

**MISSISSIPPI STATE BOARD OF ARCHITECTURE
PROPOSED RULE REVISIONS
(to become effective August 17, 2005)**

Insert the following NEW rules:

3.02 Practice Procedures

3.02.9 Architects are encouraged to seek professional employment on the basis of qualifications and competence for proper accomplishment of the work. This procedure restricts the architect from submitting a price for services until the prospective client has selected, on the basis of qualifications and competence, one architect or firm for negotiations. However, competitive price proposals may be submitted or solicited for professional services if all the following restrictions are met:

- a. The prospective client has first sought statements of qualifications from interested licensees, and
- b. those licensees chosen by the client on the basis of qualifications and competence for proper accomplishment of the work have received in writing a comprehensive and specific Scope of Work, and
- c. the Scope of Work has been prepared, signed and sealed by a licensed architect who has attested to the completeness and adequacy of the Scope of Work, assuring that it fully identifies and describes the factors affecting the required architectural services, and
- d. assurances have been given by the prospective client that factors in addition to price were considered in selecting the architect.

Neither the architect that sealed the Scope of Work nor his firm will be allowed to submit a price proposal.

3.05 Location and Organization of the Board and Any Committees Assigned Thereto

3.05.1 The Board office and the office of any Advisory Committee assigned thereto is located at 400 Legacy Park Drive, Suite B, in Ridgeland, Mississippi, 39157. The Board's telephone number is 601-899-9071. The Board's website address is www.archbd.state.ms.us.

3.05.2 The public may obtain a description of the Board's and its committees' organization and their general course and method of operation from the Rules and Regulations of the Board/Committee currently on file with the Secretary of State and by reviewing sections 73-1-1 et seq. and 73-2-1 et seq., of the Mississippi Code which may be accessed on the Board's website as provided in rule 3.05.1.

3.05.3 The Board's/Committee's Rules and Regulations may also be viewed at the Board's website as provided in rule 3.05.1.

3.05.4 The public may request public information available through the Mississippi Open Records Act by contacting the Board at their regular business address as provided in rule 3.05.1.

3.06 Board and Committee Proceedings

- 3.06.1 All information as to the rules of practice concerning all formal and informal proceedings are available by reviewing the rules and regulations of the Board currently on file with the Secretary of State. Further information may be obtained by viewing the Board website as provided in rule 3.05.1 us or by reviewing sections 73-1-1 et seq. and 73-2-1 et seq. of the Mississippi Code which may be accessed on the Board's website as provided in rule 3.05.1.
- 3.06.2 The Board and its committees generally meet quarterly at the Board's office, the address of which is provided in rule 3.05.1. The schedule is available on the Board's website as provided in rule 3.05.1. Other meetings which may be called by the Board or its committees will be posted at the Board office.

3.07 Declaratory Opinions

- 3.07.1 Any person with a substantial interest in the subject matter may petition the Board or any committees assigned thereto for a declaratory opinion by following the specified procedures.
- 3.07.2 The Board/Committee will issue declaratory opinions regarding the applicability to specified facts of:
- a. a statute administered or enforceable by the Board/Committee; or
 - b. a rule promulgated by the Board/Committee; or
 - c. an order issued by the Board/Committee.
- 3.07.3 The Board/Committee will not issue a declaratory opinion regarding a statute, rule or order which is beyond the primary jurisdiction of the Board. "Primary jurisdiction to the Board/Committee" means any one or all of the following:
- a. The Board/Committee has a constitutional grant of authority in the subject matter.
 - b. The Board/Committee has a statutory grant of authority in the subject matter.
 - c. The Board/Committee has issued specific regulations impacting on the subject matter.
 - d. The Board/Committee has issued a specific order or orders impacting on the subject matter.
- 3.07.4 Declaratory opinions will be issued by the Board/Committee and prepared by the Executive Director.
- 3.07.5 The Board/Committee 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:
- a. The matter is outside the jurisdiction of the Board/Committee.
 - b. There is a lack of clarity concerning the question presented.
 - c. There is pending or anticipated litigation, administrative action, or other

adjudication.

d. 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.

e. The facts presented in the request are not sufficient to answer the question presented.

f. The request fails to contain information required by these rules or the requestor failed to follow the procedure set forth in these rules.

g. 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.

h. 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.

i. The question presented by the request concerns the legal or constitutional validity of a statute, rule or order.

k. The requestor has not suffered an injury or threatened injury fairly traceable to the application of the statute, rule or order.

l. No clear answer is determinable.

m. The question presented by the request involves the application of a criminal statute or sets of facts which may constitute a crime.

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

o. The question is currently the subject of an Attorney General's opinion request.

p. The question has been answered by an Attorney General's opinion.

q. The request is not made in good faith.

r. The request is harassing in nature or for any other unlawful purposes.

s. A similar request is pending before this Board/Committee 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.

t. The opinion, if issued, may adversely affect the interests of the State, the Board/Committee, or any of their officers or employees in any litigation which is pending or may reasonably be expected to arise.

