

July 27, 2006

Eleanor D. Kinney, Esq.
Chair, Section of Administrative Law
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American Bar Association
740 15th Street, NW
Washington, DC 10005-1022

Re: Procedures Pertaining to Discipline of Private Sector Attorneys
Appearing Before the Nuclear Regulatory Commission

Dear Ms. Kinney,

This letter responds to your request for information regarding the US Nuclear Regulatory Commission's procedures pertaining to discipline of private sector attorneys appearing before the agency. The primary regulation governing practice before the Commission may be found in 10 C.F.R. § 2.314 (2006) (prior to 2004, the regulation was found in section 2.713). Under 10 C.F.R. § 2.314(c), "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." The presiding officer has the discretion under 10 C.F.R. § 2.319(g) to impose appropriate sanctions to prevent future breaches of the Commission's practices and procedures.

As stated in § 2.314(c)(2), if a remand, censure, or a suspension is ordered lasting one day or less, the grounds for the action must be stated in the record of the proceeding and the person disciplined must be advised of the right to appeal under § 2.314(c)(3). Should the sanction last longer than one day, the grounds for the action must be stated in writing and the person disciplined must be advised of the right to appeal and to stay the action for a reasonable time in order for the affected party to obtain other representation, if necessary to prevent injustice. 10 C.F.R. § 2.314(c)(2). The disciplined person has the option to file an appeal with the Commission within ten days after issuance of the order. 10 C.F.R. § 2.314(c)(3). Appeals 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. *Id.* In reviewing an appeal, the Commission may conduct further evidentiary hearings, or may refer the matter to another presiding officer for development of a record. *Id.*

Suspensions exceeding one day are not effective until seventy-two hours after the suspension order is issued. 10 C.F.R. § 2.314(c)(4). During this period, a suspended individual may request a stay of the sanction from the appropriate reviewing tribunal pending appeal. *Id.* The stay request must be in writing and contain the information specified in § 2.342(b) (stays of decisions). If a timely stay request is filed, the suspension must be stayed until the reviewing

tribunal rules on the motion. *Id.* The Commission will rule on the stay request within ten days after the motion is filed, taking into consideration the factors specified in § 2.342(e)(1) and (e)(2) in determining whether to grant or deny the application. *Id.* If a suspension is upheld at the conclusion of an appeal, the presiding officer, or the Commission, will notify the State bar(s) to which the attorney is admitted, including copies of the order and appeal briefs and decision, where applicable. *Id.*

The Commission's Rules of Practice provide the board with substantial authority to consider imposing sanctions against parties in proceedings who fail to meet the requirements and standards set forth therein. *See Statement of Policy on Conduct of Licensing Proceedings*, 46 Fed. Reg. 28,534 (May 27, 1981). The Boards should consider a variety of factors when selecting a sanction, such as "the relative importance of the unmet obligation, its potential for harm to other parties or the orderly conduct of the proceedings, whether its occurrence is an isolated incident or a part of a pattern or behavior, the importance of the safety or environmental concerns raised by the party, and all of the circumstances." *Id.*; see, e.g., Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), CLI-89-02, 29 N.R.C. 211, 223 (1989) (dismissing parties from proceedings after evaluating factors to consider when deciding what sanction to impose).

At the outset of a proceeding, the board should make all parties aware of the Commission's policies regarding sanctions. *Statement of Policy, supra*. The Commission set forth a graduated scale of sanctions in its May 1981 policy statement, including verbal warnings, refusal to consider a filing by the offending party, denial of the right to cross-examine or present evidence, dismissal of one or more of the party's contentions, imposition of appropriate sanctions on counsel for a party, or, in the most severe cases, dismissal of the party from the proceeding. *Id.*; see, e.g., Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Units 2 and 3), CLI-04-36, 60 N.R.C. 631, 644 (2004) (warning party representative that any future disregard for Commission procedures warranted sanctioning).

I hope that you find this information useful to your work. I have enclosed for your use copies of 10 C.F.R. § 2.314 and the referenced NRC decisions and policy statements. Please feel free to contact me if you have any further questions. I may be reached by email at sgb1@nrc.gov or by telephone at 301-415-1740.

Sincerely,

/RA/

Stephen G. Burns
Deputy General Counsel

Enclosures: As stated

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