

Compilation of the Rules of the Mississippi Workers' Compensation Commission

Title 20: Labor

Part 1: Rules of the Mississippi Workers' Compensation Commission

Part 1 Chapter 1: General Rules

### **Rule 1.1. Meetings.**

The office of the Mississippi Workers' Compensation Commission shall be in the City of Jackson. The Commission shall remain in continuous session; also, the Commission shall meet as a body at the call of the Chairman to transact other business as needed.

This Rule shall be in force and effect on and after January 18, 2018.

Source: [Miss. Code Ann. § 71-3-85](#).

## **Rule 1.2. Amendments and Construction.**

The Rules of the Commission are subject to amendment at any time, and the Commission will adopt additional Rules as needed.

All references in these Rules to the “Law” or to the “Act” refer to the most current provisions of the Mississippi Workers’ Compensation Law, [Miss. Code Ann. 71-3-1 et seq.](#) (1972, as amended), unless otherwise provided.

All references to “Commission” shall not include and apply to any Administrative Judge of this Commission, unless otherwise provided.

These Rules shall be in effect and shall apply to all claims or matters pending before the Commission as of the effective date of the Rules, and to all matters or claims thereafter filed.

If the Commission, an Administrative Judge, or any court of competent jurisdiction finds that any provision of these Rules conflicts with any provision of the Mississippi Workers’ Compensation Law, the provision of the Law shall control.

This Rule shall be in force and effect on and after January 18, 2018.

Source: [Miss. Code Ann. § 71-3-85.](#)

### **Rule 1.3. Proof of Coverage.**

Every employer within the scope of the Mississippi Workers' Compensation Law shall file proof of compliance with the insurance provisions of the Law in the manner directed by the Commission. In cases where insurance is taken with a carrier registered with the Commission, employer's notice of compliance shall be filed by the carrier with and through the National Council on Compensation Insurance's Proof of Coverage System, or with any other vendor approved by the Commission for such purposes. Individual and group self-insured employers shall file notice of coverage in the manner and format prescribed by the Commission.

This Rule shall be in force and effect on and after January 18, 2018.

Source: [Miss. Code Ann. § 71-3-85](#).

#### **Rule 1.4. [Repealed effective April 1, 2001]**

#### **Rule 1.5. Cancellation of Policies.**

To cancel or terminate an insurance policy with an employer before the expiration date stated in the policy, the carrier shall give the employer thirty (30) days prior notice as provided in [Miss. Code Ann. Section 71-3-77](#) of the Act.

The employer whose policy has been canceled or terminated per [Miss. Code Ann. Section 71-3-77](#) shall, on or before the thirtieth (30th) day after receiving notice of cancellation or termination, furnish proof of coverage in accordance with Mississippi Workers' Compensation Commission General Rule 1.3. Employer's failure to furnish such proof of coverage within thirty days shall be considered a violation of [Miss. Code Ann. Section 71-3-9](#) and subject the employer to the penalties prescribed under [Miss. Code Ann. Section 71-3-83](#).

This Rule shall be in force and effect on and after January 18, 2018.

Source: [Miss. Code Ann. § 71-3-85](#).

## **Rule 1.6. [Repealed effective September 1, 1993]**

### **Rule 1.7. Self-Insurers.**

#### (I) Individual Self-Insurance

##### A. Application for Individual Exemption from Insuring

(1) Any employer desiring to qualify as an individual exempt from insuring its liability for compensation (individual self-insurance) under the provisions of [Miss. Code Ann. § 71-3-75](#) shall make application on a form provided by the Commission, and shall be required to reply fully to all inquiries made by the Commission and provide all necessary documents for the application to be properly considered.

(2) No record or any information concerning the solvency and financial ability of any applicant for individual self-insurance and no other information acquired by the Commission, which is deemed confidential by other provisions of law, shall be subject to public inspection.

(3) In no event shall an application for self-insurance be approved unless the applicant is willing and able to furnish adequate security for the payment of its obligations under the Act, and the type and amount of such security shall be determined by the Commission and in no event shall be less than \$100,000.00. Upon approval of application by the Commission, security information shall be made available to the Mississippi Workers' Compensation Individual Self-insurer Guaranty Association (IGA).

(4) Each applicant for individual self-insurance shall provide the Commission with one (1) point of contact information consisting of its mailing address, e-mail address, and telephone number.

(5) Upon approval of an application to be self-insured, the applicant must furnish the complete excess insurance policy in a form and in an amount acceptable to the Commission and that

specifically names the Mississippi Workers' Compensation Individual Self-insurer Guaranty Association (IGA) as an additional insured in the event of the self-insurer's insolvency or default.

#### B. Regulation of Approved Individual Self-Insurers

(1) The Commission shall continually monitor the financial status and claim liabilities of the individual self-insurer, and shall require, at the expense of the self-insurer, periodic financial, actuarial, or other such audits, statements, or reports as the Commission deems necessary to ensure that the financial status of the self-insurer remains satisfactory, that its liabilities remain adequately funded, and that its obligations under the compensation law are being promptly met.

(2) All individual self-insurers shall file with the Commission a statement of financial condition audited by an independent certified public accountant six months after the end of the individual self-insurer's fiscal year. All financial reports requested are required to be submitted electronically to the Commission. No record or any information concerning the solvency and financial ability of an individual self-insurer acquired by the Commission shall be subject to public inspection.

(3) At the same time the individual self-insurer files its required financial reports, each individual self-insurer shall provide the Commission with a current point of contact information consisting of its mailing address, e-mail address, telephone number. Failure to provide a current point of contact for Commission regulation and the Commission's annual assessment may result in cancellation of an individual self-insured's certificate of authority.

(4) All individual self-insurers shall maintain specific and/or aggregate excess insurance coverage in an approved form providing statutory coverage with retention in an amount set by the Commission and naming the IGA as an additional insured in the event of the self-insurer's insolvency or default. A copy of the renewal policy shall be filed electronically with the Commission within thirty (30) days of the policy inception date.

(5) The security posted or the indemnity bond held by the Commission shall be for the benefit of the Commission and IGA as security for the payment of the individual self-insurer's covered claims and other obligations under the Law; for the expenses incurred by IGA in evaluating, adjusting, defending, or settling the self-insurer's covered claims; and for any assessment made against the self-insurer pursuant to the Mississippi Workers' Compensation Self-insurer Guaranty Association Law, [Miss. Code Ann. §§ 71-3-151 through 181](#). The security posted or the indemnity bond held by the Commission shall also be for the benefit of the Commission to the extent of any assessment made against the self-insurer pursuant to the applicable provisions of the Act. Any bond or other security held by the Commission shall not be returned to a self-insurer or released any earlier than at least one (1) year after the last known claim, including medical only claims, against such self-insurer has been closed in accordance with the provisions of the Act.

(6) The Commission has the authority to require further or additional security from the individual self-insured to ensure that all outstanding liabilities are adequately secured. Additionally, the Commission has the authority to reduce the amount of security to a minimum held on behalf of the individual self-insured. The Commission shall not reduce the amount of security held on behalf of an individual self-insurer to below \$100,000.00, until at least one (1) year after the last known claim, including medical only claims, against such individual self-insurer has been closed in accordance with the provisions of the Act. The Commission shall notify the IGA of the Commission's intent to release, reduce, or increase the security or bond.

(7) All individual self-insurers are required to furnish the Commission safety reports at least annually, according to the schedule or time fixed by the Commission. Such reports are to be made by a safety engineer or some other party competent to make safety surveys and reports, shall be submitted electronically, and shall be in the format prescribed by the Commission.

(8) At least every three years, unless relieved by the Commission, or more often if prescribed by the Commission, every

individual self-insurer shall file an actuarial report with the Commission from a Member of the American Academy of Actuaries or other Commission approved qualified loss reserve specialist. The report shall include, but not be limited to, the amount of actuarially appropriate reserves for (i) known Mississippi claims and expenses associated therewith, and (ii) Mississippi claims incurred but not reported and expenses associated therewith, which reserves shall be shown as liabilities.

(9) All renewals of certificates of authority for the privilege of individual self-insurance shall automatically be granted upon the express condition that the individual self-insurer files promptly and completely by the prescribed due date all reports required of it by the Commission and that the individual self-insurer complies with the plan of operation of the IGA, in accordance with [Mississippi Code § 71-3-165\(3\)](#).

(10) The Commission may institute proceedings requiring the individual self-insurer to show cause why its certificate of authority to act as an individual self-insurer pursuant to [Miss. Code Ann. § 71-3-75](#) should not be terminated. The Commission shall notify the IGA of any such proceedings instituted against an individual self-insurer and of the basis for the Commission's decision to institute the proceedings.

## (II) GROUP SELF-INSURERS.

### A. Authority to Act as a Workers' Compensation Self-Insurance Group

The Commission may permit two or more employers engaged in a common type of business activity or pursuit, or having other reasons to associate, to enter into agreements to pool their liabilities under [Miss. Code Ann. § 71-3-75](#) for the purpose of qualifying as group self-insurers, and, in conjunction therewith, to enter into agreements to pool any other liabilities to their employees, and each employer member of such approved group shall be classified as a self-insurer. No person, association, or other entity shall act as a workers' compensation self-insurance group unless it has been issued an annual certificate of authority by the Commission. Such



certificate of authority must be renewed annually on or before the anniversary date of the original certificate of authority of group self-insurance.

#### B. Qualifications for Initial Approval and Authority to Act as a Workers' Compensation Group

(1) A group of employers shall file an application with the Commission to act as a group self-insurer, demonstrating the need to form such a group. The proposed group self-insurer must show cause as to why a new group self-insurer should be approved. This may be through written presentation, oral, or both, at the direction of the Commission. The proposed self-insurance group shall file with the Commission its application for a certificate of approval accompanied by a non-refundable filing fee in the amount of Five Thousand Dollars (\$5,000.00).

(2) In no event shall an application for group self-insurance be approved unless the applicant is willing and able to furnish adequate security for the payment of its obligations under the Act, and the type and amount of such security shall be determined by the Commission and in no event shall be less than \$100,000.00. Upon approval of application to form a group self-insured by the Commission, security information shall be made available to the Mississippi Workers' Compensation Group Self-insurer Guaranty Association (GGA).

(3) After approval of the proposed group self-insurer, the self-insurance group shall file with the Commission the following:

(i) The applicant group self-insurer's name, location of its principal office, date of organization, and name and address of each member;

(ii) A copy of the articles of association, if any;

(iii) A copy of the bylaws of the proposed group self-insurer;

(iv) A copy of agreements with the administrator and with any and all service companies;

(v) A copy of the agreement between the group self-insurer and each member securing the payment of workers' compensation

benefits, which shall include provisions for payment of assessments as provided by law;

(vi) Designation of the initial board of trustees and administrator;

(vii) The address in this State where the books and records of the group self-insurer will be maintained;

(viii) A pro-forma financial statement and any other documents required by the Commission on forms acceptable to the Commission showing the financial ability of the group self-insurer to pay workers' compensation obligations of its members;

(ix) Proof of payment to the group self-insurer by each member of not less than 25% of that member's first year of estimated annual premium as defined by the Commission on a date prescribed;

(x) Public group self-insurers must submit authorization from the governing authorities of each proposed member allowing participation in such a group self-insurance program with other political subdivisions or state agencies, boards, commissions or other public entities;

(xi) Rates, Rating Plans, (including all rating elements and formulas, e.g., experience rating factors, discounts, Schedule Rating Plans, etc.). Premium payment plans and classes of business to be written must be submitted for, and approved by the Commission, prior to a certificate of authority being issued.

