

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Revision of Rule 25- ) DOCKET NO. 930538-OT  
22.008, F.A.C., Practitioners ) ORDER NO. PSC-93-1129-NOR-OT  
\_\_\_\_\_ ) ISSUED: August 3, 1993

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman  
THOMAS M. BEARD  
SUSAN F. CLARK  
JULIA L. JOHNSON  
LUIS J. LAUREDO

NOTICE OF RULEMAKING

NOTICE is hereby given that the Commission, pursuant to section 120.54, Florida Statutes, has initiated rulemaking to amend Rule 25-22.008, F.A.C., relating to practitioners.

The attached Notice of Rulemaking will appear in the August 6, 1993 edition of the Florida Administrative Weekly. A hearing will be held at the following time and place:

9:30 a.m., November 4, 1993  
Room 106, Fletcher Building  
101 East Gaines Street  
Tallahassee, Florida

Written comments or suggestions on the rule must be received by the Director, Division of Records and Reporting, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, FL 32399, no later than August 27, 1993.

By ORDER of the Florida Public Service Commission this 3rd day of August, 1993.

  
\_\_\_\_\_  
STEVE TRIBBLE, Director  
Division of Records & Reporting

( S E A L )

DOCUMENT NUMBER-DATE

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RULE TITLE:                   RULE NO.:

Practitioners               25-22.008

PURPOSE AND EFFECT: Rule 25-22.008 is being updated to correct several existing provisions, to add new requirements, and to delete an invalid prohibition. The provision prohibiting a lay practitioner representing a party in a proceeding from appearing as a witness in the same proceeding except under limited circumstances is added to improve the integrity of the Commission's adjudicative process and the adversarial process.

SUMMARY: The rule is revised to require Class B practitioners (lay representatives) to file a statement of the client that they have the authority to represent, to delete the prohibition against nonlawyer corporate officers representing the legal interests of their corporations, and to clarify that the Standards of Conduct for Administrative Proceedings apply to all practitioners in Commission proceedings who are not subject to the disciplinary procedures of The Florida Bar. A provision is added to prohibit, with four exceptions, a lay practitioner from being a representative and a witness in the same proceeding.

RULEMAKING AUTHORITY: 120.53, F.S.

LAW IMPLEMENTED: 120.53, F.S.

EIS SUMMARY HAS BEEN DELETED PER 120.54(1).

WRITTEN COMMENTS OR SUGGESTIONS ON THE PROPOSED RULE MAY BE SUBMITTED TO THE FPSC, DIVISION OF RECORDS AND REPORTING, WITHIN 21 DAYS OF THE DATE OF THIS NOTICE FOR INCLUSION IN THE RECORD OF THE PROCEEDING.

HEARING: A HEARING WILL BE HELD AT THE DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 9:30 A.M., November 4, 1993

PLACE: Room 106, 101 East Gaines Street, Tallahassee, Florida.

THE PERSON TO BE CONTACTED REGARDING THIS RULE AND THE ECONOMIC IMPACT STATEMENT IS: Director of Appeals, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida 32399.

THE FULL TEXT OF THE RULE IS:

25-22.008 Practitioners.

(1) To practice law before the Commission, one must qualify either as a Class A or a Class B practitioner, however, self representation is not precluded by this rule. For the purposes of this rule:

(a) The Class A practitioner is licensed to practice law in the State of Florida or elsewhere in the United States.

(b) The Class B practitioner is licensed to practice before the Commission as provided by this rule.

(c) The "practice of law" includes, but is not limited to:

1. Introduction of evidence;
2. Examination and cross-examination of witnesses;

3. Determining the qualifications or expertise of witnesses;
4. Making both written and oral motions and arguing same;
5. Objecting to evidence and arguing thereon;
6. Making decisions affecting important legal rights and obligations of clients; and
7. Filing written pleadings.
8. Conducting discovery.

(2) Class A practitioners:

(a) One licensed to practice law in the State of Florida may practice law before the Commission by making an appearance at the proceeding in which the practitioner is representing the legal interests of his or her client.

(b) One licensed to practice law elsewhere in the United States may practice law before the Commission by obtaining sponsorship of a person licensed to practice law in the State of Florida, making an appearance at the proceeding in which the practitioner is representing the legal interests of his or her client, and certifying that he or she has practiced before utility regulatory bodies in other states or at the federal level.

