

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the matter of a Repository File for)	
The Collection and Distribution of)	
Documents Pertaining to the Ethics)	<u>File No. AW-2009-0313</u>
Review at the Missouri Public Service)	
Commission)	

NOTICE OF PROPOSED RULES

July 1, 2009

Hinshaw & Culbertson LLP hereby files the attached proposed ethics rules for the Commission and practice before the Commission. These rules include the *ex parte* rules previously filed, with slight reworking to incorporate new definitions of an anticipated case and an expected party to such anticipated case. These rules are expected to serve largely as the final preliminary draft that will be subjected to comment by interested persons. However, Hinshaw believes it is quite likely they will be supplemented with a rule making clearer the procedures that should be followed for the Commission to consider whether sanctions should be imposed in a particular case.

In the very near future, Hinshaw expects to file supplemental pleadings that will show a comparison of these rules to existing Missouri authorities, and also comments that explain the genesis of these rules and some of the major decisions made during drafting.

Respectfully submitted,

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Proposed Revisions to Division 240 – Public Service Commission

Chapter 4 – Standards of Conduct

Proposed Rules

Proposed 4 CSR 240-4.100 Purpose and Scope.

(1) The Commission is obligated to promote the public interest and maintain public confidence in its integrity and impartiality. This Chapter prescribes measures to prohibit practices that possess a potential of wrongdoing or that may undermine the public interest or public confidence in the integrity and impartiality of the Commission.

(2) The rules stated in this Chapter are designed to provide guidance to the Commission, its staff and presiding officers, and persons appearing before the Commission. The purposes of these rules can be subverted, however, when they are invoked by parties in a contested case as procedural weapons. That a rule prohibits or discourages certain conduct does not necessarily imply that a party to a contested case has standing to seek enforcement of the rule or to sue for breach of the rule.

Proposed 4 CSR 240-4.110 Definitions.

This rule defines terms used in the rules comprising Chapter 4, Standards of Conduct. It supplements those definitions found in Chapter 386 of the Missouri Revised Statutes and Chapter 2, Practice and Procedure, which unless expressly stated to the contrary also apply to this Chapter.

(1) “Anticipated case” refers to contested case that a person expects to file or to be named a party to within 60 days.

(2) “Corporate affiliate” means a parent or subsidiary corporation, or any other corporation under common control.

(3) “Direct family” includes the parent, sibling, spouse, spousal equivalent, or dependent, whether related or not, as well as any person married to or the spousal equivalent of any of the foregoing.

(4) “Director of the Commission” refers to the Chair of the Commission, the Executive Director of the Commission, and the head of each Division of the Public Service Commission, and includes the Chief Law Judge and the General Counsel of the Commission.

(5) “Expected party to an anticipated case” refers to any person who expects, intends, or anticipates filing or to be named a party to a contested case within 60 days.

Proposed 4 CSR 240-4.115 Application of Executive Order 92-04.

(1) Executive Order 92-04 dated January 31, 1992, sets forth a standard of conduct for appointed officials and state employees including the Commissioners, Commission staff, and presiding officers.

(2) The Commission shall be responsible for the enforcement of applicable statutes, the provisions of Executive Order 92-04, and these rules by the sanction, suspension or discharge of employees violating the same.

EXECUTIVE ORDER 92-04

WHEREAS, public confidence in the integrity of the government of the State of Missouri is of utmost importance; and

WHEREAS, the executive branch of state government must discharge its duties in an independent and impartial manner; and

WHEREAS, executive branch employees must treat the public and fellow employees with respect, courtesy, and dignity, and provide equal access to services for all members of the public; and

WHEREAS, executive branch employees' conduct not only must be within the letter of the law but must seek to fulfill the spirit and intent of the law; and

WHEREAS, executive branch employees must provide a full day's work for a full day's pay, giving to the performance of their duties their earnest effort and best thought; and

WHEREAS, executive branch employees must demonstrate the highest standards of personal integrity and honesty and must not realize undue personal gain from the performance of any official duties; and

WHEREAS, executive branch employees are responsible for enhancing the mission of their agencies; and

WHEREAS, a clear statement of the code of conduct which guides the executive branch is both an assurance to the citizens of Missouri and an aid to our steadfast efforts;