### C. Maintaining Authority to Act as a Group Self-Insurer

(1) In order to maintain the authority to act as a self-insurance group, the certificate of authority must be renewed annually on or before the anniversary date of the original certificate of authority of group self-insurance.

(2) To renew a group self-insurer certificate of authority, the group self-insurer must comply annually with the following provisions and supply the following items to the Commission:

(i) Demonstrate a combined net worth of all members of at minimum \$1,000,000.00;

(ii) Each group self-insurer shall submit to the Commission a statement of financial condition audited by an independent certified public accountant, approved by the Commission, six months after the end of the group self-insurer's fiscal year. The financial statement shall include actuarially appropriate reserves for (a) known claims and expenses associated therewith, (b) claims incurred but not reported and expenses associated therewith, (c) unearned premiums, and (d) bad debt, which reserves shall be shown as liabilities;

(iii) An actuarial opinion regarding reserves for (a) claims and expenses associated therewith and (b) claims incurred but not reported and expense associated therewith shall be submitted to the Commission included in the audited financial statement;

(iv) Rates, Rating Plans, (including all rating elements and formulas, e.g., experience rating factors, discounts, Schedule Rating Plans, etc.) Premium payment plans and classes of business to be written must be submitted for, and approved by the Commission at least ninety (90) days prior to the renewal date in order for the group self-insurer's certificate of authority to be renewed.

(v) Unless relieved by the Commission, an actuarial rate analysis shall be performed annually and presented to the Commission in conjunction with the submission of the items mentioned in part (C)(2) (iv) above. This analysis shall include all classes to be written by the group self-insurer. The actuarial opinions and rate analysis shall be given by a Member of the American Academy of Actuaries or other Commission-approved qualified loss reserve specialist as defined in the annual statement adopted by the National Association of Insurance Commissioners, or any other qualified entity approved by the Commission.

(vi) Security against all unpaid claims and other liabilities in case of insolvency as prescribed by the Commission shall be provided by either a surety bond, financial security endorsement, guaranty agreement, or such other security as may be required by the Commission, payment into the self-insurance guaranty fund in an amount specified by the Commission, or any combination thereof.

The Commission may adjust from time to time the requirements for the amount of security based on differences among group self-insurers in their size, types of employment, years in existence, financial status, or other relevant factors. The Commission shall notify the GGA of the Commission's intent to release, reduce, or increase the security;

(vii) Specific and/or aggregate excess insurance in a form and in an amount by an insurance company acceptable to the Commission;

(viii) An indemnity agreement jointly and severally binding the group self-insurer and each member thereof to meet the workers' compensation obligations of each member. The indemnity agreement shall be in a form prescribed by the Commission;

(ix) A fidelity bond for the administrator in a form and amount acceptable to the Commission;

(x) Any changes in bylaws of the approved group self-insurer;

(xi) Any changes in agreement with the administrator and with any and all service companies;

(xii) Any changes in the board of trustees or administrator.

#### D. Examinations.

The Commission may examine the affairs, transactions, accounts, records, assets, and liabilities of each group self-insurer as often as the Commission deems advisable. The expenses of such examinations shall be assessed against the group self-insurer.

#### E. Board of Trustees: Membership, Powers, Duties, Prohibition.

(1) Each group self-insurer shall be operated by a board of trustees which shall consist of not less than five persons whom the members of a group self-insurer elect for stated terms of office. At least two-thirds of the trustees shall be employees, officers, or directors of members of the group self-insurer. The group self-insurer's administrator, service company, or any owner, officer, employee of, or any person affiliated with such administrator or service company shall not serve on the board of trustees of the group self-insurer. All trustees shall be residents of the state of

Mississippi or officers of corporations authorized to do business in the state of Mississippi. The board of trustees of each group self-insurer shall ensure that all claims are paid promptly and shall take all necessary precautions to safeguard the assets of the group self-insurer.

(2) The board of trustees shall:

(i) Maintain responsibility for all monies collected or disbursed from the group self-insurer. Unless otherwise required by the Commission, at least 70% of the premium as determined by the Commission shall be for the sole purpose of paying claims, allocated claims expenses, reinsurance or excess insurance, and special fund contributions, including second injury and other loss related funds. The remaining premium shall be for the payment of taxes, general regulatory fees and assessments, and administrative costs. The Commission may approve an administrative fund account of more than 30% and a claims fund account of less than 70% only if the group self-insurer shows to the Commission's satisfaction that (a) more than 30% is needed for an effective safety and loss control program or (b) the group self-insurer's aggregate excess insurance attaches at less than 70%;

(ii) Maintain minutes of all board meetings and make such minutes available to the Commission;

(iii) Designate an administrator to carry out the policies established by the board of trustees, provide day to day management of the group self-insurer, and delineate in the written minutes of its meetings the areas of authority it delegates to the administrator;

(iv) Retain an independent certified public accountant to prepare the statement of financial condition as required by the Commission;

(v) Adopt and be responsible for maintaining an investment policy which will permit no more than 30% of investments in equities, unless otherwise approved by the Commission.

(3) The board of trustees shall not:

(i) Extend credit to individual members for payment of a premium except pursuant to payment plans approved by the Commission;

(ii) Borrow any monies from the group self-insurer or in the name of the group self-insurer except in the ordinary course of business, without first advising the Commission of the nature and purpose of the loan and obtaining prior approval from the Commission.

#### F. Individual Employer: Group Membership, Termination, and Liability

(1) An employer joining a workers' compensation self-insurance group after the group self-insurer has been issued a certificate of approval shall (i) submit an application for membership to the board of trustees or its administrator and (ii) enter into the indemnity agreement required by this Rule. Membership takes effect no earlier than each member's date of approval. The application for membership and its approval shall be maintained as permanent records of the board of trustees.

(2) Individual members of a group self-insurer shall be subject to cancellation by the group self-insurer pursuant to the by-laws of the group. In addition, individual members may elect to terminate their participation in the group. The group self-insurer shall notify the Commission of the termination or cancellation of a member within ten (10) days and shall maintain coverage of each canceled or terminated member for thirty (30) days after such notice, at the terminating member's expense, unless the group self-insurer is notified sooner that the canceled or terminated member has procured workers' compensation insurance, has become an approved individual self-insurer, or has become a member of another group self-insurer. The Commission may terminate any member of a group self-insurer. Any member that owes undisputed premium or assessment to a group self-insurer shall be prohibited from joining any other self-insurance groups or becoming an individual self-insurer until such debt is paid.

(3) The group self-insurer shall pay all workers' compensation benefits for which each member incurs liability during its period of membership. A member that wishes to terminate its membership or

is canceled by a group self-insurer remains jointly and severally liable for workers' compensation obligations of the group self-insurer and its members which were incurred during the canceled or terminated member's period of membership.

(4) A group self-insurer member is not relieved of its workers' compensation liabilities incurred during its period of membership except through payment by the group self-insurer or the member of required workers' compensation benefits and other assessments or liabilities.

(5) The insolvency or bankruptcy of a member does not relieve the group self-insurer or any other member of liability for the payment of any workers' compensation benefits or assessments and liabilities incurred during the insolvent or bankrupt member's period of membership.

#### G. Service Companies.

(1) No service company or its employees, officers, or directors shall be an employee, officer, or director of, or have either a direct or indirect financial interest in, an administrator. No administrator or its employees, officers, or directors shall be an employee, officer, or director of, or have either a direct or indirect financial interest in, a service company. All contracts shall be made available to the Commission upon request.

(2) The service contract shall state that, unless the Commission approves otherwise, the service company shall handle, to their conclusion, all claims and their obligations incurred during the contract period.

#### H. Other Reports.

(1) The Commission may prescribe the format and frequency of other reports which may include, but shall not be limited to, payroll audit reports, summary loss reports (loss runs), and quarterly financial statements.

(2) The Commission may also prescribe that information be submitted in a data form to the Commission so that the Commission may prepare its own reports and to satisfy oversight responsibility. In

any case, non-cooperation, or incomplete or improper submissions may result in a show-cause hearing or a hearing for revocation.

#### I. Rates and Reporting of Rates.

(1) Each group member shall be audited by an auditor acceptable to the Commission at least annually, unless relieved by the Commission, to verify proper classification, experience rating, payroll, and rates.

(2) A group self-insurer or any member thereof may request a hearing and review by the Commission on any objections to the classifications, experience rating, payroll, or rates. The Commission may, in its discretion, convene a hearing for such purpose or consider the request without a formal hearing. If the Commission determines that as a result of an improper classification, a member's premium is insufficient, the Commission may order the group self-insurer to assess that member an amount equal to the deficiency. If the Commission determines that as a result of an improper classification a member's premium is excessive, the Commission may order the group self-insurer to refund to the member the excess collected. The Commission may grant such other relief as may be appropriate under the circumstances. The audit shall be at the expense of the group self-insurer.

#### J. Refunds.

(1) Any monies for a fund year in excess of the amount necessary to fund all obligations for that fund year may be declared to be refundable by the board of trustees with the approval of the Commission.

(2) Each member shall be given a written description of the refund plan at the time of application for membership. A refund for any year shall be paid only to those employers that remain participants in the group for the entire fund year for which such refund has been approved. However, payment of a refund based on a premium fund year shall not be contingent on continued membership in the group after that fund year for which such refund has been approved.



#### K. Payment of Premium.

(1) Each group self-insurer shall establish a premium payment plan which is filed with and approved by the Commission.

(2) Each group self-insurer shall establish and maintain bad debt reserves based on the historical experience of the group self-insurer or other group self-insurers.

#### L. Deficits and Insolvencies.

(1) If the assets of a group self-insurer are at any time found by the Commission to be insufficient to enable the group to discharge its legal liabilities and other obligations and to maintain the reserves required of it under the Mississippi Workers' Compensation Act and the provisions herein, the group self-insurer shall immediately levy an assessment upon its members for the amount needed to make up the deficiency.

(2) In the event of a deficiency in any fund year, such deficiency shall be made up immediately, either from: (i) surplus from a fund year other than the current fund year, (ii) administrative funds, (iii) assessments of the membership, if ordered by the group self-insurer or the Commission, or (iv) such alternate method as the Commission may approve or direct. The Commission shall be notified prior to any transfer of surplus funds from one year to another.

(3) The Commission may deem a group self-insurer insolvent if:

(i) it fails to make and collect the assessments to overcome Commission recognized deficiencies; or

(ii) it is unable to pay its outstanding lawful obligations as they mature in the regular course of business, as may be shown either by an excess of its required reserves and other liabilities over its assets or by its not having sufficient assets to reinsure all of its outstanding liabilities after paying all accrued claims and assessments owed by it. The Commission shall levy an assessment upon the members of an insolvent group self-insurer sufficient to discharge all liabilities of the group, including the reasonable cost of liquidation.

(4) The Commission may replace the current board of directors and/or administrator of an insolvent group self-insurer if necessary to collect outstanding liabilities and assessments through rehabilitation or liquidation of the fund.

