

Proposed Rules to Comply with the MTCB

25-43-2.104(a)

The purpose of this rule is to describe the organization of the Mississippi Tort State Board (hereafter referred to as MTCB) and how the public may obtain information from the Board.

Summary

This rule establishes a description of the MTCB'S organization which states the general course and method of its operations, including how the public may obtain information or make submissions/requests to the MTCB.

The Full Text of the Rule

The public may obtain a description of the MTCB'S organization from the Guidelines and Regulations of the MTCB currently on file with the Secretary of State. Additionally, the public may access information relevant to the MTCB at their website www.dfa.state.ms.us, or by reviewing Sections 11-46-1 et. Seq., of the Mississippi Code which may be accessed at www.state.ms.us. The public may also request information, make submissions or requests including Mississippi Open Records Act requests by contacting the MTCB Administrator at Post Office Box 267, Jackson, MS, 39205.

25-43-2.104(b)

Purpose

The Purpose of this rule is to inform the public of all informal proceedings available to the public.

Summary

This rule establishes information on all MTCB proceedings

The full Text of the Rule

All information as to the rules of practice concerning all formal and informal proceedings are available by reviewing the rules and regulations of the MTCB currently on file with the Secretary of State. Further information may be obtained by reviewing the MTCB website at www.dfa.state.ms.us, or by reviewing Sections 11-46-1 et. Seq., of the Mississippi Code which may be accessed at www.state.ms.us.

The MTCB generally meets the 2nd Thursday of every other month at 1:30 P.M. at the Woolfolk State Office Building, 501 North West Street, Jackson, MS 39201. Other meetings may be called by the Board as necessary.

Purpose

These sections set forth MTCB'S procedures for involving the public in the development of rules through public meetings and/or public hearings as required by Mississippi Code § 25-43-3.104.

Requirements for Public Hearings

At the time a Rule is filed with Secretary of State, the Administrator must also publish where written submissions or written requests for an opportunity to make oral presentations on the proposed rule may be inspected.

A public hearing is required if, during the first 20 business days of the rule notice, a written request for a public hearing is received from one of the following:

- a political subdivision
- an agency, or
- 10 persons

If a public hearing is required, the Administrator will establish the time, date and location for the public hearing. The Administrator shall then:

- Ensure that the public hearing is not scheduled earlier than 23 business days after filing notice of oral proceeding with SOS.
- File notice of the time, date, and location of the public hearing with the Secretary of State.
- Within three (3) days of filing notice with SOS, Administrator must mail or electronically transmit a copy of the notice to those who are on the notification list (their preference); MTCB can charge for mail but not electronic transmissions.

Location of Public Hearings

Public hearings shall be held at a place and time generally convenient for persons affected by the rule.

Conducting Public Hearings

- Public Hearings must be open to the public.
- The Administrator will preside at the proceeding.
- The Administrator may issue rules for conduct of oral proceedings.

Public Availability of Public Hearings

- A verbatim written transcript of the oral proceedings at each public hearing shall be produced by the Administrator.
- This material will be available for public inspection and copying as part of the Rule-Making Record .

Purpose

These sections set forth the MTCB'S procedures regarding the requests for Declaratory Opinions, as required by Mississippi Code § 25-43-2.103.

General

Declaratory Opinions will be prepared by the Administrator and approved by the Tort Claims Board.

Persons Who May Request Declaratory Opinions

Any person with a substantial interest in the subject matter may request the MTCB for a declaratory opinion by following the specified procedures

Subjects Which May Be Addressed In Declaratory Opinions

- The MTCB will issue declaratory opinions regarding the applicability to specified facts of:
 1. A statute administered or enforceable by the MTCB,,
 2. A rule promulgated by the MTCB, or
 3. An order issued by the MTCB.
- The MCTB will not issue a declaratory opinion regarding a statute, rule or order which is beyond the primary jurisdiction of the MTCB.
- "Primary jurisdiction of the agency" means:
 1. The agency has a constitutional grant of authority in the subject matter,
 2. The agency has a statutory grant of authority in the subject matter,
 3. The agency has issued specific regulations impacting on the subject matter, or
 4. The agency has issued a specific order or orders impacting on the subject matter.

