

CHAPTER 7845
PUBLIC UTILITIES COMMISSION
COMMISSION CONDUCT; COMMUNICATION

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CODE OF CONDUCT

7845.0100 DEFINITIONS.

Subpart 1. **Code.** "Code" refers to the code of conduct required by Minnesota Statutes, section 216A.037, subdivision 3, and set out in this chapter.

Subp. 2. **Commission.** "Commission" means the Minnesota Public Utilities Commission.

Subp. 3. **Commissioner.** "Commissioner" means a member of the commission.

Subp. 4. **Employee.** "Employee" means the executive secretary of the commission, or a member of the commission's professional, secretarial, or clerical staff.

Subp. 5. [Renumbered Subp. 10]

Subp. 6. [Renumbered Subp. 12]

Subp. 7. **Party.** "Party" means a person by or against whom a proceeding before the commission is commenced or a person permitted to intervene in a proceeding before the commission. A party includes a petitioner, complainant, intervenor, applicant, and respondent, and their attorneys, agents, or representatives.

Subp. 8. **Proceeding.** "Proceeding" means a formal or informal undertaking of the commission, on its own motion or otherwise, in which it seeks to resolve questions or issues raised in a complaint, in a petition, or during rulemaking.

Subp. 9. [Renumbered Subp. 11]

Subp. 10. **Public utility.** "Public utility" has the meaning given it in Minnesota Statutes, section 216B.02, subdivision 4, except that for the purposes of this chapter it also includes a municipal utility or a cooperative electric association that produces or furnishes natural, manufactured, or mixed gas or electric service and its agents, officers, and representatives.

Subp. 11. **Rate-regulated entity.** "Rate-regulated entity" means an entity subject to rate regulation by the commission and includes all of the following:

- A. a public utility as defined in Minnesota Statutes, section 216B.02, subdivision 4;
- B. a cooperative electric association that has elected to become subject to regulation by the commission under Minnesota Statutes, section 216B.026;
- C. a municipality that has elected to become subject to regulation by the commission under Minnesota Statutes, section 216B.025;
- D. a telephone company as defined in Minnesota Statutes, section 237.01, subdivision 7;
- E. an independent telephone company as defined in Minnesota Statutes, section 237.01, subdivision 3;
- F. a telecommunications carrier as defined in Minnesota Statutes, section 237.01, subdivision 6; and
- G. a small telephone company as defined in Minnesota Statutes, section 237.773, subdivision 1.

Subp. 12. **Telephone company.** "Telephone company" has the meaning given it in Minnesota Statutes, section 237.01, except that for the purposes of this chapter it also includes an independent telephone company as defined in Minnesota Statutes, section 237.01, subdivision 3; a radio common carrier as defined in Minnesota Statutes, section 237.01, subdivision 4; a telecommunications carrier as defined in Minnesota Statutes, section 237.01, subdivision 6; a small telephone company as defined in Minnesota Statutes, section 237.773, subdivision 1; and their agents, officers, and representatives.

Statutory Authority: *MS s 216A.037*

History: *12 SR 458; 34 SR 902*

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7845.0200 AUTHORITY.

This code is prescribed by the commission under Minnesota Statutes, sections 216A.05 and 216A.037, subdivision 3.

Statutory Authority: *MS s 216A.037*

History: *12 SR 458*

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7845.0300 PURPOSE AND CONSTRUCTION.

The purpose of this code is to preserve the integrity and independence of commission decision making and to promote public confidence in the objectivity of commission decisions. Commissioners and employees should maintain high standards of conduct to prevent a conflict or the appearance of a conflict between private interests and official duties. This code must be construed to secure these objectives in keeping with the quasi-judicial function of the commission.

Statutory Authority: *MS s 216A.037*

History: *12 SR 458*

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7845.0400 CONFLICT OF INTEREST; IMPROPRIETY.

Subpart 1. **General behavior.** A commissioner or employee shall respect and comply with the law and shall behave in a manner that promotes public confidence in the integrity and impartiality of the commission's decision making process.

Subp. 2. **Actions prohibited.** Commissioners and employees shall avoid any action that might result in or create a conflict of interest or the appearance of impropriety, including:

- A. using public office for private gain;
- B. giving preferential treatment to an interested person or entity;
- C. impeding the efficiency or economy of commission decision making;
- D. losing independence or impartiality of action;
- E. making a commission decision outside official channels; and
- F. affecting adversely the confidence of the public in the integrity of the commission.

