

FILED  
March 4, 2011  
Data Center  
Missouri Public  
Service Commission



**Robin Carnahan**  
Secretary of State

**Administrative Rules Division  
Rulemaking Transmittal Receipt**

Rule ID: 12604  
Date Printed: 3/2/2011  
Rule Number: 4 CSR 240-2.040  
Rulemaking Type: Proposed Amendment  
Date Submitted to Administrative Rules Division: 3/2/2011  
Date Submitted to Joint Committee on Administrative Rules: 3/2/2011

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Name of Person to Contact with questions concerning this rule:

Content: Nancy Dippell

Phone: 1-4393

Email: [nancy.dippell@psc.mo.gov](mailto:nancy.dippell@psc.mo.gov)

Fax:

RuleDataEntry:

Phone:

Email:

Fax:

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Included with Rulemaking:

Cover Letter

3/02/2011

Affidavit for public cost

3/02/2011

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# Robin Carnahan

Secretary of State  
Administrative Rules Division

## RULE TRANSMITTAL

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SECRETARY OF STATE  
ADMINISTRATIVE RULES

Rule Number 4 CSR 240-2.040

COPY

Use a "SEPARATE" rule transmittal sheet for EACH individual rulemaking.

Name of person to call with questions about this rule:

Content Nancy Dippell Phone 573-751-4393 FAX \_\_\_\_\_

Email address Nancy.dippell@psc.mo.gov

Data Entry same Phone \_\_\_\_\_ FAX \_\_\_\_\_

Email address \_\_\_\_\_

Interagency mailing address Public Service Commission, 9<sup>th</sup> Fl, Gov.Ofc Bldg, JC, MO

### TYPE OF RULEMAKING ACTION TO BE TAKEN

☐ Emergency rulemaking, include effective date

☒ Proposed Rulemaking

☐ Withdrawal ☐ Rule Action Notice ☐ In Addition ☐ Rule Under Consideration

☐ Order of Rulemaking

Effective Date for the Order \_\_\_\_\_

☐ Statutory 30 days OR Specific date \_\_\_\_\_

Does the Order of Rulemaking contain changes to the rule text? ☐ NO

☒ YES—LIST THE SECTIONS WITH CHANGES, including any deleted rule text:

Amending sections (1), (3), and (4).

Small Business Regulatory  
Fairness Board (DED) Stamp

SMALL BUSINESS  
REGULATORY FAIRNESS BOARD

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JOINT COMMITTEE ON

MAR 02 2011

ADMINISTRATIVE RULES



**Commissioners**

**KEVIN GUNN**  
Chairman

**ROBERT M. CLAYTON III**

**JEFF DAVIS**

**TERRY M. JARRETT**

**ROBERT S. KENNEY**

***Missouri Public Service Commission***

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

**WESS A. HENDERSON**  
Executive Director

**VACANT**  
Director, Administration and  
Regulatory Policy

**ROBERT SCHALLENBERG**  
Director, Utility Services

**NATELLE DIETRICH**  
Director, Utility Operations

**STEVEN C. REED**  
Secretary/General Counsel

**KEVIN A. THOMPSON**  
Chief Staff Counsel

March 2, 2011

Robin Carnahan  
Secretary of State  
Administrative Rules Division  
600 West Main Street  
Jefferson City, Missouri 65101

Re: 4 CSR 240-2.040 Practice Before the Commission

Dear Secretary Carnahan,

**CERTIFICATION OF ADMINISTRATIVE RULE**

I do hereby certify that the attached is an accurate and complete copy of the proposed rulemaking lawfully submitted by the Missouri Public Service Commission.


The Public Service Commission has determined and hereby certifies that this proposed rulemaking will not have an economic impact on small businesses. The Public Service Commission further certifies that it has conducted an analysis of whether there has been a taking of real property pursuant to section 536.017, RSMo 2000, that the proposed rulemaking does not constitute a taking of real property under relevant state and federal law, and that the proposed rulemaking conforms to the requirements of 1.310, RSMo, regarding user fees.

The Public Service Commission has determined and hereby also certifies that this proposed rulemaking complies with the small business requirements of 1.310, RSMo, in that it does not have an adverse impact on small businesses consisting of fewer than twenty-five full or part-time employees or it is necessary to protect the life, health, or safety of the public, or that this rulemaking complies with 1.310, RSMo, by exempting any small business consisting of fewer than twenty-five full or part-time employees from its coverage, by implementing a federal mandate, or by implementing a federal program administered by the state or an act of the general assembly.

Statutory Authority: section 386.410, RSMo 2000

If there are any questions regarding the content of this proposed rulemaking, please contact me at the address and number below.

Sincerely,

A handwritten signature in black ink that reads "Nancy Dippell". The signature is fluid and cursive, with the first name "Nancy" and last name "Dippell" clearly distinguishable.

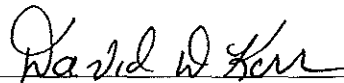
Nancy Dippell, Deputy Chief Regulatory Law Judge  
Missouri Public Service Commission  
200 Madison Street  
P.O. Box 360  
Jefferson City, MO 65102  
(573) 751-4393  
Nancy.dippell@psc.mo.gov

Enclosure

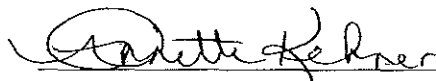
**AFFIDAVIT  
PUBLIC COST**

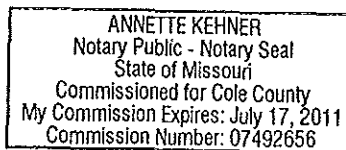
STATE OF MISSOURI )  
  )  
COUNTY OF COLE     )

I, David Kerr, 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 amendment, 4 CSR 240-2.040, is less than five hundred dollars in the aggregate to this agency, any other agency of state government or any political subdivision thereof.

