

# 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, but in addition to such continuous session, the Commission shall meet as a body at the call of the Chairman for the purpose of transacting any unusual business that may come before it.

This Rule shall be in force and effect on and after April 17, 1956.

Source: Miss. Code Ann. § 71-3-85 (2000).

*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 whenever in its judgment changes are advisable.

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.

Whenever any provision of these Rules shall be found by the Commission or Administrative Judge, or any court of competent jurisdiction, to be in conflict 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 April 1, 2001.

Source: Miss. Code Ann. § 71-3-85 (2000).

*Rule 1.3 Proof of Coverage.* Every employer within the scope of the Mississippi Workers' Compensation Law shall 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 June 15, 2001.

Source: Miss. Code Ann. § 71-3-85 (2000).

*Rule 1.4.*

**[Repealed effective April 1, 2001]**

*Rule 1.5 Cancellation of Policies.* Any insurance carrier having issued a policy to an employer and desiring to cancel or terminate same before the expiration date stated in the policy, shall be required to give thirty (30) days prior notice thereof as provided in section [71-3-77](#) of the Act.

The employer whose policy has thus been canceled or terminated shall on or before the thirtieth (30th) day after receipt of notice of cancellation or termination thereof furnish proof of coverage in accordance with General Rule 3. Failure on the part of the employer to furnish such proof of coverage within the thirty (30) days shall be considered by the Commission as prima facie evidence of violation of Code section [71-3-9](#) and subject the employer to the penalties prescribed under Code section [71-3-83](#).

This Rule shall be in force and effect on and after April 1, 2001.

Source: Miss. Code Ann. § 71-3-85 (2000).

*Rule 1.6.*

**[Repealed effective September 1, 1993]**

*Rule 1.7 Self-Insurers.* (A) SELF-INSURERS -- GENERAL PROVISIONS. Any employer desiring to qualify as an individual self-insurer, or any group of employers desiring to qualify as a group self-insurer, and carry its own risk under the provisions of section [71-3-75](#) of the Act shall make application on a form provided by the Commission, and shall be required to reply fully to all inquiries made thereon.

(1) 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 unless otherwise ordered by the Commission. Each application will be considered upon its merits with strict regard to the hazards involved and the financial strength of the applicant.

(2) No record or any information concerning the solvency and financial ability of any applicant for self-insurance, or of any approved individual self-insurer or group self-insurer, and no other information which is deemed confidential by other provisions of law, which is acquired by the Commission shall be subject to public inspection, nor shall any such information be divulged by the Commission unless consented to by the applicant or pursuant to subpoena or by order of a court of competent jurisdiction.

(3) Upon approval of any application submitted hereunder, the Commission may continually monitor the financial status of the individual self-insurer, or group self-insurer, and may require, at the expense of the individual self-insurer or group 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 individual self-insurer or group self-insurer remains satisfactory, that its liabilities remain adequately funded, and that its obligations under the compensation law are being promptly met. So long as there is no accumulation of accrued benefits or other circumstances concerning the individual self-insurer or group self-insurer which are sufficient, in the Commission's sole determination, to cause doubt as to the individual self-insurer's or group self-insurer's ability to satisfy its continuing obligations under the Law, then there shall be no effort to require further bond or posted securities, or terminate the certificate of authority to act as an individual self-insurer or group self-insurer. However, the Commission reserves the right to require further or additional security from the individual self-insurer or group self-insurer or to institute proceedings requiring the individual self-insurer or group self-insurer to show cause, if any, why its certificate of authority to act as a self-insurer should not be terminated when, in the Commission's discretion, such action is warranted.

(4) The security posted or the indemnity bond held by the Commission shall be for the benefit of, as applicable, the Mississippi Workers' Compensation Commission, the Mississippi Workers' Compensation Individual Self-insurer Guaranty Association, or the Mississippi Workers' Compensation Group Self-Insurer Guaranty Association, ("Individual Association" or "Group Association") as security for the payment of the self-insurer's or group self-insurer's covered claims and other obligations under the Law; for the expenses incurred by either Association, as applicable, in evaluating, adjusting, defending, or settling the self-insurer's covered claims; and for any assessment made against the individual self-insurer or group self-insurer pursuant to the Guaranty Association Act, Miss. Code Ann. [71-3-151](#) -- 181 (Rev. 2000). 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 individual self-insurer or group 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 against such self-insurer has been closed in accordance with the provisions of the Act.

(5) All individual self-insurers and group 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 experienced party competent to make safety surveys and reports, and shall be in the format prescribed by the Commission.

(6) All individual self-insurers and group self-insurers shall file with the Commission a statement of financial condition audited by an independent certified public accountant on or before the last day of the sixth month following the end of the individual self-insurer's or group self-insurer's fiscal year.

Additionally, at least every three years, or more often if prescribed by the Commission, every individual self insurer and group self-insurer shall file with the Commission, from a Member of the American Academy of Actuaries or other Commission approved qualified loss reserve specialist, a statement which shall include, but not be limited to, the amount of

actuarially appropriated reserves for (1) known Mississippi claims and expenses associated therewith, and (2) Mississippi claims incurred but not reported and expenses associated therewith, which reserves shall be shown as liabilities.