NOW, THEREFORE, I, JOHN ASHCROFT, GOVERNOR OF THE STATE OF MISSOURI, UNDER THE AUTHORITY VESTED IN ME UNDER THE CONSTITUTION AND THE LAWS OF THIS STATE, INCLUDING THE PROVISIONS OF SECTION 105.969 RSMO CUM. SUPP. 1992, DO HEREBY SET FORTH A CODE OF CONDUCT FOR EXECUTIVE BRANCH EMPLOYEES OF MISSOURI STATE GOVERNMENT (EXCEPTING THE EMPLOYEES OF THOSE ELECTED OFFICIALS WHO ARE TO ESTABLISH AN INTERNAL CODE OF CONDUCT FOR THEIR OFFICES):

CODE OF CONDUCT

1. Executive branch employees shall conduct the business of state government in a manner which inspires public confidence and trust.

A. Employees shall avoid any interest or activity which improperly influences, or gives the appearance of improperly influencing, the conduct of their official duties.

- B. Employees shall act impartially and neither dispense nor accept special favors or privileges which might be construed to improperly influence the performance of their official duties.
 - C. Employees shall not allow political participation or affiliation to improperly influence the performance of their duties to the public.
 - D. Employees shall not engage in business with state government, hold financial interests, or engage in outside employment when such actions are inconsistent with the conscientious performance of their official duties.
 - E. Employees shall not use or improperly possess an illegal controlled substance or alcohol in the workplace or during working hours.
 - F. Employees of the State are expected to comply with the statutes of Missouri at all times.
2. Executive branch employees shall conduct themselves in scrupulous compliance with applicable federal, state and local law.
- A. Employees shall observe all conflict of interest provisions in law applicable to their agencies and positions of employment.
 - B. Employees shall adhere to all laws providing equal opportunity to all citizens.
 - C. Employees shall perform their responsibilities as they are specified in law or other authority establishing those responsibilities.
3. Financial compensation of state employment consists of only authorized salaries and fringe benefits.
- A. Employees shall not use their public positions in a manner designed to create personal gain.
 - B. Employees shall not disclose confidential information gained by reason of their public positions, nor shall employees use such information for personal gain or benefit.
 - C. Employees shall not directly or indirectly attempt to influence agency decisions in matters relating to prospective employers with whom employment has been accepted or is being negotiated.
4. Executive branch employees owe the public the diligent application of their knowledge, skills and abilities for which they are compensated.
- A. Employees shall not perform outside employment or other activities not appropriate during hours compensated for state employment and will use leave and other benefits provided by the State only for the purposes intended.
 - B. Employees shall carry out all lawful instructions of designated supervisors, and will report instructions not consistent with law to the proper authorities.
5. Equipment, material and supplies purchased with public funds are intended for the performance of public purposes only.

- 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.
6. The work of state government will be conducted with respect, concern and courtesy toward clients, co-workers and the general public.
- A. Employees shall approach their duties with a positive attitude and constructively support open communication, dedication and compassion.
 - B. Employees shall conduct their duties with courtesy toward clients, co-workers, patients, inmates and the general public, recognizing the diverse background, characteristics and beliefs of all those with whom they conduct state business.
 - C. Employees shall not engage in any form of illegal harassment or discrimination in the workplace, including on the basis of race, color, religion, national origin, ancestry, sex, age or disability.
 - D. Employees, in connection with the performance of their duties, shall not seek sexual favors from a client, co-worker, patient, inmate or member of the public.
7. This code shall provide guidance to the officials and employees of the executive branch of Missouri state government in matters of employment related conduct.
- A. When questions arise in the application of this code, the public interest will receive primary consideration in any resolution.
 - B. This code is not intended to fully prescribe the proper conduct of employees and the failure to prohibit an employee action in this code does not constitute approval of the action.
 - C. This code is intended as a supplement to the provisions in law which govern employee conduct, and in no instance does it decrease the requirements in law.
 - D. Agency heads are responsible for promoting and enforcing this code of conduct among the employees of their agencies in accordance with their respective agency procedures, and shall supplement it with additional provisions to meet the needs of their agencies.
 - E. This code is intended to provide guidance for employment related conduct and is not intended to create any right or benefit enforceable by law.
 - F. No state agency or appointing authority shall discharge, threaten or otherwise retaliate against an employee for reporting in good faith any violation of this code.
 - G. In applying this code to specific situations, the standard to be used is that of a reasonable person having knowledge of the pertinent circumstances.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri, in the City of Jefferson, this 31st day of January, 1992.

