
**Rules of
Office of Administration
Division 50—Missouri Ethics Commission
Chapter 2—Hearing Procedures for Contested Cases**

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**Title 1—OFFICE OF
ADMINISTRATION**

**Division 50—Missouri Ethics Commission
Chapter 2—Hearing Procedures for
Contested Cases**

**1 CSR 50-2.015 Initiation of Contested
Case**

PURPOSE: This rule sets forth the manner in which a contested case is initiated.

(1) A contested case initiated pursuant to subsection 3 of section 105.961, RSMo, shall be commenced after the commission has received and reviewed a report from a special investigator made pursuant to subsection 1 of section 105.961, RSMo, or an audit conducted pursuant to section 105.959, RSMo, and the commission has concluded, based upon such report or upon such audit, that there are reasonable grounds to believe that a violation of any law has occurred which is not a violation of criminal law or that a criminal prosecution is not appropriate. Upon such conclusion—

(A) The commission shall request the attorney general to prepare a complaint, directed to the object(s) of the special investigator's report or audit, as provided by section 536.063, RSMo;

(B) Such complaint shall be filed with the commission by the attorney general and shall affirmatively request relief within the jurisdiction of the commission should the commission determine, after conducting a hearing, that probable cause exists to find the person named in the complaint in violation of the provisions of law set forth in the complaint; and

(C) If the attorney general or any member of his/her staff is the subject of any investigation or complaint, or is in any manner related or connected to the subject of any investigation or complaint to a degree indicative or suggestive of a conflict of interest, the attorney general and/or his/her assistants shall not participate in any manner in the handling or disposition of the investigation and complaint.

(2) The administrative secretary shall issue and serve in the name of the commission, a written notice, together with a copy of the complaint, requiring the person named in the complaint, hereafter referred to as "respondent," to answer the charges at a hearing before the commission, at a time and place as specified in the notice.

(3) The commission shall be a party to the action and shall be represented by the attorney general or his/her designee.

(4) The hearing shall be conducted in the manner provided by sections 536.063 to 536.090, RSMo.

AUTHORITY: section 105.955.14(7), RSMo (Cum. Supp. 1996).* Original rule filed March 24, 1997, effective Sept. 30, 1997.

*Original authority 1991, amended 1994, 1995, 1996.

1 CSR 50-2.020 Pleadings

PURPOSE: This rule defines the form and procedures for the filing of pleadings during the contested case hearing process.

(1) An answer to a complaint shall not be required. If no answer is filed, the allegations in the complaint shall be deemed denied. However, if an answer is filed, any allegation in the complaint not answered shall be deemed admitted. Any affirmative allegation and any allegation of new matter contained in an answer shall be deemed denied without the necessity of a reply.

(2) All papers and copies for filing and service shall be typewritten on good-quality white paper eight and one-half by eleven inches (8 1/2 × 11") in approximate size. Copies may be reproduced by any printing or duplicating process providing a clear image.

(3) Each document shall bear on the first page the caption, descriptive title and number of the matter in which it is filed and shall identify the part on whose behalf it is filed. Each document shall contain on the final page the name, address and telephone number and Missouri bar number of the attorney in active charge of the case, or name, address and telephone number of the party if appearing *pro se*.

(4) Any person filing any pleading or documents with the commission with respect to a complaint shall file an original and seven (7) copies with the commission, and shall provide one (1) copy to each of the other parties at the time the document is filed. The person filing the pleading or document shall certify that s/he has mailed, delivered or otherwise provided a copy of the pleading or document to all other parties, or the commission shall not accept the pleading or document for filing. Copies of all written communications to the commission shall be served on all other parties.

AUTHORITY: section 105.955.14(7), RSMo (Cum. Supp. 1996).* Original rule filed March 24, 1997, effective Sept. 30, 1997.

*Original authority 1991, amended 1994, 1995, 1996.

1 CSR 50-2.030 Ex Parte Communications

PURPOSE: This rule indicates inappropriate communications between the parties or their representatives and commission members.

A party or his/her representative shall not communicate, directly or indirectly, with any member of the commission in connection with any issue of fact or in connection with any other substantive issue relating to a specific case except upon notice and opportunity for all parties to participate.

AUTHORITY: section 105.955.14(7), RSMo (Cum. Supp. 1996).* Original rule filed March 24, 1997, effective Sept. 30, 1997.