All applications for the right of self-insurance are granted upon the express condition that said self-insurers file promptly and completely all reports required of them by the Commission.

(7) Any applicant for self-insurance not approved by the Commission shall be given fifteen (15) days from the date of notice of rejection to procure other insurance coverage which satisfies the requirements of the Act.

**(B) GROUP SELF-INSURERS.**

**(1) Authority to Act as a Workers' Compensation Self-Insurance Group.**

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 Mississippi Workers' Compensation Commission. Such certificate of authority must be renewed annually on or before the anniversary date of the original award of group self insurance.

**(2) Qualifications for Initial Approval and Continued Authority to Act as a Workers' Compensation Group.**

a. Before a group of employers may file an application seeking authority to act as a self-insurer, they must demonstrate the need to form such a group to the satisfaction of the Commission. The potential 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. Once the Commission approves the demonstration of need to form a group self-insurer, 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). The application shall include but not be limited to the group self-insurer's name, location of its principal office, date of organization, name and address of each member, together with the following:

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

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

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

(4) 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;

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

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

(7) 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;

(8) 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;

(9) 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;

(10) Rates, Rating Plans, (including all rating elements and formulas, e.g., experience rating factors, discounts, Schedule Rating Plans, etc.) and classes of business to be written must be submitted for, and approved by the Commission, prior to a certificate of authority being issued. If a group self-insurer wishes to follow the National Council on Compensation Insurance for all rating plans and procedures, only rates and classes will have to be submitted for approval and the group self-insurer is exempt from Section 4(a)(1).

b. To maintain its certificate of approval for group self-insurance the group self-insurer must comply with the following provisions and supply the following items to the Commission:

(1) A combined net worth of all members of at least \$1,000,000.00;

(2) 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, on or before the last day of the sixth month following the end of the group self-insurer's fiscal year. The financial statement shall include, but not be limited to, actuarially appropriated 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;

(3) 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;

(4) Rates, Rating Plans, (including all rating elements and formulas, e.g., experience rating factors, discounts, Schedule Rating Plans, etc.) 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. If a group self-insurer wishes to follow the National Council on Compensation Insurance for all rating plans and procedures, only rates and classes will have to be submitted for approval and the group self-insurer is exempt from Section 4(a)(1);

(5) Unless relieved by the Commission, an actuarial rate analysis will be performed annually and presented to the Commission in conjunction with the submission of the items mentioned in part (b)(4) above. This analysis will include all classes to be written by the group self-insurer. The actuarial opinions and rate analysis shall be given by a Commission-approved 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.

(6) Security against unpaid claims in case of insolvency as prescribed by the Commission which shall be provided by either a surety bond, financial security endorsement, guaranty agreement, or such other security as may be required by the Commission, continued membership and 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;

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

(8) 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;

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

**(3) 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.

**(4) Board of Trustees: Membership, Powers, Duties, Prohibition.**

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 take all necessary precautions to safeguard the assets of the group self-insurer.

a. The board of trustees shall:

(1) 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%;

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

(3) 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;

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

(5) Will 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.

b. The board of trustees shall not:

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

(2) 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.

**(5) Group Membership; Termination and Liability.**

a. An employer joining a workers' compensation self-insurance group after the group self-insurer has been issued a certificate of approval shall (1) submit an application for membership to the board of trustees or its administrator and (2) enter into the indemnity agreement required by this Rule. Membership takes effect no earlier than each members' date of approval. The application for membership and its approval shall be maintained as permanent records of the board of trustees.

b. 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 cancelled 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 will be prohibited from joining any other self insurance groups or becoming a self insurer until such debt is paid.

c. The group self-insurer shall pay all workers' compensation benefits for which each member incurs liability during its period of membership. A member who 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.

d. 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.

e. 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 incurred during the insolvent or bankrupt member's period of membership.

**(6) Service Companies.**

a. 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.

b. 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.

**(7) Other Reports.**

a. 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, and quarterly financial statements.

b. 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, incomplete or improper submissions may result in hearing for revocation.

**(8) Rates and Reporting of Rates.**

a. Each group self-insurer shall be audited at least annually, unless relieved by the Commission, and by an auditor acceptable to the Commission to verify proper classification, experience rating, payroll and rates. A report of the audit shall be filed with the Commission. 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.

**(9) Refunds.**

a. 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 and be payable not less than twelve (12) months after the end of the fund year for which such refund has been approved.

b. 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 who 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.

**(10) Payment of Premium.**

a. Each group self-insurer shall establish to the satisfaction of the Commission a premium payment plan which shall include either (1) an annual payment by each member of at least 25% of that member's annual premium before the start of the group self-insurer's fund year and (2) payment of the balance of each member's annual premium in monthly or quarterly installments. Alternatively, a payment plan may allow any member(s) to make an initial deposit payment equal to 10% of that member's then annual premium, which 10% deposit payment shall be held by the group self insurer as a permanent deposit. The member's entire annual premium, exclusive of the 10% deposit, may be paid annually, or in monthly or quarterly installments.

