

## PUC Statutes and Rules on Conflict of Interest, Standards of Conduct, *ex parte* Communications and Disqualification

### 40-2-102. Oath - qualifications

---

Each commissioner, before entering upon the duties of his office, shall take the constitutional oath of office. No person in the employ of or holding any official relation to any corporation or person, which said corporation or person is subject in whole or in part to regulation by the commission, and no person owning stocks or bonds of any such corporation or who is in any manner pecuniarily interested therein shall be appointed to or hold the office of commissioner or be appointed or employed by the commission; but if any such person becomes the owner of such stocks or bonds or becomes pecuniarily interested in such corporation otherwise than voluntarily, he shall divest himself of such ownership or interest within six months; failing to do so, his office or employment shall become vacant.

### 40-6-122. *Ex parte* communications - disclosure

---

(1) Commissioners and administrative law judges shall file memoranda, in accordance with this section, of all private communications to or from interested persons concerning matters under the commissioners' or judges' jurisdiction.

(2) For purposes of this section, "interested person" means any person or entity, or any agent or representative of a person or entity:

- (a) Whose operations are within the jurisdiction of the commission; or
- (b) Who has participated in a proceeding before the commission within one year prior to the communication; or
- (c) Who anticipates participating in a proceeding before the commission within one year after the communication.

(3) Each memorandum filed pursuant to subsection (1) of this section shall set forth the time and place at which the communication was made, the persons who were present at that time and place, a statement of the subject matter of the communication, other than proprietary information, and a statement that the subject matter of the communication did not relate to any pending adjudicatory proceeding before the commission. It shall not be necessary for the memorandum to be prepared by the commissioner or judge, but it shall be signed or otherwise authenticated by the commissioner or judge, whose signature or authentication shall constitute a certificate by such commissioner or judge that the memorandum is complete and accurate. All such memoranda shall be filed with the director of the commission, who shall keep them on file and available for public inspection for a minimum of three years after their submission.

(4) Any public utility may request that the commission conduct a public meeting at which communications otherwise subject to this section may be made without the necessity of filing memoranda. The commission shall adopt reasonable rules and regulations to govern such requests. In addition, the commission may adopt such other rules as are necessary and proper to govern ex parte communications generally.

(5) As used in this section, an "adjudicatory proceeding" does not include a rule-making proceeding or discussions on pending legislative proposals.

## 40-6-123. Standards of conduct

---

(1) Members and staff of the commission shall conduct themselves in such a manner as to ensure fairness in the discharge of the duties of the commission, to provide equitable treatment of the public, utilities, and other parties, to maintain public confidence in the integrity of the commission's actions, and to prevent the appearance of impropriety or of conflict of interest. The standards set forth in this section apply at all times to the commissioners, to their staff, including administrative law judges, and to parties under contract with the commission for state business.

(2) The commissioners, staff who act in an advisory capacity to the commissioners, and administrative law judges shall refrain from financial, business, and social dealings that adversely affect their impartiality or interfere with the proper performance of their official duties.

(3) Neither commissioners; staff members, parties under contract for state work, or members of the immediate families of such persons shall request or accept any gift, bequest, or loan from persons who appear before the commission; except that commissioners and staff members may participate in meetings, conferences, or educational programs which are open to other persons.

(4) Commissioners shall not lend the prestige of their office to advance the private interests of others, nor shall they convey the impression that special influence can be brought to bear upon them.

(5) Commissioners and presiding administrative law judges shall not own any stock, securities, or other financial interest in any company regulated by the commission.

(6) Violation of this section by a commissioner shall be grounds for the immediate removal of such commissioner by the governor.

## 40-6-124. Disqualification

---

(1) Commissioners and presiding administrative law judges shall disqualify themselves in any proceeding in which their impartiality may reasonably be questioned, including, but not limited to, instances in which they:

(a) Have a personal bias or prejudice concerning a party;

(b) Have served as an attorney or other representative of any party concerning the matter at issue, or were previously associated with an attorney who served, during such association, as an attorney or other representative of any party concerning the matter at issue;

- (c) Know that they or any member of their family, individually or as a fiduciary, has a financial interest in the subject matter at issue, is a party to the proceeding, or otherwise has any interest that could be substantially affected by the outcome of the proceeding; or
- (d) Have engaged in conduct which conflicts with their duty to avoid the appearance of impropriety or of conflict of interest.

