

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-94-0231-FOF-OT
_____) ISSUED: March 2, 1994

NOTICE OF ADOPTION OF RULE AMENDMENT

NOTICE is hereby given that the Commission, pursuant to section 120.54, Florida Statutes, has adopted the amendments to Rule 25-22.008, F.A.C., relating to Practitioners, with changes.

The rule amendment was filed with the Department of State on March 1, 1994, and will be effective on March 21, 1994. A copy of the relevant portions of the certification filed with the Secretary of State is attached to this Notice.

This docket is closed upon issuance of this notice.

By Direction of the Florida Public Service Commission, this
2nd day of March, 1994.

STEVE TRIBBLE, Director
Division of Records & Reporting

(S E A L)

by: Kay Flynn
Chief, Bureau of Records

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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, mailing address and street address, business telephone number, 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 is not employed by either the Commission or the Office of the Public Counsel and who desires to participate in a proceeding shall, prior to participating on behalf of a client for the first time before the Commission, file a notice of representation with the Director of Records and Reporting.

1. 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 Commission proceedings. The statement shall include a description of the nature and extent of the services the Class B practitioner can and will provide.

2. Class B practitioners must file an updated notice and statement with the Director of Records and Reporting no later than June 30 of each even-numbered year.

(e) ~~(d)~~ The Commission may revoke or suspend 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.~~

(f) Each Class B practitioner shall promptly notify the Director of Records and Reporting of any changes to the practitioner's mailing address, street address or business telephone number.

(g) If a person holding Class B certification does not practice before the Commission or is not employed by the Commission or the Office of the Public Counsel for a period of two consecutive years, the certification shall terminate without further action of the Commission. Not later than June 30 of each even-numbered year, each Class B practitioner who wishes to continue his or her certification shall furnish the Director of Records and Reporting with information sufficient to establish that he or she has appeared before the Commission on behalf of a client during the previous two calendar years.

(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 an evidentiary proceeding shall not appear as a witness in any hearing 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 3/21/94.