This Rule shall be in force and effect on and after November 1, 2012.

Source: Miss. Code Ann. § 71-3-85 (2000).

b. 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.

**(11) Deficits and Insolvencies.**

a. If the assets of a group self-insurer are at anytime 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, it shall forthwith make up the deficiency or levy an assessment upon its members for the amount needed to make up the deficiency.

b. In the event of a deficiency in any fund year, such deficiency shall be made up immediately, either from (1) surplus from a fund year other than the current fund year, (2) administrative funds, (3) assessments of the membership, if ordered by the group self-insurer or the Commission, or (4) 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.

c. The Commission may deem a group self-insurer insolvent if:

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

(2) 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 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.

**(12) Revocation and Non-Renewal of Certificate of Authority.**

a. After notice and opportunity for a hearing, the Commission may revoke a group self-insurer's certificate of approval or authority if (1) it is found to be insolvent, (2) fails to pay assessments, fines, or other payments imposed upon it, (3) fails to comply with any of the provisions of the Mississippi Workers' Compensation Act or rules promulgated there under, (4) any certificate of approval that was issued to the group self-insurer was obtained by fraud, (5) there was a material misrepresentation in the application for the certificate of approval, (6) 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 (7) for other good cause.

b. Non-renewal of the annual certificate of authority shall be at the discretion of the commission and shall not require a hearing.

c. Any group self-insurer which ceases to act as a self insurer 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. This rule applies whether the privilege of self insurance has been surrendered voluntarily, or has been lost through non-renewal, revocation or other act or occurrence. During this time of continuing regulatory oversight by the Commission, all reports required by the Commission will continue to be submitted by the group self-insurer as will 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.

**(13) Definitions.**

a. "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.

b. "Commission" means the Mississippi Workers' Compensation Commission.

c. "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.

This rule is effective from and after November 1, 2007.

Source: Miss. Code Ann. § 71-3-85 (2000).

*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. [71-3-69](#) (Rev. 2000) and upon conviction be subjected to the penalties therein provided.

This Rule shall be in force and effect on and after April 1, 2001.

Source: Miss. Code Ann. § 71-3-85 (2000).

*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 Mississippi Code Annotated section [71-3-15](#) (1) (1972), as amended. 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 of its choice for the purpose of evaluating temporary or permanent disability or medical treatment being rendered. If such an examination is desired by the employer, the employer must make an appointment with the physician for the injured employee at a time reasonably convenient to the injured employee, prepay mileage at the prevailing statutory rate, pay all reasonable expenses for the attendance of the injured employee as well as the charges by the physician. 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, and no compensation shall be paid at any time during the period of such suspension.

Upon proper showing by any party of interest that the injured employee is suffering from improper medical attention or lack of medical treatment, further medical treatment may be ordered by the Commission or Administrative Judge at the employer's expense. If at any time during such period the injured employee unreasonably refuses to submit to medical or surgical treatment, the Commission or Administrative Judge shall, by order, suspend the payment of further compensation during such time as such refusal continues and no compensation shall be paid at any time during the period of such suspension.

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 (1) if compensation payments should be suspended for refusal or failure to submit to a medical examination or to proper medical treatment or (2) that the injured employee is suffering from improper medical attention or lack of medical treatment.

Medical reports must be furnished by all treating or examining physicians to the Commission and the employer or carrier within twenty (20) days of the first treatment and periodically thereafter on a form prescribed by the Commission to which there may be attached office notes or narrative reports. (The HCFA 1500 form will be accepted in lieu of the Commission Forms B-9 and B-27, provided appropriate office/progress notes are attached.) The failure to furnish such reports may result in the claim for medical and surgical treatment being unenforceable against the employer unless excused by the Commission or Administrative Judge.

In the event an injured employee should be eligible for and desirous of treatment at any Veterans Hospital, or at the expense of the State Division of Medicaid or the Mississippi Department of Rehabilitation Services as a result of a disability under the Workers' Compensation Act, the employer or his 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 complies fully with Code section 71-3-15, and the Commission Rules.

This Rule shall be in force and effect on and after April 1, 2001.

Source: Miss. Code Ann. § 71-3-85 (2000).

*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 April 1, 2001.

Source: Miss. Code Ann. § 71-3-85 (2000).

*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 with that day next following 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.

For purposes of determining whether an injured employee has satisfied the waiting period requirement of section 71-3-11 of the Law, a day of disability is considered to 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 April 1, 2001.

Source: Miss. Code Ann. § 71-3-85 (2000).

*Rule 1.12 Medical fees: Medical Dispute Resolution.* The fees of physicians, hospitals, and other attendant parties must be reasonable and measured according to the employee's need and must be within the guidelines established by the Commission in its Medical fee schedule(s) pursuant to Mississippi Code Annotated section 71-3-15 (3) (1972), as amended.