Statutory Authority: *MS s 216A.037*

History: *12 SR 458*

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7845.0500 QUASI-JUDICIAL RESPONSIBILITIES.

Subpart 1. **Inappropriate influences.** Commissioners shall not be swayed by partisan interests, public clamor, or fear of criticism.

Subp. 2. **Orderly proceedings, behavior.** Commissioners shall maintain order and decorum in proceedings before the commission. In their official capacity, commissioners must be patient, dignified, and courteous to litigants, witnesses, lawyers, commission staff, and others appearing before them. Commissioners shall require similar conduct from persons appearing before them.

Statutory Authority: *MS s 216A.037*

History: *12 SR 458*

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7845.0600 DISQUALIFICATION.

Subpart 1. **Disqualifying factors.** Commissioners and employees shall disqualify themselves if they:

- A. have a personal bias or prejudice concerning a party;
- B. before employment with the commission, served or participated as a lawyer or material witness in the pending proceeding; or
- C. have an interest, other than that of the general public, that could be substantially affected by the outcome of the proceeding.

Subp. 2. **Written disclosure; withdrawal.** The commissioner or employee shall disclose in writing within 48 hours to the commission the disqualifying interest and withdraw, taking no part in the pending proceeding.

Statutory Authority: *MS s 216A.037*

History: *12 SR 458*

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7845.0700 PROHIBITED ACTIVITIES.

Subpart 1. **In general; exceptions.** A commissioner or employee shall not directly or indirectly solicit or accept for the commissioner or employee, or for another person, any compensation, gift, gratuity, favor, entertainment, meal, beverage, loan, or other thing of monetary value from a public utility, telephone company, or party, that exceeds nominal value. This prohibition does not apply to:

- A. books or printed materials that are relevant to the official responsibilities of the commission;
- or
- B. an educational program devoted to improving the regulatory process or the administration of the commission that is open to other interested groups or state agencies under the same terms and conditions. Meals associated with the program must be paid for by a commissioner or employee who attends the program.

Subp. 2. **Outside income.** A commissioner or professional employee shall not receive personal income, directly or indirectly, from a public utility or telephone company subject to regulation by the commission. A commissioner or professional employee may receive dividends or other earnings from a mutual fund or trust so long as the mutual fund or trust does not hold a significant portion of its investments in public utilities or telephone companies subject to regulation by the commission.

Subp. 3. **Interests in utilities.** A commissioner or professional employee shall not invest in a public utility or telephone company, acquire a legal or equitable interest in it, however small, become its director or advisor, or actively participate in its affairs. This prohibition does not apply to:

- A. ownership in a mutual fund or trust that holds securities in a telephone company or public utility unless the commissioner or professional employee participates in the management of the fund;
- B. holding office or title in an educational, religious, charitable, fraternal, or civic organization that owns securities in a telephone company or public utility;
- C. purchasing services from a telephone company or public utility on the same terms and conditions as a member of the general public; or

D. holding membership in a cooperative association under the same terms and conditions as other members of the cooperative.

Subp. 4. **Outside employment.** A commissioner or employee shall not negotiate for or accept outside employment or other involvement in a business or activity that will impair the person's independence of judgment in the exercise of official duties.

Subp. 5. **Insider information.** A commissioner or employee shall not directly or indirectly use, or permit others to use, information not made available to the general public, to advance a private interest.

Statutory Authority: *MS s 216A.037*

History: *12 SR 458*

Published Electronically: *January 5, 2010*

7845.0800 FUTURE EMPLOYMENT.

Subpart 1. **One-year restriction.** While employed with the commission or within one year after leaving it, a commissioner shall not accept employment with, receive compensation directly or indirectly from, or enter into a contractual relationship with a rate-regulated entity.

Subp. 2. **Commissioner communication with parties.** A commissioner shall not communicate, directly or indirectly, with a party to a pending proceeding before the commission regarding past or future benefits or compensation to be received from that party. The commissioner shall disclose in writing to the commission any communication regarding past or future benefits or compensation within 48 hours after the communication is made. The commission may dismiss a proceeding if an applicant, petitioner, or complainant violates this subpart.

Subp. 3. **Employee communication with parties.** A professional employee shall disclose in writing to the commission any communication regarding future benefits, compensation, or employment with a party to a pending proceeding before the commission within 48 hours after the communication is made. Reprisals must not be taken against a professional employee who complies with this subpart.

