



Mississippi

Charities Act Rules

**Promulgated Pursuant to the Mississippi Charitable
Solicitations Act**

Revised October, 2005

DELBERT HOSEMAN
Secretary of State

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ARTICLE ONE -- GENERAL PROVISIONS

PREAMBLE: The following Rules are hereby adopted by the Secretary of State by the authority granted him in Miss. Code Ann. §79-11-504 (1972). The Business Regulation & Enforcement Division of the Office of the Secretary of State has been vested with the authority to regulate charities as provided in Miss. Code Ann. §§79-11-501 through 79-11-529 (1972). These Rules supersede all rules heretofore adopted and from this date shall be generally applicable to the administration of the Charitable Solicitations Act, and the procedure and practice of the Business Regulation & Enforcement Division in accordance herewith. The adoption of these Rules represents a finding by the Secretary of State that such Rules are necessary and appropriate for the public interest and for the protection of contributors and are consistent with the purposes fairly intended by the policy and provisions of the Charitable Solicitations Act. These Rules are intended to supplement the statutory provisions of the Charitable Solicitations Act and should not be considered as replacing or superceding any provision concerning filings, registrations, applications, or any other requirement contained therein.

101 DEFINITIONS

As used in Miss. Code Ann. §§79-11-501 through 79-11-529 and the Rules promulgated thereunder, the following terms shall have the meaning ascribed to them below unless the context requires otherwise:

- (A) "Act" shall mean the Charitable Solicitations Act, which is codified as Miss. Code Ann. §§79-11-501 through 79-11-529.
- (B) "Religious institution " shall mean
 - (1) Ecclesiastical or denominational organizations, churches, diocese or presbytery or established physical places for worship, whether or not incorporated, at which nonprofit religious services and activities are regularly conducted and carried on and also includes those religious groups which do not maintain specific places of worship;
 - (2) Such separate groups or corporations which form an integral part of a religious institution as defined by subsection (B)(1) of this Rule and which are exempt from federal income tax under the provisions of Section 501(c)(3) of the Internal Revenue Code of 1954, or of a corresponding section of any subsequently enacted federal revenue act; and
 - (3) Such institutions soliciting contributions for the construction and maintenance of a house of worship or clergyman's residence.
- (C) "Business Regulation & Enforcement Division" or "Division" shall mean the Business Regulation & Enforcement Division of the Office of the Secretary of State of Mississippi.

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103 FILING MATERIALS

All papers, forms or information required to be filed with the Division may be filed through the mails or otherwise. The date on which papers, forms or other documents are actually received by the Division shall be the date of filing thereof. An application is not considered complete and will not be further processed until all required documentation has been received by the Division.

105 APPLICATION FORMS

All applications required to be filed shall be submitted on forms authorized by the Division. All information requested in such forms is essential and must be furnished. Additional documentation not specifically called for by the form, but which is essential to a full disclosure of all information, shall be furnished and properly identified. All forms and documentation furnished to the Division become part of the records of the Division and are not returnable.

107 VARIANCES FROM THE RULES

The Division may grant variances from these Rules if it determines that (a) application of the Rules from which the variance is granted would, in the particular case, be unnecessarily burdensome, and (b) such variance would not be inconsistent with the public policy purposes of the Act.

109 ORAL OPINIONS

Oral or informal opinions by the staff of the Division as to the applicability of the Act and oral or informal representations by the staff of the Division concerning the status of filings made with the Division are not considered binding upon the Division unless accurately and promptly confirmed in writing by the party requesting such oral or informal opinion or representation.

111 INTERPRETATIONS BY THE DIVISION

Pursuant to §79-11-504(b) of the Act, the Division may respond to written inquiries concerning interpretations of the Act or the rules promulgated thereunder, provided sufficient relevant facts are given and the situation is not hypothetical. The Division may refuse to respond to any inquiry.