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

This Rule shall be in force and effect on and after August 1, 2007.

Source: Miss. Code Ann. § 71-3-85 (2000).

*Rule 1.13 Acceleration of Payments.* In any case in which compensation is to be paid to a claimant for permanent partial disability for a period not to exceed 450 weeks and at a weekly rate less than that computed for temporary total disability, whether voluntary or by order, such compensation may, as an alternate method of payment, be accelerated by paying the same weekly rate established for temporary total disability until the full amount has been paid.

Should the parties elect to pay and receive such compensation at the accelerated rate provided herein, such election may be reported to the Commission on Form B-18 by setting out said election thereon or by statement attached thereto.

Any time subsequent to 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 discount to which the employer-carrier shall be entitled shall be computed as if there had been no such election and as if the 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 resulting amount thus obtained shall be divided by the original lesser weekly benefit rate, thereby producing the number of weeks to be used in computing the discount.

In the event a partial lump sum payment is made, as aforementioned, following 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 following 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 April 1, 2001.

Source: Miss. Code Ann. § 71-3-85 (2000).

*Rule 1.14 Mileage.* Mileage paid to witnesses who are subpoenaed in a proceeding before the Commission or whose depositions are taken, or mileage paid to claimants requiring medical treatment or attendance as prescribed in the Mississippi Workers' Compensation Law, as amended, shall be paid at the rate authorized for state travel, as provided in Mississippi Code Annotated, Section 25-3-41 (1972), as amended.

This Rule shall be in force and effect on and after July 1, 1982.

Source: Miss. Code Ann. § 71-3-85 (2000).

*Rule 1.15 Inspection and Reproduction of Records.* 1. Each person has a right to inspection and reproduction of any public record on file in the offices of the Commission, except those records expressly exempted by Law.

(a) To insure protection of Commission records and to prevent interference with the regular duties of the Commission, all Commission case 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 case file referred to either by the names of parties and/or the Mississippi Workers' Compensation Commission file number;

(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 not more than 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 not less than three (3) years.

A Commission response granting a "Request for Public Records" shall be accompanied by an estimate of charges reasonably calculated to reimburse the Commission for its actual costs in making such records available. 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.

On Commission receipt of payment of estimated charges, the Commission shall make the requested records available for inspection or shall supply machine copies of the material sought within not more than ten (10) working days.

Any excess costs exceeding the previously paid estimated charges shall be due no later than ten (10) working days after Commission compliance with the request. Non-payment of estimated charges shall be sufficient justification for 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 Mississippi Code Annotated, section 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 non-controverted cases, insofar as they refer to accidents, injuries and settlements.

(a) Such information contained in 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) In order to assure the right of individual privacy, any "Request for Public Records" referring to non-exempt information contained in a non-controverted case 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 non-controverted case file, the Commission shall separate exempt material from non-exempt material and make the non-exempt material available following the requesting party's payment of costs.

The Rule shall be in force and effect on and after April 1, 2001.

Source: Miss. Code Ann. § 71-3-85 (2000).

## **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 section 71-3-67 of the Law and on forms prescribed by the Commission.

As required by section 71-3-65 of the Law, it will be the responsibility of the employer to keep a record of all injuries, regardless of their nature, which record will be available to the Commission upon request.

This Rule shall be in force and effect on and after April 1, 2001.

Source: Miss. Code Ann. § 71-3-85 (2000).

*Rule 2.2 Procedure to Controvert.* A cause will be controverted by the employee's filing with the Mississippi Workers' Compensation Commission a properly executed Workers' Compensation Form B-5,11 (original and two copies). In the event an employer or its insurer desires to file a notice of controversion pursuant to Mississippi Code Annotated section 71-3-37(4) (1972, as amended), the employer or carrier shall file Commission Form B-52, notice of controversion, and simultaneously mail or personally deliver a copy of the notice of controversion to the employee at the most current address of that employee which can be determined by diligent inquiry or, if the claimant is represented, to his or her attorney. One copy of the employer's first report of injury or occupational disease form must also be filed or have been previously filed at the Commission at the time of the filing of Form B-52 by the employer or its insurer. The Commission Form B-18, notice to employee of suspension of payment, shall be deemed legally sufficient as a notice of controversion in the event the employer or carrier has paid workers' compensation disability benefits.

This Rule shall be in force and effect on and after April 1, 2001.

Source: Miss. Code Ann. § 71-3-85 (2000).

*Rule 2.3 Notice.* Upon the filing of the claimant's Form B-5,11 in triplicate, the Commission shall immediately furnish a copy of said B-5,11 with any attachments to the employer and to the carrier.

This Rule shall be in force and effect on and after September 1, 1993.

Source: Miss. Code Ann. § 71-3-85 (2000).