(5) The Commission shall notify the GGA of any proceedings instituted by the Commission against a group self-insurer and of the basis for the Commission's decision to institute the proceedings.

#### M. Revocation and Non-Renewal of Certificate of Authority.

(1) After notice and opportunity for a hearing, the Commission may revoke a group self-insurer's certificate of authority prior to annual renewal for the following reasons:

(i) the group self-insurer is found to be insolvent by the Commission,

(ii) the group self-insurer fails to pay assessments, fines, or other payments imposed upon it,

(iii) the group self-insurer fails to comply with any of the provisions of the Mississippi Workers' Compensation Act or Rules promulgated thereunder,

(iv) any certificate of approval that was issued to the group self-insurer was obtained by fraud,

(v) there was a material misrepresentation in the application for the certificate of approval,

(vi) the group self-insurer or its administrator has misappropriated, converted, illegally withheld, or refused to pay over upon proper demand any monies that belong to a member, or employee of a member, or a person otherwise entitled thereto and that may have been entrusted to the group self-insurer or its administrator in its fiduciary capacities, or

(vii) for other good cause.

(2) Non-renewal of the annual certificate of authority shall be at the discretion of the Commission and shall not require a hearing.

(3) Any group self-insurer that ceases to act as a self-insurer through non-renewal or revocation shall remain subject to regulation by the Commission until such time as all claims are paid and an appropriate amount of time, as determined by the Commission, has passed to insure that no additional liability under the Act will be incurred. During this time of continuing regulatory oversight by the Commission, all reports required by the Commission shall continue to be submitted by the former group self-insurer as shall any additional reports required by the Commission. The Commission maintains the ultimate responsibility for regulation throughout said process up to and including the installation of a new group self-insurer if the Commission so warrants, or final dissolution.

#### O. Definitions.

(1) “Administrator” means an individual, partnership, or corporation engaged by a workers’ compensation group self-insurer’s board of trustees to carry out the policies established by the group self-insurer’s board of trustees and to provide day to day management of the group self-insurer.

(2) “Commission” means the Mississippi Workers’ Compensation Commission.

(3) “Service Company” means a person or entity which provides services not provided by the administrator, including but not limited to, (1) claims adjustment, (2) safety engineering, (3) compilation of statistics and the preparation of premium, loss, and tax reports, (4) preparation of other required self-insurance reports, (5) development of members’ assessments and fees, and (6) administration of a claim fund.

Source: [Miss. Code Ann. § 71-3-85](#).

## **Rule 1.8. Posting Notice of Coverage.**

Every employer operating under the provisions of the Mississippi Workers' Compensation Law shall keep in a conspicuous place in and about its place of business a "Notice of Coverage" form which measures at least 8 1/2 inches by 11 inches and which contains the following information:

I. The name, address and telephone number of the workers' compensation insurance carrier for the employer, or a statement that the employer is self-insured, if applicable;

II. The name, address and telephone number of the third party administrator, if any, or other office responsible for processing and paying the workers' compensation claims on behalf of the carrier or self-insured employer;

III. The effective dates of the workers' compensation insurance coverage or the self-insurance certificate of authority which the employer maintains;

IV. The name of the person or representative affiliated with the employer to whom employees should provide notice of their injuries or illnesses; and

V. A statement that any person who willfully makes any false or misleading statement or representation for the purpose of obtaining or wrongfully withholding any benefits or payment under the Mississippi Workers' Compensation Law may be charged with violation of [Miss. Code Ann. Section 71-3-69](#) and upon conviction be subjected to the penalties therein provided.

This Rule shall be in force and effect on and after January 18, 2018.

Source: [Miss. Code Ann. § 71-3-85](#).

## **Rule 1.9. Selection of Medical.**

The employer shall select competent physicians, hospitals, and other attendance or treatment and immediately furnish such services, including all emergency services, to the injured employee. The injured employee shall have the right to accept the services furnished by the employer or, in his discretion, to select one (1) competent physician of his choosing and such other specialists to whom he is referred by his chosen physician to administer medical treatment according to the guidelines set forth in [Miss. Code Ann. Section 71-3-15 \(1\)](#) and the Commission's Medical Fee Schedule. Such physician(s) selected by the employer or the employee, including any authorized referral, shall be located in an area reasonably convenient to the place of the injury or the residence of the injured employee, and the medical services shall be reasonably suited to the nature of the injury.

The employer may have the injured employee examined by a physician or medical provider of its choice to evaluate temporary or permanent disability or medical treatment being rendered. If the employer desires such an examination, the employer must:

- a. make an appointment with the provider for the injured employee at a time reasonably convenient to the injured employee;
- b. prepay mileage at the prevailing statutory rate;
- c. pay all reasonable expenses for the attendance of the injured employee; and
- d. pay the charges by the provider.

The Commission must be notified in writing of such appointment for the examination, and copies of all reports must be promptly furnished to the Commission and the injured employee.

If at any time the injured employee unreasonably refuses or fails to submit to such medical examination, the Commission or Administrative Judge may, by order, suspend the payment of future

compensation during such time as such refusal continues; no compensation shall be paid at any time during the period of such suspension.

If any party of interest shows that the injured employee is suffering from improper medical attention or lack of medical treatment, the Commission or Administrative Judge may order further medical treatment at the employer's expense. If, during such period, the injured employee unreasonably refuses to submit to medical or surgical treatment, the Commission or Administrative Judge shall order the suspension of payment of compensation while such refusal continues.

Any hearing required by the Commission or Administrative Judge under this Rule may, in the discretion of the Commission or Administrative Judge, be held no sooner than five (5) days after notice to determine whether:

(1) compensation payments should be suspended for refusal or failure to submit to a medical examination or to proper medical treatment, or

(2) the injured employee is suffering from improper medical attention or lack of medical treatment.

Within twenty (20) days of each date of service, all treating and examining physicians shall:

(1) file CMS 1500 with the Commission and with the employer or carrier, and

(2) attach all office or progress notes to the CMS 1500 which shall specify

a. the date of maximum medical improvement,

b. any permanent impairment rating, and

c. any permanent work restrictions resulting from the work-connected injury.

A physician's failure to timely file complete reports may result in the claim for medical and surgical treatment being unenforceable against

the employer unless excused by the Commission or Administrative Judge.

If an injured employee receives treatment at any Veterans Hospital, or at the expense of the State Division of Medicaid or the Mississippi Department of Rehabilitation Services because of a disability under the Workers' Compensation Act, the employer or its carrier shall not be liable for such medical treatment as in other cases, unless the officials of the Veterans Hospital, the Division of Medicaid or Department of Rehabilitation Services to whom the injured employee is referred comply fully with [Miss. Code Ann. Section 71-3-15](#) and the Commission Rules.

This Rule shall be in force and effect on and after January 18, 2018.

Source: [Miss. Code Ann. § 71-3-85](#).

#### **Rule 1.10. Daily Rate of Compensation.**

All weekly compensation benefits payable for loss of time or other disability shall be based upon a five day work week so that the daily compensation benefit payable in any case shall be the total weekly compensation benefit divided by five (5).

This Rule shall be in force and effect on and after January 18, 2018.

Source: [Miss. Code Ann. § 71-3-85](#).

### **Rule 1.11. Waiting Period.**

If the injured employee is paid in full for the date of the accident, disability should be computed as beginning the day after the date of accident. If the injured employee is not paid in full for the date of accident, disability should be computed as beginning as of the date of the accident.

To determine whether an injured employee has satisfied the waiting period requirement of [Miss. Code Ann. Section 71-3-11](#) a day of disability shall be any day on which the injured employee is unable, because of injury, to earn the same wages as before the injury, and neither the five (5) day period of disability nor the fourteen (14) day period of disability has to consist of consecutive days.

This Rule shall be in force and effect on and after January 18, 2018.

Source: [Miss. Code Ann. § 71-3-85](#).



## **Rule 1.12. Medical fees: Medical Dispute Resolution.**

The fees of physicians, hospitals, and other attendant parties must be

a. reasonable and measured according to the employee's need, and

b. within the guidelines established by the Commission in its Medical Fee Schedule pursuant to [Miss. Code Ann. Section 71-3-15 \(3\)](#).

The procedure for resolving fee disputes and other issues which arise from utilization, billing or payment of medical services is set forth in the Medical Fee Schedule, and is incorporated herein by reference. Please consult the most current edition of the Medical Fee Schedule for rules regarding fee and other dispute resolution.

This Rule shall be in force and effect on and after January 18, 2018.

Source: [Miss. Code Ann. § 71-3-85](#).

### **Rule 1.13. Acceleration of Payments.**

Whether paying voluntarily or under an order, employer or carrier may accelerate payment of permanent partial disability benefits by tendering payment at the higher weekly rate of temporary total disability benefits until the full amount of permanent partial disability benefits has been paid.

If the parties elect to pay and receive such compensation at the accelerated rate, employer or carrier shall report how and when payments were accelerated on Form B-18 or on a statement attached to Form B-18.

After such election should the claimant request and the Commission or Administrative Judge approve payment of future compensation benefits in a partial or full lump sum, the employer/carrier's discount shall be computed as if there had been no such election — as if claimant were to receive all future benefits at the original lesser weekly rate; i. e., the amount previously paid shall be subtracted from the total compensation benefits to which the claimant is entitled, and the difference shall be divided by the original lesser weekly benefit rate, thereby producing the number of weeks to be used in computing the discount.

If a partial lump sum payment is made after the payment of benefits at the accelerated rate, the remaining weekly benefits shall continue to be paid at the accelerated rate and shall begin immediately after the last payment of compensation received prior to the lump sum, so as not to interrupt the continuity of benefits.

This Rule shall be in force and effect on and after January 18, 2018.

Source: [Miss. Code Ann. § 71-3-85](#).

### **Rule 1.14. Mileage.**

Employer or carrier shall pay mileage at the rate authorized for state travel per [Miss. Code Ann. Section 25-3-4](#) to:

a. witnesses who are subpoenaed in a proceeding before the Commission or whose depositions are taken,

b. claimants being interviewed by the Commission or an Administrative Judge for a compromise settlement or lump sum payment, and

c. claimants requiring medical treatment or attendance as prescribed in the Mississippi Workers' Compensation Law.

This Rule shall be in force and effect on and after January 18, 2018.

Source: [Miss. Code Ann. § 71-3-85](#).

## **Rule 1.15. Inspection and Reproduction of Records.**

1. Each person has a right to inspect and reproduce any public record on file in the offices of the Commission, except those records expressly exempted by a statute or a Commission Rule.

(a) To insure protection of Commission records and to prevent interference with the regular duties of the Commission, all Commission claim files shall be made available for inspection and copying only in the offices of the Commission during usual business hours, provided:

(1) A written request marked "Request for Public Records" is submitted to the Secretary of the Commission;

(2) The written request sufficiently identifies the claim file by referencing the names of parties and/or the Commission file number; and

(3) The written request states the desired time for inspection and/or the number of copies sought.

On the requesting party's compliance with (1), (2) and (3) above, the Commission shall respond in writing by granting or denying the request within ten (10) working days after receipt of the request. A Commission response denying a "Request for Public Records" shall specifically state the grounds for the denial and shall remain on file with the Commission for three (3) years.