3.07.6 A declaratory opinion shall not be binding or effective for any third party or person other than the Board/Committee 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.

3.07.7 Where a request for a declaratory opinion involves a question of law, the Board/Committee may refer to the matter to the State Attorney General.

3.07.8 Written requests are 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 Board/Committee or in the form of a pleading as

might be addressed to a court. Oral and telephone requests are unacceptable.

- 3.07.9 All requests must be mailed or delivered to the Board/Committee, at its physical address as provided in rule 3.05.1. The request and its envelope shall clearly state that it is a request for a declaratory opinion. 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. A request must be limited to a single transaction or occurrence. Each request shall contain the following:
- a. A clear identification of the statute, rule, or order at issue
 - b. A concise statement of the issue or question presented for the declaratory opinion
 - c. A full, complete, and accurate statement of all facts relevant to a resolution of the question presented
 - d. The identify 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
 - e. A statement sufficient to show that the person seeking relief is substantially affected by the rule
 - f. The terms of the proposed opinion suggested by the requestor may be submitted with the request or may be requested by the agency.
 - g. 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.

- 3.07.10 Within forty-five (45) days after the receipt of a request for a declaratory opinion which complies with the requirements of these rules, the Board/Committee shall, in writing:
- a. Issue an opinion declaring the applicability of the specified statute, rule, or order to the specified circumstances; or
 - 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 no later than ninety (90) days after receipt of the written request.
- The forty-five (45) day period shall begin running on the first State of Mississippi business day that the request is received in the Board/Committee.

- 3.07.11 The procedure which shall be followed after a request for a declaratory opinion is received is as follows:
- a. The Board/Committee 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.
 - b. 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 Board/Committee within twenty days of the date of this request."
- 3.07.12 If the Board/Committee in its sole discretion deems a hearing necessary or helpful in determining any issue concerning a request for declaratory opinion, the Board/Committee may schedule such hearing. Notice of the hearing shall be given to all interested parties unless waived. Notice mailed by first class mail seven calendar days prior to the hearing shall be deemed appropriate. 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 Board/Committee. The Board/Committee shall allow the requestor to participate in any hearing. The Board/Committee may allow any other persons or entities to participate in the hearing.
- 3.07.13 The Board/Committee 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.
- 3.07.14 Once the Board/Committee has issued its declaratory opinion, the Executive Director will then review the request for validity and prepare a response per the guidelines listed in this Rule. The Executive Director will then forward the request and opinion to Board's legal counsel. After the Board's legal counsel reviews the opinion, he or she will forward the request and opinion to the Executive Director. The Executive Director will index the opinions by name and subject and make available for public inspection. The Executive Director will mail the opinion back to the requestor and anyone else who has asked to participate.

3.08 Requirements for Public Hearings for Rule Making (for the Board and Any Committees Assigned Thereto)

- 3.08.1 At the time a Rule is filed with Secretary of State, the Executive Director must also publish where written submissions or written requests for an opportunity to make oral presentations on the proposed rule may be inspected.
- 3.08.2 A public hearing is required if, during the first 20 business days of the rule notice, written request for a public hearing is received from one of the following:
- a. a political subdivision
 - b. an agency
 - c. 10 persons
- 3.08.3 If a public hearing is required, the Executive Director will establish the time, date and location for the public hearing. The Executive Director shall then:
- a. Ensure that the public hearing is not scheduled earlier than 23 business days after filing notice of oral proceeding with SOS
 - b. File notice of the time, date, and location of the public hearing with the Secretary of State
 - c. Within three (3) days of filing notice with SOS, mail or electronically transmit a copy of the notice to those who are on the notification list (their preference)
The Board/Committee can charge for mail, but not electronic transmissions.
- 3.08.4 Public hearings shall be held at a place and time generally convenient for persons affected by the rule.
- 3.08.5 Conducting Public Hearings
- a. Public Hearings must be open to the public.
 - b. The President/Chairman of the Board/Committee will preside at the proceeding.
 - c. The Board/Committee and/or Executive Director will be responsible for answering all questions regarding the rule.
 - e. The Board/Committee may issue rules for conduct of oral proceedings.
- 3.08.5 Public Availability of Public Hearings
- a. A verbatim written transcript of the oral proceedings at each public hearing shall be produced.
 - b. This material will be available for public inspection and copying

3.09 Final Orders: Indexing, Public Inspection and Precedent

- 3.09.1 The Executive Director shall maintain all written final orders that affect the public and will be responsible for making them available for public inspection and copying. The order shall be indexed by name and subject. This is subject to any confidentiality provisions established by law.
- 3.09.2 The written final order can't be precedent to the detriment of any person by the

Board/Committee until it has been made available for public inspection and indexed. This is inapplicable to any person who has actual timely knowledge of the order.