



**Rules of
Department of Economic
Development
Division 240—Public Service Commission
Chapter 4—Standards of Conduct**

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

4 CSR 240-4.010 Gratuities

PURPOSE: The commission is obligated to promote the public interest and maintain public confidence in its integrity and impartiality. This rule prescribes measures to prohibit practices that possess a potential of wrongdoing.

(1) Each member of the commission and all of its employees are directed to read and comply with this rule and with Executive Order 92-04 dated January 31, 1992 following, which sets forth a standard of conduct for appointed officials and state employees. The commission shall be responsible for the enforcement of applicable statutes, the provisions of the Executive Order and this rule by the suspension or discharge of employees violating the same.

(2) All companies, corporations or individuals and any representative subject to the jurisdiction of the commission shall be prohibited from offering and all members and employees of the commission shall not accept, directly or indirectly, any gifts, meals, gratuities, goods, services or travel, regardless of value, except meals to a commissioner or an employee of the commission when given in connection with a speaking engagement or when the individual is a guest at a conference, convention or association meeting.

(3) All companies, corporations or individuals and any representative subject to the jurisdiction of this commission, and the members and employees of the commission shall immediately file with the chairman and each member of the commission, from and after March 18, 1976, report of any direct or indirect gratuities, meals, services, gifts or travel given or received and the identity and value of same and the purpose for which given or received, which is not permitted by this rule.

AUTHORITY: section 386.040, RSMo 1986. Original rule filed May 2, 1973, effective June 1, 1973. Amended: Filed Nov. 7, 1984, effective Feb. 11, 1985.*

**Original authority: 386.040, RSMo 1939.*

**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

4 CSR 240-4.020 Ex Parte and Extra-Record Communications

PURPOSE: To set forth the standards to promote the public trust in the commission with regard to pending filings and cases. This rule regulates communication between the commission, technical advisory staff, and presiding officers, and anticipated parties, parties, agents of parties, and interested persons regarding substantive issues that are not part of the evidentiary record.

(1) Definitions.

(A) Anticipated contested case—Any case that a person anticipates, knows, or should know will be filed before the commission within sixty (60) days and that such person anticipates or should anticipate will be or become a contested case.

(B) Anticipated party—A person who anticipates, knows, or should know that such person will be a party to a contested case.

(C) Contested case—Shall have the same meaning as in section 536.010(4), RSMo.

(D) Commission—Means the Missouri Public Service Commission as created by Chapter 386, RSMo.

(E) Commissioner—Means one (1) of the members of the commission.

(F) Discussed case—Each contested case or anticipated contested case whose substantive issues are the subject of an extra-record communication regulated under this rule.

(G) Ex parte communication—Any communication outside of the contested case hearing process between the commission, a commissioner, a member of the technical

advisory staff, or the presiding officer assigned to the proceeding and any party or anticipated party, or the agent or representative of a party or anticipated party, regarding any substantive issue. Ex parte communications shall not include a communication regarding general regulatory policy allowed under section 386.210.4, RSMo, communications listed in section (3) of this rule, or communications that are de minimis or immaterial.

(H) Extra-record communication—Any communication outside of the contested hearing process between the commission, a commissioner, a member of the technical advisory staff, or the presiding officer assigned to the proceeding and any individual interested in a contested case or anticipated contested case regarding any substantive issue. Extra-record communications shall not include communications that are de minimis or immaterial.

(I) Finally adjudicated—A decision of the commission in a contested case which is no longer subject to appeal.

(J) General regulatory policy—Any topic that is not specific to a single entity regulated by the commission and such topic is not reasonably believed by any person who is a party to the communication to be a subject within a contested case or anticipated contested case of which the person or such person's principal is or will be a party. Any communication regarding the merits of an administrative rule, whether a concept or a pending rulemaking, or legislation, whether a concept or a pending piece of legislation, shall at all times be considered a communication regarding a general regulatory policy allowed under section 386.210.4, RSMo.

(K) Party—Any applicant, complainant, petitioner, respondent, or intervenor in a contested case before the commission. Commission staff and the public counsel are also parties unless they file a notice of their intention not to participate in the relevant proceeding within the period of time established for interventions by commission rule or order, or where staff serves in an advisory capacity pursuant to any commission rule.

(L) Person—Any individual, partnership, company, corporation, cooperative, association, political subdivision, entity regulated by the commission, party, or other entity or body that could become a party to a contested case.

(M) Presiding officer—Means a commissioner, or a law judge licensed to practice law in the state of Missouri and appointed by the commission to preside over a case.

(N) Public counsel—Shall have the same meaning as in section 386.700, RSMo.



(O) Substantive issue—The merits, specific facts, evidence, claims, or positions which have been or are likely to be presented or taken in a contested case. The term substantive issue does not include procedural issues, unless those procedural issues are contested or likely to materially impact the outcome of a contested case.

(P) Technical advisory staff—Shall have the same meaning as in section 386.135, RSMo.