The Commission shall attach an estimate of its actual copy costs to its response to the "Request for Public Records." Actual costs to the Commission shall be determined as follows:

(1) For copies of records not required to be certified by the Commission, \$.50 per page;

(2) For certified copies of records, \$1.00 per page and \$3.50 for every certificate under seal affixed thereto;

(3) For copies of transcripts not required to be certified by the Commission, such cost per page shall be equal to the prevailing cost per page of transcripts in the trial courts of this state.

(4) For any staff time or contractual services required to respond to the request which shall be at the pay scale of the lowest level employee or contractor competent to respond to the request.

Within ten (10) business days after receiving payment of copy costs, the Commission shall supply machine copies of the material sought. The Commission may also elect to respond to a records request by making the requested records available for inspection in its offices or by electronically transmitting the records.

Any excess costs exceeding the previously paid estimated charges shall be due no later than ten (10) business days after Commission compliance with the request. Non-payment of estimated charges shall justify Commission denial of future requests.

(b) Notwithstanding any other provision contained herein, the Commission shall provide to any party to a claim a copy of any record in the file of such claim, including but not limited to, transcripts prepared for review by the Full Commission, at a charge of ten cents (\$.10) per page, with a minimum charge of five dollars (\$5.00).

2. As provided in [Miss. Code Ann. § 71-3-66](#) (1972), the following records are exempt from public disclosure under the Mississippi Public Records Act of 1983 and shall not be available for public inspection: medical reports, rehabilitation counselor reports and psychological reports on file with the Commission in controverted and non-controverted cases, insofar as they refer to accidents, injuries and settlements.

(a) Such information contained in controverted and non-controverted case files shall be made available only to the claimant or to the employer or its insurance carrier which is called upon to pay claimant compensation in the same or any other workers' compensation claim. However, such information shall be subject to inspection by proper representatives of the Social Security Administration, Medicaid Commission, Employment Security

Commission, or other state or federal agency which, in the opinion of the Commission, can show a compelling state interest requiring disclosure. The Commission may also issue statistical information where the individual claimants are not identified.

(b) The Commission may also make such information available to interested parties involved in proceedings or negotiations regarding the legal liability owing claimant from a third party. However, such request for disclosure, just as all other requests not specifically referred to in (a), above, shall be accompanied by a statement of the requesting party's interest in disclosure of exempt materials. On Commission receipt of such request, the Secretary of the Commission, by certified mail, shall provide claimant a copy of the request and notify claimant of his right to file with the Commission an objection to such disclosure within ten (10) working days. Should claimant file an objection to the request, the parties shall be entitled to a hearing before the Commission. If claimant files no objection within ten (10) working days, such failure to respond shall be a waiver of any objection to the release of such requested information, and such information shall be provided upon payment of fees as set forth in section 1(a).

(c) To assure the right of individual privacy, any "Request for Public Records" referring to non-exempt information contained in a claim file shall be accompanied by a statement of the requesting party's interest in such records. Should the requesting party satisfy the Commission of its right to inspect records contained in a claim file, the Commission shall separate exempt material from non-exempt material and make the non-exempt material available after the requesting party's payment of costs.

Source: [Miss. Code Ann. § 71-3-85](#).

## **Rule 1.16. Assessment Procedure.**

1. Every Carrier or Self-Insured shall report to the Commission all compensation and medical payments for the prior calendar year (January 1st through December 31st) on or before March 1st of each year on the Annual Assessment Report Form available on the Commission's website. The Carrier or Self-Insured shall include the six-digit Carrier Number at the time of submission. Additionally, each Carrier or Self-Insured shall certify that the form is a true and correct report of payments made by the Carrier or Self-Insured for the prescribed period. Failure to include all information required shall result in the Annual Assessment Report being returned to the Carrier or Self-Insured and may result in late penalties.

2. Failure of the Carrier or Self-Insured to submit the Annual Assessment Report on or before March 1st shall result in assessment of a twenty dollars (\$20.00) per day penalty for each day the Carrier or Self-Insured fails to return the completed Annual Assessment Report to the Commission.

3. When calculating the percentage of gross claims for compensation and medical payments of Carriers and Self-Insureds to fund the administration of the Commission, the Commission shall utilize a percentage for the assessment that yields the closest total practical to the budget amount appropriated by the Legislature.

4. A Carrier or Self-Insured shall have 30 days from the date of the assessment invoice to tender payment to the Commission in the form and manner as directed by the assessment invoice.

5. Failure of the Carrier or Self-Insured to tender payment in the form and manner as directed by the assessment invoice within 30 days from the date of the assessment invoice shall result in notice to the Carrier or Self-Insured that payment is due and that a late penalty of ten percent (10%) on the unpaid assessment amount, is due at the same time payment of the outstanding assessment is tendered.

6. Failure of any Carrier or Self-Insured to pay an outstanding assessment within 60 days from the date of the assessment invoice shall result in the Commission entering an Order to demand payment of the outstanding assessment in full, including penalties. Further, failure to promptly issue payment may result in the Commission suspending or revoking the authorization to insure compensation or to be self-insured.

Source: [Miss. Code Ann. § 71-3-99](#) (Rev. 2017)

## Part 1 Chapter 2: Procedural Rules

### **Rule 2.1. Reporting Injuries or Deaths.**

Employers shall report all on-the-job deaths of and injuries to their employees to the Mississippi Workers' Compensation Commission as provided for in [Miss. Code Ann. Section 71-3-67](#) and on forms prescribed by the Commission.

As required by [Miss. Code Ann. Section 71-3-65](#), employer shall keep a record of all injuries and make the record available to the Commission upon request.

This Rule shall be in force and effect on and after January 18, 2018.

Source: [Miss. Code Ann. § 71-3-85](#).



## **Rule 2.2. Procedure to Controvert.**

### **A. Claimant Represented by an Attorney**

An Employee's attorney may controvert a claim by filing with the Commission a properly executed Petition to Controvert, Form B-5,11. This document shall be filed electronically with the Commission through the Attorney Transmittal Online System (ATOS). In all claims in which no benefits, including disability, death, and medical benefits, have been paid, the Claimant shall file medical records in support of his claim for benefits within sixty days of filing a Petition to Controvert. Absent good cause shown, Claimant's failure to file medical records in support of his claim for benefits in accordance with this rule may result in dismissal of the claim or other sanctions.

A Claimant's attorney preparing to file a Petition to Controvert shall (a) locate the proper Commission claim file number by using Claimant's name/social security number to check the "First Report of Injury" portal on the Commission web site for a non-controverted file that appears to reference the same injury; (b) determine whether the Employer had workers' compensation insurance coverage on the date of the injury by checking the "Proof of Coverage" portal on the Commission web site; (c) list only one date of injury per Petition to Controvert; (d) correctly identify the Employer, county of injury and date of injury to prevent filing delays due to misinformation; and (e) file an attorney employment/fee contract, if one is not already on file.

If the Employer is uninsured, the Claimant shall include on the Petition to Controvert the name and address of each owner of the Employer, or, in the case of an uninsured corporation, the names and addresses of the corporate president, secretary and treasurer pursuant to [Miss. Code Ann. § 71-3-83](#), so the owners/officers will be given notice of the claim when filed and afforded an opportunity to answer.

### **B. Unrepresented Claimant**

An Employee may controvert a claim by filing with the Commission a properly executed Petition to Controvert, Form B-5,11. This document shall be mailed to the Commission. The Claimant shall file medical records in support of his claim for benefits within sixty days of filing a Petition to Controvert. Claimant's failure to file medical records in support of his claim for benefits may result in dismissal of the claim or other sanctions.

#### C. Employer or Carrier

An Employer or Carrier may controvert its liability to pay a claim by filing a Notice of Controversion, Form B-52, pursuant to [Miss. Code Ann. § 71-3-37\(4\)](#). Employer or Carrier shall simultaneously mail or personally deliver a copy of the Notice of Controversion to the Employee at the Employee's most current address which can be determined by diligent inquiry or, if the Employee is represented, to his or her attorney through ATOS or by mail. Commission Form B-18, Notice to Employee of Suspension of Payment, shall suffice as notice of controversion if the Employer or Carrier has paid workers' compensation disability benefits.

Source: [Miss. Code Ann. § 71-3-85](#).

#### **Rule 2.3. Notice.**

Upon the filing of Claimant's Petition to Controvert, Form B-5,11, the Commission shall immediately furnish a copy of the Petition to Controvert with any attachments to Employer and Carrier.

Source: [Miss. Code Ann. § 71-3-85](#).

## **Rule 2.4. Response to Petition to Controvert.**

The Employer or Carrier shall file a properly executed Answer, Form B-5,22, with the Commission within twenty-three (23) days after the Commission mails an unrepresented Claimant's Petition to Controvert, Form B-5,11 to the Employer or Carrier. Employer or Carrier may attach a list of affirmative defenses to the Answer. No other copies of the Answer need be furnished to the Commission. The Employer or Carrier shall mail a copy of the completed Answer and any attachments to the Claimant or, if represented, provide notice to the Claimant's attorney.

Averments contained in Claimant's Petition to Controvert to which a responsive answer is required are admitted unless denied in the Answer. All affirmative defenses such as intoxication of the injured Employee, willful intent to injure himself or another, statute of limitations, lack of notice, etc., must be pleaded. Unless so pleaded, they shall be deemed waived.

The Administrative Judge may grant Employer or Carrier additional time to file an Answer, but the discovery period shall still begin twenty-three (23) days after the Commission mails the Petition to Controvert to Employer or Carrier. All requests for additional time shall note Claimant's agreement to the extension or be filed as a motion and noticed for hearing in the usual manner. An Employer may be sanctioned for failure to timely file an Answer without good cause.

Source: [Miss. Code Ann. § 71-3-85](#).

## **Rule 2.5. Prehearing Statement; Setting of Hearings.**

Before a matter can be set for hearing on the merits, each party must submit a complete Prehearing Statement with appropriate documents attached. The completed Prehearing Statement shall follow the form prescribed by the Commission and be completed per its instructions. Attorneys shall file the Prehearing Statement electronically with the Commission through ATOS.

All depositions shall be taken or officially noticed before the hearing on the merits is set. If medical witnesses have not been deposed before the Prehearing Statement is filed, a copy of the notice of the deposition must be attached to the Prehearing Statement.

Except for depositions and exhibits to depositions, counsel shall secure the Administrative Judge's permission to attach to the Prehearing Statement any single, proposed exhibit that exceeds fifty (50) pages.

The written information submitted by the parties shall comprise the only prehearing conference to be held routinely before the hearing, unless the Administrative Judge or a party requests further conference for special needs in a particular claim. The granting of a prehearing conference shall be in the discretion of the Administrative Judge. After the parties file complete Prehearing Statements, the Administrative Judge shall advise the Commission docket room that the matter is ready to be set for hearing. The Administrative Judge may schedule the hearing, or the docket room shall notify the parties in writing that they may contact the Administrative Judge's legal assistant to request a setting. The hearing date shall follow the date of the last deposition. Both parties shall confirm a hearing date or dates with the Administrative Judge's legal assistant within two (2) business days after a hearing date or dates are provided; failure to confirm a date for hearing without good cause may result in sanctions for unreasonable delay.

