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(3) Any Commissioner, Administrative Law Judge or Commission decisional employee who knowingly makes or knowingly cause to be made, or who knowingly solicits or knowingly causes the solicitation of, an ex parte communication which violates the prohibitions contained in paragraph (b) of this section may, on that basis alone, be deemed to have engaged in conduct of the type proscribed by 17 CFR 140.735–3(b)(3).

(e) *Applicability of prohibitions and sanctions against ex parte communications.* (1) The prohibitions of this section against ex parte communications shall apply:

(i) To any person who has actual knowledge that a proceeding has been or will be commenced by order of the Commission; and

(ii) To all persons after public notice has been given that a proceeding has been or will be commenced by order of the Commission.

(2) The prohibitions of this section shall remain in effect until a final order has been entered in the proceeding which is no longer subject to review or reconsideration by the Commission or to review by any court.

(3) Nothing in this section shall constitute authority to withhold information from Congress.

(Sec. 4, Pub. L. 94–409, 90 Stat. 1246, 1247 (5 U.S.C. 551(14), 556(d) and 557(d)); sec. 101(a)(11), Pub. L. 93–463, 88 Stat. 1391 (7 U.S.C. 4a(j) (Supp. V, 1975))

[42 FR 13700, Mar. 11, 1977, as amended at 60 FR 54801, Oct. 26, 1995]

§ 10.11 Appearance in adjudicatory proceedings.

(a) *Appearance*—(1) *By non-attorneys.* An individual may appear pro se (in his own behalf), a member of a partnership may represent the partnership, a bona fide officer of a corporation, trust or association may represent the corporation, trust or association, an officer or employee of a State Commission or of a department or political subdivision of a State may represent the State Commission or the department or political subdivision of the State in any proceeding.

(2) *By attorneys.* An attorney-at-law who is admitted to practice before the highest Court in any State or territory, or of the District of Columbia, who has not been suspended or disbarred from appearance and practice before the Commission in accordance with the provisions of part 14 of this title, may represent parties in proceedings before the Commission.

(b) *Debarment of counsel or representative by administrative law judge during the course of a proceeding.* (1) Whenever, while a proceeding is pending before him, the Administrative Law Judge finds that a person acting as counsel or representative for any party to the proceeding is guilty of contemptuous conduct, the Administrative Law Judge may order that such person be precluded from further acting as counsel or representative in such proceeding. An immediate appeal to the Commission may be sought from any such order, pursuant to the terms of § 10.101, but the proceeding shall not be delayed or suspended pending disposition of the appeal: *Provided,* That the Administrative Law Judge may suspend the proceedings for a reasonable time for the purpose of enabling the party to obtain other counsel or representative.

(2) Whenever the Administrative Law Judge has issued an order precluding a person from further acting as counsel for representative in the proceeding, the Administrative Law Judge within a reasonable time thereafter, shall submit to the Commission a report of the facts and circumstances surrounding the issuance of the order and shall recommend what action the Commission should take respecting the appearance of such person as counsel or representative in other proceedings before the Commission.

§ 10.12 Service and filing of documents; form and execution.

(a) *Service by a party or other participant in a proceeding*—(1) *Number of copies; when required.* Two copies of all pleadings subsequent to the complaint, all motions, petitions or applications made in the course of a proceeding (unless made orally during a hearing), all proposed findings and conclusions, all petitions for review of any initial decision, and all briefs shall be served by the party or other participant upon all parties to the proceeding.

(2) *How service is made.* Service shall be made by personal service, delivering the documents by first-class United States mail or a similar commercial package delivery service, or transmitting the documents via facsimile machine. Service shall be complete at the time of personal service or upon deposit in the mails or with a similar commercial package delivery service of a properly addressed document for which all postage or fees have been paid to the mail or delivery service. Where a party effects service by mail or similar package delivery service, the time within which the party being served may respond shall be extended by three days. Service by facsimile machine shall be permitted only if all parties to the proceeding have agreed to such an arrangement in writing and a copy of the written agreement, signed by each party, has been filed with the Proceedings Clerk. The agreement must specify the facsimile machine telephone numbers to be used, the hours during which the facsimile machine is in operation and when service will be deemed complete.

(3) *Proof of Service.* Proof of service of a document shall be made by filing with the Proceedings Clerk, simultaneously with the filing of the required number of copies of the document, an affidavit of service executed by any person 18 years of age or older or a certificate of service executed by an attorney-at-law qualified to practice before the Commission. The proof of service shall identify the persons served, state that service has been made, set forth the date of service, and recite the manner of service.

(b) *Service of decisions and orders.* A copy of all rulings, opinions and orders of the Administrative Law Judge and the Commissions shall be served by the Proceedings Clerk on each of the parties.

(c) *Designation of person to receive service.* The first document filed in a proceeding by or on behalf of any party or participant (including the complaint and notice of hearing, the answer, and an application for intervention) shall state on the first page thereof the name and post office address of the person who is authorized to receive service for him of all documents filed in the proceeding. Thereafter service of documents shall be made upon the person authorized unless service on the party himself is ordered by the Administrative Law Judge or the Commission, or unless no person authorized to receive service can be found, or unless the person authorized is changed by the party upon due notice to all other parties.

