

August 30, 1979

SECY-79-514

For:

The Commissioners

From:

**COMMISSIONER ACTION**

Thru:

Executive Director for Operations *RL*

Subject:

PROPOSED AMENDMENTS TO 10 CFR PART 2 CONCERNING DISCIPLINE  
IN ADJUDICATORY PROCEEDINGS

Purpose:

To obtain Commission approval for the publication for  
public comment of a notice of proposed rulemaking to  
amend 10 CFR, Section 2.713.

Discussion:

By memorandum dated July 18, 1979, Commissioner Kennedy  
requested that the Rules of Practice (10 CFR Part 2)  
regarding discipline in NRC proceedings be reviewed.  
The Commissioner suggested that experience seemed to  
indicate that the regulations were in need of modifica-  
tion to clarify sanctions and procedures available to  
presiding officers and hearing participants in adjudica-  
tory proceedings. The attached proposed amendments are  
designed to take account of the experience and comments  
received on these matters. The proposed amendments  
would:

- (1) reiterate the standard of conduct expected of par-  
ticipants in proceedings;
- (2) clarify who may appear before NRC in a representa-  
tive capacity;
- (3) clarify and bolster the authority of the presiding  
officer, Appeal Board, and Commission to suspend  
any party or representative of a party from partici-  
pation in a particular proceeding where, as a result  
of the party's or representative's conduct, this is  
necessary for the orderly conduct of the proceeding;  
and
- (4) specify special interlocutory appeal procedures  
governing suspensions from participation.

Contact:  
Marc R. Staenberg  
492-8689

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This action involves no new resource requirements.

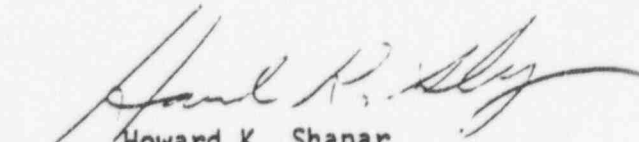
Recommendation:

It is recommended that the Commission:

1. Approve publication in the Federal Register of a notice of proposed rulemaking to amend NRC regulations (Attachment A);
2. Note that:
  - a. The notice of proposed rulemaking will allow 45 days for public comment;
  - b. A public announcement will be issued when the notice is published in the Federal Register; and
  - c. The Subcommittee on Nuclear Regulation of the Committee on Environment and Public Works, the Subcommittee on Energy and the Environment of the Committee on Interior and Insular Affairs, the Subcommittee on Energy and Power of the Committee on Interstate and Foreign Commerce, and the Subcommittee on Environment, Energy and Natural Resources of the Committee on Government Operations will be informed by letter.
  - d. A comparative text of the present and proposed rule is attached as Attachment B.

Coordination:

The Chairman of the Atomic Safety and Licensing Appeal Board Panel, the Acting Chairman of the Atomic Safety and Licensing Board Panel, and the Office of the General Counsel concur in the recommendation of this paper.

  
Howard K. Shapar  
Executive Legal Director

Attachments:

- A. Proposed Federal Register notice.
- B. Comparative Text of present and proposed rule.

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Commissioners' comments should be provided directly to the Office of the Secretary by c.o.b. Friday, September 14, 1979.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT September 7, 1979, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional time for analytical review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

DISTRIBUTION

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NUCLEAR REGULATORY COMMISSION

[10 CFR Part 2]

Changes In Rules of Practice Governing  
Discipline In Adjudicatory Proceedings

AGENCY: U.S. Nuclear Regulatory Commission

ACTION: Proposed Rule

SUMMARY: The Commission has reexamined its current rules (10 CFR §§ 2.718 and 2.713) regarding representation and conduct of attorneys in adjudicatory proceedings. The proposed rules set forth below are the result of this reexamination and would: (1) remove any implication that an attorney may be generally suspended from practice before NRC; (2) clarify and bolster the authority of the presiding officer, Appeal Board, and Commission to suspend any party or any representative of a party from participation in a particular proceeding where, as a result of the party's or representative's conduct in that proceeding, this is necessary for the orderly conduct of the proceeding; (3) specify special interlocutory appeal procedures governing suspensions from participation; and (4) clarify who may appear before NRC in a representative capacity.

The rules which follow should be self-explanatory. The Commission gave careful consideration to whether it should not only assert authority to

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suspend a party or representative from participation in a particular proceeding, but should also assert authority to suspend or bar an attorney at law from appearing in all Commission proceedings. It concluded that this severe sanction of general suspension or disbarment was not necessary. The Commission has no interest in general matters of attorney discipline and chooses to focus instead on the means necessary to keep its adjudicatory proceedings orderly and to avoid unnecessary delays. The Commission expects that the more limited remedy of suspension in the particular proceeding should be entirely sufficient for this purpose.

All representatives--attorneys at law, as well as those who appear on their own behalf or on behalf of a partnership, corporation, or unincorporated association of which they are a member--are expected to conduct themselves with honor, dignity and decorum as they would before a court of law. See generally, ABA Code of Professional Responsibility and Ethical Consideration, EC 7-34 through and including 7-39 and 8-5.

DATES: Comments are due on or before (45 days after publication in the Federal Register.)

ADDRESSES: Written comments concerning the proposed amendments should be submitted to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

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FOR FURTHER INFORMATION CONTACT: Mr. Marc R. Staenberg, Office of the Executive Legal Director, U.S. NRC, Washington, D.C. 20555, Telephone (301) 492-7437.

Pursuant to section 161 of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and sections 553 and 555(b) of Title 5 of the United States Code, notice is hereby given that adoption of the following amendment is contemplated.