Within fifteen (15) days after the discovery deadline expires per Mississippi Workers' Compensation Commission Procedural Rule 2.7, the Claimant shall file a properly completed Prehearing Statement or a written request for an extension of time explaining the reasons for the request. The Employer and carrier shall have fifteen (15) days after the filing of the Claimant's properly completed Prehearing Statement to file a properly completed Prehearing Statement or written request for an extension of time. Claimant's failure to timely file the Prehearing Statement may result in the dismissal of the claim or other sanctions. Employer/Carrier's failure to timely file the Prehearing Statement may entitle Claimant to a unilateral setting or other sanctions.

## **Rule 2.6. Notice of Hearing.**

Absent agreement by the parties, the Commission shall give notice of an evidentiary hearing at least twenty (20) days before the hearing date. The notice shall contain the names of the parties and the date, time and place of the hearing. The hearing shall be limited solely to the issues reflected by the pleadings, requests for admissions, and prehearing statements.

Per [Miss. Code Ann. § 71-3-55\(3\)](#), the Commission may designate one or more central locations within the territory of each Administrative Judge, other than the county where the injury occurred, as the location for all hearings by the Administrative Judge in that territory. The hearing locations are listed on the Commission's website.

The parties shall contact each other fourteen (14) days prior to the hearing to discuss settlement. Counsel for the Employer/Carrier shall report the results of this discussion to the Administrative Judge and the Administrative Judge's legal assistant by email copied to opposing counsel.

Source: [Miss. Code Ann. § 71-3-85](#).

## **Rule 2.7. Hearings; Discovery.**

All evidentiary hearings before an Administrative Judge or review hearings before the Commission, shall be docketed with the Commission at least twenty-three (23) days before the date set for hearing, except when the parties otherwise agree or when shorter notice is allowed by statute or rule, including but not limited to [Miss. Code Ann. § 71-3-17\(b\)](#) and Mississippi Workers' Compensation Commission General Rule 1.9. The Commission shall provide all parties written notice of the date, time and place of the hearing.

At each evidentiary hearing before an Administrative Judge, the Employer shall have the claims professional handling the claim present at the hearing or available to the Commission by telephone during the entirety of the hearing. Parties shall bring three (3) hard copies of all proposed exhibits to the hearing. Medical records must be paginated and presented in chronological order.

Twenty-three days after Claimant files a Petition to Controvert, the claim shall be assigned to an Administrative Judge and placed on the active docket. Discovery shall be completed and medical depositions scheduled within 120 days after the claim is placed on the active docket.

A party may request extension of the 120-day time limitation for discovery if there is credible medical evidence that the Claimant has not reached maximum medical improvement or if other good cause is shown in writing to the Administrative Judge. The discovery deadline may be shortened to as few as sixty (60) days if the Claimant files a complete Prehearing Statement indicating discovery is complete and the claim is ready for a hearing on the merits; in that event, Employer/carrier have fifteen (15) days after the filing of the Claimant's Prehearing Statement to file its completed Prehearing Statement or written request for additional time.

Unless the Administrative Judge finds a bifurcated hearing shall expedite resolution of a claim, all claims shall be completed at one

hearing on the merits, and all lay, expert, and documentary evidence, including medical depositions, shall be introduced at the hearing. All issues ripe for determination at the time of the hearing shall be addressed at the hearing.

Absent the illness of a party or other extreme circumstances, no claim set for a hearing on the merits shall be continued. All requests for continuances shall be in writing and state with particularity the grounds for the request. An Administrative Judge or a Commissioner may grant a continuance by written order or hearing cancellation notice.

If a party fails to appear at a scheduled hearing, the Administrative Judge on the Administrative Judge's motion, or the motion of a party, may dismiss the claim or award compensation upon presentation of proper proof. If a justifiable reason for the party's absence is presented within fourteen (14) days after the date of the order dismissing or awarding compensation the Commission or Administrative Judge may grant a motion to reopen or set aside the order of dismissal.

Each controverted claim not set for hearing shall be reviewed periodically. Failure of the party or the party's attorney to respond to the Commission status request form within fifteen (15) days may result in the dismissal of the claim, award of benefits, or other sanctions.

Source: [Miss. Code Ann. § 71-3-85](#).



## **Rule 2.8. General Rules of Evidence Relaxed.**

In compensation hearings the general rules of evidence shall be relaxed to permit the introduction of any relevant and competent evidence. On motion of a party or Administrative Judge, the Administrative Judge may exclude any matters that are libelous or personal which do not have a direct bearing on the claim. All other matters which are accepted by the Administrative Judge over the objection of either party shall become a part of the record with the objection properly shown.

This Rule shall be in force and effect on and after January 18, 2018.

Source: [Miss. Code Ann. § 71-3-85](#).

## **Rule 2.9. Introduction of Evidence and Discovery.**

All testimony and documentary evidence shall be presented at the evidentiary hearing before the Administrative Judge. The hearing shall be stenographically reported or recorded. The Commission has discretion to admit any additional evidence offered on review. A motion to introduce additional evidence must be made in writing at least five (5) days before the date of the Commission's review hearing. The motion shall state with particularity the nature and need for such evidence, and the reason it was not introduced at the evidentiary hearing. If additional evidence is admitted, it shall be stenographically reported or recorded and become a part of the record.

Depositions may be taken and discovery had by any party in accordance with the Mississippi Rules of Civil Procedure relating to depositions and discovery (Rules 26 - 37) except as specifically amended by the Commission Rules.

**INTERROGATORIES; REQUESTS FOR PRODUCTION.** Interrogatories to parties, responses to interrogatories, requests for production of documents and things, and the responses to requests for production shall be served upon other counsel or parties per Rules 33 and 34 of the Mississippi Rules of Civil Procedure, respectively. The interrogatories, requests for production, and responses shall not be filed with the Commission, but the party serving the discovery requests or responses shall file a copy of the transmittal letter with the Commission.

**DEPOSITIONS.** Medical deposition transcripts shall be filed with the Commission. Deposition transcripts other than medical depositions shall not be filed with the Commission.

**REQUESTS FOR ADMISSION.** Requests for admissions and responses to requests for admission (Rule 36 of the Mississippi Rules of Civil Procedure) shall be filed with the Commission.

**MEDICAL RECORDS AND AFFIDAVITS.** Parties in controverted claims shall exchange medical records upon receipt. They are encouraged to admit into evidence medical records of claimant's treatment for the injury alleged in the Petition to Controvert. Absent agreement, the medical records of examining or treating physicians, including narrative office notes, reports dictated by the physician in the ordinary course of his or her practice, CMS 1500 forms, and other records composed by the physician in his or her practice, may be introduced into evidence in lieu of direct testimony taken at the hearing or by deposition upon the following conditions. The records shall not contain narrative reports composed by attorneys which require only the signature of the medical providers.

All medical records filed with the Commission, whether attached to a Motion, Response to Motion, Prehearing Statement, or submitted at a hearing or otherwise, shall be paginated and arranged in chronological order. Failure to do so may constitute unreasonable delay in the proceedings and subject the party to sanctions by the Commission.

1. The party wishing to introduce such medical records shall notify opposing parties and the Commission in writing at least thirty (30) days before the scheduled hearing. The Prehearing Statement may suffice as notification under this Rule.

2. A copy of the medical records shall be attached to the written notice. Each set of medical records shall be presented in chronological order and paginated.

3. An attorney offering the medical records/reports shall attach to the records/reports his or her attested statement that

a. the records/reports are a true, correct, and complete copy of the records/reports received from the medical provider, or

b. opposing counsel agreed that only the attached excerpts from the medical provider's records/reports are needed to address the contested issues.

4. The contents of the medical reports shall be subject to the same objections as to relevancy and competency as the testimony of

the reporting physician had he or she been personally present to testify at the hearing. Any objection to the use of an affidavit must be made within fifteen (15) days after receipt by the objecting party of a notice of intent to use such affidavit.

5. Any other party to the controversy may depose the physician and/or require the physician's presence at the hearing on the merits, at the sole expense of the party who requests the deposition or appearance at the hearing. Notice of the deposition must be made before setting the case for hearing on the merits, and the deposition must be taken before the evidentiary hearing on the merits. At the deposition or hearing, the physician shall be declared to be the witness of the party who introduced the medical records in lieu of testimony. The other party must cooperate in the taking of the deposition by agreeing to a deposition date within two (2) business days after dates are provided; failure to agree to a deposition date without good cause within two (2) business days may result in sanctions for unreasonable delay.

6. The affidavit used for the introduction of medical records shall be in the form prescribed by the Commission.

Source: [Miss. Code Ann. § 71-3-85](#).

## **Rule 2.10. Review Hearings.**

Any party seeking Commission review of a decision by an Administrative Judge shall file a written request or petition for review with the Secretary of the Commission within twenty (20) days of the date of the Administrative Judge's decision. Any other party to the dispute may cross-appeal by filing a written cross-petition for review within ten (10) days after the petition for review is filed in the office of the Commission, except that in no event shall a cross-appellant have less than twenty (20) days from the date of decision or award within which to file a cross-petition for review.

Oral argument is not required and may, in the discretion of the Commission, be granted if one or more of the parties file a written request within fifteen (15) days after the date the petition for review is filed with the Commission. The Commission may also ask the parties for oral argument. Arguments of counsel will be limited to twenty (20) minutes for each party.

In any case pending for review before the Commission, a party may submit a brief of law and fact. The brief may be in the form of a letter or in the format required by the Supreme Court of Mississippi. The party filing a brief shall file the original and two copies and serve a copy to opposing parties. Briefs previously prepared for the Administrative Judge are not a part of the record on review and are not considered by the Commission.

If a review hearing is scheduled before the Commission, any party submitting a written brief shall file the brief with the Commission at least five (5) business days before the hearing date. If a review hearing is not scheduled before the Commission, the Commission will send all parties written notice of the briefing schedule.

The parties filing a petition for review, cross-petition for review or briefs shall certify that copies have been provided to the opposing

party; however, failure to file such certification shall not bar review of the claim.

The record on review before the Commission shall consist of:

- a) Any transcript of testimony before the Administrative Judge;
- b) Exhibits admitted by the Administrative Judge;
- c) Petition to Controvert and Amended Petitions to Controvert;
- d) Answers and Amended Answers;
- e) Required "B" forms to be filed with the Commission including the B-3, First Report of Injury form; B-18, Payment Notice form; and B-31, Notice of Final Payment form;
- f) Motions with attachments and Responses to Motions with attachments;
- g) Administrative Judge Orders;
- h) Petitions for Settlement along with supporting documentation and Orders Approving Settlement;
- i) Prehearing Statements (not including attachments) and Amended Prehearing Statements (not including attachments);
- j) Petition for Review and Response to Petition for Review; and
- k) Any additional documentation the Commission determines is necessary for inclusion into the record on review.

The record on appeal from the Commission to the Mississippi Supreme Court shall consist of:

- a) All of the above listed documents;
- b) Motions (with attachments) and Responses to Motions (with attachments) filed before the Commission while on review;
- c) Evidence admitted by the Commission on review; and
- d) Commission Orders.

This Rule shall be in force and effect on and after January 18, 2018.

Source: [Miss. Code Ann. § 71-3-85](#).

### **Rule 2.11. Appeal from Commission Award.**

A party appealing from a Commission order shall file a notice of appeal with the Commission within thirty (30) days of the date of the Commission Order. The notice shall set out the style of the case, the grounds upon which the appeal is taken, and certification that copies of the notice of appeal have been filed with the opposing parties.