(Signature) _____

GOVERNOR

ATTEST

(Signature) _____

SECRETARY OF STATE

Proposed 4 CSR 240-4.120 Prohibition on Gratuities.

(1) Except as provided in 4 CSR 240-4.125 and 4 CSR 240-4.130, all persons subject to the jurisdiction of the Commission shall be prohibited from offering to the Commission, a Commissioner, Commission staff, and presiding officers, and all Commissioners, Commission staff, and presiding officers shall be prohibited from accepting, directly or indirectly, any gifts, meals, gratuities, goods, services, travel, or other benefits. This prohibition applies regardless of the value of the gifts, meals, gratuities, goods, services, travel, or other benefits.

(2) All companies, corporations or individuals subject to the jurisdiction of this Commission, as well as the attorneys and representatives of the foregoing, and the Commission, a Commissioner, Commission staff, or presiding officer shall immediately file with the Chairman and each commissioner, a report of any direct or indirect gifts, meals, gratuities, goods, services, travel, or other benefits given or received and the identity and value of same and the purpose for which given or received, except where the item is covered under 4 CSR 240-4.125 or 4 CSR 240-4.130 and those provisions do not require reporting.

Proposed 4 CSR 240-4.125 Visits to Sites Impacted by Commission Regulations.

(1) The power of the Commission to confer under § 386.210.1 RSMo. includes the power of the Commission, or a Commissioner, or Commission staff to review and inspect sites related to the performance of Commission duties.

(2) The Commission, a Commissioner, or Commission staff may receive free, discounted, or reimbursed meals, travel, or other goods or services from a person other than the Commission when those meals, travel, or other goods or services are directly related to the conducting of a review or inspection of a site related to the performance of Commission duties and the Commission, Commissioner, or Commission staff complies with the remainder of this rule. Failure to comply with the remainder of this rule when receiving free, discounted, or reimbursed meals, travel, or other goods or services shall constitute a violation of the Commission ethics rules, unless a Commissioner or staff receives prior approval from the Commission.

(3) A Commissioner or Commission staff who receives any free, discounted, or reimbursed meals, travel, or other goods or services from any person other than the Commission to conduct a review or inspection permitted under this rule shall file a notice of receipt of such free, discounted, or reimbursed meals, travel, or other goods or services with the secretary of the Commission within five business days of receipt of such item, unless:

- (A) The value of any free or reimbursed meals, travel, or other goods or services, or the discount received on meals, travel, or other goods or services, for a particular site review or inspection is less than \$25; and
 - (B) The total value of any free or reimbursed meals, travel, or other goods or services, or the discount received on meals, travel, or other goods or services, from the person offering or giving the free, discounted, or reimbursed meals, travel or other goods or services, plus the direct family or corporate affiliates of such person, on the particular site review and inspection, and on all other site reviews and inspections during the prior twelve months, is less than \$75.
- (4) Without prior approval of the Commission, a Commissioner or Commission staff may not receive any free, discounted, or reimbursed meals, travel, or other goods or services from a person to review or inspect a site when the total value of free or reimbursed meals, travel, or other goods or services, or the discount received on meals, travel, or other goods or services under this rule and under 4 CSR 240.4-130, from that person, plus the direct family or corporate affiliates of such person, during the prior twelve months, exceeds \$250.
- (5) Without prior approval of the Commission, a Commissioner or Commission staff may receive any free, discounted, or reimbursed meals, travel, or other goods or services from a person when that person, or a direct family member or corporate affiliate of such person, is a party to a contested case or an expected party to an anticipated contested case, only when the following conditions are satisfied.
- (A) The meals, travel, or other goods or services offered to or accepted by the Commission, Commissioner, or Commission staff are offered to the Office of Public Counsel or its designate, and to a designate of every other party to the contested case, on terms substantially equivalent to those offered to the Commission, Commissioner or Commission staff; and
 - (B) Notice of the offer or receipt of meals, travel, or other goods or services is filed in the official file of the case regarding receipt of the meals, travel, or other goods or services. Such notice shall be filed prior to receipt of such meals, travel, or other goods or services, unless prior notice is not permitted by law or is not practicable (including because the contested case has not yet been filed). If prior notice is not permitted or practicable, notice shall be given within two business days of receipt of the meals, travel, or other goods or services, or within two days of the filing of the contested case.
- (6) A person may not offer free, discounted, or reimbursed goods or services under this rule, unless that person complies with subsection (5) of this rule, if that person, or a person in the direct family or corporate affiliate of that person, is a party to a contested case or an expected party to an anticipated contested case at the time when the free, discounted, or reimbursed meals, travel, or other goods or services would be offered or received by the Commission, a Commissioner, or Commission staff. Before the Commission, a Commissioner, or Commission staff receives any free, discounted, or reimbursed meals, travel, or other goods or services under this rule, the person seeking to provide the free, discounted, or reimbursed meals, travel, goods or services shall file a certification stating that the person, its direct family and corporate affiliates are not a party to a contested case or an expected party to an anticipated contested case.