*Rule 2.4 Response to Petition to Controvert.* The employer or carrier shall, within twenty-three (23) days after the Commission has placed the claimant's Form B-5,11 in the U .S. Mail, addressed either to the employer or carrier, furnish to the Mississippi Workers' Compensation Commission a properly executed Form B-5,22, to which shall be attached, if the employer or carrier so desires, any affirmative defense. No other copies of the Form B-5,22 need be furnished to the Commission. The employer or carrier, however, will be responsible for serving, either



personally or by U.S. Mail, a copy of the completed Form B-5,22 and attachments, if any, to the claimant or, if represented, to the claimant's attorney.

Averments contained in claimant's B-5,11 to which a responsive answer is required are admitted when not denied in the responsive 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.

This Rule shall be in force and effect on and after September 1, 1993.

Source: Miss. Code Ann. § 71-3-85 (2000).

*Rule 2.5 Prehearing Statement; Setting of Hearings.* Before a matter can be set for hearing on the merits, each party must submit a prehearing statement, either jointly or severally, completed in all respects with appropriate documents attached. The completed statement shall follow the form prescribed by the Commission and set forth:

- I. The contested issues;
- II. Stipulations which will avoid unnecessary proof;
- III. A statement that up-to-date medical reports have been filed with the Commission and provided to the other party;
- IV. Name and address of each lay witness except those to be called for impeachment or rebuttal purposes;
- V. Name and address of each expert witness, together with a notation that affidavit and records are attached to the prehearing statement or the date the affidavit and records were previously filed at the Commission, the date the deposition was taken or has been noticed, or that the witness will testify at the hearing;
- VI. Proposed exhibits except those intended for impeachment or rebuttal purposes, and a notation that a copy of each exhibit is attached to the prehearing statement or has previously been filed with the Commission;
- VII. A statement that the parties have entered into serious settlement negotiations;
- VIII. An estimate of the time required for the hearing;
- IX. A statement that discovery responses have been supplemented; and
- X. Any other matters which may aid in the disposition of the case.

No hearings on the merits will be set until all desired depositions have either been taken or officially noticed. If depositions of medical witnesses have not been taken prior to the submission of the prehearing statement, a copy of the notice of each deposition to be taken must be attached to the prehearing statement.

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 should request further conference for special needs in a particular case. The granting of a prehearing conference

shall be in the discretion of the Administrative Judge. The prehearing statement may be amended at the discretion of the Administrative Judge upon good cause shown.

Once the filing of the prehearing statement has been completed and all depositions have either been taken or noticed, the Administrative Judge shall advise the Commission docket room that the matter is ready to be set for hearing. The Administrative Judge may at his or her discretion call the parties to schedule the hearing, or the docket room will send a letter to the parties informing them that they may place a conference call to the docket room to request a setting time. The hearing date shall be subsequent to the date of the taking of the last deposition. A written notice will be mailed by the Commission to each party in confirmation of the time and place of hearing.

Within fifteen (15) days after the expiration of the discovery deadline established according to Procedural Rule 7, the claimant shall file a properly completed prehearing statement or file a written request for an extension of time with reasons set forth therein. 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. Failure of the claimant to timely file the prehearing statement may result in the dismissal of the case or other sanctions. Failure of the employer and carrier to timely file the prehearing statement may result in a unilateral setting of the case by the claimant or other sanctions.

This Rule shall be in force and effect on and after April 1, 2001.

Source: Miss. Code Ann. § 71-3-85 (2000).

*Rule 2.6 Notice of Hearing.* In the event a proper disposition of the cause is not made and any party desires a hearing in the matter, the Commission will give notice of this hearing at least twenty (20) days prior to the date on which the matter is to be heard; said notice shall contain the names of the parties, the place and time of the hearing. The hearing will be limited solely to the issues reflected by the pleadings, requests for admissions, and prehearing statements.

As provided by 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, which may be the location for all hearings to be conducted by the Administrative Judge assigned to the territory.

This Rule shall be in force and effect on and after May 1, 2009.

Source: Miss. Code Ann. § 71-3-85 (2000).

*Rule 2.7 Hearings; Discovery.* All cases to be heard before the Commission, whether an evidentiary hearing before an Administrative Judge or a review hearing before the Full Commission, shall be docketed with the Commission at least twenty-three (23) days before the date set for hearing, except those cases requiring less time or notice of hearing by statute or rule, including, but not limited to, section 71-3-17(b) and General Rule 9, or by agreement of all parties. Each such case docketed shall be given a number and all parties advised of the date of hearing.

When the claim is controverted and an answer filed, the case shall be immediately assigned to an Administrative Judge and placed on the active docket. Discovery shall be completed and medical depositions scheduled within 120 days from the date of notice from the Commission that the case has been placed on the active docket.

The 120-day time limitation for discovery may be extended only if there is credible medical evidence that the claimant has not reached maximum medical improvement or for other good cause shown in writing to the Administrative Judge handling the case. The discovery deadline may be shortened to as few as sixty (60) days if the claimant files a completed prehearing statement indicating that the claimant has completed discovery and is ready for hearing on the merits, in which event the employer and carrier will have fifteen (15) days after the filing of the claimant's prehearing statement in which to file their completed prehearing statement or written request for additional time.

