

4 CSR 240-4.020 Conduct During Proceedings

(1) Any attorney who participates in any proceeding before the commission shall comply with the rules of the commission and shall adhere to the standards of ethical conduct required of attorneys before the courts of Missouri by the provisions of Civil Rule 4, Code of Professional Responsibility, particularly in the following respects:

(A) During the pendency of a contested case proceeding before the commission, an attorney or law firm associated with the attorney shall not make or participate in making a statement, other than a quotation from or reference to public records, that a reasonable person would expect to be disseminated by means of public communication if it is made outside the official course of the proceeding and relates to any of the following:

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1. Evidence regarding the occurrence of transaction involved;
2. The character, creditability or criminal record of a part, witness or prospective witness;
3. Physical evidence, the performance or results of any examinations or tests or the refusal or failure of a party to submit to examinations or tests;
4. His/her opinion as to the merits of the claims, defenses or positions of any interested person; and
5. Any other matter which is reasonably likely to interfere with a fair hearing.

(B) An attorney shall exercise reasonable care to prevent employees and associates from making an extra-record statement as s/he is prohibited from making; and

(C) These restrictions do not preclude an attorney from replying to charges of misconduct publicly made against him/her, or from participating in the proceedings of legislative, administrative or other investigative bodies.

(2) In all contested case proceedings before the commission, no attorney shall communicate, or cause another to communicate, as to the merits of the cause with any commissioner or examiner before whom proceedings are pending except:

(A) In the course of official proceedings in the cause; and

(B) In writing directed to the secretary of the commission with copies service upon all other counsel of record and participants without intervention.

(3) No person who has served as a commissioner or as an employee of the commission, after termination of service or employment, shall appear before the commission in relation to any case, proceeding or application with respect to which s/he was directly involved and in which s/he personally participated or had substantial responsibility in during he period of service or employment with the commission.

- (4) It is improper for any person interested in a contested case proceeding before the commission to attempt to sway the judgment of the commission by undertaking, directly or indirectly, outside the hearing process to bring pressure or influence to bear upon the commission, its staff or the presiding officer assigned to the proceeding.
- (5) Requests for expeditious treatment of matters pending with the commission are improper except when filed with the secretary and copies serviced upon all other parties.
- (6) No member of the commission, presiding officer or employee of the commission shall invite or knowingly entertain any prohibited *ex parte* communication, or make any such communication to any party or counsel or agent of a party, or any other person who s/he has reason to know may transmit that communication to a party or party's agent.
- (7) These prohibitions apply to contested case proceedings where the legal rights, duties or privileges of specific parties are required by law to be determined after hearing during the period of time commencing thirty days prior to the filing with the Commission of any tariff, application, motion, complaint or other pleading initiating such a proceeding until the time the proceeding is terminated by final order of the commission, provided that any party may address substantive or procedural matters in a contest case proceeding in which no evidentiary hearing has been scheduled if the:
- (A) communication is made at a public agenda meeting of the commission where such matter has been posted in advance as an item for discussion or decision, or
- (B) communication is made at a forum where representatives of the public utility affected thereby, the office of Public Counsel, and any other party to the case are present.
- (8) As *ex parte* communications (either oral or written) may occur inadvertently, any member of the commission, hearing examiner or employee of the commission who receives that communication shall disclose the communication in the following manner:
- (A) If the communication is written, the commissioner, hearing examiner or employee shall no later than the next business day following the communication file a copy of the written communication in the official case file of the pending filing or case and serve it upon all parties of record:
- (B) If the communication is oral, the commissioner, hearing examiner or employee shall no later than the next business day following the communication file a memorandum in the official case file of the pending case disclosing the communication and serve such memorandum on all parties of record. The memorandum must contain a summary of the substance of the communication and not merely a listing of the subjects covered.
- (9) Nothing in this section or any other provision of law shall be construed as imposing any limitation on the free exchange of ideas, views, and information between any person and the commission or any commissioner, provided that such communications relate to matters of

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¶Deleted: immediately prepare a written report concerning the communication and submit it to the chairman and each member of the commission. The report shall identify the employee and the person(s) who participated in the *ex parte* communication, the circumstances which resulted in the communication, the substance of the communication, and the relationship of the communication to a particular matter at issue before the commission.

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general regulatory policy and do not address the merits of the specific facts, evidence, claims, or positions presented or taken in a pending case.

(10) The commission and any commissioner may also advise any person, member of the general assembly or other governmental official of the issues or factual allegations that are the subject of a pending case, provided that the commission or commissioner does not express an opinion as to the merits of such issues or allegations, and may discuss in a public agenda meeting with parties to a case in which an evidentiary hearing has been scheduled, any procedural matter in such case or any matter relating to a unanimous stipulation or agreement resolving all of the issues in such case.

(11) Each commissioner shall maintain a public calendar, posted on the commission's web site, noting any meetings scheduled with parties to a current contested case proceeding and describing the purpose of such meeting.

(12) Any party seeking to schedule a meeting with a majority of the commissioners, shall provide a written request to the chairman of the commission, together with a proposed agenda outlining the matters to be discussed at the meeting.

(13) Unless designated otherwise in accordance with commission rules 4 CSR 240-2.085 or 4 CSR 240-2.135, any documentation provided to a commissioner shall be presumed to be a matter of public record.

(14) The commission may direct any or all of its employees to undertake periodic training concerning ethical conduct related to their official duties.