*Original authority 1991, amended 1994, 1995, 1996.

1 CSR 50-2.040 Prehearing Conferences

PURPOSE: This rule describes the procedures and scope of prehearing conferences.

(1) The commission, or a presiding commissioner designated for that purpose, may hold prehearing conferences for the purpose of facilitating the hearing process, ruling on procedural motions and making other determinations as may be necessary for the efficient function of the hearing process.

(2) These prehearing conferences shall be held by telephone conference call unless the commission or presiding commissioner shall decide an in-person conference is required.

(3) The purpose of the prehearing conference may be to—

(A) Determine the date, location and length of the hearing;

(B) Simplify the issues;

(C) Obtain admissions as to, or stipulations of, facts not in dispute or authenticate documents which might properly shorten the hearing;

(D) Determine and discuss the status of discovery; and

(E) Determine other matters as may be properly dealt with to aid in expediting the orderly conduct and disposition of the proceeding.

(4) All parties participating in a prehearing conference are expected to be fully prepared for useful discussion of all problems involved in the proceeding, both procedurally and substantively and be fully authorized to make commitments with respect to all problems. This preparation should include, among other things, advance study of all relevant material and advance informal communication between the participants, including the request for additional data and information, to the extent it appears feasible and desirable. Failure of a party to participate in a prehearing conference, after being served with due notice of the time and place of the conference shall preclude the party from objecting to any order or ruling with respect to the subjects discussed in the prehearing conference. Agreements, orders or rulings, for good cause shown, may be set aside at any time before the date of the hearing of the case, upon terms as shall be just.

(5) The commission or presiding commissioner at any time may determine and rule upon any procedural matters which the commission is authorized to rule upon during the course of the proceeding. In addition, where it appears that the proceeding would be substantially expedited by distribution of proposed exhibits reasonably in advance of the hearing, the commission or presiding commissioner at his/her discretion and with due regard for the convenience and necessity of the parties, may direct advance distribution by a prescribed date.

AUTHORITY: section 105.955.14(7), RSMo (Cum. Supp. 1996).* Original rule filed March 24, 1997, effective Sept. 30, 1997.

*Original authority 1991, amended 1994, 1995, 1996.

1 CSR 50-2.050 Prehearing Discovery

PURPOSE: This rule describes the procedures and scope of prehearing discovery.

(1) The commission shall follow the procedural rules as set out in these rules as well as the Missouri Rules of Civil Procedure and Chapters 105 and 536, RSMo.

(2) Any party to a hearing may take and use depositions in the same manner, upon the same notice as is or may be hereafter provided in section 536.073, RSMo and the Missouri Rules of Civil Procedure. No part of a deposition shall constitute a part of the record in a proceeding, unless received as evidence by the commission. Objection may be made at the hearing in the proceeding to receiving

in evidence any deposition or part of the deposition for any reason which would require the exclusion of the evidence if the witnesses were then present and testifying.

(3) The original of all depositions shall be filed with the commission with a copy being served on each party.

(4) Discovery subpoenas and subpoenas *duces tecum* shall be issued in the same manner and under the same conditions as stated in 1 CSR 50-2.060. The commission shall have the authority to impose sanctions for failure to comply with reasonable discovery requests in the same manner as set forth in the Missouri Rules of Civil Procedure, except that the commission shall not have the authority to issue an order treating as a contempt of court the failure to obey any subpoena to comply with any discovery.

(5) The commission shall have the authority to impose sanctions for failure to comply with reasonable discovery requests in the same manner as set forth in the Missouri Rules of Civil Procedure, except that the commission shall not have the authority to issue an order treating as a contempt of court the failure to obey any subpoena to comply with any discovery.

AUTHORITY: section 105.955.14(7), RSMo (Cum. Supp. 1996).* Original rule filed March 24, 1997, effective Sept. 30, 1997.

*Original authority 1991, amended 1994, 1995, 1996.

1 CSR 50-2.060 Subpoenas and Subpoenas Duces Tecum

PURPOSE: This rule describes the procedure for the issuance of subpoenas and subpoenas *duces tecum*.

(1) The commission shall issue subpoenas upon the request of any party. Subpoenas shall be processed in accordance with the provisions of section 536.077, RSMo.

