

Minnesota Public Utilities Commission

Proposed Permanent Rules Relating to *Ex Parte* Communications and Restrictions on Former Commissioners

CODE OF CONDUCT

7845.0100 DEFINITIONS.

Subp. 6. **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.

Subp. 9. **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;
- G. a small telephone company as defined in Minnesota Statutes, section 237.773, subdivision 1.

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 ~~public utility or telephone company subject to rate regulation by the commission~~ rate-regulated entity.

7845.0900 ~~POST-EMPLOYMENT~~ POSTEMPLOYMENT REPRESENTATION.

Subpart 1. **By commissioner.** A commissioner shall not represent a ~~public utility or telephone company subject to rate regulation by the commission~~ 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 ~~public utility or telephone company subject to rate regulation by the commission,~~ rate-regulated entity before the commission on a proceeding that the employee participated in during that employment with the commission.

EX PARTE COMMUNICATION

7845.7000 DEFINITIONS.

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. 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.

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;

C. a material issue in a disputed formal petition; or

D. other communications prohibited by law, ~~such as:~~

~~(1) offers of employment to commissioners, as described in Minnesota Statutes, section 216A.036, and in parts 7845.0700 and 7845.0800;~~

~~(2) discussions with commissioners concerning past or future benefits or compensation, as described in Minnesota Statutes, section 216A.037, subdivision 2, and in parts 7845.0700 and 7845.0800; or~~

~~(3) offers to commissioners of compensation, gifts, gratuities, favors, entertainment, meals, beverages, loans, or other things of monetary value, as described in part 7845.0700.~~

7845.7300 HANDLING PROHIBITED EX PARTE COMMUNICATIONS.

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.

7845.7400 HANDLING PERMISSIBLE EX PARTE COMMUNICATIONS.

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.

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 ~~following~~ sanctions: listed in part 7845.7800.

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

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

~~C. the striking of evidence or pleadings when the evidence or pleadings are tainted by the prohibited ex parte communication; or~~

~~D. 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 or 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 the proceeding; and~~

~~(4) do not taint the evidence or pleadings.~~

7845.7700 EX PARTE COMMUNICATIONS; COMPLAINTS SEEKING SANCTIONS.

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

Subpart 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. the facts which constitute the allegation; and
- F. sanctions sought.

Subpart 3. **Service.** Complaints filed under this part must be filed with the commission and mailed to or served on 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.

Subpart 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.

7845.7800 COMPLAINT PROCEEDING.

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

Subpart 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.

Subpart 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.

Subpart 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.

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.

Subpart 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 vary the notice period as it deems appropriate.

Subpart 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.