The content of such a certification shall be an application for other consideration for purposes of § 575.060 RSMo.

(7) For purposes of this rule, meals, travel, or other goods or services are “directly related” to the performance of Commission duties when they are directly linked to the conducting of the review or inspection. This includes transportation to a review or inspection site, safety or other equipment required to review and inspect the site, and food, non-alcoholic beverages, and other items that are consumed during the period of travel to or from a site or at the site. Any other meals, travel, or other goods or services not included in this section are not directly related to the performance of Commission duties, and shall not be received by a Commissioner or Commission staff without express prior authorization from the Commission.

(8) The term “site” in this rule refers to a facility that provides goods or services subject to Commission regulation, or that are used by consumers of such goods or services to receive the good or service. The term “site” also includes facilities that would be regulated by the Commission but for the facility’s ownership, location, or consumer served.

(9) The secretary of the Commission shall preserve all notices filed under this rule for a minimum period of five years.

Proposed Rule 4 CSR 240-4.130 Attendance at Educational Conventions and Seminars.

(1) The power of the Commission to confer under 386.210.1 RSMo. includes the power of the Commission, or a Commissioner, or Commission staff to speak or be a guest at a conference, convention or association meeting related to the performance of Commission duties.

(2) The Commission, a Commissioner or Commission staff may receive free, discounted, or reimbursed meals, travel, or other goods or services from a person other than the Commission, unless that person may not participate in offering free, discounted, or reimbursed meals, travel, or other goods or services under section (6) of this rule, to speak or be a guest at a conference, convention or association meeting related to the performance of Commission duties as long as such meals, travel, or other goods or services are offered to similarly situated persons who are speaking or guests at the conference, convention, or association meeting, and the Commission, Commissioner, or Commission staff complies with the remainder of this rule. Failure to do so shall constitute a violation of the Commission ethics rules, unless the Commissioner or staff receives prior approval from the Commission or its designate.

(3) A Commissioner or Commission staff who receives any free, discounted, or reimbursed meals, travel, or other goods or services, from any person other than the Commission, to speak or be a guest at a conference, convention or association meeting related to the performance of Commission duties shall file a notice of receipt of such free, discounted, or reimbursed meals, travel, or other goods or services with the secretary of the Commission within five business days of receipt of such item, unless:

- (A) The value of any free or reimbursed meals, travel, or other goods or services, or the discount received on meals, travel, or other goods or services, for a particular conference, convention, or association meeting is less than \$25; and
- (B) The total value of any free or reimbursed meals, travel, or other goods or services, or the discount received on meals, travel, or other goods or services, from the

person offering or giving the free, discounted, or reimbursed meals, travel or other goods or services, plus the direct family or corporate affiliates of such person, on the particular conference, convention, or association meeting, and on all other particular conference, convention, or association meetings during the prior twelve months, is less than \$75; and

- (C) Receipt of the free, discounted, or reimbursed meals, travel, or other goods or services is permitted under subsections (4) and (5) of this rule.

(4) Without prior approval of the Commission, a Commissioner or Commission staff may not receive any free, discounted, or reimbursed meals, travel, or other goods or services from a person to speak or be a guest at a conference, convention or association meeting when the total value of free or reimbursed meals, travel, or other goods or services, or the discount received on meals, travel, or other goods or services under this rule and under 4 CSR 240.4-125, from that person, plus the direct family or corporate affiliates of such person, during the prior twelve months, exceeds \$250.

(5) Without prior approval from the Commission, a Commissioner, or Commission Staff shall not accept any free, discounted, or reimbursed meals, travel, or other goods or services under this rule from a person when that person, or a direct family member or corporate affiliate of such person, is a party to a contested case or an expected party to an anticipated contested case.