(2) The commission, in appropriate circumstances, shall issue subpoenas *duces tecum* upon the request of any party. Requests for issuance of a subpoena *duces tecum* shall be in writing and shall include the name of the person to be served; the date for his/her appearance; and the description of books, papers, records or documents sought to be subpoenaed.

(3) Requests for the issuance of subpoenas and subpoenas *duces tecum* shall be directed

to the commission, or the presiding commissioner appointed for the case.

(4) Where a subpoena or a subpoena *duces tecum* is requested and issued at the instance of any party to a hearing or other proceeding, the responsibility for service and the cost of the subpoena, witness and mileage fees shall be borne by the party at whose instance it has been requested and issued, unless otherwise ordered by the commission for good cause shown. Witness and mileage fees shall be paid in the same manner as paid in civil actions before the circuit courts.

(5) Subpoenas and subpoenas *duces tecum* shall be enforced as provided in section 536.077, RSMo.

AUTHORITY: section 105.955.14(7), RSMo (Cum. Supp. 1996).* Original rule filed March 24, 1997, effective Sept. 30, 1997.

*Original authority 1991, amended 1994, 1995, 1996.

1 CSR 50-2.070 Continuances

PURPOSE: This rule describes the process of requesting continuances of public hearings.

(1) The commission may continue a hearing or prehearing conference upon a showing of good cause. Before a party requests a continuance, the requesting party shall contact the other parties to determine whether they object to the continuance and to determine mutually acceptable dates to which the hearing or conference may be rescheduled and the information shall be included in the party's motion for continuance. When a hearing is continued, the parties shall be notified in writing of the new hearing date in advance of the new hearing date. Any order granting a continuance shall be mailed to the parties by the administrative secretary by regular first class mail, postage prepaid.

AUTHORITY: section 105.955.14(7), RSMo (Cum. Supp. 1996).* Original rule filed March 24, 1997, effective Sept. 30, 1997.

*Original authority 1991, amended 1994, 1995, 1996.

1 CSR 50-2.080 Conduct of the Hearing

PURPOSE: This rule describes the conduct of a contested case hearing.

(1) A hearing will be conducted by a quorum consisting of at least four (4) commission members.

(2) Only the commission may make a final disposition of the case. A presiding commissioner may be appointed by the commission, who shall have full power and authority to control the procedure of the hearing, to admit or exclude testimony or other evidence, or rule upon all motions or objections, to call and examine witnesses, to issue subpoenas and subpoenas *duces tecum* in accordance with 1 CSR 50-2.060, to direct the production of papers or other matters during the hearing and to take such other actions necessary and proper in expediting the order, conduct and disposition of the proceeding. Any decision of the presiding commissioner may be overruled by a vote of at least four (4) members of the commission, upon either motion of any party or of any commissioner.

(3) The commission may make full inquiry into all facts and issues and obtain a full and complete record of all facts necessary for a fair determination of the issues. All commissioners may inquire into all facts and issues at the hearing.

(4) No cameras, lights or mechanical recording devices shall be operated in the hearing room while the hearing is in progress, other than by personnel of the commission or by a court reporter with the permission of the commission.

(5) No person shall be allowed to be present during the hearing, except for members and personnel of the commission subject to subsection 15 of section 105.961, RSMo, the attorney general or his/her designee who shall present evidence in support of the complaint; the attorney general or his/her designee who is legal counsel to the commission; all respondents and their counsel; a court reporter; and any other with permission of all respondents to the proceeding. Witnesses shall remain outside of the hearing except during the time that s/he offers testimony or evidence.

(6) The commission may exclude from the hearing room or otherwise prevent further participation during a hearing. Contempt before the commission shall be resolved in the manner provided in section 536.095, RSMo.

*AUTHORITY: section 105.955.14(7), RSMo (Cum. Supp. 1996). * Original rule filed March 24, 1997, effective Sept. 30, 1997.*

**Original authority 1991, amended 1994, 1995, 1996.*

1 CSR 50-2.090 Evidence

PURPOSE: This rule describes the introduction of evidence at a public hearing.

(1) Rulings on evidence offered at hearings shall be made in accordance with sections 536.063 to 536.090, RSMo. Objections or motions not ruled on at the hearing shall be considered with the record. Evidence concerning terms or offers of settlement made during endeavors to conciliate shall not be admitted into the record.

(2) When objections to the admission or exclusion of evidence before the commission are made, the grounds relied upon shall be stated briefly.

