CCASE: DISCIPLINARY PROCEEDING DDATE: 19860228 TTEXT:

## FMSHRC-WDC FEB 28, 1986

DISCIPLINARY PROCEEDING Docket No. D 86-1

BEFORE: Ford, Chairman; Lastowka and Nelson, Commissioners

## ORDER

## BY THE COMMISSION:

In this disciplinary matter pending before Chief Administrative Law Judge Paul Merlin, the attorney whose conduct is the subject of the proceeding has filed with the Commission a Motion to Quash the judge's setting of the hearing site in Washington, D.C. 1/ Originally, the judge noticed the hearing for February 27, 1986, in Washington. Following an objection from the attorney as to the timing and location of the hearing, the judge, by order dated February 5, 1986, rescheduled the hearing date for March 7, 1986, to accommodate the attorney, but retained the Washington hearing site. In the present motion, the attorney asserts that the Commission "has no authority or jurisdiction to subpoena individuals to testify at Commission hearings when said individual lives 450 miles from the hearing [s]ite." This jurisdictional argument is meritless and must be rejected. 30 U.S.C. \$ 823(d) & (e). We note also that the attorney is a party in this matter -- indeed, is the subject of the proceeding -- not merely a witness.

1/ This case arose from a disciplinary referral made by Commission Administrative Law Judge George A. Koutras in White Oak Coal Co., 7 FMSHRC 2039, 2047-52 (December 1985). On January 8, 1986, we referred the matter to Judge Merlin for appropriate proceedings under Commission Procedural Rule 80(c), 29 C.F.R. \$ 2700.80(c). Judge Merlin assigned the matter to himself. ~196

We observe further, however, that Commission Procedural Rule 51 governs the setting of appropriate hearing sites and requires a careful balancing of interests. 29 C.F.R. \$ 2700.51. See Cut Slate, Inc., 1 FMSHRC 796, 796-98 (July 1979). The judge hereby is requested to reexamine his choice of hearing site specifically in view of the principles set forth in Cut Slate.

Accordingly, this matter is returned to the judge for proceedings consistent with this order. 2/

Ford B. Ford, Chairman

James A. Lastowka, Commissioner

L. Clair Nelson, Commissioner

2/ For purposes of ruling on this motion, we have designated ourselves as a panel of three members under section 113(c) of the Mine Act. 30 U.S.C. \$ 823(c).