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ARTICLE TWO -- CHARITABLE ORGANIZATIONS

201 REGISTRATION STATEMENT

In order to apply for registration as a Charitable Organization pursuant to §79-11-503 of the Act, the following must be submitted to the Division:

- (A) The Unified Registration Statement,
- (B) The non-refundable \$50.00 registration fee,
- (C) Copies of contracts between the Charitable Organization and any Professional Fund-Raisers relating to financial compensation or profit to be derived by the Professional Fund-Raisers, and
- (D) With the initial registration only, a copy of the current charter, articles of incorporation, bylaws and/or any other instrument of organization and any federal tax exemption determination letter from the Internal Revenue Service or notification of any rescission of, challenge to, or investigation of the charitable organization's federal tax exemption.
- (E) An Annual Financial Report must be filed with the Registration Statement along with an audited financial statement and IRS Form 990 if the Organization 1) received contributions in its most recently completed fiscal year of over \$100,000; 2) hired, employed or contracted with a professional fund-raiser or fund-raising counsel; or 3) carried on fundraising functions by hiring, employing or contracting with any person paid for such services.

An Annual Financial Report must be filed with the Registration Statement along with a financial statement which may be an audited statement and, if applicable, IRS Form 990 if the Organization 1) received contributions within its most recently completed fiscal year of less than \$100,000; 2) did not hire, employ or contract with a professional fund-raiser or fund-raising counsel; and, 3) did not carry on fundraising functions by hiring, employing or contracting with any person paid for such services.

203 CERTIFICATE OF REGISTRATION

Registration in Mississippi as a Charitable Organization shall become effective upon the date of the issuance of a Certificate of Registration by the Division. The Certificate of Registration shall expire one year from the date of issuance.

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205 RENEWAL

The following must be submitted to the Division on or before one year from the date of the Certificate of Registration in order to renew:

- (A) The Unified Registration Statement,
- (B) The \$50.00 non-refundable renewal fee, and
- (C) Copies of contracts not already on file with the Division between the Charitable Organization and any Professional Fund-Raisers relating to financial compensation or profit to be derived by the Professional Fund-Raisers, and
- (D) An Annual Financial Report must be filed with the Registration Statement along with an audited financial statement and IRS Form 990 if the Organization 1) received contributions in its most recently completed fiscal year of over \$100,000; 2) hired, employed or contracted with a professional fund-raiser or fund-raising counsel; or 3) carried on fundraising functions by hiring, employing or contracting with any person paid for such services.

An Annual Financial Report must be filed with the Registration Statement along with a financial statement which may be an audited statement and, if applicable, IRS Form 990 if the Organization 1) received contributions within its most recently completed fiscal year of less than \$100,000; 2) did not hire, employ or contract with a professional fund-raiser or fund-raising counsel; and, 3) did not carry on fundraising functions by hiring, employing or contracting with any person paid for such services.

- (E) A notarized statement of solicitations must be submitted with the Registration Statement (Form URS) if the renewal is late. When the renewal is received after the expiration of the Certificate of Registration, a statement detailing the solicitations made during the period of non-registration must be submitted. The statement must contain the donations pledged and donations received from Mississippi residents. If no solicitations were made, the statement must affirm that no solicitations were made during the period of non-registration. For purposes of this subsection, the period of non-registration shall mean the date on which the Certificate of Registration expired through the date on which the Division receives the complete renewal package. A renewal is not considered complete and will not be further processed until the Division has received all the required documentation, including the statement of solicitations. [Adopted 01/02/2003].

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207 NOTICE OF EXEMPTION

Any Charitable Organization claiming an exemption from registration as a Charitable Organization pursuant to §79-11-505 of the Act, must file the following with the Division prior to any solicitations:

- (A) A properly completed Notice of Exemption form along with the required documentation. [Amended 11/28/2005].
- (B) A Statement of Exemption will be issued by the Division upon receipt of the Notice of Exemption;
- (C) The Statement of Exemption will remain in effect until such time as notification is received by the Division of any change in the status of the Organization that would require registration or that the Organization is no longer soliciting contributions.
- (D) Any changes in information on file with the Division should be made within 30 days.

209 TERMINATION OF REGISTRATION

A Charitable Organization may terminate registration by submitting a Notice of Termination or a letter requesting termination to the Division within thirty (30) days of ceasing activities in the state.

211 DISPLAY OF CERTIFICATE

The current registration certificate or certificate of exemption issued by the Division to the Charitable Organization shall be posted and displayed in a conspicuous place and in easy view of all persons who enter the office of the Charitable Organization.