Statutory Authority: *MS s 216A.037*

History: *12 SR 458; 34 SR 902*

Published Electronically: *January 5, 2010*

7845.0900 POSTEMPLOYMENT REPRESENTATION.

Subpart 1. **By commissioner.** A commissioner shall not represent a rate-regulated entity, formally or informally, before the commission for one year after leaving the commission. At no time shall a commissioner represent a party on a proceeding that was pending before the commission during that commissioner's term in office.

Subp. 2. **By employee.** For one year after leaving the commission, an employee shall not represent a rate-regulated entity before the commission on a proceeding that the employee participated in during that employment with the commission.

Statutory Authority: *MS s 216A.037*

History: *12 SR 458; 34 SR 902*

Published Electronically: *January 5, 2010*

7845.1000 SANCTIONS.

Subpart 1. **Against commissioner.** A commissioner who intentionally fails to comply with this code is subject to disciplinary action under Minnesota Statutes, sections 15.0575 and 216A.036, and in accordance with Minnesota Statutes, section 43A.33.

Subp. 2. **Against employee.** An employee who intentionally fails to comply with this code is subject to disciplinary action under the applicable collective bargaining agreement, commissioner's or manager's plan, or in accordance with Minnesota Statutes, section 43A.33.

Statutory Authority: *MS s 216A.037*

History: *12 SR 458*

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EX PARTE COMMUNICATION

7845.7000 DEFINITIONS.

Subpart 1. **Scope.** The terms used in parts 7845.7000 to 7845.7600 have the meanings given them in this part.

Subp. 2. **Decision-making personnel.** "Decision-making personnel" means the commission's executive secretary and professional staff, and consultants to the commission.

Subp. 3. **Disputed formal petition.** A "disputed formal petition" refers to a formal petition (1) filed with the commission, (2) for which a hearing is not automatically required, (3) for which the commission has received a written statement disputing the action or relief sought in the petition, and (4) on which the commission has ordered comments, written responses to comments, oral argument, negotiations, settlement conferences, a formal hearing, or other procedures it considers necessary or helpful to enable it to decide the petition. A petition ceases to be a "disputed formal petition" when the notice of dispute is withdrawn in writing or when the commission resolves the dispute by written order.

Subp. 4. **Ex parte communication.** "Ex parte communication" means an oral or written, off-the-record communication made to or by commissioners or commission decision-making personnel, without notice to parties or participants, that is directed to the merits or outcome of an on-the-record proceeding. This term does not include procedural, scheduling, and status inquiries or other inquiries or requests for information that have no bearing on the merits or the outcome of the proceeding.

Subp. 5. **Material issue.** "Material issue" means an issue that may affect the merits or outcome of an on-the-record proceeding.

Subp. 6. [Renumbered Subp. 8]

Subp. 7. **Participant.** "Participant" means a person who files comments or appears in a proceeding, other than public hearings held in contested cases and other commission proceedings conducted to receive general public comments, to present views without becoming a party.

Subp. 8. **Party.** "Party" means a person by or against whom a proceeding before the commission is commenced or a person permitted to intervene in a proceeding before the commission. A party includes a petitioner, complainant, intervenor, applicant, and respondent, and their attorneys, agents, or representatives.

Statutory Authority: *MS s 216A.037*

History: *11 SR 1743; 34 SR 902*

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7845.7100 PERMISSIBLE EX PARTE COMMUNICATIONS.

An ex parte communication is permissible except as prohibited in part 7845.7200.

Statutory Authority: *MS s 216A.037*

History: *11 SR 1743*

Published Electronically: *January 5, 2010*

7845.7200 PROHIBITED EX PARTE COMMUNICATIONS.

Subpart 1. **Communications with commissioners.** An ex parte communication, either direct or indirect, must not be made or attempted to be made between a commissioner and a party or a participant concerning:

A. a material issue during a pending contested case proceeding, from the date the matter is referred to the Office of Administrative Hearings until the commission issues its final order and the time to petition for reconsideration expires, or until the commission issues a final order responding to the petition for reconsideration, whichever is later;

B. a material issue in a rulemaking proceeding after the beginning of commission deliberations, from the date the commission posts notice of its deliberations for adoption of rules on the open meeting calendar until the order adopting the rules is issued; or

C. a material issue in a disputed formal petition.

Subp. 2. **Communications with staff.** Ex parte communications with decision-making personnel are not prohibited under Minnesota Statutes, section 216A.037.

