

MEMORANDUM

TO: Dale Hardy Roberts, Secretary

DATE: December 2, 1999

RE: Authorization to File Orders of Rulemaking With the Office of Secretary of State

CASE NO: AX-2000-110

The undersigned Commissioners hereby authorize the Secretary of the Missouri Public Service Commission to file Orders of Rulemaking with the Office of Secretary of State, to wit:

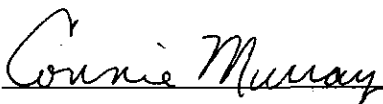
4 CSR 240-2.040 Practice Before the Commission



Sheila Lumpe, Chair



Harold Crumpton, Commissioner



Connie Murray, Commissioner



Robert Schemenauer, Commissioner



M. Dianne Drainer, Vice Chair

RECEIVED

JAN 21 2000

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
Diskette File Name 2.040 rule (Word 97 format)
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 _____ 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 240-2.040

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.

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/>

January 21, 2000

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

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
Page two
January 21, 2000

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

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: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 240-2.040 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 Oct. 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.