(2) Any regulated entity that intends to file a case likely to be a contested case shall file a notice with the secretary of the commission a minimum of sixty (60) days prior to filing such case. Such notice shall detail the type of case and issues likely to be before the commission.

(A) Any case filed which is not in compliance with this section shall not be permitted and the secretary of the commission shall reject any such filing.

(B) A party may request a waiver of this section for good cause.

(3) Ex Parte Communications.

(A) No party or anticipated party shall initiate, participate in, or undertake, directly or indirectly, an ex parte communication.

(B) A commissioner, technical advisory staff, or the presiding officer assigned to a proceeding shall not initiate, participate in, or undertake, directly or indirectly, an ex parte communication regarding a contested case or anticipated contested case. However, it shall not constitute participation in or undertaking an ex parte communication if such person—

1. Does not initiate the communication;

2. Immediately terminates the communication, or immediately alerts the initiating person that the communication is not proper outside the hearing process and makes a reasonable effort to terminate the communication; and

3. Files notice in accordance with section (4) of this rule, as applicable.

(C) Should an ex parte communication occur, the party or anticipated party involved in such communication shall file a notice in the case file if such exists or if not, with the secretary of the commission. Such notice shall provide the information required in section (4) of this rule.

(D) The secretary of the commission shall create a repository for any notice of ex parte communication filed in advance of an anticipated contested case. Once such a case has been filed, the secretary shall promptly file any such notices in the official case file for each discussed case.

(4) A person who initiates an extra-record communication regarding a pending case shall within three (3) business days following such communication give notice of that communication as follows:

(A) If the communication is written, the initiating person or party shall file a copy of the written communication in the official case file for each discussed case; or

(B) If the communication is not written, the initiating person shall file a memorandum disclosing the communication in the official case file for each discussed case. The memorandum must contain a list of all participants in the communication; the date, time, location, and duration of the communication; the means by which the communication took place; and a summary of the substance of the communication and not merely a listing of the subjects covered. Alternatively, a recording or transcription of the communication may be filed, as long as that recording or transcription indicates all participants and the date, time, location, duration, and means of communication.

(5) A person who initiates an extra-record communication regarding an anticipated contested case shall, within three (3) business days of the later of becoming a party to the contested case or the conversion of the case to a contested case, give notice of the extra-record communication. The notice shall be made in the manner set forth in subsections (4)(A) and (B).

(6) In addition to sections (4) or (5) of this rule, if an extra-record communication regarding a pending case is initiated by a person not a party to the discussed case, the commissioner, the technical advisory staff, or the presiding officer assigned to the discussed case shall give notice of the extra-record communication in the manner set forth in subsections (4)(A) and (B) as soon as practicable after learning of the person's failure to file such notice.

(7) Unless properly admitted into evidence in subsequent proceedings, an extra-record communication shall not be considered as part of the record on which a decision is reached by the commission, a commissioner, or presiding officer in a contested case.

(8) Any communication, other than public statements at a public event or de minimis or immaterial communications, between a commissioner or technical advisory staff and any regulated entity regarding regulatory issues, including but not limited to issues of general regulatory policy under subsection 386.210.4, RSMo, if not otherwise disclosed pursuant to

this rule, shall be disclosed in the following manner:

(A) If the communication is written—

1. If no contested case or anticipated contested case is pending, no notice is required; or

2. If a contested case or anticipated contested case is pending, notice of extra-record communication shall be filed in accordance with section (4) of this rule. However, any information which is designated by the communicator as highly confidential or proprietary, under federal or state law, or commission rule, shall not be subject to disclosure; or

(B) If the communication is oral—

1. If no contested case or anticipated contested case is pending, the regulated entity shall provide a document to such commissioner or technical advisory staff detailing the participants in the communication, date, approximate time, location, means by which the communication took place, and the subjects covered; or

2. If a contested case or anticipated contested case is pending, notice shall be filed in the case file and posted on the commissioner's public calendar forty-eight (48) hours prior to such conversation. A representative of the office of the public counsel shall be provided an opportunity to attend the meeting in person or by other reasonable means.

A. Following such communication, a notice of extra-record communication shall be filed by the person who initiated the communication in accordance with section (4) of this rule.

B. Inadvertent communication, or any communication which becomes subject to this subparagraph, shall be terminated immediately, and a notice of extra-record communication shall be filed by the person initiating the communication in accordance with section (4) of this rule.

(9) Each commissioner shall include a public calendar on the commission's website which shall provide notice of communications required to be disclosed by section (8), regarding regulatory issues occurring after the effective date of this rule with representatives of entities regulated by the commission, regardless of whether a contested case is pending. However, communications which are de minimis or immaterial are not required to be disclosed. A commissioner's technical advisory staff shall note any such communications he/she is involved in on his/her commissioner's public calendar.