Circumstances in which Declaratory Opinions Will Not Be Issued

- The MTCB may, for good cause, refuse to issue a declaratory opinion. Without limiting the generality of the foregoing, the circumstances in which d declaratory opinions will not be issued include, but are not necessarily limited to:
 1. The matter is outside the jurisdiction of the MTCB;
 2. Lack of clarity concerning the question presented;
 3. There is pending or anticipated litigation, administrative action, or other adjudication;
 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 or constitutional validity of a statute, rule or order;
 10. The requestor has not suffered an injury or threatened injury fairly traceable to the application of the statute, rule or order;
 11. No clear answer is determinable;
 12. The question presented by the request involves the application of a criminal statute or sets for 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;
 15. The question has been answered by an Attorney General's opinion;
 16. The request is not made in good faith; or
 17. The request is harassing in nature or for any other unlawful purposes.
- 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.
 - A declaratory opinion will not be issued if it may adversely affect the interests of the State, the MTCB or any of their officers or employees in any litigation which is pending or may reasonably be expected to arise.
 - A declaratory opinion shall not be binding or effective for any third party or person other than the MTCB and the person to whom the opinion is issued and shall not be used as precedent for any other transaction or occurrence beyond that set forth by the requesting person.
 - Where a request for a declaratory opinion involves a question of law, the MTCB may refer the matter to the State Attorney General.

Form of the Request for a Declaratory Opinion

- **Written Requests Required.** Each request must be printed or typewritten, or must be in legible handwriting. Each request must be submitted on standard business letter-size paper (8-1/2 inches by 11 inches). Requests may be in the form of a letter addressed to the MTCB or in the form of a pleading as might be addressed to a court.

- Where to Send Request~ All requests must be mailed or delivered to the MTCB Administrator. The request and its envelope shall clearly state that it is a request for a declaratory opinion. Oral and telephone requests are unacceptable.
- 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.
- Single transaction. A request must be limited to a single transaction or occurrence.
- Question Presented. Each request shall contain the following:
 - A clear identification of the statute, rule, or order at issue;
 1. A concise statement of the issue or question presented for the declaratory opinion;
 2. A full, complete, and accurate statement of all facts relevant to a resolution of the question presented;
 3. The identify 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;
 4. A statement sufficient to show that the person seeking relief is substantially affected by the rule
- The terms of the proposed opinion suggested by the requestor may be submitted with the request or may be requested by the agency;
- Memorandum of Authorities. A request may contain an argument by the requestor in support 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, including any legal authorities, in support of such position of the requestor. The agency may request that argument and memorandum of authorities be submitted by any interested party.

Time for MTCB'S Response

- MTCB'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 MTCB 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.
- When Period Begins to Run. The forty-five (45) day period shall begin running on the first State of Mississippi business day that the request is received in the MTCB.

Public Availability of Requests and Declaratory Opinions

The Administrator will make declaratory opinions and requests for declaratory opinions available for public inspection and copying at the expense of the viewer during normal business hours. All declaratory opinions and requests shall be indexed by name and subject. Declaratory opinions and requests which contain information which is exempted from disclosure under the Mississippi Public Records Act or is otherwise confidential by law shall be exempt from this requirement.

Purpose

These sections set forth the procedures for making the MTCB Orders available to the public as required by Mississippi Code § 25-42-2.102.

General

The Administrator shall be responsible for making them available for public inspection and copying indexed by name and subject. This is subject to any confidentiality provisions established by law.

Using Commission Orders as Precedent

The written final order can't be precedent to the detriment of any person by the MTCB until it has been made available for public inspection & indexed.

- this is inapplicable to any person who has actual timely knowledge of the order
- the burden of proof is on the MTCB