(3) All testimony to be taken at the hearing, except matters officially noticed or entered by stipulation, shall be sworn or affirmed. This may include testimony given on deposition or by affidavit.

(4) Expert Witnesses.

(A) The commission may require, at least ten (10) days prior to the hearing, that the parties to the hearing—

1. Identify each person expected to be called as an expert witness at the hearing;

2. State the subject matter on which the expert is expected to testify; and

3. State the substance of the facts and opinions to which the expert is expected to testify.

(B) Where the presiding commissioner determines that a party failed to timely comply in providing the information required under subsection (4)(A) of this rule, the witnesses and any previously offered evidence by the witnesses may be excluded from the hearing.

(5) Interpreter.

(A) When a disabled person, or person who cannot speak or understand the English language, is a respondent in a hearing, the party is entitled to a qualified interpreter. In order to obtain the services of an interpreter, a party shall notify the commission at least ten (10) days prior to the date the interpreter will be needed.

(B) Upon receipt of the request, the administrative secretary at the direction of the commission shall arrange for the services of an interpreter and shall notify the parties of the identity of the interpreter. The commission shall compensate the interpreter where necessary.

(C) A member of the commission staff may serve as an interpreter where all parties consent on the record.

(6) Exhibits.

(A) Exhibits shall be marked upon receipt by the commission and the marking shall identify the party offering the exhibit. Admitted and excluded exhibits shall be preserved by the commission as part of the record of the proceedings. Excluded exhibits shall be retained by the commission only if the party seeking to introduce the document as an offer of proof specifically requests the document to be placed in an excluded exhibit file.

(B) All paper exhibits shall be no longer than eight and one-half by eleven inches (8 1/2 × 11") in size and the party presenting an exhibit must submit the exhibit and seven (7) copies to the commission and must provide one (1) copy to each of the other parties at the time the exhibit is marked.

(C) Larger exhibits are allowed; however, in order to be included in the record, the information contained in the exhibit must be reduced to paper eight and one-half by eleven inches (8 1/2 × 11") in size by the party offering the exhibit.

(D) Variation from the requirements in section (7) will be allowed with leave of the commission only in cases where there is no reasonable alternative.

(7) The commission may take notice of judicially recognizable facts and of general, technical or scientific facts. The parties shall be notified at any time during a proceeding of material officially noticed and they will be afforded the opportunity to contest the facts so noticed. The notice required by this section shall be given to the party prior to the issuance of decision and order in the matter.

*AUTHORITY: section 105.955.14(7), RSMo (Cum. Supp. 1996). * Original rule filed March 24, 1997, effective Sept. 30, 1997.*

**Original authority 1991, amended 1994, 1995, 1996.*

1 CSR 50-2.100 The Record at the Hearing

PURPOSE: This rule defines what constitutes the record of the public hearing.

(1) The record of the hearing shall include the notice of hearing; the verified complaint filed pursuant to 1 CSR 50-2.015 and any amendments; the answer, if any, and any amendments; the transcript of the testimony taken at the hearing; the exhibits and depositions admitted into evidence; written applications, motions and stipulations; briefs submitted by the parties; orders entered by the presiding

commissioner; suggested findings of fact, conclusions of law, decisions and orders submitted by the parties; the final findings of fact, conclusions of law, and decision and order of the commission; and all other pleadings. The record shall not include rejected exhibits, unless received by the commission pursuant to an offer of proof made by any party. Prehearing discovery filed with the commission shall not be a part of the record unless specifically received into evidence at the hearing.

(2) A verbatim record of the proceeding shall be made and kept by the commission. The testimony may be recorded by stenographer, by videotape, by audiotape or by any other means which would ensure that a verbatim record of the proceedings is made.

*AUTHORITY: section 105.955.14(7), RSMo (Cum. Supp. 1996). * Original rule filed March 24, 1997, effective Sept. 30, 1997.*

**Original authority 1991, amended 1994, 1995, 1996.*

1 CSR 50-2.110 Stipulation

PURPOSE: This rule describes the scope of stipulations and possible waiver of a contested case hearing.

(1) Upon written motion of the parties and with approval of the commission, the parties may stipulate to all or any portion of the facts upon which the commission shall base its decision, and may waive a public hearing.

