

## MEMORANDUM

TO: Dale Hardy Roberts, Secretary

DATE: August 16, 1999

RE: Authorization to File Proposed Rules With the Office of Secretary of State

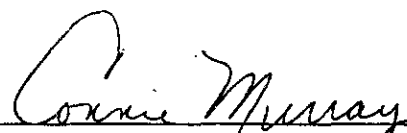
CASE NOS: AX-2000-108 through AX-2000-131

AGENDA DATE: August 17, 1999

The undersigned Commissioners hereby authorize the Secretary of the Missouri Public Service Commission to file Proposed Rules with the Office of Secretary of State, as listed on the attached sheet.

  
\_\_\_\_\_  
Sheila Lumpe, Chair

~~ABSENT DR~~  
\_\_\_\_\_  
Harold Crumpton, Commissioner

  
\_\_\_\_\_  
Connie Murray, Commissioner

  
\_\_\_\_\_  
Robert Schemenauer, Commissioner

  
\_\_\_\_\_  
M. Dianne Drainer, Vice Chair

Proposed Rules:

Rule: 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 Effective Dates

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

**RECEIVED**

AUG 24 1999  
**SECRETARY OF STATE**  
**ADMINISTRATIVE RULES DIVISION**

**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 240-2.040 **COPY**  
 Diskette File Name 2.040 proposed rule  
 Name of Person to call with questions about this rule:  
 Context Vicky Ruth Phone 573-522-8459 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  
 \_\_\_\_\_ Private Entity Fiscal Note  
 OTHER Takings Analysis  
 Small Business Impact Analysis

C. RULEMAKING ACTION TO BE TAKEN  
 \_\_\_\_\_ Emergency Rulemaking, Must Specify Effective Date  
☒ Proposed Rulemaking (New Rule)  
 \_\_\_\_\_ 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:)

**RULE TRANSMITTAL (PAGE 2)**

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E. ORDER OF RULEMAKING: Rule Number (Not Applicable)

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.

(Start text here. If text continues to a third page, insert a continuous section break and, in section 3, delete the footer language that appears at the bottom of this page.)

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.



*Commissioners*

SHEILA LUMPE  
Chair

HAROLD CRUMPTON

CONNIE MURRAY

ROBERT G. SCHEMENAUER

M. DIANNE DRAINER  
Vice Chair

## Missouri Public Service Commission

POST OFFICE BOX 360  
JEFFERSON CITY, MISSOURI 65102  
573-751-3234  
573-751-1847 (Fax Number)  
<http://www.ecodev.state.mo.us/psc/>

August 24, 1999

GORDON L. PERSINGER  
Acting Executive Director  
Director, Research and Public Affairs

WESS A. HENDERSON  
Director, Utility Operations

ROBERT SCHALLENBERG  
Director, Utility Services

DONNA M. KOLILIS  
Director, Administration

DALE HARDY ROBERTS  
Secretary/Chief Regulatory Law Judge

DANA K. JOYCE  
General Counsel

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**AUG 24 1999**

**SECRETARY OF STATE  
ADMINISTRATIVE RULES DIVISION**

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 Proposed Rules lawfully submitted by the Missouri Public Service Commission for filing this 24th day of August, 1999, and that a takings analysis and small business impact analysis have occurred.

- Rule: 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 Effective Dates
  - 4 CSR 240-2.060 -- Applications
  - 4 CSR 240-2.065 -- Tariff Filings Which Create Cases
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  - 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  
Page two  
August 24, 1999

Statutory authority: 386.410, RSMo Supp. 1998

Missouri Public Service Commission Case Nos.: AX-2000-108 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

A handwritten signature in black ink that reads "Dale Hardy Roberts". The signature is written in a cursive, slightly slanted style.

**Dale Hardy Roberts**  
**Secretary/Chief Regulatory Law Judge**

DHR:BH:jp

Enclosures: Packets for 23 Proposed Rules  
+ Proposed Rules in Word 97 format on 3-1/2" diskette

**AFFIDAVIT**

STATE OF MISSOURI }


COUNTY OF COLE }

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**AUG 24 1999**

**SECRETARY OF STATE  
ADMINISTRATIVE RULES DIVISION**

I, Joseph L. Driskill, Director of the Department of Economic Development, first being duly sworn on my oath state that it is my opinion that the cost of Proposed Rule **4 CSR 240-2.040 Practice Before the Commission** is less than five hundred dollars in the aggregate to this agency, any other agency of state government or any political subdivision thereof.



Joseph L. Driskill  
DIRECTOR

Department of Economic Development

Subscribed and sworn to before me this 23rd day of August,  
1999. I am commissioned as a notary public within the County of Cole,  
State of Missouri, and my commission expires on April 26, 2003.

  
NOTARY PUBLIC

**LAURA L. HOSKINS  
NOTARY PUBLIC STATE OF MISSOURI  
COLE COUNTY  
MY COMMISSION EXP. APR. 26, 2003**

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

**PROPOSED RULE**

**RECEIVED**  
**AUG 24 1999**  
**SECRETARY OF STATE**  
**ADMINISTRATIVE RULES DIVISION**

**4 CSR 240-2.040 Practice Before the Commission**

*PURPOSE: This rule sets forth who may practice as an attorney before the commission.*

(1) The general counsel represents the staff in investigations, contested cases and other proceedings and appears for the commission in all courts and before federal regulatory bodies; and in general performs all duties and services as attorney and counsel to the commission which the commission may reasonably require.

