

	<p>Pre-Drafting Opportunity to Comment</p> <p>Working Docket on Ethics and Standards of Conduct</p>

	<p>Overview of Process</p>
	<ul style="list-style-type: none"> ■ Stage I – Preparation of Comparative State Ethics Compendium ■ Stage II – Drafting of Rules <ul style="list-style-type: none"> – Draft Rule – May 18 – Focus Meetings – June 5 – Proposed Rule in MO Register – July 10 ■ Stage III – Ethics Training

	<p>Substantial Revision Anticipated</p>

	Limits on <i>Ex Parte</i> Communications
	<ul style="list-style-type: none"> ■ Should application of <i>ex parte</i> rules be determined by type of proceeding (California model)

	California Model
	<ul style="list-style-type: none"> ■ Applies to “Commission staff of record” <ul style="list-style-type: none"> - proceeding, staff from the Consumer Protection and Safety Division assigned to an adjudicatory proceeding or to a ratesetting proceeding initiated by complaint, and any other staff assigned to an adjudicatory proceeding in an advocacy capacity. - “Commission staff of record” does not include the following staff and to the extent they are acting in an advisory capacity to the Commission with respect to a formal proceeding: (1) staff from any of the industry divisions; or (2) staff from the Consumer Protection and Safety Division in a quasi-legislative proceeding, or in a ratesetting proceeding not initiated by complaint.

	<ul style="list-style-type: none"> ■ “Ex parte communication” means a written communication . . . or oral communication . . . that: <ol style="list-style-type: none"> (1) concerns any substantive issue in a formal proceeding, including categorization of a proceeding, or assignment or reassignment of a proceeding to an Administrative Law Judge, (2) takes place between an interested person and a decisionmaker, and (3) does not occur in a public hearing, workshop, or other public forum established in the proceeding, or on the record of the proceeding. ■ Communications regarding the schedule, location, or format for hearings, filing dates, identity of parties, and other such nonsubstantive information are procedural inquiries, not ex parte communications.

	Variance by Type of Proceeding
	<p>(a) In any quasi-legislative proceeding, ex parte communications are allowed without restriction or reporting requirement.</p> <p>(b) In any adjudicatory proceeding, ex parte communications are prohibited.</p> <p>(c) In any ratesetting proceeding, ex parte communications are subject to the reporting requirements set forth in Rule 8.3.</p>

	8.5 Communications with Advisors
	<p>■ Communications with Commissioners' personal advisors are subject to all of the restrictions on, and reporting requirements applicable to, ex parte communications, except that oral communications in ratesetting proceedings are permitted without the restrictions of Rule 8.2(c)(1) and (2).</p>

	<p>■ Should application of <i>ex parte</i> rules be determined by role of staff (Washington model)</p>

	Washington Code 480-07-310
	(c) Commission employees and consultants. A presiding officer may receive legal counsel, or consult with staff assistants or consultants who are subject to the presiding officer's supervision or who have not participated in the proceeding in any manner, and who are not engaged in any investigative or prosecutorial functions in the same or a factually related case.

	<ul style="list-style-type: none"> ■ Should <i>ex parte</i> rules apply in certain types of proceedings upon election of a party or the Commission (New Hampshire model)

	New Hampshire Statute
	<p>(a) Whenever the commission conducts an adjudicative . . . , the commission shall designate members of its staff as staff advocates and decisional employees, if requested by a party with full rights of participation in the proceeding, when:</p> <p>(1) It appears that staff members have committed or are likely to commit to a highly adversarial position in the proceeding and may not be able to fairly and neutrally advise the commission on all positions advanced in the proceeding;</p> <p>(2) The docket concerns an issue or matter which is particularly contentious or controversial and which is significant in consequence;</p> <p>(3) The issues in the docket are so contested as to create reasonable concern on the part of any party about the staff's role in commission decision making;</p> <p>(4) It appears reasonable that such designations may increase the likelihood of a stipulated agreement of the parties.</p> <p>(b) Unless the commission provides otherwise, any such designations shall only be applicable to a specified adjudicative proceeding. . . .</p> <p><i>Commissioners and intervening parties may also request designation</i></p>

	Other <i>Ex Parte</i>-Related Issues
	<ul style="list-style-type: none"> ■ How should the General Counsel's Office handle "internal" and "external" matters? ■ How should communications from consumers – and for consumers – be handled?

	Broadened Conflict of Interest Rule
	<ul style="list-style-type: none"> ■ Missouri Revised Statute 386.110 <ul style="list-style-type: none"> – No person shall be eligible to appointment or shall hold the office of commissioner, or be appointed by the commission, or hold any office or position under the commission, [or serve as technical technical staff] who holds any official relation to any gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, heat and refrigerating corporation, sewer corporation, or other public service or public utility corporation or person subject to any of the provisions of this chapter, or who owns stocks or bonds therein, or who has any pecuniary interest therein.

