

REBECCA MCDOWELL COOK
Secretary of State
Administrative Rules Division
RULE TRANSMITTAL

A "SEPARATE" rule transmittal sheet must be used for EACH individual rulemaking.

A. Rule Number 4 CSR 240-2.080
Diskette File Name 2.080 rule (Word 97 format)
Name of Person to call with questions about this rule:
Context Nancy Dippell Phone 573-751-4393 FAX 573-751-1847
Data Entry Judy Pope Phone 573-751-6526 FAX 573-751-1847
Interagency Mailing Address Truman Bldg., 301 W. High St., Room 530, Jefferson City, MO

Statutory Provision for Rulemaking
Authority § 386.410 Provide Most Current RSMo Year 1998
Date Filed With the Joint Committee on Administrative Rules Exempt per Sections 536.024 and 536.037, RSMo Supp. 1998, and Executive Order No. 97-97 (June 27, 1997)

B. CHECK, IF INCLUDED: FORMS, List by Mo-Form Number, # of Pages
 Cover Letter _____
 Affidavit _____
 Cost Statements _____
 Public Entity Fiscal Note OTHER _____
 Private Entity Fiscal Note _____

C. RULEMAKING ACTION TO BE TAKEN
 Emergency Rulemaking, Must Specify Effective Date
 Proposed Rulemaking
 Order of Rulemaking (MUST complete page 2 of this transmittal)
 Withdrawal (Rule, Amendment, Rescission or Emergency)
 Rule Action Notice
 In Addition

D. SPECIFIC INSTRUCTIONS: In this space indicate any special instructions (e.g., specify publication date preference, identify material incorporated by references, etc.)

E. ORDER OF RULEMAKING: Rule Number 4 CSR 240-2.080

1a. Effective Date for the Order
 Statutory 30 days or later specific date _____

1b. Does the Order of Rulemaking contain changes to the rule text?
 YES NO _____

1c. If the answer is YES, please complete section F. If the answer is NO, Stop here.

F. Please provide a complete list of the changes in the rule text for the order or rulemaking, indicating the specific section, subsection, subparagraph, part, etc., where each change is found.

In section (5) the word "stricken" is deleted and replaced by "rejected".

In section (6), the phrase "By signing a pleading," is added at the beginning of the sentence, and the first letter of the word originally beginning the sentence is changed from uppercase to lowercase.

In section (16), "seven (7)" is changed to "ten (10)".

In subsection (17)(B), after the phrase "or the benefit that will accrue," the phrase "including a statement of the negative effect, or that there will be no negative effect, on the party's customers or the general public," is inserted.

In subsection (17)(C), the phrase "An attestation by the moving party" is deleted, and the first letter of the word "that" is changed from lowercase to uppercase.

In paragraph (18)(A)2., the word "or" is deleted.

In paragraph (18)(A)3., the period at the end of the clause is deleted and replaced by "; or".

A new paragraph (18)(A)4. is added which reads as follows: "4. Facsimile transmission to the current facsimile machine of the party's attorney."

Subsection (18)(C) is rewritten as follows:

"(C) Completion of Service.

1. Service by mail is complete upon mailing.
2. Service by facsimile transmission is complete upon actual receipt.
3. Service by electronic mail is complete upon actual receipt."

A new section (21) is added which reads as follows: "(21) Any pleading may be amended within ten days of filing, unless a responsive pleading has already been filed, or at any time by leave of the commission."

NOTE: ALL changes MUST be specified here in order for those changes to be made in the rule as published in the *Missouri Register* and the *Code of State Regulations*.

Add additional sheet(s), if more space is needed.



Missouri Public Service Commission

Commissioners
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HAROLD CRUMPTON
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January 21, 2000

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DANA K. JOYCE
General Counsel

Honorable Rebecca McDowell Cook
Secretary of State
600 West Main Street
Jefferson City, Missouri 65101

ATTENTION: Administrative Rules Division

I do hereby certify that the attached are accurate and complete copies of the Orders of Rulemaking lawfully submitted by the Missouri Public Service Commission for filing this 21st day of January, 2000.

Rules: 4 CSR 240-2.010 – Definitions
4 CSR 240-2.015 – Waiver of Rules
4 CSR 240-2.040 – Practice Before the Commission
4 CSR 240-2.050 – Computation of Time
4 CSR 240-2.060 – Applications
4 CSR 240-2.065 – Tariff Filings Which Create Cases
4 CSR 240-2.070 – Complaints
4 CSR 240-2.075 – Intervention
4 CSR 240-2.080 – Pleadings, Filing, and Service
4 CSR 240-2.085 – Protective Orders
4 CSR 240-2.090 – Discovery and Prehearings
4 CSR 240-2.100 – Subpoenas
4 CSR 240-2.110 – Hearings
4 CSR 240-2.115 – Nonunanimous Stipulations and Agreements
4 CSR 240-2.116 – Dismissal
4 CSR 240-2.120 – Presiding Officers
4 CSR 240-2.125 – Procedures for Alternative Dispute Resolution
4 CSR 240-2.130 – Evidence
4 CSR 240-2.140 – Briefs and Oral Argument
4 CSR 240-2.150 – Decisions of the Commission
4 CSR 240-2.160 – Rehearings or Reconsideration
4 CSR 240-2.180 – Rulemaking
4 CSR 240-2.200 – Small Company Rate Increase Procedure

