

4 CSR 240-2.010 Definitions

(2) Certificate of service means a document or page of a document showing the caption of the case, attorney of record served or the name of the party served, the date and manner of service, and the signature of the serving party or attorney.

(13) Pleading means any application, complaint, petition, answer, motion, staff recommendation, or other similar written document, which is not a tariff or correspondence, and which is filed in a case. A brief is not a pleading under this definition.

(16) Public counsel means the Office of the Public Counsel as created by the Omnibus State Reorganization Act of 1974, and includes the assistants who represent the public before the commission.

AX-2000-109

**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. 1999, the commission adopts a rule as follows:

4 CSR 240-2.015 Waiver of Rules is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on October 1, 1999 (24 MoReg 2319). No changes were made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Commission received one comment regarding the proposed rule.

COMMENT: One comment indicated opposition to this revision, stating that the rule is too broad and does not provide adequate due process safeguards, including notice and opportunity to be heard on the proposed waiver. At a minimum, the rule should provide that the Commission may waive or modify a rule upon application of a party, with proper notice and an opportunity to intervene, and with adequate and reasonable opportunity to be heard, for good cause shown. It is error for the Commission not to follow its own rules. The broad, open-ended waiver provision leaves the rules and their application solely at the Commission's discretion and whim and does not provide the predictability and protection that the rules of procedure are designed to provide.

RESPONSE: The Commission has reviewed the comment and finds that it is in the public interest to include a waiver provision in the rules. No changes were made to the rule as a result of this comment.

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ORDER OF RULEMAKING

By the authority vested in the Missouri Public Service Commission under section 386.410, RSMo Supp. 1999, the commission rescinds a rule as follows:

4 CSR 240-2.040 Practice Before the Commission is rescinded.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on October 1, 1999 (24 MoReg 2320). No changes were made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: This rescission was proposed in conjunction with a replacement proposed rule. The comments received were directed to the proposed rule.

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ORDER OF RULEMAKING

By the authority vested in the Missouri Public Service Commission under section 386.410, RSMo Supp. 1999, the commission adopts a rule as follows:

4 CSR 240-2.040 Practice Before the Commission is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on October 1, 1999 (24 MoReg 2320). No changes were made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Commission received two comments, one in support and one in opposition to the proposed rule.

COMMENT: One comment simply notes support of the proposed rule.

RESPONSE: The Commission appreciates the comment in support of the rule. The comment does not propose any changes and none were made as a result of this comment.

COMMENT: The new Section (6) allows an attorney to withdraw from a case at the Commission only with leave of the Commission. Attorneys in this state are governed as to their conduct by rules adopted by the Missouri Supreme Court. The Public Service Commission is not a court, and has no inherent authority over the ethical conduct of attorneys. While rule 4-1.16 of the Supreme Court Rules indicates that a "tribunal" can order an attorney to continue representing a client notwithstanding good cause for terminating the representation, there do not appear to be any provisions similar to proposed Section (6). Further, the comments to rule 4-1.16 indicate that there are situations where a client has a right to terminate a lawyer, and there are situations where a lawyer must withdraw from representation (mandatory withdrawal). There appears to be a conflict between Supreme Court Rule 4-1.16, e.g., a client's right to dismiss a lawyer at any time, and the Commission's unauthorized attempt to inject itself into that relationship. There is little, if any, authority for the Commission to promulgate rules regarding attorney conduct in this situation. Additionally, the Commission has provided no explanation in the Purpose section as to why this new provision is necessary. For these reasons, the Commission should not adopt this provision.

RESPONSE: The Commission has reviewed the comment and the rule and has determined that the requirement is within the Commission's authority. No changes were made to the rule as a result of this comment.