When a notice of appeal to the Mississippi Supreme Court is filed with the Commission, the Secretary shall, with a proper letter of transmittal, deliver the record to the Clerk of Appellate Courts within thirty (30) days after such notice of appeal is received by the Commission.

After the Appellate Court renders any order or decree affecting any matter over which this Commission has jurisdiction, the parties to the claim shall file a copy of the decree or order with the Commission within thirty (30) days of the date of rendition.

This Rule shall be in force and effect on and after January 18, 2018.

Source: [Miss. Code Ann. § 71-3-85](#).

## **Rule 2.12. Attorneys.**

Upon satisfactory evidence of employment, attorneys shall be entitled to all information available to their respective clients, whether claimants or employers. Either party shall likewise be bound by the acts of his respective counsel until a revocation of employment is filed with the Commission.

A fee of not more than \$200.00, or an aggregate of \$200.00 in any one claim shall be considered consultation, and shall not be submitted to the Commission for approval. In all instances where a claimant's attorney's fees in any matter exceed \$200.00, a fee agreed upon by the attorney and claimant shall be submitted to the Commission for approval per [Miss. Code Ann. Section 71-3-63](#). Although exceptions may be made in the interest of justice, it shall be deemed conducive to the best interest of all concerned for the Commission to approve contracts voluntarily entered into between attorney and client within the limitations set out in [Miss. Code Ann. Section 71-3-63](#).

The Commission will review all attorney's fees in light of the interest of justice and fairness to both attorney and client as required in [Miss. Code Ann. Section 71-3-63](#). In any proposed settlement under Miss. Work. Comp. Rule 2.15, the maximum allowable twenty-five percent (25%) attorney's fee shall be calculated based on the aggregate present day value of settlement proceeds, which includes all indemnity and all future medical benefits, so long as any future medical expenses are fully funded. If the allowable attorney's fee invades the future medical expenses, the attorney may reduce the lien or negotiate a separate attorney fee to be paid by the employer/carrier not to exceed the maximum allowable 25% of the aggregate settlement amount. In any event in which future medical expenses are not fully funded, the settlement shall be presumed not to be in the best interest of the claimant as required by [Miss. Code Ann. Section 71-3-29](#).



If medical benefits are awarded and indemnity benefits have been paid out or claimant no longer has access to indemnity benefits, the parties may agree to a separate reasonable attorney's fee to be paid by the employer/carrier not to exceed the maximum allowable 25% of the aggregate settlement amount. An attorney who is not licensed in good standing to practice law in Mississippi, but who is

a. currently a member in good standing of the bar of another state, the District of Columbia, or other American jurisdiction and

b. who is of good moral character and familiar with the ethics, principles, practices, customs, and usages of the legal profession in this state,

may appear as counsel pro hac vice in a claim before the Commission, pursuant to the conditions set forth in the Mississippi Rules of Appellate Procedure (Rule 46).

This Rule shall be in force and effect on and after January 15, 2018.

Source: [Miss. Code Ann. § 71-3-85](#).

### **Rule 2.13. Violations of Child Labor Law.**

In matters pertaining to violations of the Child Labor Law, [Miss. Code Ann. Sections 71-1-17 through 71-1-33](#) shall be considered by the Commission as the labor law referred to in Section 71-3-107 of the Mississippi Workers' Compensation Act. The Commission or Administrative Judge may order double compensation assessed against any employer where a minor worker is injured in the occupations or businesses specifically listed as hazardous in said sections of the Mississippi Code of 1972 Annotated. In all other instances of injury to minors, before double compensation shall be assessed against an employer as a penalty, there shall be filed with the Secretary of the Commission a certified copy of the findings of the court of final appeal on the prosecution and conviction of the employer in connection with violation of the Child Labor Law.

This Rule shall be in force and effect on and after January 18, 2018.

Source: [Miss. Code Ann. § 71-3-85](#).

### **Rule 2.14. Deviation from Rules.**

In any claim, for good cause shown, the Commission or the Administrative Judge may permit deviations from these Rules insofar as compliance is found to be impossible or impracticable. However the time limits for requesting review of an Administrative Judge's decision or judicial review or appeal of a decision of the Commission may not be waived unless otherwise provided by statute or case law.

This Rule shall be in force and effect on and after January 18, 2018.

Source: [Miss. Code Ann. § 71-3-85](#).

## **Rule 2.15. Settlements and Mediation.**

All matters pertaining to applications for lump sum payment of benefits pursuant to [Miss. Code Ann. § 71-3-37\(10\)](#); requests for lump sum payment of attorney's fees pursuant to [Miss. Code Ann. § 71-3-63](#); requests for approval of compromise settlements pursuant to [Miss. Code Ann. § 71-3-29](#); and requests for approval of third party settlements pursuant to [Miss. Code Ann. § 71-3-71](#) shall be considered at the offices of the Commission by the Commission. Proposed settlements and all applications for lump sums shall be electronically filed through ATOS and shall be assigned to a Commissioner for review. Unrepresented Claimants may file an application for lump sum payment of benefits by mail.

At the Commission's discretion, the Commission may assign a settlement to be reviewed by an Administrative Judge as deemed appropriate. A settlement agreement or lump sum payment application approved by an Administrative Judge shall have the same force and effect as one approved by the Commission.

In all [Miss. Code Ann. § 71-3-29](#) compromise settlements and [Miss. Code Ann. § 71-3-71](#) third party settlements, where the Claimant is physically able, it shall be the responsibility of the Employer or insurer to make the Claimant available, along with the legal representative of the Employer or insurer, at the office of the Commission in Jackson, Mississippi, or at some other designated location, on a day set by the Commission or Administrative Judge if requested by the Commission or Administrative Judge; however, where minors and incompetents are concerned, or where the Claimant is represented by counsel, Claimant's presence shall not be required. All expenses incurred in transporting the Claimant from his home to the designated location shall be paid by the Employer or insurer.

Prior to appearing before the Commission with an unrepresented Claimant, counsel for Employer or insurer shall file the proposed settlement paperwork and supporting documentation with the

Commission. After the Commission reviews the proposed settlement, the attorney shall be notified via e-mail that the Claimant shall be made available in the manner requested by the Commissioner to whom the settlement is assigned to the Commission for the settlement interview.

A Claimant making application for lump sum payment of benefits pursuant to [Miss. Code Ann. § 71-3-37\(10\)](#) shall, unless represented by an attorney or unless otherwise provided by the Commission or Administrative Judge, make himself or herself available for an interview with the Commission or one of its Administrative Judges prior to approval of the application. The purpose of this interview is to

- a. explain to the applicant the nature and consequences of his or her actions in applying for a lump sum payment of benefits, and
- b. determine whether payment in this manner is in the Claimant's best interest.

In every case of compromise settlement, the proposed settlement will be explored and medical reports shall be examined to determine if the amount of the proposed settlement appears fair and reasonable. The Commission or Administrative Judge shall not approve the settlement if it is:

- a. not accurately reported,
- b. not completely understood by the Claimant, or
- c. not in the best interest of the Claimant.

The Commission or Administrative Judge shall approve the settlement if:

- a. the underlying facts, terms, and amount of the settlement are accurately reported,
- b. Claimant understands the settlement's import and effect, and
- c. the settlement is in Claimant's best interest.

MEDIATION.

The Commission encourages voluntary alternative dispute resolution and mediation by the parties on the terms they may choose. The Commission does not endorse or recommend any particular mediation procedures or lists of mediators. Names of mediators may be obtained from the Mississippi Bar's website, for which there is a link on the Commission's website. All settlement agreements reached through mediation must be submitted for consideration and review by the Commission pursuant to [Miss. Code Ann. Section 71-3-29](#).

Source: [Miss. Code Ann. § 71-3-85](#).

#### **Rule 2.16. [Repealed effective April 1, 2001]**

#### **Rule 2.17. Report of Payment and Settlement Receipt.**

Employer or carrier's filing of a Form B-31 shall constitute compliance with the requirements of [Miss. Code Ann. Section 71-3-37\(7\)](#). Claimant, or Claimant's counsel shall be provided a copy of the Form B-31 in any manner which acknowledges delivery of the B-31. Claimant's signature is not required on the Form B-31, but the presence of Claimant's signature will constitute acknowledged delivery of the B-31 to Claimant. The filing of the Form B-31 with the Commission will start the running of the one-year statute of limitation under [Miss. Code Ann. Section 71-3-53](#). If the original or any subsequent Form B-31 filed with the Commission does not furnish all medical or other information required, Employer or Carrier shall file another Form B-31 containing complete information as soon as possible per Section 71-3-37, and following the above notice requirements.

This Rule shall be in force and effect on and after January 18, 2018.

Source: [Miss. Code Ann. § 71-3-85](#).

## **Rule 2.18. Subpoenas Witness Fees and Sanctions.**

(a) For Attendance of Witnesses: Forms; Issuance. Every subpoena shall be issued by the Commission Secretary or as provided in [Miss. Code Ann. Section 71-3-61](#), under the seal of the Commission, shall state the name of the Commission and the title of the claim, and shall command each person to whom it is directed to attend and give testimony at a time and place therein specified. The Commission Secretary shall issue a subpoena, or a subpoena for the production of documentary evidence, signed and sealed, but otherwise in blank, to a party requesting it, who shall fill it in before service. The Commission's official subpoena forms, signed and sealed but otherwise in blank, may be printed from the Commission website.

(b) For Production of Documentary Evidence.

(1) A subpoena may also command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein; and in such cases, the party to whom the subpoena is directed is entitled to be reimbursed by the requesting party for the reasonable costs of producing the things subpoenaed; but the Commission or Administrative Judge, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may (a) quash or modify the subpoena if it is unreasonable and oppressive or (b) condition the denial of the motion upon the advance by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things. The subpoena duces tecum form, signed and sealed by the Commission Secretary but otherwise in blank, may be printed from the Commission website.

(2) A subpoena issued pursuant to subparagraph (b)(1) of this Rule may compel the production of books, papers, documents, or tangible things by the person in possession, custody, or control thereof without the necessity that such person be deposed.

(3) Unless for good cause shown the Commission or Administrative Judge enlarges or shortens the time, a subpoena issued pursuant to subparagraph (b)(1) of this Rule shall allow not less than ten (10) days for the person upon whom it is served to produce the books, papers, documents, or tangible things therein specified. A copy of all such subpoenas shall be served forthwith upon counsel for all opposite parties.

(c) Service.

A subpoena may be served by the sheriff, by his deputy, or by any person who is not a party and is not less than eighteen (18) years of age; and his return endorsed thereon shall be prima facie proof of service, or the witness may acknowledge service in writing on the subpoena. Service of the subpoena shall be executed upon the witness personally.

(d) Subpoena for Taking Depositions; Place of Examination.

(1) Proof of service of a notice to take deposition as provided in Rules 30(b) and 31(a) of the Mississippi Rules of Civil Procedure constitutes a sufficient authorization for the issuance by the Commission Secretary of subpoenas for the persons named or described therein. The subpoena may command the person to whom it is directed to produce and permit inspection and copying of designated books, papers, documents, or tangible things which constitute or contain matters within the scope of the examination permitted by Rule 26(b) of the Mississippi Rules of Civil Procedure, but in that event the subpoena will be subject to the provisions of Rule 26(b) and subdivision (b)(1) of this Rule. The subpoena for taking deposition form, signed and sealed by the Commission Secretary but otherwise in blank, may be printed from the Commission website.