Statutory Authority: *MS s 216A.037*

History: *11 SR 1743; 34 SR 902*

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7845.7300 HANDLING PROHIBITED EX PARTE COMMUNICATIONS.

Subpart 1. **Written communication.** When possible, a commissioner who receives a prohibited written ex parte communication shall forward the communication, without reading it, to the commission's executive secretary.

A commissioner who receives and reads a prohibited written ex parte communication shall forward the communication to the commission's executive secretary within 48 hours, along with a signed statement of the source of and circumstances under which the communication was received and read.

Subp. 2. **Oral communication.** If a party or participant makes or attempts to make a prohibited oral ex parte communication to a commissioner, the commissioner shall advise the party or participant who makes or attempts to make the communication that the communication is prohibited and shall immediately terminate the communication. If a prohibited oral ex parte communication takes place, the commissioner who receives the communication shall forward to the commission's executive secretary, within 48 hours, a signed and dated statement that includes the following information:

- A. the name and docket number of the proceeding;
- B. to the extent known, the name and address of the person making the communication and the relationship, if any, to the parties to or the participants in the proceeding;
- C. the date and time of the communication, its duration, and the means by and circumstances under which it was made;
- D. a summary of the matters discussed; and
- E. whether the party or participant making the prohibited communication persisted after being advised that the communication was prohibited.

Subp. 3. **Notice to parties and participants.** The commission's executive secretary shall place the statement in the commission's public file within 48 hours, but shall not make the statement part of the record of the pending proceeding. The executive secretary shall serve a copy of the statement on the parties and participants on the commission's official service list. If the statement is voluminous, the executive secretary may serve notice to the parties and participants on the official service list that the statement is available for public inspection at the commission's offices during regular business hours.

Statutory Authority: *MS s 216A.037*

History: *11 SR 1743; 34 SR 902*

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7845.7400 HANDLING PERMISSIBLE EX PARTE COMMUNICATIONS.

Subpart 1. **Documentation.** Documentation is not needed for permissible ex parte communications with commissioners and decision-making personnel except as provided in subparts 2 to 4.

Subp. 2. **Written communications with staff.** Decision-making personnel who receive or generate a permissible written ex parte communication that is prohibited for commissioners under part 7845.7200 shall file a copy of the communication in the commission's public file with a notation of the sender and recipient within 48 hours after the communication is received or generated.

Subp. 3. **Oral communications with staff.** Decision-making personnel who receive or generate a permissible oral ex parte communication that is prohibited for commissioners under part 7845.7200 shall ensure that the substance of the communication and the name of the maker or recipient of the communication is recorded in a signed memorandum to the commission's public file within 48 hours. If a proceeding has been assigned to an administrative law judge, a copy of the memorandum must be sent to the judge.

Subp. 4. **Interim rate proceedings; compliance filings.** Commissioners and decision-making personnel may receive or generate written or oral ex parte communications with a party or participant in the setting of interim rates or the review of compliance filings following the issuance of a final order or order after reconsideration. Commissioners and decision-making personnel who receive or generate written or oral ex parte communications in these situations shall place a signed note in the commission's public file

containing the name of the party or participant, date, docket number of proceeding, and topic as soon as practicable, but no later than the issuance of the interim rate order or the compliance filing order.

Subp. 5. **Informing the public.** The commission shall make information regarding ex parte communications that occur in these situations available to the public upon reasonable request at its office during regular business hours.

Statutory Authority: *MS s 216A.037*

History: *11 SR 1743; 34 SR 902*

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7845.7500 SANCTIONS.

Subject to notice and hearing, a party who makes a prohibited ex parte communication to a commissioner or who encourages or solicits others to make a prohibited ex parte communication to a commissioner is subject to the sanctions listed in part 7845.7800.

Statutory Authority: *MS s 216A.037*

History: *11 SR 1743; 34 SR 902*

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7845.7600 VIOLATIONS BY COMMISSION AND STAFF.

A commissioner who intentionally violates parts 7845.7000 to 7845.7500 shall recuse himself or herself and shall not participate, offer advice, or vote in the commission's decision-making process in the pending on-the-record proceeding.

Decision-making personnel who intentionally violate parts 7845.7000 to 7845.7500 must be removed from participating in a staff support capacity or prohibited from offering advice on the affected case if the violation has substantially interfered with due process in the proceeding.