(d) *Filing of documents with the Proceedings Clerk.* (1) All documents which are required to be served upon a party shall be filed concurrently with the Proceedings Clerk. A document shall be filed by delivering it in person or by certified or registered mail with return receipt requested to:

Proceedings Clerk, Office of Proceedings, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

(2) To be timely filed, a document must be received by the Proceedings Clerk within the time prescribed for filing.

(e) *Formalities of filing*—(1) *Number of copies.* Unless otherwise specifically provided, an original and five conformed copies of all documents shall be filed with the Proceedings Clerk.

(2) *Title page.* All documents filed with the Proceedings Clerk must include at the head thereof, or on a title page, the name of the Commission, the docket number and title of the proceeding, the subject of the particular document and the name of the person in whose behalf the document is being filed. In the complaint the title of the action shall include the names of all the respondents, but in documents subsequently filed it is sufficient to state the name of the first respondent named in the complaint with an appropriate indication of other parties.

(3) *Paper, spacing, type.* All documents filed under this part shall be typewritten, mimeographed, printed, or otherwise reproduced by a process that produces permanent and plainly legible copies, shall be on one grade of good unglazed white paper no less than 8 or more than 8½ inches wide and no less than 10½ or more than 14 inches long, with a left-hand margin 1½ inches wide, and shall be bound on the top only. They shall be double spaced, except for long quotations (3 or more lines) and footnotes, which should be

single-spaced. If printed, the documents shall be in either 10- or 12-point type with double-leaded text and single-leaded quotations and footnotes.

(4) *Signatures*. The original copy of all papers must be signed in ink by the person filing the same or by his duly authorized agent or attorney.

(5) *Length and form of briefs*. All briefs filed with the Proceedings Clerk containing more than ten pages shall include an index and a table of cases and other authorities cited. The date of each brief must appear on its front cover or title page and on its signature page. No brief shall exceed 60 pages in length, except with the permission of the Administrative Law Judge or, by the Commission, to whomever the brief is directed.

(6) *Documents improperly tendered for filing*. No document will be accepted unless it complies with the requirements of this paragraph concerning form, filing, subscription, service and other similar matters. A document tendered but not accepted for filing shall not be entered on the Proceedings Clerk's docket, but a motion may be made to the Administrative Law Judge for leave to file an otherwise unauthorized document.

(f) *Subscriptions*—(1) *By whom*. Pleadings, petitions, motions and answers thereto, briefs and other documents filed with the Commission shall be subscribed:

(i) By the person or persons on whose behalf they are tendered for filing;

(ii) By a partner, officer or director of a partnership, corporation, association, or other legal entity; or

(iii) By an attorney-at-law having authority with respect thereto.

The Proceedings Clerk may require appropriate evidence of the authority of a person subscribing a document on behalf of another person.

(2) *Effect*. The signature on a document of any person acting either for himself or as attorney or agent for another constitutes a certification by him that:

(i) He has read the document subscribed and knows the contents thereof;

(ii) If executed in any representative capacity, it was done with full power and authority to do so;

(iii) To the best of his knowledge, information and belief, every statement contained in the document is true and not misleading; and

(iv) The document is not being interposed for delay.

(3) *Sham documents*. If a document is not signed or is signed with an intent to defeat the purpose of this rule, it may be stricken as sham and false. For a willful violation of this rule an attorney may be subjected to appropriate disciplinary action pursuant to § 10.11(b). Similar action may be taken if scandalous matter is inserted.

(g) *Official docket*. The Proceedings Clerk will maintain the official docket for each proceeding. The official docket is available for public inspection in the Commission's Office of Proceedings.

[41 FR 2511, Jan. 16, 1976, as amended at 41 FR 28260, July 9, 1976; 60 FR 54802, Oct. 26, 1995; 63 FR 55791, Oct. 19, 1998]

Subpart B—Institution of Adjudicatory Proceedings; Pleadings; Motions

§ 10.21 Commencement of the proceeding.

An adjudicatory proceeding is commenced when a complaint and notice of hearing is filed with the Office of Proceedings.

[63 FR 55791, Oct. 19, 1998; 63 FR 68829, Dec. 14, 1998]

§ 10.22 Complaint and notice of hearing.

(a) *Content*. The complaint and notice of hearing shall include:

(1) The legal authority and jurisdiction under which the hearing is held;

(2) The matters of fact and law to be considered and determined.

The complaint shall set forth the matters of fact alleged therein in such manner as will permit a specific response to each allegation. The notice shall notify the respondent of his right to a hearing and shall specify the time required by § 10.23 of these rules for the filing of an answer and the consequence of failure to file an answer.

(b) *Service*. The Proceedings Clerk shall give appropriate notice to each respondent by serving them with a copy of the complaint and notice of