(6) A person may not offer free, discounted, or reimbursed goods or services under this rule if that person, or a person in the direct family or corporate affiliate of that person, is a party to a contested case or an expected party to an anticipated contested case at the time when the free, discounted, or reimbursed meals, travel, or other goods or services would be offered or received by the Commission, a Commissioner, or Commission staff. Before the Commission, a Commissioner, or Commission staff receives any free, discounted, or reimbursed meals, travel, or other goods or services under this rule, the person seeking to provide the free, discounted, or reimbursed meals, travel, goods or services shall file a certification stating that the person, its direct family and corporate affiliates are not a party to a contested case or an expected party to an anticipated contested case. The content of such a certification shall be an application for other consideration for purposes of § 575.060 RSMo.

(7) The secretary of the Commission shall preserve all notices and certifications filed under this rule for a minimum period of five years.

Proposed 4 CSR 240-4.150 Limitation on Ex Parte Communications.

(1) It is improper for any person interested in a contested case or anticipated contested case to attempt to sway the judgment of the Commission, a Commissioner, or a presiding officer by undertaking, directly or indirectly, an ex parte communication prohibited by this section and 4 CSR 240-4.160 or an extra-record communication prohibited by 4 CSR 240-4.170.

(2) A communication with the Commission, Commissioners, the presiding officer assigned to a contested case, or the Commission's advisory staff shall constitute an ex parte communication if:

- (A) It concerns the merits of a pending contested case that has been filed or that a person having the communication expects or intends to file within the next 60 days;
 - (B) A participant to the communication is a party to the contested case or an expected party to an anticipated contested case, or the direct family, corporate affiliate, or officer, employee, agent, or attorney of such party or expected party; and
 - (C) All parties to the contested case are not participating in the communication either personally or through counsel.
- (3) The Commission, Commissioners, the presiding officer assigned to a contested case, or the Commission's advisory staff shall not invite, knowingly entertain, or participate in an ex parte communication, unless:
- (A) The communication is made at a public agenda meeting of the Commission where such matter has been posted in advance as an item for discussion or decision; or
 - (B) The communication is made at a forum where representatives of the public utility affected by the contested case, the Office of Public Counsel, and any other party to the contested case are present; or
 - (C) If made outside such agenda meeting or forum, the communication is subsequently disclosed to the public utility, the Office of the Public Counsel, and any other party to the contested case in accordance with the following procedure:
 - 1. If the communication is written, the person or party making the communication shall no later than the next business day following the communication file a copy of the written communication in the official case file of the case and serve it upon all parties of record; or
 - 2. If the communication is oral, the person or party making the oral communication shall no later than the next business day following the communication file a memorandum in the official case file of the case disclosing the communication and serve such memorandum on all parties of record. The memorandum must contain a summary of the substance of the communication and not merely a listing of the subjects covered.
- (4) An attorney for a person or party that makes a communication governed by subsection (3)(C) of this Rule shall make reasonable efforts to ensure that notice of the communication is filed as provided in subparagraph (3)(C) of this rule. Also, an attorney shall prepare a notice when requested to do so by the Commission, a Commissioner, the presiding officer assigned to a contested case, or the Commission's advisory staff with whom the ex parte communication occurs.
- (5) An attorney for a person or party shall be responsible for making reasonable efforts to ensure that the attorney and the person or party that attorney represents avoid ex parte communications concerning the merits of a contested case other than those provided for under subsections 2(A) and 2(B) of this rule or exempted from this rule under 4 CSR 240-4.160.
- (6) Requests for expeditious treatment of a contested case with the commission are improper except when filed with the secretary of the Commission with copies served upon all other parties to that contested matter.

Proposed 4 CSR 240-4.160 Exceptions from Ex Parte Limitations.

The following communications shall not constitute ex parte communications under 4 CSR 240-4.150 even if they are with the Commission, Commissioners, the presiding officer assigned to a contested case, or the Commission's advisory staff:

(1) A communication with the general assembly or other governmental official of the issues or factual allegations that are the subject of a contested case, provided that the Commission, Commissioners, the presiding officer assigned to a contested case, or the Commission's advisory staff does not express an opinion as to the merits of such issues or allegations.

(2) A communication from one or more members of the public about the Commission, the duties of the Commission, or one or more public utilities as long as subparts (A) through (C) hereto are satisfied.