All cases shall be completed at one hearing on the merits, and all lay, expert, and documentary evidence, including medical depositions, shall be introduced at such hearing. No case set for hearing on the merits shall be continued except in event of illness of an interested party or other extreme circumstances. All requests for continuances shall be in writing and shall state with particularity the grounds therefor. An Administrative Judge or a Commissioner may grant such continuance by written order.

Should a party fail to appear at a scheduled hearing, the Administrative Judge on his or her motion, or on a motion of an appearing party, may dismiss the case or award compensation upon presentation of proper proof. If, however, a justifiable reason is presented within fourteen (14) days after the date of the order dismissing or awarding compensation, a motion to reopen or set aside the order of dismissal may be heard in the Commission or Administrative Judge's discretion.

All cases not set for hearing shall be reviewed periodically. Failure of the party or the party's attorney to respond to a status inquiry within twenty (20) days may result in the dismissal of the claim, award of benefits, or other sanctions.

This Rule shall be in force and effect on and after April 1, 2001.

Source: Miss. Code Ann. § 71-3-85 (2000).

*Rule 2.8 General Rules of Evidence Relaxed.* In compensation hearings the general rules of evidence shall be relaxed so as to permit the introduction of any relevant and competent evidence. There shall be excluded from the record, however, by motion of either party or at the direction of the administrative judge, any matters that are libelous or of a personal nature which do not in the opinion of the administrative judge have a direct bearing on the case at hand. All other matters sought to be introduced, and 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 September 1, 1993.

Source: Miss. Code Ann. § 71-3-85 (2000).

*Rule 2.9 Introduction of Evidence and Discovery.* All testimony and documentary evidence shall be presented at the evidentiary hearing before the Administrative Judge which hearing shall be stenographically reported or recorded. Where additional evidence is offered on the review before the Full Commission, it shall be admitted in the discretion of the Commission. A motion for the introduction of additional evidence must be made in writing at least five (5) days prior to the date of the hearing of the review by the Full Commission. Such shall state with particularity the nature of such evidence, the necessity therefor, 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 and the responses thereto and requests for production of documents and things and the responses thereto shall be served upon other counsel or parties as provided by 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 or responses shall mail to the Commission a copy of the transmittal letter to be placed in the case file.

**DEPOSITIONS.** Medical depositions shall be filed with the Commission. Depositions other than medical depositions shall not be filed with the Commission.

**REQUESTS FOR ADMISSION.** Requests for admissions and the responses thereto (Rule 36, M.R.C.P) shall be filed with the Commission.

**MEDICAL RECORDS AND AFFIDAVITS.** 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, completed Commission Forms B-9 and B-27 or HCFA 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.

1. The party wishing to introduce such medical records shall notify opposing parties and the Commission by written notice served at least thirty (30) days prior to 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.

3. There shall be submitted with the medical records a sworn statement of either the physician or the physician's medical records custodian stating that the attached medical records are a true and correct copy of the medical records of the physician as kept in the regular course of the physician's medical practice.

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 shall have the opportunity to take the deposition of 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 prior to setting the case for hearing on the merits, and the deposition must be taken prior to the hearing on the merits. At the deposition or hearing, the physician shall be declared to be the witness of the party who announced intention to introduce the medical records in lieu of direct testimony. The other party must cooperate in the taking of the deposition.

6. If the claimant announces an intent to introduce medical records into evidence in lieu of the physician's testimony, and the employer or carrier takes the deposition of that physician, the employer or carrier may be reimbursed \$200.00 from the administrative expense fund upon the filing of the deposition with the Commission, together with a written request for reimbursement. Only one such reimbursement may be made to the employer or carrier in each case. Likewise, if the employer or carrier announces intent to introduce medical records into evidence in lieu of the physician's testimony, and the claimant takes the deposition of the physician, the claimant may be reimbursed \$200.00 from the administrative expense fund upon the filing of the deposition with the Commission, together with a written request for reimbursement. Only one such reimbursement may be made to the claimant in each case, and the reimbursement counts as one of the two allowed by Procedural Rule 18.

7. The affidavits shall not contain opinions or other matters composed by attorneys for the signature of physicians. The Commission intends for this rule to pertain to narrative notes and reports composed and generated by the physician in the ordinary course of medical practice.

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

The Rule shall be in force and effect on and after April 1, 2001.

Source: Miss. Code Ann. § 71-3-85 (2000).

*Rule 2.10 Review Hearings.* In all cases where either party desires a review before the Full Commission from any decision rendered by an Administrative Judge, the party desiring the review shall within twenty (20) days of the date of said decision file with the Secretary of the Commission a written request or petition for review before the Full Commission. 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 request same by filing a written request within fifteen (15) days after the date the petition for review is filed with the Commission. The Commission may also request the parties to give 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, which 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 oral argument has been requested, and a party desires also to submit a written brief, he must file the brief not less than five (5) business days before the hearing date. If oral argument is not requested, the petitioner shall have thirty (30) days following the date the record is mailed to the parties within which to submit a brief. The opposing party then has an additional thirty (30) days from that date (or a total of sixty days from the date the record is mailed to the parties) within which to submit a response, if desired.