  
\_\_\_\_\_  
David Kerr  
Director  
Department of Economic Development

Subscribed and sworn to before me this 18<sup>th</sup> day of Feb., 2011, I am commissioned as a notary public within the County of Cole, State of Missouri, and my commission expires on 17 July 2011

  
\_\_\_\_\_  
Notary Public



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

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PROPOSED AMENDMENT

SECRETARY OF STATE  
ADMINISTRATIVE RULES

**4 CSR 240-2.040 Practice Before the Commission.** The commission is amending sections (1), (3), and (4).

*PURPOSE: Section (1) is being amended to reflect the new organizational structure of the commission distinguishing "staff counsel" from the "general counsel." Section (3) is amended to clarify that a visiting attorney must provide proof of compliance with Supreme Court Rule 6.01(m). Section (4) is being amended to allow a Rule 13 certified law student to appear before the commission without petitioning the commission.*

(1) The *[general]*staff counsel represents the **commission** 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.]* **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:

(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:

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

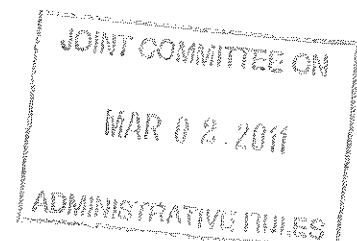
3. The designated Missouri attorney shall simultaneously enter an appearance as an attorney of record~~[.]~~; **and**

4. **The visiting attorney shall provide a receipt or a statement showing that he or she has complied with the requirement of Missouri Supreme Court Rule 6.01(m).**

(4) An eligible law student **certified under Missouri Supreme Court Rule 13** may *[petition the commission to be allowed to]* **appear before the commission as an attorney.** Such application must comply with any applicable rules or statutes.

*AUTHORITY: section 386.410, RSMo 2000.\* 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 Aug. 24, 1999, effective April 30, 2000. Amended: Filed \_\_\_\_\_.*

*\*Original authority: 386.410, RSMo 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 amendment will not cost state agencies or political subdivisions more than \$500 in the aggregate.

**PRIVATE ENTITY COST:** This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

**NOTICE TO SUBMIT COMMENTS AND NOTICE OF PUBLIC HEARING:** Anyone may file comments in support of or in opposition to this proposed amendment with the Missouri Public Service Commission, Steven C. Reed, Secretary of the Commission, P.O. Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the Commission's offices no later than May 16, 2011, and should include a reference to Commission Case No. AX-2011-0094. Comments may also be submitted via a filing using the Commission's electronic filing and information system at <http://www.psc.mo.gov/case-filing-information>. A public hearing regarding this proposed amendment is scheduled for May 19, 2011, at 10:00 a.m., in Room 310 of the commission's offices in the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed amendment, and may be asked to respond to commission questions. Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 (voice) or Relay Missouri at 711.

# **Small Business Regulatory Fairness Board**

## **Small Business Impact Statement**

**Date: 1-27-11**

**Rule Number: 4 CSR 240-2.040 Practice Before the Commission**

**Name of Agency Preparing Statement: Public Service Commission**

**Name of Person Preparing Statement: Nancy Dippell**

**Phone Number: 573-751-4393      Email: nancy.dippell@psc.mo.gov**

**Name of Person Approving Statement: Morris Woodruff, Chief Regulatory Law Judge, Public Service Commission**

**Please describe the methods your agency considered or used to reduce the impact on small businesses:** This rule is being amended to reflect changes in the Commission's organizational structure and to the rules for visiting and student attorneys set out by the Missouri Supreme Court. Because these were organizational changes in the agency and because the Supreme Court governs the practice of law in the state, nothing could be done to reduce impact on small businesses. The Commission held a roundtable discussion on November 30, 2010, and invited the public to comment informally on the draft of the proposed rules. The Commission subsequently incorporated some changes from that roundtable into the rules for clarity and ease of use.

**Please explain how your agency has involved small businesses in the development of the proposed rule.**

This rule is being amended to reflect changes in the Commission's organizational structure and to the rules for visiting attorneys set out by the Missouri Supreme Court. The Commission held a roundtable discussion on November 30, 2010, and invited the public to comment informally on the draft of the proposed rules. The Commission subsequently incorporated some changes from that roundtable into the rules for clarity and ease of use.

**Please list the probable monetary costs and benefits to your agency and any other agencies affected. Please include the estimated total amount your agency expects to collect from additionally imposed fees and how the moneys will be used.**

There are no monetary costs or benefits as a result of this rule.



**Please describe small businesses that will be required to comply with the proposed rule and how they may be adversely affected.**

Attorneys not licensed to practice law in the state of Missouri who wish to appear before the Commission are the only small businesses that will be affected. Those attorneys will be required to provide proof of compliance with Supreme Court Rule 6.01(m). Compliance with that rule was required by the Supreme Court, the Commission's rule only requires proof of compliance.

**Please list direct and indirect costs (in dollars amounts) associated with compliance.**

There is no additional cost to attorneys as a result of this rule. The cost is associated with complying with the Supreme Court Rule.

**Please list types of business that will be directly affected by, bear the cost of, or directly benefit from the proposed rule.**

Out of state attorneys will bear any costs. All citizens of the state of Missouri will benefit from only licensed attorneys providing legal representation before the Commission.

**Does the proposed rule include provisions that are more stringent than those mandated by comparable or related federal, state, or county standards?**

Yes\_\_\_ No\_X\_\_

**If yes, please explain the reason for imposing a more stringent standard.**

*For further guidance in the completion of this statement, please see §536.300, RSMo.*