## 24-6-202. Disclosure - contents - filing - false or incomplete filing - penalty

---

(1) Except as otherwise provided in subsection (1.7) of this section, not later than the January 10 following his or her election, reelection, appointment, or retention in office, written disclosure, in such form as the secretary of state shall prescribe, stating the interests named in subsection (2) of this section shall be made to and filed with the secretary of state of Colorado by:

- (a) Each member of the general assembly;
- (b) The governor, lieutenant governor, secretary of state, attorney general, and state treasurer;
- (c) Each justice or judge of a court of record;
- (d) Each district attorney;
- (e) Each member of the state board of education;
- (f) Each member of the board of regents of the university of Colorado;
- (g) Each member of the public utilities commission.
- (h) Repealed.

## PUC Rules on Prohibited Communications

### **CODE OF COLORADO REGULATIONS 4 CCR 723-1**

#### **1106. Prohibited Communications – Generally.**

Ex parte communications concerning any disputed substantive or procedural issue, or facts or allegations at issue, are strictly prohibited. Commission staff members shall not act as conduits of communication in a manner that would violate this rule if the communication had occurred directly. Prohibited communication includes any oral or written communication that:

- (a) occurs during the pendency of an adjudicatory proceeding or occurs when the persons engaging in the communication know or reasonably should know that the adjudication will commence within 30 days;
- (b) occurs between any advisory staff, Commissioner, or Administrative Law Judge, on the one hand, and, on the other hand, any person, including trial staff, related to, acting as, or acting on behalf of a party, amicus curiae, or member of the public submitting comments pursuant to rule 1509; and
- (c) is made without providing other parties notice and an opportunity to respond.

### **1107. Prohibited Communications – Disclosure.**

(a) Any person communicating with any advisory staff, Commissioner, or Administrative Law Judge concerning a pending adjudicatory proceeding shall state the party with whom he or she is associated and the number and short title of the proceeding.

(b) Any person, party, Commissioner, Administrative Law Judge, or member of Commission staff engaging in prohibited communications shall forthwith serve a notice on all parties describing:

(I) the name and number of the proceeding;

(II) a summary of the matters discussed;

(III) the persons involved and their relationship, if any, to the parties;

(IV) the date, time, and place of the communication and the circumstances under which it was made; and

(V) any other relevant information concerning the communication.

### **1108. Prohibited Communications - Remedies.**

Upon determining that a party has engaged in prohibited communication, the Commission shall ensure that all parties have the opportunity to respond; this includes, if necessary, calling and cross-examining witnesses. In addition, the Commission may, upon its own motion or upon the motion of a party, order any of the following remedial measures:

(a) dismissal of the proceeding, in whole or in part;

(b) striking evidence or pleadings when the evidence or pleading is tainted by the prohibited communication;

(c) a public statement of censure; or

(d) such alternative or additional sanctions as may be appropriate under the circumstances.

## **PUC Rule on Disqualification**

### **CODE OF COLORADO REGULATIONS 4 CCR 723-1**

#### **1109. Disqualification of Commissioner or Administrative Law Judge.**

(a) Whenever any party has a good faith belief that a Commissioner or Administrative Law Judge has engaged in a prohibited communication or may not be impartial, the party may file a motion to disqualify the Commissioner or Administrative Law Judge. Such a motion shall be supported by an affidavit describing the nature and extent of the alleged prohibited communication or bias. Within ten days after any response has been filed, the Commissioner or Administrative Law Judge shall rule on the motion on the record. If the motion is denied, the movant may file a request within ten days, requesting the full Commission to review the denial of the motion. All Commissioners may fully participate in such review.

(b) If at any time a Commissioner or Administrative Law Judge believes that his or her impartiality may reasonably be questioned, the Commissioner or Administrative Law Judge shall withdraw, as provided in § 40-6-124, C.R.S.