The parties filing a petition for review, cross-petition for review or briefs shall certify that copies have been provided to the opposing party; provided, however, that failure to file such certification shall not be a bar to the review requested.

This Rule shall be in force and effect on and after April 1, 2001.

Source: Miss. Code Ann. § 71-3-85 (2000).

*Rule 2.11 Appeal from Commission Award.* Should either party desire to appeal from an award of the Commission, the party desiring to appeal within thirty (30) days of the date of the award will file a notice of appeal with the Secretary of the Commission. 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 Supreme Court is filed with the Commission, the Secretary shall, with a proper letter of transmittal, place the matters possessed by this Commission and pertaining to the appealed case in the hands of the Supreme Court within thirty (30) days after such notice of appeal is received by the Commission.

Following rendition by the Supreme Court of any order or decree affecting any matter over which this Commission has jurisdiction, the parties to the cause shall file a copy of such 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 July 1, 2011.

Source: Miss. Code Ann. § 71-3-85 (2000).

*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 case, shall be considered consultation, and shall not be submitted to the Commission for approval. In all instances where attorney's fees in any matter exceed \$200.00, a fee agreed upon by an attorney and claimant shall be submitted to the Commission for approval as provided for in section [71-3-63](#) of the Law. Absent objection from the claimant, submission by the attorney of his or her contract of

employment to the Commission and acknowledgment of this filing from the Commission shall be considered approval by the Commission of the fee arrangement set forth therein, subject to the fee limits established by section 71-3-63 of the Law.

An attorney who is not licensed in good standing to practice law in Mississippi, but who is currently a member in good standing of the bar of another state, the District of Columbia, or other American jurisdiction and 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 particular cause 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 April 1, 2001.

Source: Miss. Code Ann. § 71-3-85 (2000).

*Rule 2.13 Violations of Child Labor Law.* In matters pertaining to violations of the Child Labor Law, those certain sections numbered 71-1-17 thru 71-1-33, inclusive, of the 1972 Code of Mississippi Annotated, 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, heretofore referred to. 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 April 1, 2001.

Source: Miss. Code Ann. § 71-3-85 (2000).

*Rule 2.14 Deviation from Rules.* In any case, for good cause shown, the Commission or the Administrative Judge may permit deviations from these rules insofar as compliance therewith may be found to be impossible or impracticable, except that the time limits for requesting review of an Administrative Judge's decision or for perfecting an appeal to circuit court from 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 April 1, 2001.

Source: Miss. Code Ann. § 71-3-85 (2000).

*Rule 2.15 Settlements.* All matters pertaining to applications for lump sum payment of benefits pursuant to section 71-3-37(10); requests for lump sum payment of attorneys fees as provided for in section 71-3-63; and requests for approval of compromise settlements pursuant to section 71-3-29; and requests for approval of third party settlements pursuant to section 71-3-71, of the Mississippi Workers' Compensation Act, as amended, will be considered at the offices of the Commission on Tuesday or Wednesday of each week by either the Commission or an Administrative Judge. Administrative Judges may also consider such matters at other times and

places within their assigned territories as they deem 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 section 71-3-29 compromise settlements and section 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 Judge; provided, however, that where minors and incompetents are concerned, or where the claimant is represented by counsel, claimant's presence will not be required; and provided further that all expenses incurred in transporting the claimant from his home to the designated location shall be paid by the employer or insurer.

A claimant making application for lump sum payment of benefits pursuant to section 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 explain to the applicant the nature and consequences of his or her actions in applying for a lump sum payment of benefits, and to determine whether payment in this manner is in the best interest of the claimant.

In every case of compromise settlement, the proposed settlement will be explored and medical reports will be examined to determine if the amount of the proposed settlement appears fair and reasonable. If the Commission or Administrative Judge considers that the proposed settlement is not accurately reported, is not completely understood by the claimant, or is not in the best interest of the claimant, then approval for settlement will be withheld. If the Commission or Administrative Judge finds nothing objectionable about the terms or amount of the proposed settlement and is satisfied that the claimant understands its import and effect, and further believes that it would be in claimant's best interest, a compromise settlement will be approved.

This Rule shall be in force and effect on and after April 1, 2001.

Source: Miss. Code Ann. § 71-3-85 (2000).

*Rule 2.16.*

**[Repealed effective April 1, 2001]**

*Rule 2.17 Report of Payment and Settlement Receipt.* The requirement for the filing of Commission Form B-31, shall be deemed to have been met upon receipt by the Commission of such form, signed by the claimant, provided however, that the form so filed is in accordance with the requirements of section 71-3-37(7) of the Act and contains the information specified therein. In the event Form B-31 is not signed by claimant, the unsigned form shall be filed with the Commission with notice of such filing thereafter given to the claimant by the employer or carrier by certified mail. Should the original or any subsequent Form B-31 be filed that does not furnish all medical or other information required, another Form B-31 containing complete information shall be filed as soon as possible thereafter as provided in section 71-3-37.

