

## §2.314

3105, for a hearing conducted under subparts G, J, K, L, or N of this part; or

(2) An Atomic Safety and Licensing Board, an administrative law judge, or an administrative judge for a hearing conducted under subpart M of this part.

(b) Disqualification. (1) If a designated presiding officer or a designated member of an Atomic Safety and Licensing Board believes that he or she is disqualified to preside or to participate as a board member in the hearing, he or she shall withdraw by notice on the record and shall notify the Commission or the Chief Administrative Judge, as appropriate, of the withdrawal.

(2) If a party believes that a presiding officer or a designated member of an Atomic Safety and Licensing Board should be disqualified, the party may move that the presiding officer or the Licensing Board member disqualify himself or herself. The motion must be supported by affidavits setting forth the alleged grounds for disqualification. If the presiding officer does not grant the motion or the Licensing Board member does not disqualify himself, the motion must be referred to the Commission. The Commission will determine the sufficiency of the grounds alleged.

(c) Unavailability. If a presiding officer or a designated member of an Atomic Safety and Licensing Board becomes unavailable during the course of a hearing, the Commission or the Chief Administrative Judge, as appropriate, will designate another presiding officer or Atomic Safety and Licensing Board member. If he or she becomes unavailable after the hearing has been concluded, then:

(1) The Commission may designate another presiding officer;

(2) The Chief Administrative Judge or the Commission, as appropriate, may designate another Atomic Safety and Licensing Board member to participate in the decision;

(3) The Commission may direct that the record be certified to it for decision.

(d) Substitution. If a presiding officer or a designated member of an Atomic Safety and Licensing Board is substituted for the one originally des-

## 10 CFR Ch. I (1-1-06 Edition)

ignated, any motion predicated upon the substitution must be made within five (5) days after the substitution.

### **§2.314 Appearance and practice before the Commission in adjudicatory proceedings.**

(a) Standards of practice. In the exercise of their functions under this subpart, the Commission, the Atomic Safety and Licensing Boards, Administrative Law Judges, and Administrative Judges function in a quasi-judicial capacity. Accordingly, parties and their representatives in proceedings subject to this subpart are expected to conduct themselves with honor, dignity, and decorum as they should before a court of law.

(b) Representation. A person may appear in an adjudication on his or her own behalf or by an attorney-at-law. A partnership, corporation, or unincorporated association may be represented by a duly authorized member or officer, or by an attorney-at-law. A party may be represented by an attorney-at-law if the attorney is in good standing and has been admitted to practice before any Court of the United States, the District of Columbia, or the highest court of any State, territory, or possession of the United States. Any person appearing in a representative capacity shall file with the Commission a written notice of appearance. The notice must state his or her name, address, telephone number, and facsimile number and email address, if any; the name and address of the person or entity on whose behalf he or she appears; and, in the case of an attorney-at-law, the basis of his or her eligibility as a representative or, in the case of another representative, the basis of his or her authority to act on behalf of the party.

(c) Reprimand, censure or suspension from the proceeding. (1) A presiding officer, or the Commission may, if necessary for the orderly conduct of a proceeding, reprimand, censure or suspend from participation in the particular proceeding pending before it any party or representative of a party who refuses to comply with its directions, or who is disorderly, disruptive, or engages in contemptuous conduct.

(2) A reprimand, censure, or a suspension that is ordered to run for one day

## Nuclear Regulatory Commission

## §2.315

or less must state the grounds for the action in the record of the proceeding, and must advise the person disciplined of the right to appeal under paragraph (c)(3) of this section. A suspension that is ordered for a longer period must be in writing, state the grounds on which it is based, and advise the person suspended of the right to appeal and to request a stay under paragraphs (c)(3) and (c)(4) of this section. The suspension may be stayed for a reasonable time in order for an affected party to obtain other representation if this would be necessary to prevent injustice.

(3) Anyone disciplined under this section may file an appeal with the Commission within ten (10) days after issuance of the order. The appeal must be in writing and state concisely, with supporting argument, why the appellant believes the order was erroneous, either as a matter of fact or law. The Commission shall consider each appeal on the merits, including appeals in cases in which the suspension period has already run. If necessary for a full and fair consideration of the facts, the Commission may conduct further evidentiary hearings, or may refer the matter to another presiding officer for development of a record. In the latter event, unless the Commission provides specific directions to the presiding officer, that officer shall determine the procedure to be followed and who shall present evidence, subject to applicable provisions of law. The hearing must begin as soon as possible. In the case of an attorney, if no appeal is taken of a suspension, or, if the suspension is upheld at the conclusion of the appeal, the presiding officer, or the Commission, as appropriate, shall notify the State bar(s) to which the attorney is admitted. The notification must include copies of the order of suspension, and, if an appeal was taken, briefs of the parties, and the decision of the Commission.

(4) A suspension exceeding one (1) day is not effective for seventy-two (72) hours from the date the suspension order is issued. Within this time, a suspended individual may request a stay of the sanction from the appropriate reviewing tribunal pending appeal. No responses to the stay request from

other parties will be entertained. If a timely stay request is filed, the suspension must be stayed until the reviewing tribunal rules on the motion. The stay request must be in writing and contain the information specified in §2.342(b). The Commission shall rule on the stay request within ten (10) days after the filing of the motion. The Commission shall consider the factors specified in §2.342(e)(1) and (e)(2) in determining whether to grant or deny a stay application.

### **§2.315 Participation by a person not a party.**

(a) A person who is not a party (including persons who are affiliated with or represented by a party) may, in the discretion of the presiding officer, be permitted to make a limited appearance by making an oral or written statement of his or her position on the issues at any session of the hearing or any prehearing conference within the limits and on the conditions fixed by the presiding officer. However, that person may not otherwise participate in the proceeding. Such statements of position shall not be considered evidence in the proceeding.

(b) The Secretary will give notice of a hearing to any person who requests it before the issuance of the notice of hearing, and will furnish a copy of the notice of hearing to any person who requests it thereafter. If a communication bears more than one signature, the Commission will give the notice to the person first signing unless the communication clearly indicates otherwise.

(c) The presiding officer will afford an interested State, local governmental body (county, municipality or other subdivision), and affected, Federally-recognized Indian Tribe, which has not been admitted as a party under §2.309, a reasonable opportunity to participate in a hearing. Each State, local governmental body, and affected Federally-recognized Indian Tribe shall, in its request to participate in a hearing, each designate a single representative for the hearing. The representative shall be permitted to introduce evidence, interrogate witnesses where cross-examination by the parties is permitted, advise the Commission