades, and I see nothing in Respondents' Motions that would cause me to rule otherwise.

ORDER

Respondents' Motion for a More Definite Statement is granted. Respondents' other Motions are denied.

MARC R. HILLSON
Administrative Law Judge

February _____, 2004