

Final Rule

LSA Document #18-272(F)

DIGEST

Adds [312 IAC 3-1-3.5](#) governing a party's participation and representation in a proceeding controlled by the Administrative Orders and Procedures Act, [IC 4-21.5-3](#). Effective 30 days after filing with the Publisher.

[312 IAC 3-1-3.5](#)

SECTION 1. [312 IAC 3-1-3.5](#) IS ADDED TO READ AS FOLLOWS:

[312 IAC 3-1-3.5](#) Participation by a party; representation

Authority: [IC 14-10-2-4](#)

Affected: [IC 4-21.5](#); [IC 14](#); [IC 25](#); [IC 30-5-2-2](#)

Sec. 3.5. (a) Subject to subsection (d), any party may participate by and through an attorney in good standing admitted to practice law in Indiana pursuant to the Rules for Admission to the Bar and the Discipline of Attorneys.

(b) For purposes of this rule, a "corporation" includes the following:

- (1) Domestic or foreign corporation.**
- (2) Not-for-profit corporation.**
- (3) Limited liability corporation.**

(c) In addition to subsection (a) and subject to subsections (e) and (f), the following apply:

(1) A party that is an individual or is an unincorporated sole proprietorship may participate in a proceeding:

- (A) in person; or**
- (B) by another individual designated in writing by the party.**

(2) A party that is an incompetent individual may participate by the party's:

- (A) next friend;**
- (B) court-appointed representative;**
- (C) attorney in fact, as defined at [IC 30-5-2-2](#); or**
- (D) other fiduciary;**

that possesses appropriate authority.

(3) A party that is a trust, partnership, association, or other unincorporated entity may participate in a proceeding by the trustee, partners, members, or other principals. Any trustee, partner, member, or principal that is:

- (A) an individual or unincorporated sole proprietorship may participate as specified in subdivision (1);**
- (B) an incompetent individual may participate as specified in subdivision (2); or**
- (C) a corporation may participate as specified in subdivision (4).**

(4) A party that is a corporation may participate in a proceeding by an individual who is duly authorized by corporate resolution, operating agreement, or other action taken in accordance with the governing rules of the corporation to provide representation for the corporation.

(5) A party that is a state agency, political subdivision, or other governmental entity may participate in a proceeding by an individual duly authorized by official action of the state agency, political subdivision, or other governmental entity to provide representation.

(d) An attorney who appears in a representative capacity on behalf of any party shall file an appearance as specified in Rule 3.1 of the Indiana Rules of Trial Procedure.

(e) A party designating an individual who is not an attorney to appear in a representative capacity on behalf of the party shall file a written designation of representative setting forth the following information:

- (1) The designated representative's:**

- (A) name;
- (B) address;
- (C) telephone number;
- (D) fax number; and
- (E) electronic mail address.

(2) The represented party's:

- (A) name;
- (B) address;
- (C) telephone number;
- (D) fax number; and
- (E) electronic mail address.

(3) An affirmation, signed by the party and the party's designated representative, acknowledging the following:

- (A) The designation authorizes the representative to act in all respects on behalf of the party who will be bound by the act and omissions of the designated representative.
- (B) The commission and any party will communicate exclusively with the designated representative.
- (C) The designated representative is not an attorney in good standing admitted to practice law in Indiana pursuant to the Rules for Admission to the Bar and the Discipline of Attorneys.
- (D) The designated representative may not:
 - (i) make legal arguments;
 - (ii) address legal issues; or
 - (iii) otherwise engage in the representation of a party through the application of knowledge, judgment or principles associated with a profession for which:
 - (AA) admission;
 - (BB) licensure;
 - (CC) permitting; or
 - (DD) registration;is required by law unless the designated representative has acquired the necessary admission, license, permit, or registration.
- (E) Issues not raised in the administrative proceeding by the designated representative may be waived on behalf of the party.
- (F) The administrative law judge may reject or rescind the party's designation of representation by an individual who is not an attorney as specified in subsection (f).

(f) The administrative law judge may reject or rescind a party's designation of representative if, during the progression of a proceeding, the administrative law judge determines the following:

- (1) The constitutionality of a law is at issue.
- (2) An action's legality as a matter of law is at issue.
- (3) The representation is causing delay prejudicial to the tribunal or any party.

(g) Nothing contained in this section shall be construed to:

- (1) allow a person to appear in a representative capacity for a party without a license, permit, or registration required by law; or
- (2) relieve an attorney from compliance with the Indiana Rules of Professional Conduct.

(h) The party, designated representative, or attorney may seek to terminate representation as follows:

- (1) A motion to withdraw appearance by an attorney shall be in compliance with Rule 3.1(H) of the Indiana Rules of Trial Procedure.
- (2) A designated representative who is not an attorney shall file a written motion to withdraw that includes the following verifications:
 - (A) The designated representative provided written notice of intent to withdraw to the party at least ten (10) days before filing the motion.
 - (B) The party's information as specified in subsection (e)(2).
- (3) A party shall file a written motion to rescind a written designation of representative filed pursuant to subsection (e).

A party's, designated representative's, or an attorney's motion to withdraw representation shall be granted unless it is determined that the withdrawal is not reasonable or consistent with the efficient administration of justice.

(i) If not specified in any document incorporated by reference in this section, the version or edition of material incorporated by reference is the version or edition that was in effect on the effective date of this section.

(Natural Resources Commission; [312 IAC 3-1-3.5](#); filed Mar 18, 2019, 2:31 p.m.: [20190417-IR-312180272FRA](#))

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Proposed Rule: [20181114-IR-312180272PRA](#)

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Documents Incorporated by Reference: Indiana Rules of Court, Rules for Admission to the Bar and the Discipline of Attorneys; Indiana Rules of Trial Procedure, Rule 3.1 Appearance.

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