(3) Class B practitioners:

(a) A person who wishes to practice before the Commission may do so by applying to the Commission's Director of Records and Reporting Clerk for a Class B certification, completing the application, satisfying the Commission via the written application that he or she possesses legal skills and a knowledge of the law and utility regulatory matters which is greater than that possessed by the average person, and making an appearance before the Commission as a Class B practitioner.

Specifically, the applicant for a Class B certification must detail:

1. Name, address, employer, and occupation;
2. Knowledge of Commission jurisdiction and the relief obtainable from the Commission ~~supportive legal authority to file the initial notice~~;
3. Education and ~~or~~ experience relative to Chapter 120, F.S., Rules 9.020, 9.110, 9.310 and 9.800 of the Florida Rules of Appellate ~~Appellant~~ Procedure, the Florida Rules of Civil Procedure as they relate to discovery in administrative proceedings, rules of evidence including the concept of hearsay and its use in administrative proceedings, relevant chapters of Title 25 of the Florida Administrative Code, and relevant chapters of Florida Statutes governing the Commission;

4. Knowledge of the Standards of Conduct Code of Ethics for Administrative Proceedings as contained in Rule 28-5.1056, Chapter 23-5 of the Florida Administrative Code; and

5. Educational background, training and ~~or~~ work experience relative to utility regulation.

(b) The applicant for a Class B certification may specify that he or she wishes to limit practice before the Commission. Under such a circumstance, the Commission will evaluate the applicant's qualifications with regard to the limitation on practice. Where the application is granted under this paragraph, the Commission will issue the Class B certification with appropriate notations as to the limitations imposed.

(c) The Office of the General Counsel will determine the qualifications of any applicant for a Class B certification and may grant the application. Where, however, the Office of General Counsel determines that the application should be denied, its recommendation shall come to the Commission's attention at agenda conference and the Commission shall dispose of the application.

(d) Each Class B practitioner who desires to participate in a proceeding shall, prior to participating, file a notice of appearance with the Director of Records and Reporting. The notice shall be accompanied by a signed, written statement of the person desiring non-attorney representation stating the person's acceptance and approval of representation by the Class B

practitioner in the particular proceeding. The statement shall include a description of the nature and extent of the services the Class B practitioner can and will provide.

(e) ~~(d)~~ The Commission may revoke a Class B certification after hearing for good cause, which shall include, but not be limited to, a violation of the Standards of Conduct Code of Ethics contained in Rule 28-5.1056, Chapter 25-2 of the Florida Administrative Code.

(4) Self representation, which includes individuals appearing on their own behalf and representation of a corporation or other entity within the meaning of "person" as defined in section 1.01, Florida Statutes, by an officer of the corporation or entity, is not precluded by this rule. ~~However, the right of self representation does not allow nonlawyer corporate officers to represent the legal interests of their corporations except upon compliance with the requirements of subsection (3) of this rule.~~

(5) Rule 28-5.1056, Florida Administrative Code, entitled "Standards of Conduct for Administrative Proceedings," is incorporated by reference into this rule and applies to practitioners in any Commission proceeding other than practitioners subject to the disciplinary procedures of The Florida Bar.

(6) A practitioner representing a party in a proceeding shall not appear as a witness in that proceeding except where the Commission determines:

(a) the testimony relates to an uncontested issue;

(b) the testimony will relate solely to a matter of formality and there is no reason to believe that substantial evidence will be offered in opposition to the testimony;

(c) the testimony relates to the nature and value of the practitioner's services rendered in the case; or

(d) disqualification of the practitioner would work substantial hardship on the person desiring non-attorney representation.

Specific Authority: 120.53, F.S.

Law Implemented: 120.53, F.S.

History: New 9/30/81, Transferred 12/21/81, formerly 25-22.08,  
Amended \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Christiana T. Moore

NAME OF SUPERVISOR OR PERSON(S) WHO APPROVED THE PROPOSED RULE:  
Florida Public Service Commission.

DATE PROPOSED RULE APPROVED: July 20, 1993

If any person decides to appeal any decision of the Commission with respect to any matter considered at the rulemaking hearing, if held, a record of the hearing is necessary. The appellant must ensure that a verbatim record, including testimony and



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evidence forming the basis of the appeal is made. The Commission usually makes a verbatim record of rulemaking hearings.

Any person requiring some accommodation at this hearing because of a physical impairment should call the Division of Records and Reporting at (904) 488-8371 at least five calendar days prior to the hearing. If you are hearing or speech impaired, please contact the Florida Public Service Commission using the Florida Relay Service, which can be reached at: 1-800-955-8771 (TDD).