(10) The following communications shall not be prohibited by or subject to the disclosure



and notice requirements of section (3) of this rule, if such communication would otherwise be an ex parte communication, or subject to section (8) of this rule:

(A) Communications between the commission, a commissioner, or a member of the technical advisory staff and a public utility or other regulated entity that is a party to a contested case, or an anticipated party to an anticipated contested case, notifying the commission, a commissioner, a member of the technical advisory staff, or the presiding officer assigned to the proceeding of—

1. An anticipated or actual interruption or loss of service;

2. Damage to or an incident or operational problems at a utility's facility;

3. An update regarding efforts to restore service after an interruption, loss of service, damages, or an incident or problems referred in paragraphs (10)(A)1. and 2.;

4. Security or reliability of utility facilities;

5. Issuance of public communications regarding utility operations, such as the status of utility programs, billing issues, security issuances, or publicly available information about a utility's finances. These communications may also include a copy of the public communication, but should not contain any other communications regarding substantive issues;

6. Information regarding matters before state or federal agencies and committees including but not limited to state advisory committees, the Federal Communications Commission, the Federal Energy Regulatory Commission, and the Nuclear Regulatory Commission;

7. Information regarding a regional transmission organization;

8. Labor matters not part of a pending case; or

9. Matters related to the safety of personnel;

(B) Communications between the commission, a commissioner, or a member of the technical advisory staff and any employee of the commission relating to exercise of the commission's investigative powers as established under Missouri law. If the communication concerns an anticipated case, notice shall be given in accordance with section (4) upon the filing of the case;

(C) Communications between the commission, a commissioner, a member of the technical advisory staff, or the presiding officer and a party or anticipated party concerning an issue or case in which no evidentiary hearing has been scheduled made at a public agenda meeting of the commission where such matter has been posted in advance as an

item for discussion or decision;

(D) Communications between the commission, a commissioner, a member of the technical advisory staff, or the presiding officer and a party or anticipated party concerning a case in which no evidentiary hearing has been scheduled made at a forum where representatives of the public utility affected thereby, the office of public counsel, and all other parties to the case are present; and

(E) Communications between the commission, a commissioner, a member of the technical advisory staff, or the presiding officer and a party or anticipated party concerning a case in which no evidentiary hearing has been scheduled made outside a public agenda meeting or forum where representatives of the parties are present when disclosed as provided in section 386.210.3(3), RSMo.

(11) No person who is likely to be a party to a future case before the commission shall attempt to communicate with any commissioner or member of the technical advisory staff regarding any substantive issue that is likely to be an issue within a future contested case, unless otherwise allowed under this rule. Should such a communication occur, the person involved in the communication shall file a notice with the secretary of the commission. Such notice shall provide the information required in section (4) of this rule. Once such a case has been filed, the secretary shall promptly file any such notices in the official case file for each discussed case.

(12) It is improper for any person interested in a case before the commission to attempt to sway the judgment of the commission by undertaking, directly or indirectly, outside the hearing process to bring pressure or influence to bear upon the commission, its employees, or the presiding officer assigned to the proceeding.

(13) Notwithstanding any provision of this rule to the contrary, once a contested case has been finally adjudicated, the commission, a commissioner, a member of the technical advisory staff, or the presiding officer may communicate with any person regarding any procedural or substantive issues related to such case within thirty (30) days of the case being finally adjudicated, unless the same regulated entity has a contested case or anticipated contested case pending before the commission which includes such issues.

(14) An attorney, or any law firm the attorney is associated with, appearing before the commission shall—

(A) Make reasonable efforts to ensure that

the attorney and any person whom the attorney represents avoid initiating, participating in, or undertaking an ex parte communication prohibited by section (3) or a communication prohibited by section (11);

(B) Make reasonable efforts to ensure that the attorney and any person whom the attorney represents gives notice of any communication as directed in section (4), (5), (8), or (11);

(C) Prepare a notice in accordance with section (4), (5), (8), or (11) when requested to do so by the commission, a commissioner, technical advisory staff, or the presiding officer assigned to a contested case;

(D) Make reasonable efforts to notify the secretary when a notice of ex parte communication is not transferred to a case file as set forth in subsection (3)(D);

(E) Comply with all the Missouri Rules of Professional Conduct;

(F) During the pendency of an administrative proceeding before the commission, 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 course of the proceeding and relates to any of the following:

1. Evidence regarding the occurrence or 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. The attorney's 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; and

(G) Exercise reasonable care to prevent the client, its employees, and the attorney's associates from making a statement that the attorney is prohibited from making.

(15) The commission may issue an order to show cause why sanctions should not be ordered against any party or anticipated party, or the agent or representative of a party or anticipated party, engaging in an ex parte communication in violation of section (3) or (11) of this rule or a failure to file notice or otherwise comply with section (4), (5), or (8) of this rule. The commission may also issue an order to show cause why sanctions should not be ordered against any attorney who knowingly violates section (14) of this rule.



(16) No person who has served as a commissioner, presiding officer, or commission employee 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.

AUTHORITY: section 386.410, RSMo 2000. Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed April 26, 1976, effective Sept. 11, 1976. Rescinded and readopted: Filed Nov. 4, 2009, effective July 30, 2010.*

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