(A) The member of the public making the communication does not indicate that he or she is an agent or employee of a public utility, or a member of an agent or employee's direct family;

(B) The communication does not reference the name or case number of a particular contested case, and does not contain an attempt to describe the factual or legal issues presented in a particular contested case; and

(C) The communication does not ask the Commission, a Commissioner, the presiding officer assigned to a contested case, or the Commission's advisory staff to take a specific action in a pending contested case.

(D) A communication excluded from regulation 4 CSR 240-4.150 under this subpart shall be filed with the secretary of the Commission in accordance with the following procedure:

1. If the communication is written the Commission, Commissioner, presiding officer assigned to a contested case, or Commission's advisory staff shall within five business days give a copy of the communication to the secretary of the Commission, who shall keep such communication organized by name of the public utility or, if no public utility is named, the name of the person making the communication;

2. If the communication is oral, the Commission, Commissioner, or Commission staff shall within five business days give a written list of the subject covered to the secretary of the Commission, who shall keep such communication organized by name of the public utility or, if no public utility is named, the name of the person making the communication.

(3) A communication from a public utility if it seeks to notify the Commission of an unanticipated interruption or loss of service or provides an update regarding efforts to restore service after such an interruption or loss of service, as long as the communication or a summary thereof is filed with the secretary of the Commission in accordance with the following procedure:

(A) If the communication is written, the Commission, Commissioner, or Commission staff shall within five business days give a copy of the communication to the

secretary of the Commission, who shall keep such communication organized by name of the public utility; or

- (B) If the communication is oral, the Commission, Commissioner, or Commission staff shall within five business days give a written list of the subjects covered to the secretary of the Commission, who shall keep such communication organized by name of the public utility.

- (4) The secretary of the Commission shall preserve all notices filed under subsections (2) or (3) of this rule for a minimum period of five years.

Proposed 4 CSR 240-4.170 Extra-Record Statements Regarding Contested Case.

(1) As stated in 4 CSR 240-4.150, it is improper for any person interested in a contested case or anticipated contested case to attempt to sway the judgment of the Commission, a Commissioner, or a presiding officer by undertaking, directly or indirectly, an ex parte communication prohibited by 4 CSR 240-4.150 or 240-4.160 or an extra-record communication prohibited by this section.

(2) A contested case constitutes an adjudicative proceeding under Missouri Supreme Court Rule 4-3.6, as that rule may be amended. Accordingly, any attorney who participates in any contested case before the Commission shall comply with Missouri Supreme Court Rule 4-3.6 regarding extra-record statements made about the proceeding. Specifically:

- (A) During the pendency of a contested case before the Commission, an attorney or law firm associated with the attorney shall not make or participate in making a statement, other than a quotation from or reference to public records, that a reasonable person would expect to be disseminated by means of public communication if it is made outside the official proceedings and relates to any of the following:
 - 1. Evidence regarding the occurrence of transaction involved;
 - 2. The character, credibility or criminal record of a party, witness or prospective witness;
 - 3. Physical evidence, the performance or results of any examinations or tests or the refusal or failure of a party to submit to examinations or tests;
 - 4. His/her opinion as to the merits of the claims, defenses or positions of any interested person; and
 - 5. Any other matter which is reasonably likely to interfere with a fair hearing.
- (B) As required under Missouri Supreme Court Rules 4-5.1 and 4-5.3, an attorney for a party to a contested case shall exercise reasonable care to prevent colleagues, employees and associates from making an extra-record statement as the attorney for the party is prohibited from making; and
- (C) These restrictions do not preclude an attorney for a party from replying to charges of misconduct publicly made against the attorney or the attorney's client, or from

participating in the proceedings of legislative, administrative or other investigative bodies.

(3) The prohibitions in this rule apply from the time a contested case is set for hearing by the Commission until the proceedings in the contested case are terminated by final order of the Commission. An on-the-record proceeding means a proceeding where a hearing is set and to be decided solely upon the record made in a commission hearing.

Proposed 4 CSR 240-4.200 Financial Conflicts of Interest.