Honorable Rebecca McDowell Cook

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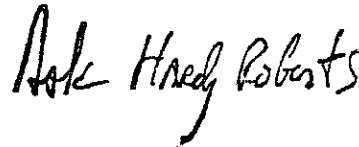
Statutory authority: Section 386.410, RSMo Supp. 1998

Effective date of the rules: thirty days after publication in the *Code of State Regulations*

Missouri Public Service Commission Case Nos.: AX-2000-108 through AX-2000-128, and
AX-2000-130 through AX-2000-131

If there are any questions, please contact: *(These rules are assigned to several regulatory law judges. Please refer to the transmittal form for the name, phone number and fax number of the regulatory law judge assigned to a particular rule.)*

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

DHR:jp

Enclosures: Packets for 23 Orders of Rulemaking
Orders of Rulemaking in Word 97 format on 3-1/2" diskette

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 240—Public Service Commission
Chapter 2—Practice and Procedure**

ORDER OF RULEMAKING

By the authority vested in the Missouri Public Service Commission under section 386.410, RSMo Supp. 1998, the commission adopts a rule as follows:

4 CSR 240-2.080 Pleadings, Filing, and Service is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on Oct. 1, 1999 (24 MoReg 2327-2328). Those sections with changes are reprinted here. This proposed rule becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: One written comment each was received to sections (2), (6), (7), (10), two written comments each to sections (8) and (18), eight written comments to section (16), and three written comments to section (17) were received. One commentator suggested a new section (21). The Commission also made one change to section (5) upon its own review.

COMMENT: One commentator stated that section (2) should not require the signing of a pleading or brief to provide its electronic mail address because none of the statutes governing the means of communication by the Commission authorizes it.

RESPONSE: The Commission has the statutory authority to adopt procedural rules. The Commission finds that its ability to communicate quickly and efficiently with counsel for parties before it will be enhanced by having an electronic mail address for counsel if one exists. The Commission notes that in the same document this commentator applauds the Commission's attempts to reduce paper filings and recommends the Commission utilize electronic filing as much as possible and recommends that service by facsimile be added to the methods of service on parties' attorneys. The Commission fails to see why the commentator would not also want the Commission to communicate with the parties or their attorneys in the most expedient manner possible. Therefore, the Commission finds that no changes are necessary to this rule as a result of this comment.

COMMENT: One comment was received supporting the restatement of general ethical responsibilities of counsel in section (7).

RESPONSE: No changes to this rule are necessary as a result of this comment.

COMMENT: Two commentators applauded the Commission for reducing its filing requirements from 14 copies to 8 copies. One of those commentators encouraged the Commission to reduce paper filings even more by utilizing electronic filing as much as possible.

RESPONSE: The Commission expects to have ready a system by which electronic filings can be possible in the near future. When that system is ready, it will be necessary for the Commission to revise its procedural rules to accommodate that method of filing. However, until the Commission

has the systems and technology in place, the Commission has reduced the number of paper copies required. The Commission finds that no changes to this rule are necessary as a result of this comment.

COMMENT: One comment in support of the Commission's reduction in the number of copies needed for filing a complaint was received.

RESPONSE: No changes to this rule are necessary as a result of this comment.

Upon review of the proposed rule, the Commission finds that the word "stricken" is incorrect and should be replaced by the word "rejected" in section (5). In this context, "stricken" would incorrectly imply that the pleading or brief was accepted by the Commission to be filed and then removed from the record. The term "rejected" would correctly mean that the pleading or brief was never accepted for filing with the Commission.

COMMENT: One comment was received suggesting that for grammatical reasons, the phrase "By signing a pleading," should be added to the beginning of section (6).

RESPONSE: The Commission agrees with the comment and for clarity and consistency the Commission will make the change as recommended.

COMMENT: Seven comments were received objecting to the shortening of the time to respond from ten days to seven days in proposed section (16) and one comment supported the shortened response time with an amendment. The commentors cited holidays and weekends, postal service delays, and the ability of parties to request a shortened response time where necessary under other rules of the Commission, as reasons for objecting to this proposed rule. Two commentors suggested that the response period in section (16) could be seven days if the Commission allowed an additional three days where service of the pleading was made by mail. Two commentors also suggested that requiring or permitting service by facsimile would help to shorten the response time.

RESPONSE: The Commission has considered the comments and has determined that the time period for filing a response should be ten days. However, the Commission notes that by operation of law, when the tariff effective date or operation of law date occurs sooner than ten days from the filing of the pleading, the responsive party may not have a full ten days available to respond before the Commission takes action. Therefore, the Commission finds that section (16) should be amended.