1. 10 CFR 2.713 is proposed to be amended in its entirety to read at follows:

§ 2.713 Appearance and Practice before the Commission in Adjudicatory  
—Proceeding

(a) Standards of Practice. In the exercise of their functions under this subpart, the Commission, the Atomic Safety and Licensing Appeal Boards, the Atomic Safety and Licensing Boards, and Administrative Law 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 would 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 by

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an attorney-at-law. A party may be represented by an attorney-at-law provided 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 which shall state his or her name, address and telephone number; and the name and address of the person 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) Suspension from the Proceeding. (1) A presiding officer, an Atomic Safety and Licensing Appeal Board, or the Commission may, if necessary for the orderly conduct of a proceeding, suspend from participation in the particular proceeding pending before it any party or representative of a party who shall refuse to comply with its directions, or who shall be guilty of disorderly, disruptive, or contemptuous conduct.

(2) A suspension which is ordered to run for one day or less shall be ordered with grounds stated on the record of the proceeding. A suspension which is ordered for a longer period shall be in writing, shall state the grounds on which it is based, and shall advise the person suspended of the

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right to appeal pursuant to paragraph (3) of this subsection. A proceeding 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 suspended from participation in a particular proceeding for longer than one day may within ten (10) days after issuance of the order file an appeal with the Atomic Safety and Licensing Appeal Board or the Commission, as appropriate. The Appeal shall be in writing and state concisely, with supporting argument, why the order was erroneous either as a matter of fact or law. The Appeal Board or Commission, as appropriate, shall within ten (10) days after the filing of the appeal, either lift the suspension or consider the matter on its merits. If necessary for a full and fair consideration of the facts, the Appeal Board or Commission, as appropriate, may conduct further evidentiary hearings or may refer the matter to another presiding officer for development of a record. Such hearing shall commence as soon as possible after expiration of the ten day period.

\* \* \* \* \*

(Sec. 161, Pub. L. 83-703, 68 Stat. 948 (42 U.S.C. 2201); Sec. 201, Pub. L. 93-438, 88 Stat. 1243 (42 U.S.C. 5841)).

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 1979.

For the Nuclear Regulatory Commission.

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\_\_\_\_\_  
Samuel J. Chilk  
Secretary of the Commission



## Attachment B - Comparative Text

(a) Standards of Practice. In the exercise of their functions under this subpart, the Commission, the Atomic Safety and Licensing Appeal Boards, the Atomic Safety and Licensing Boards, and Administrative Law 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 would before a court of law.

~~[(b)--Standards-of-conduct--An-attorney-shall-conform-to-the-standards-of-to-the-standards-of-conduct-required-in-the-courts-of-the-United-States.]~~

(b) Representation. A person may appear in an adjudication on his or her own behalf or by an attorney-at-law [in-good-standing-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]. A partnership, corporation or unincorporated association may be represented by a duly authorized member or by an attorney-at-law. A party may be represented by an attorney-at-law provided 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. [an-attorney] Any person appearing in a representative capacity shall file with the Commission a written notice of appearance which shall state his or her name, address, and telephone number;

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and the name and address of the person 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 [~~and-the-name-and-address~~  
~~of-the-person-on-whose-behalf-he-appears~~].

(c) Suspension [~~of-attorneys~~] from the Proceeding. (1) A presiding officer,  
an Atomic Safety and Licensing Appeal Board, or the Commission may, [by-order]  
if necessary for the orderly conduct of a proceeding, suspend [~~or-bar-any~~  
~~person~~] from participation [~~as-an-attorney-in-a-proceeding-if-the-presiding~~  
~~officer-finds-that-such-person~~]

~~(1)--Is-not-an-attorney-at-law-in-good-standing-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;~~

~~(2)--Has-failed-to-conform-to-the-standards-of-conduct-required-in-the~~  
~~courts-of-the-United-States;~~

~~(3)--Is-lacking-in-character-of-professional-integrity;~~

~~(4)--Engages-in-dilatory-tactics-or-disorderly-or-contemptuous-con-~~  
~~duct-or~~

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~~(5) -- Displays toward the Commission or any of its presiding officers conduct which, if displayed toward any court of the United States, would be cause for censure, suspension, or disbarment.]~~

in the particular proceeding pending before it any party or representative of a party who shall refuse to comply with its directions, or who shall be guilty of disorderly, disruptive, or contemptuous conduct.

~~[Any such order shall state the grounds on which it is based, -- Before any person is suspended or barred from participation as an attorney in a proceeding, charges shall be preferred by the presiding officer against such person and he shall be afforded an opportunity to be heard thereon before another presiding officer.]~~

(2) A suspension which is ordered to run for one day or less shall be ordered with grounds stated on the record of the proceeding. A suspension which is ordered for a longer period shall be in writing, shall state the ground on which it is based, and shall advise the person suspended of the right to appeal pursuant to paragraph (3) of this subsection. A proceeding 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 suspended from participation in a particular proceeding for longer than one day may within ten (10) days after issuance of the order

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file an appeal with the Atomic Safety and Licensing Appeal Board or the Commission, as appropriate. The Appeal shall be in writing and state concisely, with supporting argument, why the order was erroneous either as a matter of fact or law. The Appeal Board or Commission, as appropriate, shall within ten (10) days after the filing of the appeal, either lift the suspension or consider the matter on its merits. If necessary for a full and fair consideration of the facts, the Appeal Board or Commission, as appropriate, may conduct further evidentiary hearings or may refer the matter to another presiding officer for development of a record. Such hearing shall commence as soon as possible after expiration of the ten day period.

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