(1) A Commissioner, Commission staff, or presiding officer appointed to preside over a contested case shall have a disqualifying conflict and shall recuse from a contested case when a reasonable person would doubt the Commissioner, Commission staff, or presiding officer can make a fair and impartial decision in that contested case. The following are a list of circumstances when such a disqualifying conflict occurs:

- (A) When the Commissioner, Commission staff, or presiding officer has a personal bias or prejudice concerning a party or its representative, or has prejudged a disputed evidentiary fact involved in a contested case prior to its resolution. For the purposes of this subsection, “personal bias or prejudice” means a predisposition toward a party based on a previous or ongoing relationship, including a professional, personal, familial or other intimate relationship, that renders the Commissioner, Commission staff, or presiding officer unable to exercise judgment or other functions impartially;
- (B) When the Commissioner, Commission staff, or presiding officer has a pecuniary interest in the outcome of the contested case other than as a customer of a party;
- (C) When in previous employment the Commissioner, Commission staff, or presiding officer served as an attorney, adviser, consultant or witness in the contested case, or otherwise provided professional services regarding the same contested case; or
- (D) When, prior to serving as a Commissioner or Commission staff, the Commissioner, Commission staff, or presiding officer made statements concerning the contested case or a factual issue in the contested case.

(2) A party to a contested case that knows of an apparent disqualifying conflict for Commission staff or a presiding officer shall promptly notify the apparently conflicted Commission staff or presiding officer of the apparent disqualifying conflict. If the Commission staff or presiding officer declines to recuse from the contested case, upon written request of a party, the Commission staff or presiding officer shall provide a written explanation of the reason for not recusing within 10 days of receipt of a party’s request. This notice shall be filed with the Commission secretary and sent to all parties to the contested case.

(3) Upon receipt of the written explanation from Commission staff or a presiding officer under section (2) of this rule, the Commission shall review the written explanation and determine whether the Commission staff or presiding officer should be disqualified from work on the contested case.

(4) A party to a contested case that knows of an apparent disqualifying conflict for a Commissioner shall promptly notify the apparently conflicted Commissioner of the apparent disqualifying conflict. If the Commissioner then declines to recuse from the contested case, upon written request of a party, the Commissioner shall provide a written explanation of the reason for not recusing within 10 days of receipt of a party's request. This notice shall be filed with the Commission secretary and sent to all parties to the contested case. Further review of a Commissioner's decision not to recuse shall be through a writ filed with the Missouri Court of Appeals for the Court whose territorial jurisdiction includes Jefferson City.

(5) In deciding whether to recuse, a Commissioner may consult with the Chief Law Judge. Such consultations shall be deemed closed records under Missouri Revised Statute 610.021(1).

Proposed 4 CSR 240-4.210 Prohibited Financial Interests

(1) During the period of service with or on the Commission, a Commissioner, Commission staff, or presiding officer shall not:

(A) have a pecuniary interest, including an interest as an officer, director, partner, owner, employee, attorney, or consultant, in:

1. a public utility or a corporate affiliate of a public utility; or
2. a person who has a significant portion of business consisting of furnishing goods or services to public utilities or corporate affiliates of a public utility; or

(B) directly or indirectly own or control securities in a public utility, a corporate affiliate of a public utility, or direct competitor of a public utility.

(2) A Commissioner, Commission staff, or presiding officer shall not directly or indirectly solicit, request from, or suggest or recommend to a public utility or an agent, representative, attorney, employee, officer, owner, director, or partner of a public utility the appointment to a position or the employment of a person by the public utility or a corporate affiliate of the public utility.

(3) Subsection (1)(A) does not apply to an interest in a nonprofit group or association, other than a trade association, that is solely supported by gratuitous contributions of money, property, or services.

(4) It is not a violation of this section if a Commissioner or Commission staff, on becoming the owner of stocks, bonds, or another pecuniary interest in a public utility, a corporate affiliate of a public utility, or direct competitor of a public utility otherwise than voluntarily, informs the Commission and the attorney general of the ownership and divests the ownership or interest within the period prescribed by the Commission.

(5) It is not a violation of this section if a pecuniary interest is held indirectly by ownership of an interest in a retirement system, institution, or fund that in the normal course of its business invests in diverse securities independently of the control of the Commissioner, Commission staff, or presiding officer.

(6) This section does not apply to a contract for a public utility product or service or equipment for use of a public utility product when a Commissioner or Commission employee is acting as a consumer.

(7) In this section, a “pecuniary interest” includes income, compensation, and payment of any kind, in addition to an ownership interest.

Proposed 4 CSR 240-4.220 Limitation on Post-Commission Employment.

(1) No person who has served as a Commissioner, Commission staff, or a presiding officer shall, after termination of service or employment with or on the Commission, appear before the Commission in relation to any case, proceeding, or application with respect to which that person was directly involved or in which that person personally participated or had substantial responsibility during the period of service or employment with the Commission.