(2) The person to whom the subpoena is directed may within ten (10) days after the service thereof or on or before the time specified in the subpoena for compliance if such time is less than ten (10) days after service serve upon the attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials. If objection is made, the party serving the

subpoena shall not be entitled to inspect and copy the material except pursuant to an order of the Commission or Administrative Judge and the party serving the subpoena may, if objection has been made, move upon notice to the deponent for an order at any time before or during the taking of the deposition.

(3) A resident of the State of Mississippi may be required to attend an examination only in the county wherein he resides or is employed or transacts his business in person, or at such other convenient place as is fixed by an order of the Commission or Administrative Judge. A nonresident of this state subpoenaed within this state may be required to attend only in the county wherein he is served, or at a place within this state not more than forty (40) miles from the place of service, or at such other convenient place as is fixed by an order of the Commission or Administrative Judge.

(e) Subpoena for a Hearing or Trial. At the request of any party subpoenas for attendance at a hearing or trial shall be issued by the Secretary of the Commission, if available, otherwise by a Commissioner or an Administrative Judge. The subpoena of witness form, signed and sealed by the Commission Secretary but otherwise in blank, may be printed from the Commission website. A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within the state.

(f) Contempt. Failure by any person without adequate excuse to obey a subpoena served upon him may be certified to the proper Circuit Court for contempt proceedings by the Commission.

(g) Sanctions. On motion of a party or of the person upon whom a subpoena for the production of books, papers, documents, or tangible things is served and upon a showing that the subpoena power is being exercised in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the party or the person upon whom the subpoena is served, the Commission may order that the subpoena be quashed and may enter such further orders as justice may require to curb abuses of the power granted under this Rule. To this end, the Commission or Administrative Judge may award to the successful movant attorney's fees and



expenses for challenging the subpoena and may order that they be paid directly by the attorney who caused the issuance of such subpoena.

(h) Witness Fees. Witnesses subpoenaed to appear in proceedings before the Commission shall receive a witness fee of Twenty Five Dollars (\$25.00) per day plus mileage at the rate authorized by Mississippi Workers' Compensation Commission General Rule 1.14. The Commission or Administrative Judge may allow the payment from the Administrative Expense Fund of said fees and mileage to witnesses, other than expert medical witnesses, subpoenaed at the request of claimants.

The Commission may at its discretion suspend or eliminate payment for expert medical witness fees as provided herein without notice. Inasmuch as the Administrative Expense Fund is funded by assessments against the carriers writing compensation insurance in the state and self-insurers, as provided by [Miss. Code Ann. Section 71-3-99](#), and inasmuch as the application, computation, requisition, and disbursement of payments of fees and mileage for witnesses or carriers and self-insurers result in additional expense which ultimately must be borne by them, said carriers and self-insurers are, therefore, required to pay said fees and mileage directly to each witness subpoenaed at their request. It is not intended that carriers and self-insurers shall pay fees and mileage, if payment of same is ordered to be paid by claimant pursuant to [Miss. Code Ann. Section 71-3-59](#) of the Act.

This Rule shall be in force and effect on and after January 18, 2018.

Source: [Miss. Code Ann. § 71-3-85](#).

## **Rule 2.19. Rehabilitation.**

Rehabilitation cases shall be reported on Form R-1 or R-2 in compliance with the provisions of [Miss. Code Ann. Sections 71-3-105](#) and [71-3-19](#).

(a) Claim files shall be reviewed by the Mississippi Workers' Compensation Commission to assure that employees entitled to rehabilitation will receive needed services expediently.

(b) In all cases referred for rehabilitation services by the Commission Form R-2 shall be completed and the appropriate copy returned to the Commission together with copies of all reports, programs and services.

(c) All cases referred for rehabilitation services to either a public or private supplier by employers and carriers must be reported to the Commission, using Form R-2 together with copies of all reports, programs and services.

(d) Using Form R-1, employers and carriers shall notify the Commission immediately of all serious injuries, i.e., (1.) Major amputations, (2.) Spinal cord injuries, (3.) Brain damage, (4.) Loss of sight of one or both eyes, (5.) Severe 2nd and 3rd degree burns as well as those which result in the loss of or loss of use of any member of the body which will render the employee unable to continue employment in the job performed at the time of the injury, or which causes him to be unemployable in another position with the employer or which by experience in the industry causes the employee to be unemployable in any part of the industry.

(e) The amount of additional compensation awarded to be used for vocational rehabilitation purposes will be determined by the recommendation of Vocational Rehabilitation Division setting out the contemplated program of training needed and the necessary cost thereof, and shall be awarded only after the injured has been accepted for training. The employer and carrier shall report all cases

not within the purview of the Mississippi Workers' Compensation Act where an employee needs vocational rehabilitation services.

Source: [Miss. Code Ann. § 71-3-85](#).

This Rule shall be in force and effect on and after January 18, 2018.

## **Rule 2.20. Filing of Pleadings and Other Documents.**

### **A. Attorneys of Record**

Any document or pleading prepared by an attorney representing a party shall be electronically filed with the Commission through ATOS and contain the typed or printed name, official Mississippi Bar identification number, email address, mailing address and telephone number of the attorney. Once a claim is controverted, each party shall certify that he or she has sent a copy of the pleading or other document to each other party to the claim. Any document or pleading requiring a claimant's signature may be electronically signed using DocuSign.

All pleadings and other documents filed with the Commission, including any stenographically reported depositions, shall be typed or printed on letter size (8-1/2' x 11') paper to conform with the Mississippi Rules of Civil Procedure and the Mississippi Rules of Appellate Procedure and shall contain the style of the claim and Commission file number.

Any proposed order submitted to the Commission or Administrative Judge shall be signed by the party preparing the order, and where the proposed order is an agreed or joint order, such as an order approving settlement, it must be signed and approved by an attorney or other legal representative for each party.

### **B. Unrepresented Party**

An unrepresented party shall file all pleadings and documents required by the Commission by mail addressed to the attention of the Administrative Judge assigned to the claim.

Source: [Miss. Code Ann. § 71-3-85](#).

## **Rule 2.21. Address and Phone of Parties.**

Every party to a controverted or non-controverted case must keep the Commission informed of that party's current address, e-mail address and telephone number. Attorneys representing a party in any claim shall also keep the Commission informed of their current address, telephone number, facsimile number, and e-mail address.

All self-insured employers, workers' compensation insurance carriers, and third party administrators shall also maintain a single address, e-mail address and telephone number on file with the Commission for the purpose of electronic service, notice, and/or other correspondence with the Commission.

Claimants, either self-represented or through their attorney, must provide the Commission with their current mailing address, e-mail address and telephone number.

All of the above have a continuing obligation during the claim to notify the Commission of any changes in their required contact information. The most recent contact information on file with the Commission shall be presumed correct unless the Commission is notified otherwise in writing.

This Rule shall be in force and effect on and after January 18, 2018.

Source: [Miss. Code Ann. § 71-3-85](#).

## **Rule 2.22. Prehearing Motions; Motion Days.**

(a) All motions shall be filed in the manner prescribed by Miss. Work. Comp. Comm. Rule 2.20. All documents to be considered as evidence by the Administrative Judge shall be attached to the motion or described with specificity if already filed. A proposed order must accompany each nondispositive motion. The movant shall serve a copy of the motion, attachments and proposed order on the opposite party.

(b) A party desiring oral argument on a motion shall:

1. notice the motion for motion day or other agreed time and place permitted by the Administrative Judge;

2. coordinate the date and time of the hearing with the opposing party and the Administrative Judge;

3. if the nonmoving party does not confirm a motion hearing date with the Administrative Judge's legal assistant within two (2) business days after dates are provided, movant may unilaterally select an open hearing date and notice the motion for hearing on that date;

4. allow at least five (5) calendar days before setting the motion hearing, unless the parties and Administrative Judge agree otherwise;

5. file the notice of hearing with the Commission; and

6. serve a copy of the notice of hearing on the opposing party.

(c) Respondent shall file a written response in the manner prescribed by Miss. Work. Comp. Comm. Rule 2.20 within fifteen (15) days after the date of service of the motion. All documents to be considered as evidence by the Administrative Judge shall be attached to the response or described with specificity if already filed. Any party who wants to present testimony before a court reporter in lieu of a telephonic hearing shall file a written motion for a hearing on the record at least five (5) days before the date set for the telephonic

hearing. Otherwise said issue is moot and shall not be considered by the Commission on any appeal.

Before all telephonic motion hearings, counsel for the parties shall discuss and identify the documents they will offer as exhibits during the motion hearing (aside from attachments to the motion/response to the motion); after the telephonic motion hearing, a Commission court reporter shall mark into evidence any exhibits admitted by the Administrative Judge during the motion hearing.

Briefs or other memoranda of law will not routinely be required for motion hearings.

The Administrative Judge has the discretion to conduct a motion hearing by telephone conference and to waive oral argument on a motion.

(d) MOTION DAY. Each Administrative Judge shall hold at least one motion day a month on a date certain beginning at 10:00 a.m. and at a place central to the territory to which he or she travels. The dates and locations shall be published on the Commission website.

(e) SPECIAL MOTIONS. A party who files a motion for emergency hearing (e.g. motion for immediate hearing or five-day hearing under Mississippi Workers' Compensation Commission General Rule 1.9 or [Miss. Code Ann. § 71-3-17\(b\)](#)) or a motion to reopen shall first request a telephonic prehearing conference with the Administrative Judge and other parties to the claim so the parties may consult with the Administrative Judge about all necessary prehearing matters.

(f) PREHEARING STATEMENTS. The parties shall file Prehearing Statements if an evidentiary hearing is needed to resolve any motion.

Source: [Miss. Code Ann. § 71-3-85](#).

### **Rule 2.23. Earwiggling Prohibited.**

No person or party shall discuss or attempt to discuss with or in the presence of a Commissioner or Administrative Judge the merits of a claim which is pending before the Commission or Administrative Judge or which is likely to be pending therein, except in pleadings, motions, briefs, forms or other correspondence necessarily required in the development and presentation of a claim to the Commission or Administrative Judge. No person or party shall attempt in any manner, except as stated above, to influence the decision of a Commissioner or Administrative Judge in any such matter. No person or party shall send any written communication to a Commissioner or Administrative Judge on any matter pending or likely to be pending before the Commission or Administrative Judge without simultaneously delivering or mailing a copy of that communication to all other parties to the claim, or their legal representatives.

Any person or party who violates the provisions of this Rule shall be subject to sanctions as determined by the Commission or Administrative Judge.

This Rule shall be in force and effect on and after January 18, 2018.

Source: [Miss. Code Ann. § 71-3-85](#).



## **Rule 2.24. Requests for Declaratory Opinions.**

### **Scope of Rules**

100 These sections set forth the Commission's Rules governing the form and content of requests for declaratory opinions and the Commission's procedures regarding the requests as required by [Mississippi Code 25-43-2.103](#).

### **Persons Who May Request Declaratory Opinions**

101.01 Any person with a substantial interest in the subject matter may make a request to the Commission for a declaratory opinion by following the specified procedures.