COMMENT: Two identical comments were received which stated that the requirement of subsection (17)(C) is inappropriate. The commentor stated that the information was not relevant to the issue of whether expedited treatment should be granted. The commentor stated that the information could only be used to assign blame that is not an appropriate consideration in making a determination of whether expedited treatment is in the public interest.

RESPONSE: Proposed section (17) of this rule, sets up a procedure for requesting expedited consideration of a case. The Commission does not intend to use subsection (C) as a means of punishing parties who might suffer harm, or where failure to expedite might cause harm to the general public, because the party has caused a delay in requesting expedited treatment. However, the Commission also does not intend to reward bad actors or take extraordinary measures in cases where the requesting party has orchestrated, by intent or neglect, its own emergency.

Therefore, the Commission finds that no change to this rule is needed as a result of this comment.

COMMENT: One commentor suggested that section (17) regarding motions for expedited treatment should also include a requirement for disclosure of any negative effect the request may have on the company's customers or the public.

RESPONSE: The Commission agrees with the commentor. Knowing the negative effect, if any, on the public of expediting the request is important to the Commission. Therefore, the Commission will amend this rule to include this recommendation.

COMMENT: One commentor stated that proposed subsection (17)(C) should be amended by changing the words "An attestation by the moving party" to "A statement in the pleading by the moving party or counsel."

RESPONSE: The Commission has reviewed this subsection and agrees that an amendment should be made. When read in conjunction with the opening phrases of section (17) and with the Commission rule requiring pleadings to be verified, the Commission determines that the only revision necessary to this rule is to strike the words "An attestation by the moving party" because they are unnecessary.

COMMENT: Two commentors suggested that section (18) be amended to allow for service by facsimile. One commentor also suggested that service be allowed by electronic mail.

RESPONSE: The Commission agrees that electronic communication should be utilized as much as possible and where practicable. Several comments were received indicating a desire for service by facsimile. The Commission will amend this rule to include service by facsimile. The Commission also believes that service by electronic mail where possible is an efficient manner of obtaining service. Therefore, the Commission will also amend this rule to allow for service by electronic mail.

COMMENT: One commentor suggested that a section for amending pleadings be added.

RESPONSE: The Commission agrees with the commentor that a procedure for amending pleadings should be added. The Commission finds it reasonable to include a procedure similar to the one found in Missouri Supreme Court Rule 55.33. Therefore, the Commission will amend this rule to include a procedure for amending pleadings as new section (21).

COMMENT: Two comments were received suggesting that the Commission's choice to propose a new rule rather than amend the old rule made evaluation of the rule too difficult. The commentor stated that if the Commission had used a method of deletions and additions "the cost and efficiency of the presentation would be more than outweighed by the cost and efficiency of the analyses by affected parties."

RESPONSE: The comment was not addressed to the specific provisions of the rule, but rather to the method by which the Commission chose to complete its rulemaking. The Commission considered the commentor's method before proposing this rule. However, because of the numerous changes being made, the Commission determined that it would be less confusing for the general public to see the rule in its entirety when published in the Missouri Register, than if a series of deletions and additions was published. Therefore, the Commission determines that no

changes are necessary as a result of this comment. The Commission will consider these comments in future rulemaking proceedings.

4 CSR 240-2.080 Pleadings, Filing, and Service

(5) An unsigned pleading or brief shall be rejected.

(6) By signing a pleading, the signer represents that he or she is authorized to so act, and that the signer is a licensed attorney-at-law in good standing in Missouri or has complied with the rules below concerning any attorney who is not a Missouri attorney or is appearing on his or her own behalf.

(16) Parties shall be allowed not more than ten (10) days from the date of filing in which to respond to any pleading unless otherwise ordered by the commission.

(17) Any party seeking expedited treatment in any case shall include in the title of the pleading the words "Motion for Expedited Treatment." The pleading shall also set out with particularity the following:

(A) The date by which the party desires the commission to act;

(B) The harm that will be avoided, or the benefit that will accrue, including a statement of the negative effect, or that there will be no negative effect, on the party's customers or the general public, if the commission acts by the date desired by the party; and

(C) That the pleading was filed as soon as it could have been or an explanation why it was not.

(18) Methods of Service:

(A) Any person entitled by law may serve a document on a represented party by:

1. Delivering it to the party's attorney;

2. Leaving it at the office of the party's attorney with a secretary, clerk or attorney associated with or employed by the attorney served;

3. Mailing it to the last known address of the party's attorney; or

4. Facsimile transmission to the current facsimile machine of the party's attorney.

(B) Any person entitled by law may serve a document on an unrepresented party by:

1. Delivering it to the party; or

2. Mailing it to the party's last known address.

(C) Completion of Service.

1. Service by mail is complete upon mailing.

2. Service by facsimile transmission is complete upon actual receipt.

3. Service by electronic mail is complete upon actual receipt.

(21) Any pleading may be amended within ten days of filing, unless a responsive pleading has already been filed, or at any time by leave of the commission.