213 BOOKS AND RECORDS

Charitable organizations either registered with the Secretary of State or exempt from registration shall maintain accurate books and records of the solicitation activities of the organization for a period of at least three (3) years. Solicitation activities shall include all financial activities of the organization. The records shall be maintained at the offices of the charitable organization and shall be kept in an auditable format. By way of example such records shall include, but not be limited to, the following:

- (A) All check books, bank statements, cancelled checks and cash reconciliations of the organization;
- (B) All bills, statements and receipts (or copies thereof), paid or unpaid, relating to the business and operation of the organization;

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- (C) Statements and records of all accounts in which the organization is vested;
- (D) All written agreements (or copies thereof) entered into by the organization with any entity, person or otherwise relating to the business of the organization as such;
- (E) General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts;
- (F) Current minutes of the meetings of the organization's board of directors; and,
- (G) Copies of all solicitation materials.

[Adopted 11/28/2005]

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ARTICLE THREE -- PROFESSIONAL FUND-RAISERS/SOLICITORS

301 APPLICATION - PROFESSIONAL FUND-RAISER

In order to apply for registration as a Professional Fund-Raiser pursuant to §79-11-513 of the Act, the following must be submitted to the Division:

- (A) The Professional Fund-Raiser Application for Registration,
- (B) The Ten Thousand Dollar (\$10,000) bond as provided in §79-11-513 of the Act,
- (C) Copies of contracts between the Professional Fund-Raiser and any Charitable Organization relating to financial compensation or profit to be derived by the Professional Fund-Raisers,
- (D) All copies of booklets, brochures, bulletins, circulars, scripts, documents, letters, pamphlets; including any articles evidencing a writing which will be used in the solicitation campaign,
- (E) Professional Solicitor Application for Registration for each employee who will be making solicitations, and
- (F) The \$250.00 non-refundable registration fee.

302 APPLICATION - PROFESSIONAL FUND-RAISING COUNSEL

In order to apply for registration as a Professional Fund-raising counsel pursuant to §79-11-513 of the Act, the following must be submitted to the Division:

- (A) The Application for Registration of a Professional Fund-raising counsel form,
- (B) Copies of contracts between the Professional Fund-raising counsel and the Professional Fund-raiser and any Charitable Organization relating to financial compensation or profit to be derived from the Professional Fund-raising counsel's affiliation with either or both entities,
- (D) All copies of booklets, brochures, bulletins, circulars, scripts, documents, letters, pamphlets, including any articles evidencing a writing which will be used in the solicitation campaign, and
- (E) The \$250.00 non-refundable registration fee.

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303 RETENTION OF RECORDS

A professional fund-raiser shall maintain during each solicitation campaign and for not less than three years after the completion of such campaign the following records, which shall be available for inspection upon demand by the Secretary of State's Office:

- (A) The date and amount of each contribution received and the name and address of each contributor.
- (B) The name and residence of each employee, agent or other person involved in the solicitation.
- (C) Records of all revenue received and expenses incurred in the course of the solicitation campaign.
- (D) The location and account number of each bank or other financial institution account in which the professional fund-raiser has deposited revenue from the solicitation campaign.
- (E) The professional fund-raising counsel shall maintain, for a period of three years, a copy of any contract, or contracts, or documents evidencing a contract, such as writings, notes, ledger entries, or taped conversations, relating to any agreements between the professional fund-raiser and the professional fund-raising counsel regarding contractual performance.

304 CERTIFICATE OF REGISTRATION - PROFESSIONAL FUND-RAISER / FUNDRAISING COUNSEL

Registration in Mississippi as a Professional Fund-Raiser/Fund-raising Counsel shall become effective upon the date of the issuance of a Certificate of Registration by the Division. The Certificate shall expire on June 30th each year.