(2) The public counsel represents the interests of the public before the commission.

(3) Attorneys who wish to practice before the commission shall fully comply with its rules and also comply with one (1) of the following criteria:

(A) An attorney who is licensed to practice law in the state of Missouri, and in good standing, may practice before the commission;

(B) A nonresident attorney who is a member of the Missouri Bar in good standing, but who does not maintain an office for the practice of law within the state of Missouri, may appear as in the case of a resident attorney;

(C) Any attorney who is not a member of the Missouri Bar, but who is a member in good standing of the bar of any court of record may petition the commission for leave to be permitted to appear and participate in a particular case under all of the following conditions:

1. The visiting attorney shall file in a separate pleading a statement identifying each court of which that attorney is a member and certifying that neither the visiting attorney nor any member of the attorney's firm is disqualified to appear in any of these courts; and

2. The statement shall designate some member in good standing of the Missouri Bar having an office within Missouri as associate counsel; and

3. The designated Missouri attorney shall simultaneously enter an appearance as an attorney of record.

(4) An eligible law student may petition the commission to be allowed to appear. Such application must comply with any applicable rules or statutes.

(5) Practice by Nonattorneys. A natural person may represent himself or herself. Such practice is strictly limited to the appearance of a natural person on his or her own behalf and shall not be made for any other person or entity.

(6) After an attorney has entered an appearance for any party, the attorney may withdraw only by leave of the commission.



*AUTHORITY: section 386.410, RSMo Supp. 1998.\* Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed Nov. 7, 1984, effective June 15, 1985. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed August 24, 1999.*

*\* Original authority 1939, amended 1947, 1977, 1996.*

***Smith v. Public Service Commission**, 336 SW2d 491 (Mo. 1960). Commission Rule 12.07 allowing individual party before commission held not to authorize non-lawyer individual to act as attorney for twenty-five other individuals. See Also **Reed v. Labor and Industrial Relations**, 789 SW2d 19 (Mo. banc 1990) and **Clark v. Austin**, 340 Mo. 647, 101 SW2d 977 (Mo. 1937).*

*PUBLIC ENTITY COST: This proposed rule will not cost state agencies or political subdivisions more than \$500 in the aggregate.*

*PRIVATE ENTITY COST: This proposed rule will not cost private entities more than \$500 in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Public Service Commission, Dale Hardy Roberts, Secretary, P.O. Box 360, Jefferson City, MO 65102. To be considered, comments shall be filed on or before Nov. 1, 1999. Comments should refer to Case No. AX-2000-110 and be filed with an original and fourteen (14) copies. No public hearing is scheduled.*



**Commissioners**

**SHEILA LUMPE**  
Chair

**HAROLD CRUMPTON**

**CONNIE MURRAY**

**ROBERT G. SCHEMENAUER**

**M. DIANNE DRAINER**  
Vice Chair

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**DANA K. JOYCE**  
General Counsel

August 18, 1999

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**SECRETARY OF STATE  
ADMINISTRATIVE RULES DIVISION**

Mr. Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
Post Office Box 360  
Jefferson City, Missouri 65102

**COPY**

RE: Proposed Rescission of Rule 4 CSR 240-2.040 and Adoption of Proposed New Rule 4 CSR 240-2.040

Dear Mr. Roberts:

Executive Order 93-13 requires state agencies to undertake a "takings analysis" of each proposed rule or regulation in light of the United States Supreme Court decision in *Lucas v. South Carolina Coastal Council*, 112 S. Ct. 2886 (1992). Pursuant to that order, I have undertaken a "takings analysis" of the above-referenced proposed rulemaking. In *Lucas*, the Court held that state regulation depriving an owner of real property of all economically beneficial use of that property constitutes a "taking" under the Fifth and Fourteenth Amendments of the U.S. Constitution, for which the property owner must be compensated. The Court also held that when state regulations compel a property owner to suffer a permanent physical invasion of his/her property, such an invasion is compensable.

The proposed new rule sets forth who may practice as an attorney before the Commission.

Replacing the existing rule with the proposed new rule does not implicate the takings clause of the U.S. Constitution, because the rule does not involve the taking of real property.

Mr. Dale Hardy Roberts

Page two

August 18, 1999

Please let me know if you have any questions on this issue.

Very truly yours,

A handwritten signature in cursive script that reads "Vicky Ruth".

Vicky Ruth  
Regulatory Law Judge

VR:jp



Commissioners

SHEILA LUMPE  
Chair

HAROLD CRUMPTON

CONNIE MURRAY

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ADMINISTRATIVE RULES DIVISION**

**COPY**

Mr. Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
Post Office Box 360  
Jefferson City, Missouri 65102

RE: Proposed Rescission of Existing Rule 4 CSR 240-2.040 and Adoption of Proposed New Rule 4 CSR 240-2.040

Dear Mr. Roberts:

Executive Order 96-18 requires state agencies to determine whether a proposed rulemaking will have direct economic impact on small businesses of five hundred dollars or more in the aggregate. A small business is defined in the Executive Order as an independently owned and operated business entity that employs fifty or fewer full-time employees.

Replacing the existing rule with the proposed new rule will not have a direct economic impact on small businesses of five hundred dollars or more in the aggregate.

Please let me know if you have any questions on this issue.

Very truly yours,

Vicky Ruth  
Regulatory Law Judge

VR:jp