(2) No person who has served as a Commissioner, Commission staff, or a presiding officer shall, for one year after termination of service or employment with or on the Commission, appear before the Commission as an attorney or other representative, or otherwise seek to influence the Commission in any rulemaking proceeding.

Proposed 4 CSR 240-4.300 Limitation on Use of Commission Property and Equipment.

(1) A Commissioner, Commission staff, or presiding officer shall not use Commission time, property, equipment or other facilities to benefit a personal or financial interest, or the personal or financial interest of direct family. A Commissioner, Commission staff, or presiding officer have a duty to protect and conserve Commission property and equipment, including but not limited to supplies, materials and other items as may be issued or entrusted to that person.

(2) Notwithstanding section (1) of this rule, a Commissioner, Commission staff, or presiding officer may use Commission time, property, equipment, or facilities as follows:

(A) When the Commission or a Director of the Commission acting with authority authorizes the use of property, equipment or other facility in writing pursuant to a written policy of the Commission or due to emergency circumstances; or

(B) When the use satisfies the following conditions:

(1) The use does not interfere with the performance of public duties;

(2) The cost or value related to the use is nominal; and

(3) The use does not create the appearance of impropriety.

(C) The use of Commission telephones or other means of communication if there is no special charge for that use.

(3) If the Commission incurs a cost as a result of a use that is authorized pursuant to this rule or if the Commission would ordinarily charge a member of the general public for the use, the Commissioner, Commission staff, or presiding officer shall pay such costs or charges promptly.

(4) This rule does not prohibit the Commission, Commission staff, or a presiding officer from using Commission time, property, equipment, or facilities to benefit others in an appropriate manner while carrying out official duties.

(5) Notwithstanding section (2)-(4) of this Rule, Commissioners, Commission staff, and presiding officers shall not use or authorize the use of Commission time, property, equipment or facilities, directly or indirectly, for the purpose of assisting a campaign for or against election of a person to an office or for the promotion of or opposition to a ballot proposition. Knowing acquiescence by a person with authority to direct, control or influence the actions of the Commissioner, Commission staff, or presiding officer constitutes a violation of this subsection.

(6) Time, property, equipment and facilities of the Commission include, but are not limited to, use of stationery, postage, postage machines, Commission employees during working hours, vehicles, office space, publications of the Commission, and lists of persons served by or under the jurisdiction of the Commission.

Proposed 4 CSR 240-4.400 Confidentiality

(1) A Commissioner, Commission staff, or presiding officer shall not disclose confidential information acquired during the course of official duties or by reason of position with the Commission.

(2) A Commissioner, Commission staff, or presiding officer shall not directly or indirectly use information acquired during the course of official duties or by reason of position with the Commission to benefit a personal or financial interest, or the personal or financial interest of another.

Proposed 4 CSR 240-4.900 Sanctions for Violations.

In addition to legal remedies otherwise available, the Commission may upon a finding by a preponderance of the evidence that a person has violated one or more rules set forth in 4 CSR 240-4 impose the following sanctions upon such person:

(1) If the person who has violated the rules of this chapter is Commission staff, then the Commission may:

- (A) Order the person to stop engaging in any official action related to a violation;
- (B) Order divestiture, establishment of a blind trust, restitution, or forfeiture;
- (C) Remove the person from the matter where a violation occurred;
- (D) Order restitution or disgorgement of any ill-gotten gains; or
- (E) Recommend that the Commission take disciplinary action against the employee, including dismissal.

(2) In addition to those powers enumerated in section (1) of this Rule, if the person who has violated the rules of this chapter is a law judge, then the Commission may:

- (A) Order the law judge to refrain from voting, deliberating, or participating in a matter; or

- (B) Recommend to the appropriate appointing authority that the member be removed from the board or commission.
- (3) If the person who violated the rules of this chapter is a party, or an attorney or other representative of a party, then the Commission may:
- (A) Issue a public statement of its findings, conclusions, and recommendation;
 - (B) Suspend the person from appearing as an attorney or other representative of a party for a specified duration;
 - (C) Refer the person to an appropriate professional body for further investigation and discipline; or
 - (D) Request the attorney general to exercise all legal and equitable remedies available to the state to seek whatever relief is appropriate.
- (4) Any action taken under this rule shall be subject to review in the manner prescribed by an applicable collective bargaining agreement or personnel statute or rule.

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