305 RENEWAL - PROFESSIONAL FUND-RAISER

The following must be submitted to the Division on or before June 30th each year in order to renew:

- (A) The Professional Fund-Raiser Application for Registration form,
- (B) The Ten Thousand Dollar (\$10,000) surety bond or a continuation notice of the bond on file as provided in §79-11-513 of the Act,
- (C) Copies of contracts not already on file with the Division between the Professional Fund-Raiser and any Charitable Organization relating to financial compensation or profit to be derived from the Professional Fund-raising counsel's affiliation with either or both entities,

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- (D) All copies of booklets, brochures, bulletins, circulars, scripts, documents, letters, pamphlets; including any articles evidencing a writing which will be used in the solicitation campaign.
- (E) The \$250.00 non-refundable registration fee.

306 RENEWAL - FUND-RAISING COUNSEL

The following must be submitted to the Division on or before June 30th of each year in order to renew:

- (A) The Application for Registration of Fund-raising Counsel form,
- (B) Copies of contracts not already on file with the Division between the Fund-raising counsel and the Professional Fund-Raiser and any Charitable Organization relating to financial compensation or profit to be derived from the Professional Fund-raising counsel's affiliation with either or both entities, and
- (C) All copies of booklets, brochures, bulletins, circulars, scripts, documents, letters, pamphlets,
- (D) The \$ 250.00 non-refundable registration fee.

307 FILING OF SOLICITATION CAMPAIGN NOTICE

Prior to the commencement of each solicitation campaign, the Professional Fund-Raiser shall file a completed Solicitation Campaign Notice form with the Division. Any changes or modifications in the required information must be submitted to the Division on an amended form within 7 days.

309 FILING OF SUMMARY OF FINANCIAL ACTIVITIES OF A PROFESSIONAL FUND-RAISER FOR A SOLICITATION CAMPAIGN

A Summary of Financial Activities of a Professional Fund-Raiser for a Solicitation Campaign form must be filed with the Division to report the financial activities for each individual solicitation campaign conducted for every charitable organization for which the Professional Fund-Raiser makes solicitations. This financial report is to be filed with the Division no more than 90 days after a solicitation campaign has been completed and/or annually on the anniversary date of the commencement of any solicitation if the campaign lasts more than one (1) year. If the solicitation campaign is conducted nationally or regionally and is not confined solely to the State of Mississippi, the financial information required to be filed shall be inclusive of the national or regional campaign.

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**311 TERMINATION OF REGISTRATION - PROFESSIONAL FUND-RAISER /
FUNDRAISING COUNSEL**

A Professional Fund-Raiser/Fundraising Counsel may terminate registration by submitting a letter requesting termination to the Division within thirty (30) days of ceasing activities in the state.

313 APPLICATION/RENEWAL - PROFESSIONAL SOLICITOR

- (A) In order to apply for registration as a Professional Solicitor pursuant to §79-11-517 of the Act, the Professional Solicitor Application for Registration form must be completed and submitted to the Division. The application must be filed either (1) with the Professional Fund-Raiser Application for Registration or (2) with the Solicitation Campaign Notice filed by the Professional Fund-Raiser. A completed, attested form must be on file with the Division before any solicitations may be made by the Solicitor.
- (B) On or before June 30th each year, the Professional Solicitor Application for Registration form must be completed in order to renew registration as a Professional Solicitor.
- (C) In the event of termination of employment, notice of such termination must be provided to the Division within thirty (30) days.

**315 DISPLAY OF CERTIFICATE - PROFESSIONAL FUND-RAISER /
FUNDRAISING COUNSEL**

The current registration certificate issued by the Division to the Professional Fund-Raiser/ Fundraising Counsel shall be posted and displayed in a conspicuous place and in easy view of all persons who enter the office of the Professional Fund-Raiser/ Fundraising Counsel.

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ARTICLE FOUR -- ADMINISTRATIVE HEARING PROCEDURES

401 DEFINITIONS

"Party", as used in these rules, shall include the Attorney General, the Secretary of State, other governmental agency, charitable organization, professional fund-raiser, professional solicitor, or any other person.

403 NOTICE OF ADMINISTRATIVE HEARING

- (A) Written notice shall be provided to any charitable organization or other person against whom the Attorney General or the Secretary of State intends to institute an administrative hearing pursuant to the Regulation of Charitable Solicitations Act.
- (B) Such notice shall be by certified mail, return receipt requested and shall set forth the date, time and place for the administrative hearing and shall also designate a Hearing Officer.