*AUTHORITY: section 105.955.14(7), RSMo (Cum. Supp. 1996). * Original rule filed March 24, 1997, effective Sept. 30, 1997.*

**Original authority 1991, amended 1994, 1995, 1996.*

1 CSR 50-2.120 Default

PURPOSE: This rule describes the procedures when a party fails to appear at a contested case hearing and for requesting relief from that default.

(1) Default may occur where a party has been served with notice of hearing and fails to appear at the scheduled hearing.

(2) Unless notified by the party, the commission shall wait no longer than thirty (30) minutes from the time set for hearing in the notice of hearing to commence the hearing.

(3) When the respondent fails to appear at the specified time and place for the hearing, evi-

dence shall be presented in support of the complaint, which shall constitute the sole evidentiary basis for disposition and the respondent shall be deemed to have waived any evidentiary and other objections at the hearing.

(4) The commission, in its discretion and upon such terms as may be just, may entertain a motion for rehearing filed within five (5) days after the respondent defaults at hearing, if the respondent establishes that the default was the result of an excusable mistake or circumstance beyond his/her control. The motion for rehearing shall be in writing and accompanied by—

(A) A sworn written statement(s), together with supporting documentation, setting forth the facts of the alleged excusable mistake or the circumstances beyond the control of the party; and

(B) The opposing party and any witnesses who appeared at the date and time originally scheduled for the hearing shall have ten (10) days to reply to the motion for rehearing.

*AUTHORITY: section 105.955.14(7), RSMo (Cum. Supp. 1996). * Original rule filed March 24, 1997, effective Sept. 30, 1997.*

**Original authority 1991, amended 1994, 1995, 1996.*

1 CSR 50-2.130 Post-Hearing Procedure

PURPOSE: This rule describes the procedures to be followed after a hearing has been held.

(1) The parties may file suggested findings of fact and conclusions of law and briefs within the time limits as the commission may determine.

*AUTHORITY: section 105.955.14(7), RSMo (Cum. Supp. 1996). * Original rule filed March 24, 1997, effective Sept. 30, 1997.*

**Original authority 1991, amended 1994, 1995, 1996.*

1 CSR 50-2.140 Orders

PURPOSE: This rule establishes the content, issuance, service and filing of orders.

(1) Copies of orders shall be served by regular first class mail or by personal service on all parties, accompanied by a notice of the statutory right to judicial review.

*AUTHORITY: section 105.955.14(7), RSMo (Cum. Supp. 1996). * Original rule filed March 24, 1997, effective Sept. 30, 1997.*

**Original authority 1991, amended 1994, 1995, 1996.*

1 CSR 50-2.150 Certification of Record

PURPOSE: This rule stipulates who is authorized to certify commission documents.

The chairperson, the administrative secretary to the commission, or other person as may be designated by the commission is authorized and empowered to all documents or records which are part of the files and records of the commission.

*AUTHORITY: section 105.955.14(7), RSMo (Cum. Supp. 1996). * Original rule filed March 24, 1997, effective Sept. 30, 1997.*

**Original authority 1991, amended 1994, 1995, 1996.*

1 CSR 50-2.160 Separability, Amendments and Availability of Rules

PURPOSE: This rule establishes the procedure by which amendments are made to the commission's rules, where to obtain copies of these rules and that, if any provision or term of these rules is held invalid, the remaining provisions remain valid.

(1) In the event any provision of these rules is determined by a court or other authority of competent jurisdiction to be invalid, the determination shall not affect the remaining provisions which shall remain in full force and effect.

(2) New rules may be adopted and any rule may be amended or rescinded by the commission at regular or special meetings provided that the amendment or rescission shall require the approval of at least four (4) members of the commission. Notice of the proposed adoption, amendment or rescission shall be given in writing to all members of the commission at least ten (10) days before the meeting at which action is to be taken; except that ten (10) days' notice shall not be required when all members of the commission shall approve in writing the adoption, amendment or rescission.

(3) The amendment of any existing rule or the adoption of any new rule shall be made in accordance with Chapter 536, RSMo.

(4) The rules of the commission and any amendments, additions or modifications of the rules, shall be available to the public at the commission's office in Jefferson City.

AUTHORITY: section 105.955.14(7), RSMo (Cum. Supp. 1996). Original rule filed March 24, 1997, effective Sept. 30, 1997.*

**Original authority 1991, amended 1994, 1995, 1996.*