

TITLE 03 - OFFICE OF THE ATTORNEY GENERAL
Part 3 - Procedure for Oral Proceedings on Rulemaking and
Procedure for Issuing Declaratory Opinions

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Chapter 01 Procedure for Oral Proceedings on Rulemaking

100 Scope

These rules apply 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 Office of the Attorney General pursuant to Mississippi Code Annotated § 25-43-3.104.

101 Scheduling an Oral Proceeding on a Proposed Rule

The Office of the Attorney General 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.

102 Request for Oral Proceeding

Each request must be printed, typewritten, or must be in legible handwriting. Each request must be submitted on standard business letter-size paper (8 ½ inches by 11 inches). Each request must include the full name, mailing address and telephone number of the requestor(s). Requests may be in the form of a letter addressed to the Office of the Attorney General or in the form of a pleading as if filed with the court. 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.

103 Notice of Oral Proceeding

The date, time and place of all oral proceedings shall be filed with the Secretary of State's Office and notice 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.

104 Presiding Officer

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

105 Public Presentations and Participation

Public participation shall be permitted at oral proceedings in accordance with the following:

1. At an oral proceeding on a proposed rule, persons may make oral statements, documentary and physical submissions, which may include data, views, comments or arguments concerning the proposed rule.
2. Persons wishing to make oral presentations at such a proceeding shall notify the presiding officer at least three (3) 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 Office of the Attorney General.
3. 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.
4. 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 who presentations represent the views of other individuals as well as their own views.
5. Persons making oral presentations are encouraged to avoid restating matters that have already been submitted in writing. Written materials may, however, be submitted at the oral proceeding.
6. 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 participant's time where the orderly conduct of the proceeding so requires.

106 Oral Proceeding Agenda

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 (a) call proceeding to order; (b) give a brief synopsis of the proposed rule, a statement of the statutory authority for the proposed rule, and the reasons provided by the Office of the Attorney General for the proposed rule; (c) call on those individuals who have contact the Office of the Attorney General about speaking on or against the proposed rule; (d) allow for rebuttal statements following all participants' comments; and (e) adjourn the proceeding.

107 Questions

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.

108 Documentary and Physical Submissions

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

109 Record of the Oral Proceeding

The Office of the Attorney General may record oral proceedings by stenographic or electronic means.

Chapter 02 Procedure for Issuing Declaratory Opinions

200 Scope

This chapter consists of rules addressing the public's request for declaratory opinions and the Office of the Attorney General's disposition of requests for declaratory opinions. This chapter sets forth the Office of the Attorney General's rules governing the form, content and filing of requests for declaratory opinions, the procedural rights of persons in relation to the written requests, and the Office of the Attorney General's procedures regarding the disposition of requests as required by Mississippi Code Annotated § 25-43-2.103.

201 Declaratory Opinions Requestors

Any person with a substantial interest in the subject matter may make a request to the Office of the Attorney General for a declaratory opinion by following the specified procedures. "Substantial interest in the subject matter" as used in this chapter means a party that is directly affected by the Office of the Attorney General's administration of the laws within the Office of the Attorney General's primary jurisdiction. "Primary jurisdiction of the Office of the Attorney General" means the Office of the Attorney General has a constitutional or statutory grant of authority in the subject matter at issue.

202 Subjects Which May Be Addressed in Declaratory Opinions

The Office of the Attorney General will issue declaratory opinions regarding the applicability to specified facts of: (1) a statute administered or enforceable by the Office of the Attorney General, (2) a rule promulgated by the Office of the Attorney General, or (3)

an order issued by the Office of the Attorney General.

203 Circumstances In Which Declaratory Opinions Will Not Be Issued

The Office of the Attorney General may, for good cause, refuse to issue a declaratory opinion. The circumstances in which declaratory opinions will not be issued include, but are not limited to:

1. the matter is outside the primary jurisdiction of the Office of the Attorney General;
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 has been answered by an Attorney General's opinion;
15. a similar request is pending before the Office of the Attorney General, 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;
16. where issuance of a declaratory opinion may adversely affect the interests of the State, the Office of the Attorney General, or any of their officers or employees in any litigation which is pending or may reasonably be expected to arise;
17. where a request for a declaratory opinion involves a question of law, the Office of the Attorney General may refer the matter to the Opinions Division of the Office of Attorney General; or
18. where the question involves eligibility for a license, permit, certificate or other approval by the Office of the Attorney General 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.

204 Formatting and Submission of the Request for a Declaratory Opinion

1. Each request must be printed, typewritten or in legible handwriting. Each request must be submitted on standard business letter size paper (8 ½" by 11"). Requests may be in the form of a letter addressed to the Office of the Attorney General or in the form of a pleading as might be addressed to a court.
2. All requests must be mailed, delivered or transmitted via facsimile to the Office of the Attorney General. The request and its envelope shall clearly state that it is a request for a declaratory opinion. Oral, telephone, and email requests are unacceptable.
3. 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.
4. A request must be limited to a single transaction or occurrence.

5. Each request must contain the following:
 - a. a clear identification of the statute or rule at issue;
 - b. the question sought to be answered in the declaratory opinion, stated clearly;
 - c. a clear and concise statement of all facts relevant to the question presented;
 - d. the identity of all other known persons involved in or impacted by the described factual situation prompting the request, including their relationship to the facts, name, mailing address and telephone number; and
 - e. a statement sufficient to show that the person seeking the opinion has a substantial interest in the subject matter.
6. The terms of the proposed opinion suggested by the requestor may be submitted with the request or may be requested by the Office of the Attorney General.
7. 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 Office of the Attorney General may request that the argument and memorandum of authorities be submitted by any interested party.

205 Office of the Attorney General's Response

1. Within forty-five (45) days after the receipt of a request for a declaratory opinion which complies with the requirements of these rules, the Office of the Attorney General shall, in writing:
 - a. issue an opinion declaring the applicability of the specified statute, rule, or order to the specified circumstances;
 - b. decline to issue a declaratory opinion, stating the reasons for its action; or
 - c. agree to issue a declaratory opinion or a written statement declining to issue a declaratory opinion, by a specified time but not later than ninety (90) days after receipt of the written request.
2. The forty-five (45) day period shall begin on the first State of Mississippi business day that the request is received by the Office of the Attorney General.
3. 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 Office of the Attorney General 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.

206 Procedure After Request for Declaratory Opinion Received

1. The Office of the Attorney General may give notice to any person, agency or entity that a declaratory opinion has been requested and may receive and consider data, facts, arguments and opinions from other persons, agencies or other entities other than the requestor.
2. The requestor, or his attorney, shall append to the request for a declaratory opinion a listing of all person, 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 Office of the Attorney General within twenty (20) days of the date of this request."

207 Hearings at the Discretion of the Office of the Attorney General

1. If the Office of the Attorney General in its sole discretion deems a hearing necessary or helpful in determining any issue concerning a request for a declaratory opinion, the Office of the Attorney General may schedule such a hearing. Notice of the hearing shall be given to all interested parties unless waived. Notice mailed by first class mail seven (7) calendar days prior to the hearing shall be deemed appropriate.
2. The procedure for conduct a hearing, including, but not limited to, the manner of presentation, the time for presentation, and whether and how information may be taken, shall be within the discretion of the Office of the Attorney General.
3. The Office of the Attorney General shall allow the requestor to participate in the hearing. The Office of the Attorney General may allow any other persons or entities to participate in the hearing.

208 Public Availability of Requests and Declaratory Opinions

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 and in accordance with the Mississippi Office of the Attorney General's public records request

procedure. 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.