

# DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES

## DIRECTOR'S OFFICE

### DECLARATORY RULINGS

(By authority conferred on the director of the department of consumer and industry services by section 63 of 1969 PA 306, MCL 24.263, and Executive Reorganization Order No. 1996-2, MCL 445.2001)

#### **R 338.81 Declaratory rulings.**

Rule 1. (1) The following provisions set forth the form and procedure for the submission, consideration, and disposition of a request for declaratory ruling in the Department of Consumer and Industry Services, hereinafter referred to as the "department":

(a) Any interested person, hereinafter referred to as "applicant," may request a declaratory ruling as to the applicability to an actual state of facts of a statute, rule, final order or decision administered, promulgated, or issued by any bureau, office, commission, council, board, or agency, hereinafter referred to as "agency," within the department. A request shall not relate to a hypothetical fact situation. An applicant shall observe the following procedure:

(b) An applicant shall submit an original and 1 copy of each request on a form similar to figure 1, or in writing, on 8 ½ by 11-inch paper. An applicant shall submit the request by mail or personal delivery to the current office of the director of the agency. An applicant shall not submit a request by facsimile or electronic means.

(c) The request shall contain all of the following information:

(i) Under a section labeled "Statement of Facts," a complete, accurate, and concise statement of the facts or situation upon which the request is based, which shall include all facts known to the applicant that are or may be relevant to a determination of the applicability of a statute, rule, final order, or decision.

(ii) Under a section labeled "Certification," a certification by the applicant as to the existence of the actual state of facts set forth and the submission of all relevant facts known to the applicant.

(iii) Under a section labeled "Laws/Rules/Orders," specific reference to all statutes, rules, final decisions, or orders that are to be considered.

(iv) Under a section labeled "Issues," a concise statement of the issues presented.

(v) Under a section labeled "Analysis and Conclusions," an analysis, legal brief, or memorandum of the issues presented, including reference to any legal authority relied upon, and the applicant's conclusions.

(vi) The applicant's full name, degree or title, if applicable, professional or occupational license number, if applicable, daytime telephone number, mailing address and identification of any legal counsel.

(d) An applicant shall submit two copies of all relevant documents as attachments to the request.

(e) Failure to follow the procedure in subdivisions (a) to (d) of this subrule may result in the return of the request for compliance or in denial as specified in subrule (8) of this rule.

(2) Figure 1 reads as follows:

Figure 1: Request for Declaratory Ruling

|   |  |
|---|--|
| Department of Consumer and Industry Services<br>Request for Declaratory Ruling  |  |
| Applicant's full name:  | Applicant's degree or title (if applicable):           |
| Applicant's full name:  | Professional/occupational license no. (if applicable): |
| Daytime telephone no.:  | Name and address of legal counsel (if applicable):     |
| Statement of facts: (Please provide a complete, accurate and concise statement of the facts or situation upon which the request is based. The statement shall include all facts known to you which are or may be relevant to a determination of the applicability of statute, rule, final order or decision.) |  |
| Laws /Rules /Orders: (Please provide references to all statutes, rules, final decisions or orders which are to be considered.)  |  |
| Issues: (Please provide a concise statement of the issues presented.)   |  |
| Analysis and Conclusions: (Please provide an analysis, legal brief or memorandum of the issues presented, including reference to any legal authority relied upon, and the applicant's conclusions.)   |  |
| Certification : I hereby certify the existence of the actual state of facts set forth and the submission of all relevant facts known to me:<br><br>Date: _____ Signature: _____   |  |

(3) Before determining whether or not to issue a declaratory ruling, the agency, in its discretion, may receive comments, written or oral arguments, or information from interested persons, legal counsel, or any other source.

(4) Within 60 calendar days of the receipt of the request, the agency shall issue a written notification by regular first-class mail to the applicant and the applicant's legal counsel, if any, stating whether or not a declaratory ruling will be issued.

(5) If the agency has determined that it will issue a declaratory ruling, then it shall do so within 90 calendar days of the notification date specified in subrule (4) of this rule, unless the agency advises the applicant, in writing, of the need for additional time, stating the reasons therefor.

(6) Before the issuance of the declaratory ruling, the agency in its discretion may choose to do 1 or more of the following:

(a) Request submission by the applicant of any additional information deemed necessary.

(b) Seek consultation, comments, or advice from legal counsel, experts within or outside the agency, local, state, or federal governmental agencies, or any other source.

(c) Request information or comments from other interested parties.

(d) Request oral or written arguments from interested parties.

(e) Hold a public hearing upon proper notice to all interested parties.

(7) The agency may require that a contested case proceeding take place instead of issuing a declaratory ruling.

(8) In the discretion of the agency, a request for declaratory ruling may be denied if the applicant fails to follow the procedure for submission set forth in this rule, if the statement of facts is incomplete or inaccurate, if the facts or circumstances relate to a changing situation, if the ruling would not be in the public interest or in furtherance of statutory objectives, or for any other stated reason. The agency shall set forth the reason or reasons for denial of the request in its written notification to the applicant.

(9) If a declaratory ruling is issued by the agency, it shall be in writing, mailed by regular first-class mail to the mailing address supplied by the applicant and to the applicant's identified legal counsel, if any, and contain all of the following:

(a) The specific facts upon which it is based.

(b) The legal authority upon which it is based.

(c) The ruling itself.

(d) A statement that the ruling is limited to the specific facts presented and to the statute, rule, final decision, or order identified by the applicant or other statute, rule, final decision, or order identified by the agency.

(e) A statement that the ruling is binding on the agency and the applicant unless it is altered or set aside by any court.

(f) A statement that the agency may not retroactively change the ruling, but may prospectively do so in its discretion.

(g) A statement that the ruling is subject to judicial review in the same manner as an agency final decision or order in a contested case.

(10) This rule does not prohibit or restrict any interested person from informally discussing any actual or proposed activity with any agency. Informal discussions are not subject to the rule.

History: 2001 AACCS.