101.02 "Substantial interest in the subject matter" as used in this chapter means: that a party is directly affected by the Commission's administration of the laws within the Commission's primary jurisdiction.

101.03 "Primary jurisdiction of the Agency" as used in this chapter means the Commission has a constitutional or statutory grant of authority in the subject matter at issue.

101.04 (Reserved)

### **Subjects Which May Be Addressed In Declaratory Opinions**

201 The Commission will issue declaratory opinions regarding the applicability to specified facts of:

1. a statute administered or enforceable by the Commission,
2. a rule promulgated by the Commission, or
3. an order issued by the Commission.

### **Circumstances In Which Declaratory Opinions Will Not Be Issued**

301 The Commission may, for good cause, refuse to issue a declaratory opinion. Without limiting the generality of the foregoing,

the circumstances in which declaratory opinions will not be issued include, but are not necessarily limited to:

1. the matter is outside the primary jurisdiction of the Commission;

2. lack of clarity concerning the question presented;

3. there is pending or anticipated litigation, administrative action, or other adjudication which may either answer the question presented by the request or otherwise make an answer unnecessary;

4. the statute, rule, or order on which a declaratory opinion is sought is clear and not in need of interpretation to answer the question presented by the request;

5. the facts presented in the request are not sufficient to answer the question presented;

6. the request fails to contain information required by these Rules or the requestor failed to follow the procedure set forth in these Rules;

7. the request seeks to resolve issues which have become moot, or are abstract or hypothetical such that the requestor is not substantially affected by the rule, statute or order on which a declaratory opinion is sought;

8. no controversy exists concerning the issue as the requestor is not faced with existing facts or those certain to arise which raise a question concerning the application of the statute, rule, or order;

9. the question presented by the request concerns the legal validity of a statute, rule or order;

10. the request is not based upon facts calculated to aid in the planning of future conduct, but is, instead, based on past conduct in an effort to establish the effect of that conduct;

11. no clear answer is determinable;

12. the question presented by the request involves the application of a criminal statute or sets forth facts which may

constitute a crime;

13. the answer to the question presented would require the disclosure of information which is privileged or otherwise protected by law from disclosure;

14. the question is currently the subject of an Attorney General's opinion request; or,

15. the question has been answered by an Attorney General's opinion.

302 A declaratory opinion will not be issued where a similar request is pending before this agency, or any other agency or a proceeding is pending on the same subject matter before any agency, administrative or judicial tribunal, or where such an opinion would constitute the unauthorized practice of law.

303 A declaratory opinion will not be issued if it may adversely affect the interests of the State, the Commission, or any of their officers or employees in any litigation which is pending or may reasonably be expected to arise.

304 Where a request for a declaratory opinion involves a question of law, the Commission may refer the matter to the State Attorney General.

305 A declaratory opinion will not be issued where the question involves eligibility for a license, permit, certificate or other approval by the Commission or some other agency and there is a statutory or regulatory application process by which eligibility for said license, permit, or certificate or other approval may be determined.

### **Form of the Request for a Declaratory Opinion**

401 Written Requests Required. Each request must be typewritten. Each request must be submitted on standard business letter size paper (8 1/2" by 11"). Requests may be in the form of a letter addressed to the Commission or in the form of a pleading as might be addressed to a court.

402 Where to Send Requests. All requests must be mailed or delivered to the Commission. The request and its envelope shall

clearly state that it is a request for a declaratory opinion. Oral and telephone requests are unacceptable.

403 Name, Address and Signature of Requestor. Each request must include the full name, telephone number, and mailing address of the requestor. All requests shall be signed by the person filing the request, unless represented by an attorney, in which case the attorney may sign the request. The signing party shall attest that the request complies with the requirements set forth in these Rules, including but not limited to a full, complete, and accurate statement of relevant facts and that there are no related proceedings pending before any agency, administrative or judicial tribunal.

404 Single transaction. A request must be limited to a single transaction or occurrence.

405 Question Presented. Each request must contain the following:

1. a clear identification of the statute or rule at issue;
2. the question for the declaratory opinion;
3. a clear and concise statement of all facts relevant to the question presented;
4. the identity of all other known persons involved in or impacted by the factual situation causing the request including their relationship to the facts, name, mailing address and telephone number;
5. a statement sufficient to show that the person seeking relief has a substantial interest in the subject matter.

406 The terms of the proposed opinion suggested by the requestor may be submitted with the request or may be requested by the agency;

407 Memorandum of Authorities. A request may contain an argument by the requestor in support of the terms of the proposed opinion suggested by the requestor. The argument may be submitted in the form of a memorandum of authorities, containing a full discussion of the reasons and any legal authorities, in support of

such position of the requestor. The agency may request that the argument and memorandum of authorities be submitted by any interested party.

### **Time for Agency's Response**

501 Agency's Response. Within forty-five (45) days after the receipt of a request for a declaratory opinion which complies with the requirements of these Rules, the Commission shall, in writing:

1. issue an opinion declaring the applicability of the specified statute, rule, or order to the specified circumstances;
2. decline to issue a declaratory opinion, stating the reasons for its action; or
3. agree to issue a declaratory opinion or a written statement declining to issue a declaratory opinion, by a specified time but no later than ninety (90) days after receipt of the written request.

502 When Period Begins. The forty-five (45) day period shall begin on the first State of Mississippi business day that the request is received by the Commission.

503 Opinion Not Final for Sixty Days. A declaratory opinion shall not become final until the expiration of sixty (60) days after the issuance of the opinion. Prior to the expiration of sixty (60) days, the Commission may, in its discretion, withdraw or amend the declaratory opinion for any reason which is not arbitrary or capricious. Reasons for withdrawing or amending an opinion include, but are not limited to, a determination that the request failed to meet the requirements of these Rules or that the opinion issued contains a legal or factual error.

### **Procedure After Request for Declaratory Opinion Received**

601 Notice by Agency. The Commission may give notice to any person that a declaratory opinion has been requested and may receive and consider data, facts, arguments and opinions from persons other than the requestor.

602 Notice by Requestor. The requestor, or his attorney, shall append to the request for a declaratory opinion a listing of all

persons, with addresses, known to the requestor who may have an interest in the declaratory opinion sought to be issued, and shall mail a copy of the request to all such persons. The requestor or his attorney shall certify that a copy of the request was mailed to all such persons together with this statement: "Should you wish to participate in the proceedings of this request, or receive notice of such proceedings or the declaratory opinion issued as a result of this request, you should contact the Commission within twenty days of the date of this request."

### **Hearings at the Discretion of the Agency**

701 Provision for Hearing. If the Commission in its sole discretion deems a hearing necessary or helpful in determining any issue concerning a request for a declaratory opinion, the Commission may schedule such a hearing. Notice of the hearing shall be given to all interested parties unless waived. Notice mailed by first class mail 7 calendar days prior to the hearing shall be deemed appropriate.

702 Proceedings at the Hearing. The procedure for conducting a hearing, including but not limited to the manner of presentation, the time for presentation, and whether and how evidence may be taken, shall be within the discretion of the Commission.

703 Persons Appearing at the Hearing. The Commission shall allow the requestor to participate in any hearing. The Commission may allow any other persons or entities to participate in the hearing.

### **Public Availability of Requests and Declaratory Opinions**

801 Declaratory opinions and requests for declaratory opinions shall be available for public inspection and copying at the expense of the viewer during normal business hours. Declaratory opinions and requests which contain information which is confidential or exempt from disclosure under the Mississippi Public Records Act or other laws shall be exempt from this requirement and shall remain confidential.

This Rule shall be in force and effect on and after January 18, 2018.

Source: [Miss. Code Ann. § 71-3-85](#).

## **Rule 2.25. Rulemaking Oral Proceedings.**

### **Scope**

101 This Rule applies to all oral proceedings held for the purpose of providing the public with an opportunity to make oral presentations on proposed new rules and amendments to rules before the Commission pursuant to the Mississippi Administrative Procedures Law.

### **When an Oral Proceeding will be Scheduled on a Proposed Rule**

102 Where an oral proceeding has not previously been held or scheduled, the Commission will conduct an oral proceeding on a proposed rule or amendment if requested by a political subdivision, an agency or ten (10) persons in writing within twenty (20) days after the filing of the notice of the proposed rule.

### **Format of Request**

103.01 Each request must be typewritten. Each request must be submitted on standard business letter-size paper (8-1/2 inches by 11 inches).

103.02 The request may be in the form of a letter addressed to the Commission or as a pleading filed with a court.

103.03 Each request must include the full name, telephone number, and mailing address of the requestor(s).

103.04 All requests shall be signed by the person filing the request, unless represented by an attorney, in which case the attorney may sign the request.

### **Notification of Oral Proceeding**

104 The date, time and place of all oral proceedings shall be filed with the Secretary of State's office and mailed to each requestor.

The oral proceedings will be scheduled no earlier than twenty (20) days from the filing of this information with the Secretary of State.

### **Presiding Officer**

105 The Commission or designee, who is familiar with the substance of the proposed rule, shall preside at the oral proceeding on a proposed rule.

### **Public Presentations and Participation**

106.00 Public participation shall be permitted at oral proceedings in accordance with the following sections.

106.01 At an oral proceeding on a proposed rule, persons may make oral statements and make documentary and physical submissions, which may include data, views, comments or arguments concerning the proposed rule.

106.02 Persons wishing to make oral presentations at such a proceeding shall notify the Commission at least three business days prior to the proceeding and indicate the general subject of their presentations. The presiding officer in his or her discretion may allow individuals to participate that have not previously contacted the Commission.

106.03 At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer.

106.04 The presiding officer may place time limitations on individual oral presentations when necessary to assure the orderly and expeditious conduct of the oral proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.

106.05 Persons making oral presentations are encouraged to avoid restating matters that have already been submitted in writing. Written materials, however, may be submitted at the oral proceeding.



106.06 There shall be no interruption of a participant who has been given the floor by the presiding officer, except that the presiding officer may in his or her discretion interrupt or end the partisan's time where the orderly conduct of the proceeding so requires.

## **Conduct of Oral Proceeding**

### **Presiding Officer**

107.01 The presiding officer shall have authority to conduct the proceeding in his or her discretion for the orderly conduct of the proceeding. The presiding officer shall (i) call proceeding to order; (ii) give a brief synopsis of the proposed rule, a statement of the statutory authority for the proposed rule, and the reasons provided by the Agency for the proposed rule; (iii) call on those individuals who have contacted the Agency about speaking on or against the proposed rule; (iv) allow for rebuttal statements following all participants' comments; (v) adjourn the proceeding.

### **Questions**

107.02 The presiding officer, where time permits and to facilitate the exchange of information, may open the floor to questions or general discussion. The presiding officer may question participants and permit the questioning of participants by other participants about any matter relating to that rulemaking proceeding, including any prior written submissions made by those participants in that proceeding; but no participant shall be required to answer any question.

### **Physical and Documentary Submissions**

107.03 Physical and Documentary Submissions. Submissions presented by participants in an oral proceeding shall be submitted to the presiding officer. Such submissions become the property of the Commission, part of the rulemaking record, and are subject to the Commission's public records request procedure.

### **Recording**

107.04 The Commission may record oral proceedings by stenographic or electronic means.

This Rule shall be in force and effect on and after January 18, 2018.

Source: [Miss. Code Ann. § 71-3-85](#).