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Proposed regulation requires corporate entities to be represented by attorney in cases before Kentucky Review Commission

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The Kentucky Occupational Safety and Health Review Commission is the administrative agency established by the Kentucky legislature, pursuant to Chapter 338 of the Kentucky Revised Statutes – Kentucky’s Occupational Safety and Health Act – for the purpose of hearing and ruling on appeals from citations, notifications, and variances.

The Commission is also authorized to promulgate rules and administrative regulations with respect to the procedural aspects of its hearings. Those regulations are found in the Kentucky Administrative Regulations at 803 KAR 50:010.

In the January 1, 2014 edition of the Administrative Register of Kentucky, the Review Commission has published a proposed amended regulation regarding its procedures. The primary change being proposed is to require any party or intervenor to a case before the Commission who is not a natural person to be represented by an attorney.

The current regulation reads as follows: “Any party or intervenor may appear in person, through an attorney, or through another representative who is not an attorney.”

The proposed new regulation reads as follows: “Except for natural persons who may represent themselves, a party or intervenor shall appear through an attorney.”

In the commentary accompanying the proposed regulation, the Review Commission explains that the reason for the proposed change is to comply with a November 2012 Opinion of the Kentucky Bar Association in which the Bar Association said that, “a corporation or other artificial entity must be represented by a licensed attorney when appearing as a party before an administrative agency conducting a hearing.”

Apparently the Review Commission has been adhering to this Opinion since 2012, and the proposed regulation formalizes current practice.

The proposed regulation was scheduled for a public hearing to be held on January 23, 2014 at the Commission’s office in Frankfort. However, the hearing was subject to being cancelled if no one notified the Commission five days in advance of the hearing that they wanted to attend the hearing.

The public could submit written comments on the proposed rule until January 31, 2014. It will be interesting to see if any comments are submitted and if there is any opposition to this change.

After the public comment period, the Review Commission will consider any comments submitted and may or may not amend the proposed regulation, or may withdraw it. The final regulation, if any, will be published in the *Administrative Register*.

A corporation or other artificial entity must be represented by an attorney when appearing before an administrative agency in Kentucky.

Bill would ban smoking in workplaces in Kentucky

One of the major bills now under considerations in the Kentucky General Assembly is a proposal to ban smoking in public places and private businesses in Kentucky, from Mom & Pops to the state’s largest corporations. Actually, there are two bills on this subject, so-called companion bills, because there’s one in each chamber. Senate Bill 117, sponsored by Sen. Julie Denton, R-Louisville, is sitting on the back burner in the Senate Judiciary Committee, awaiting action in the House of Representatives on House Bill 173, sponsored by Rep. Susan Westrom, D-Lexington, which has been reported favorably out of committee and is posted for passage on the House floor.

HB 173 reads, in Section 2(1), “A person shall not