

Title 4 – DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240 – Public Service Commission
Chapter 4 – Standards of Conduct

4.020 Conduct of Participants in Commission Proceedings

PURPOSE: The commission must ensure its impartiality in reaching decisions. This rule establishes requirements for the behavior of those who participate in commission proceedings. This rule is being amended to clarify areas of confusion and to bring the rule into closer alignment with the statute.

(1) Any attorney who practices before the commission shall comply with the rules of the commission and shall adhere to the standards of ethical conduct required of attorneys before the courts of Missouri. This shall not preclude an attorney or any person participating in a commission case, including commissioners, advisors or regulatory law judges (RLJs) from replying to charges of misconduct publicly made against that person, or from participating in the proceedings of legislative, administrative or other investigative bodies.

(2) Except as provided below, in contested cases before the commission, no party, attorney or other person acting on behalf of a party, shall communicate, or cause another to communicate, about the merits of the case with any commissioner, advisor or RLJ, except for those communications made in the record of the case.

(3) Unlimited Communications. The following communications are permitted without limitation:

- (A) Communications concerning rulemakings;
- (B) Communications concerning investigative dockets designated as non-contested cases in which no action can be taken;
- (C) Communications concerning a tariff filing where no party has moved for suspension or rejection;
- (D) Communications concerning contested cases that have not been set for hearing, which are made in a properly noticed agenda session or other forum at which all parties have the opportunity to be present or represented;
- (E) Communications concerning stipulations and agreements in contested cases, which are made in a properly noticed agenda session or other forum at which all parties have the opportunity to be present or represented;
- (E) Communications of a purely procedural nature that affect only the communicating party;

(F) Communications among the parties and the RLJ in the context of a discovery conference in which all parties have notice and an opportunity to be present;

(G) Communications between commissioners, advisors and RLJs and the General Counsel or other attorneys representing the commission on appeal of any of its orders or in any court cases in which the commission is a party, provided that such communication with any given person is reasonably necessary to pursue the matter;

(H) Communications between the commission and any other governmental entity, provided that, if such information is relied on by the commission in its decision, it will either be included in the record or disclosed by the commission no later than the issuance of the decision;

(I) Communications publicly conveyed during a presentation at a conference or other forum where such information is widely disseminated to all attendees; or

(J) Communications concerning a matter that is not the subject of an open docket of any nature at the commission.

(4) Limited Communications. The following communications are permitted with the condition that the communicator shall, no later than the next business day after the communication or the action that causes the communication to be restricted, file a copy of any written communication or a disclosure statement that specifically describes the circumstances and substance of a verbal communication, in the commission record of the matter:

(A) Communications concerning a matter that is not the subject of an open docket when the communication is made, but a contested case is opened on the matter within 90 days of the communication;

(B) Communications concerning an uncontested case that becomes contested (e.g. a motion to suspend is filed), regardless of whether the uncontested case was designated with a docket number or a tracking number;

(C) Communications concerning a small company rate case proceeding filed under 4 CSR 240-3.050 after the matter is set for hearing;

(D) Communications concerning matters of procedure that affect more than the communicating party; or

(E) Communications concerning a matter that is the subject of an open docket that directly relate to an emergency in which the safety of life is endangered or substantial loss of property is threatened.

(5) Prohibited Communications. Communication concerning the merits of any pending commission contested case, made outside the record of that case, may not be made by any party, attorney or other person acting on behalf of a party to any Commissioner, Advisor or RLJ. A case is no longer pending when the final order in the matter is effective and no request for rehearing is filed or all requests for rehearing have been denied. In the event a prohibited communication is

inadvertently made, the person making the communication shall, as quickly as possible, make the applicable filing as if the communication were a restricted communication. If that person fails to do so, another person who is aware of the communication, including the recipient, shall make the necessary filing no later than three business days after such person is made aware of the communicator's failure to make the applicable filing.

(6) Each commissioner and RLJ shall conduct fair and impartial hearings, avoid unnecessary delay in the disposition of cases and maintain order and proper decorum at hearings. No commissioner, advisor or RLJ shall invite or knowingly entertain any prohibited *ex parte* communication. A commissioner, advisor or RLJ that receives an *ex parte* communication shall not entertain or consider such communication concerning the merits of the proceeding, unless such communication is subsequently admitted into evidence.

(7) Recusal or Disqualification. The commission lacks jurisdiction to order or otherwise remove a commissioner from any proceeding. However, every party is entitled to have its case considered by a commission consisting only of persons who are not interested or prejudiced in the cause and who are not parties to the cause. If a party believes that grounds exist that a commissioner is party to a pending case, or is interested or prejudiced in the case, such party shall seek appropriate relief in the circuit court.

(8) It is improper for any person interested in a case before the commission to attempt to sway the judgment of the commission by making a statement or taking any action outside the hearing process to bring pressure or influence to bear on the commission, any commissioner, advisor or RLJ.

(9) Where a contested case precipitates written or electronic correspondence from the general public, such correspondence from non-party entities or individuals shall be placed in the comment portion of the case file but shall not be required to be served on the parties to the case.

(10) No person who has served as a commissioner or as an employee of the commission, after termination of service or employment, shall appear before the commission in relation to any case, proceeding or application with respect to which that person was directly involved and in which that person personally participated or had substantial responsibility during the period of service or employment with the commission.

(11) Meetings with Commissioners. Regulated entities and other interested persons may meet with commissioners to discuss matters of regulation and regulatory policy only under the following circumstances:

(A) The matter to be discussed is not a prohibited communication as set forth above;

(B) If the substance of the meeting will be discussed with a majority of the commission in multiple meetings, without a quorum of the commission present in any one meeting, Public Counsel shall at the discretion of the attending commissioner(s), be allowed to attend or the person or entity requesting the meetings shall offer to schedule such a meeting with the Public Counsel; and

(C) If the meeting is located at the facilities of a regulated entity, the Public Counsel shall be notified of and invited to the meeting no later than the next business day after the meeting(s) with the commissioner(s) is scheduled; and

(12) A commissioner, advisor or RLJ may order any party, attorney or other person acting on behalf of a party that communicates with such commissioner, advisor or RLJ to file notice of such communication in the commission record of the matter.

(13) Nothing in this rule shall impose any limitation on the free exchange of ideas, views, and information between any person and the commission or any commissioner, provided that such communications relate to matters of general regulatory policy and do not address the merits of an open contested case. This rule shall not be construed to require the public disclosure of any information that is proprietary or highly confidential.

AUTHORITY: section 386.410, RSMo 1986. Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed April 26, 1976, effective Sept. 11, 1976.*

**Original authority: 386.410, RSMo 1939, amended 1947, 1977, 1996.*