Form 27.40.40

Business Area

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**EXAMPLE OF ATTORNEY LETTER**

*STATE AGENCY LETTERHEAD*

Date

The Honorable Lynn Fitch

Attorney General

State of Mississippi

ATTN: Civil Litigation Division

550 High Street, Suite 1200

Jackson, MS 39201

Dear Attorney General Fitch:

In connection with an examination of our financial statements at June 30, 2023, and for the year then ended, we have prepared and furnished to the Mississippi Department of Finance and Administration a description and evaluation of certain contingencies. The attached contingencies involve matters on which you have been engaged and to which you have devoted substantive attention on behalf of this agency in the form of legal consultation or representation. We have represented to the Department of Finance and Administration that there are no unasserted claims or assessments that our legal counsel has advised us are probable of assertion and should be disclosed, except as reported on the attached schedules.

On our agency’s behalf, please compile the information below and deliver to the Director of Finance and Administration and the State Auditor such explanation, if any, that you consider necessary to supplement the attached information. Include an explanation of those matters to which your views may differ from those stated and an identification of the omission of any pending or threatened litigation, claims, and assessments or a statement that the list of such matters is complete.

Your response should include matters that existed at June 30, 2023, and during any period from that date to October 31, 2023, in the format prescribed that follows:

1. Pending or Threatened Litigation (excluding unasserted claims):
   1. The nature of the litigation;
   2. The progress of the case to date;
   3. The agency’s response to the litigation (i.e., to contest the case vigorously or to seek an out-of-court settlement);
   4. An evaluation of the likelihood of an unfavorable outcome, noting if an unfavorable outcome is “probable” or “remote,” as defined in Paragraph 5 of the *American Bar Association Statement of Policy Regarding Lawyers’ Responses to Auditors’ Requests for Information[[1]](#endnote-1)*; and
   5. In the event the evaluation of the likelihood of an unfavorable outcome is judged to be “probable” and not “remote,” an estimate of the amount or range of potential loss. If you believe that the probability of providing an inaccurate amount or range is more than slight, please note the factors that lead you to this conclusion.
2. Unasserted claims and assessments considered to be probable of assertion, and that, if asserted, would have at least a reasonable possibility of an unfavorable outcome:
   1. The nature of the matter;
   2. How the agency intends to respond or is expected to respond if the claim is asserted;
   3. An evaluation of the likelihood of an unfavorable outcome, noting if an unfavorable outcome is “probable” or “remote,” as defined in Paragraph 5 of the *American Bar Association Statement of Policy Regarding Lawyers’ Responses to Auditors’ Requests for Information*; and
   4. In the event the evaluation of the likelihood of an unfavorable outcome is judged to be “probable,” and not “remote,” an estimate of the amount or range of potential loss. If you believe that the probability of providing an inaccurate amount or range is more than slight, please note the factors that lead you to this conclusion.

We understand that whenever, in the course of performing legal services for us with respect to a matter recognized to involve an unasserted possible claim or assessment that may call for financial disclosure, you have formed a professional conclusion that we should disclose or consider disclosure concerning such possible claim or assessment, as a matter of professional responsibility to us, you will so advise us, the Department of Finance and Administration, and the State Auditor, and will consult with us concerning the question of such disclosure and the applicable requirements of Statement of Financial Accounting Standards No. 5. Please specifically confirm to the Executive Director and the State Auditor that our understanding is correct.

Please, also, specifically identify the nature of and reasons for any limitation to your response.

Sincerely,

Executive Director

1. From Paragraph 5 of the *American Bar Association Statement of Policy Regarding Lawyers’ Responses to Auditors’ Requests for Information*:

   **Probable** – an unfavorable outcome for the client is probable if the prospects of the claimant not succeeding are judged to be extremely doubtful and the prospects of success by the client in its defense are judged to be slight.

   **Remote** – an unfavorable outcome is remote if the prospects of the client not succeeding in its defense are judged to be extremely doubtful and the prospects of success by the claimant are judged to be slight. [↑](#endnote-ref-1)