	Missouri Executive Order 92-04
	<ul style="list-style-type: none"> ■ 1. Executive branch employees shall conduct the business of state government in a manner which inspires public confidence and trust. <ul style="list-style-type: none"> – A. Employees shall avoid any interest or activity which improperly gives the appearance of improperly influencing, the conduct of their official duties. ly influences, or their official – B. Employees shall act impartially and neither dispense nor accept or privileges which might be construed to improperly influence the performance of their official duties. pt special favors – D. Employees shall not engage in business with state government, interests, or engage in outside employment when such actions are with the conscientious performance of their official duties. hold financial inconsistent ■ 2...A. Employees shall observe all conflict of interest provisions applicable to their agencies and positions of employment. in law ■ 3...A. Employees shall not use their public positions in a manner designed to create personal gain.

	Limits on Use of Commission Property
	<ul style="list-style-type: none"> ■ Missouri Executive Order <ul style="list-style-type: none"> A. Employees shall use and maintain state equipment, materials and supplies in an efficient manner which will conserve future usefulness. B. Employees shall use state equipment, materials and supplies solely for purposes related to the performance of state business.

	Public Statements on Pending Matters
	<ul style="list-style-type: none"> ■ Should communications with the public on pending matters be limited? <ul style="list-style-type: none"> – Adversarial (contested) matters – Rulemaking procedures – Ratemaking procedures ■ Should limits apply to both public information and opinions? <ul style="list-style-type: none"> – <i>Confidential information protected</i>

	Commissioner Responsibility for Personal Staff
	<ul style="list-style-type: none"> ■ Should Commissioners have express obligation to ensure their personal staff complies with the Rules?

	Response and Remedy of Violations
	<ul style="list-style-type: none"> ■ Present recognized remedies are mainly recusal and removal ■ Is better vehicle for reporting <i>ex parte</i> communications needed

	Ethics Training and Guidance
	<ul style="list-style-type: none"> ■ Should training activities be separated by role or responsibilities? ■ How could guidance (advisory opinions) be made available?

	Evaluation of Need for Rulemaking

	Third-Party Payments for Travel and Education
	<ul style="list-style-type: none"> ■ Missouri law provides for reimbursement from state for travel ■ No guidance on when others may pay for travel

	Permissibility of Speaking, Writing, and Teaching
	<ul style="list-style-type: none"> ■ Presently no specific guidance

	Limits on Political Activities and Fundraising
	<ul style="list-style-type: none"> ■ Missouri Executive Order 92-04 <ul style="list-style-type: none"> – Employees shall not allow political participation or affiliation to improperly influence the performance of their duties to the public.

	<h2>Post-Employment Recommendations for Staff</h2>
	<ul style="list-style-type: none"> ■ Mo. Rev. Stat. 386.200. prohibits recommendations to entities or attorneys subject to commission <ol style="list-style-type: none"> 1. Every commissioner, the public counsel and every person employed or appointed to office, either by the commission or by the public counsel, is hereby forbidden and prohibited to solicit, suggest, request or recommend, directly or indirectly, to any public utility, corporation or person subject to the supervision of the commission, or to any officer, attorney, agent or employee thereof, the appointment of any person to any office, place, position or employment. <p><i>Is almost complete ban on recommendations appropriate?</i></p>

	<h2>Post-Commission Employment</h2>
	<ul style="list-style-type: none"> ■ Limits already exist <ul style="list-style-type: none"> – One year bar on trying to influence rulemaking <ul style="list-style-type: none"> ■ Exception for adversarial matters – Prohibition on work on matters handled for Commission ■ <i>Should general prohibition be clarified, including both appearing before and working on matters before Commission?</i>

	<h2>Existing Rules Likely Adequate</h2>

	Use of Commission Information
	<ul style="list-style-type: none"> ■ Missouri Executive Order 92-04 <ul style="list-style-type: none"> – Employees shall not disclose confidential information gained by reason of their public positions, nor shall employees use such information for personal gain or benefit.

	Prohibitions on Gifts
	<ul style="list-style-type: none"> ■ Mo. Rev. Stat. 386.200 basically prohibits gifts <ul style="list-style-type: none"> – [E]very such public utility, corporation and person, and every officer, attorney, agent and employee thereof, is hereby forbidden and prohibited to offer [or give] to any commissioner, the public counsel, or to any person employed by the commission or by the public counsel, any office, place, appointment or position, [or] any free pass or transportation or any reduction in fare to which the public generally are not entitled or free carriage for property or any present, gift, entertainment or gratuity of any kind

	Financial Conflict-of-Interest Rules
	<ul style="list-style-type: none"> ■ Already prohibition for Commissioners and professional staff to have relationship or financial interest ■ <i>Do rules need to be extended to family members?</i>

	Limits on Pay from Former Employers
	<ul style="list-style-type: none"> ■ Pay from former employers already prohibited

	Concurrent Employment
	<ul style="list-style-type: none"> ■ Already broad prohibition against current employment ■ <i>Should non-related employment be permitted for staff?</i>

	Other Issues Deserving Attention