This Rule shall be in force and effect on and after April 1, 2001.



Source: Miss. Code Ann. § 71-3-85 (2000).

*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 section [71-3-61](#) of the Act, under the seal of the Commission, shall state the name of the Commission and the title of the action, 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.

(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.

(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 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.

(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. 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 General Rule 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. A payment not to exceed Three Hundred Fifty Dollars (\$350.00) for a deposition or for testifying at an evidentiary hearing, may be allowed to each medical expert so testifying on behalf of a claimant, said payment likewise to be paid from said fund. The aforesaid payment of Three Hundred Fifty Dollars (\$350.00) for expert medical testimony by deposition from said fund shall only apply to depositions taken by claimant and filed with the Commission in a controverted claim. Except on prior written approval of the Commission or an Administrative Judge, payment for expert

medical witnesses on behalf of the claimant, whether by deposition or at an evidentiary hearing, shall be limited to two (2).

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 section 71-3-99 of the Act, 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 section 71-3-59 of the Act.

This Rule shall be in force and effect on and after August 1, 2007.

Source: Miss. Code Ann. § 71-3-85 (2000).

*Rule 2.19 Rehabilitation.* Rehabilitation cases shall be reported on Form R-1 or R-2, Revised as approved by the Mississippi Workers' Compensation Commission September 1981, in compliance with the provisions of Code Section 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 expeditiously.

(b) In all cases referred for rehabilitation services by the Mississippi Workers' Compensation Commission, Form R-2, Revised 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, Revised, together with copies of all reports, programs and services.

(d) 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 undesirable for continued 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 undesirable for employment in any part of the industry using Form R-1.

(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 are requested by the Commission to report all cases not within the jurisdiction of the Compensation Act where there is a need for Vocational Rehabilitation Services which comes to their attention.

This Rule shall be in force and effect on and after July 1, 1982.

Source: Miss. Code Ann. § 71-3-85 (2000).

*Rule 2.20 Filing of Pleadings and Other Documents.* Except for the claimant's petition to controvert (in triplicate); proposed order for approval of settlement (original and three copies); and briefs to the Full Commission (original and two copies); only one copy of a pleading or other document is required to be filed at the Commission. Once a case 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 case.

Any document or pleading prepared by an attorney for a party shall contain the typed or printed name, official Mississippi Bar identification number, address, telephone number, facsimile number, and email address of the attorney. 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 case 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.

This Rule shall be in force and effect on and after November 1, 2012.

Source: Miss. Code Ann. § 71-3-85 (2000).

*Rule 2.21 Address and Phone of Parties.* Every party to a controverted or non-controverted case must keep the Commission informed of their current address and telephone number. Attorneys representing a party in any such case shall also keep the Commission informed of their current address, telephone number, facsimile number, and email address. 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 November 1, 2012.

Source: Miss. Code Ann. § 71-3-85 (2000).

*Rule 2.22 Prehearing Motions; Motion Days.* (a) The original of a motion shall be filed with the Secretary of the Commission, who will forward the motion to the Administrative Judge to whom the case is assigned. A proposed order must accompany each nondispositive motion. The movant shall serve a copy of the motion and proposed order on the opposite party.

(b) If a party desires oral argument on a motion, the party shall notice the motion for motion day or, at the discretion of the Administrative Judge, other agreed time and place, before the assigned Administrative Judge. The party desiring oral argument on motion day shall coordinate the date of hearing on a particular motion day with counsel opposite, but at least five (5) calendar days before the motion day, and no other setting need be made through the docket room. A copy of the notice shall be served on the opposite party.

(c) A response is not required, but a party desiring to file a response shall do so within fifteen (15) days after date of service of the motion and serve a copy of the response to the movant. The Administrative Judge may, in his or her discretion, hear oral argument by telephone conference or waive oral argument. Briefs or other memoranda of law will not routinely be required.

(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 with the docket room of the Commission.

(e) SPECIAL MOTIONS. A party who files a motion for emergency hearing (e.g. motion for immediate hearing or five-day hearing under General Rule 9 or Miss. Code Ann. 71-3-17(b)) or a motion to reopen shall not notice the motion for motion day without first conducting a prehearing conference with the Administrative Judge assigned to hear the motion and other parties to the claim, either in person or by telephone, in order for the parties to consult with the Administrative Judge about all necessary prehearing matters.

This Rule shall be in force and effect on and after April 1, 2001.

Source: Miss. Code Ann. § 71-3-85 (2000).

*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 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 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 Judge on any matter pending or likely to be pending before the Commission or 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 Judge.

This Rule shall be in force and effect on and after April 1, 2001.

Source: Miss. Code Ann. § 71-3-85 (2000).

*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.

Effective from and after May 1, 2009.

Source: Miss. Code Ann. § 71-3-85 (2000).

*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 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.

Effective from and after May 1, 2009.

Source: Miss. Code Ann. § 71-3-85 (2000).