Statutory Authority: *MS s 216A.037*

History: *11 SR 1743*

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7845.7700 EX PARTE COMMUNICATIONS; COMPLAINTS SEEKING SANCTIONS.

Subpart 1. **Complaint.** A person seeking sanctions for alleged ex parte violations may file a complaint with the commission.

Subp. 2. **Contents.** The contents of the complaint must include all of the following information:

- A. name and address of the complainant;
- B. name and address of the complainant's counsel, if any;
- C. name and address of each person alleged to have violated the ex parte prohibition (respondents);
- D. name and address of each respondent's counsel, if any;
- E. facts constituting the allegation; and

F. sanctions sought.

Subp. 3. **Service.** Complaints filed under this part must be filed with the commission and mailed to or served on all of the following:

- A. each respondent;
- B. the department;
- C. the Residential Utilities Division of the Office of the Attorney General; and
- D. all persons on the commission's official service list for the proceeding.

Subp. 4. **Answer.** Within seven days of service of the complaint, each respondent shall file an answer with the commission and serve it on all of the following:

- A. each complainant;
- B. the department;
- C. the Residential Utilities Division of the Office of the Attorney General; and
- D. all persons on the commission's official service list for the proceeding.

Statutory Authority: *MS s 216A.037*

History: *34 SR 902*

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7845.7800 COMPLAINT PROCEEDING.

Subpart 1. **Office of Administrative Hearings.** The commission shall refer the complaint and answer to the Office of Administrative Hearings.

Subp. 2. **Investigation.** The administrative law judge assigned to the ex parte complaint proceeding by the Office of Administrative Hearings shall conduct a hearing investigation and shall issue a report within 30 days after the matter is referred. If the administrative law judge determines that the report cannot be properly completed within that time period, the judge shall report that fact to the commission within the 30-day period and shall file a final report within a reasonable time thereafter, no later than 60 days after the referral to the Office of Administrative Hearings.

Subp. 3. **Decision.** The report of the administrative law judge shall describe the relevant facts of the case and shall set forth the judge's findings as to whether ex parte violations occurred. The findings and decisions of the judge as to whether ex parte violations occurred are binding on the commission.

Subp. 4. **Sanctions.** In the report, the administrative law judge shall discuss and make recommendations regarding sanctions, including the recusal of any commissioner or the removal of decision-making personnel from an affected case. The administrative law judge may only recommend that the commission impose one of the following sanctions if the judge finds that the condition specified for the sanction is met:

A. dismiss the proceeding if the prohibited ex parte communication has so prejudiced the proceeding that the commission cannot consider it impartially;

B. issue an adverse ruling on a pending issue that is the subject of the prohibited ex parte communication, when other parties or participants are prejudiced by the prohibited ex parte communication;

C. strike evidence or pleadings when the evidence or pleadings are tainted by the prohibited ex parte communication;

D. issue a public statement of censure by the commission, when the prohibited ex parte communication is determined to be part of a continuing pattern of improper ex parte communication;

E. issue a public statement of censure by the commission when a single prohibited communication takes place and mitigating circumstances exist that:

- (1) negate the need for a more severe sanction;
- (2) do not prejudice the proceeding to the extent that the commission is unable to consider it impartially;
- (3) do not prejudice other parties to or participants in the proceeding; and
- (4) do not taint the evidence or pleadings; or

F. if the administrative law judge finds the complainant's allegation of an ex parte violation was interposed for any improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of the proceeding, the judge may recommend that the commission issue an appropriate sanction against the complainant.

Statutory Authority: *MS s 216A.037*

History: *34 SR 902*

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7845.7900 COMMENT PERIOD; COMMISSION DECISION.

Subpart 1. **Notice.** After receiving the administrative law judge's report, the commission shall provide notice of the report to all persons on the commission's official service list for the affected proceeding.

Subp. 2. **Comment period.** Any person wishing to comment on the judge's report regarding the recommendation of sanctions must do so within ten days of the commission's notice of the report. The commission may extend the notice period for reasonable cause.

Subp. 3. **Decision.** Following the comment period, and with notice, the commission shall hold a hearing and render its decision regarding the imposition of sanctions. Notice of the hearing must be sent to those on the commission's official service list for the affected proceeding.

Statutory Authority: *MS s 216A.037*

History: *34 SR 902*

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