405 WITNESSES

- (A) Any Party wishing to appear or introduce evidence or other testimony at the administrative hearing shall, no later than fourteen (14) days prior to the hearing date, file with the Hearing Officer a list of witnesses which it intends to call to testify or to otherwise give evidence. The list shall contain for each witness:
 - 1. Name;
 - 2. Current residential and business address, if known;
 - 3. Current residential and business telephone number, if known;
 - 4. A statement indicating whether such person is to testify in person or by affidavit.
- (B) A true and correct copy of such list shall be forwarded by each Party to all other Parties no later than fourteen (14) days prior to the hearing date.

407 DOCUMENTS

Upon request by any Party, any documents, papers or tangible things to be introduced by any Party at the hearing shall be made available for inspection and copying by the requesting Party no later than fourteen (14) days prior to the hearing date. This shall include written reports prepared by any expert retained by any Party to testify at the hearing.

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409 CONDUCT OF HEARING

- (A) The Hearing Officer shall have the authority to administer oaths and affirmations;
- (B) Each Party may be represented by an attorney or other authorized representative;
- (C) The Hearing Officer may clear the hearing room of witnesses not under examination.
- (D) The Hearing Officer shall have the authority to maintain the decorum of the hearing and shall take reasonable steps to do so when necessary, including clearing the hearing room of any person who is disruptive.

411 EVIDENCE

- (A) Hearings shall be informal and technical rules of evidence shall be relaxed;
- (B) All witnesses who appear and testify under oath shall be subject to cross examination. A witness who does not appear may testify by affidavit provided the Party presenting the particular witness' affidavit has complied with the requirements of Rule 405 thereby affording any other Party an opportunity to contact said witness and obtain an affidavit on its own behalf;
- (C) The Hearing Officer shall have the authority to admit into the record any evidence which, in his or her judgment, has a reasonable degree of probative value and trustworthiness. The Hearing Officer shall have the authority to exclude evidence which is irrelevant, immaterial, lacking in probative value, untrustworthy or unduly cumulative;
- (D) Documents received into evidence by the Hearing Officer shall be marked by him or her, or under his or her direction, and filed for the record of the appeal;
- (E) Rebuttal and surrebuttal evidence may be heard at the discretion of the Hearing Officer;
- (F) Arguments summarizing the evidence and the law may be heard at the discretion of the Hearing Officer.

413 ORDER OF PROOF - BURDEN OF PROOF

- (A) At the hearing, the Attorney General or the Secretary of State shall be the first to present evidence.
- (B) The Attorney General or the Secretary of State shall have the burden of proving its allegations by a preponderance of the evidence.

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415 PRESERVATION AND TRANSCRIPTION OF RECORD OF HEARING

- (A) A record of testimony at the hearing may be made by other than stenographic means, in which event notice shall be given to all parties designating the manner of recording and preserving the testimony.
- (B) It shall be the responsibility of any Party desiring to preserve by stenographic means a record of testimony at the hearing to:
 - 1. Arrange for a court reporter to make stenographic recording of the hearing;
 - 2. Pay all fees and expenses for such recording and transcription directly to the court reporter.
- (C) A true and correct copy of said stenographic recording shall be made available to any other Party requesting it, provided such Party agrees to pay the expense of such copy.

417 ORDER TO BE FILED UPON COMPLETION OF HEARING

After all evidence is heard or received and the hearing is completed, the Hearing Officer shall, within a reasonable time thereafter, prepare and file a written findings of fact and conclusions of law and a Final Order based thereon. A copy of such decision and order shall be sent promptly by the Secretary of State, via certified mail, return receipt requested, to all Parties who appeared at the administrative hearing or their attorney or authorized representative.

419 CONTINUANCES

Continuances requested by any Party shall be granted within the discretion of the Hearing Officer only for good cause shown.

421 COMPUTATION OF TIME

In computing any period of time prescribed or allowed under these rules, the Hearing Officer shall be guided by the Mississippi Rules of Civil Procedure.

423 VALIDITY OF RULES

If any one or more of these rules is found to be invalid by any court of competent jurisdiction, such finding shall not affect the validity of any other of these rules.

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