



SPECIAL MEETING Minutes
Tuesday, February 20, 2024
9:00 a.m.

Board Members: David Russell, Chair
Norman Katool, Vice-Chair
Norman McLeod
Billy Morehead
Liz Welch

Board Members Attending Via Teleconference:

Rita Wray

Staff Members: Brittney Thompson
Suzanne Hudson, Special Assistant Attorney General
Liz Bolin, General Counsel
Jay Woods, Special Assistant Attorney General
Ross Campbell
Amelia Gamble
Carrie Boyd
Kimberly Burse
Shantina Christmas

Guests: Janet McMurtray
MiMi Speyerer
Sterling Kidd
Brant Ryan
Lucien Smith
Kayla Mcknight
Bryan Wardlaw
Laura Gibbes
Kristen Jones

I. Call to Order

The meeting was called to order by David Russell Chair.

II. Consideration of Protest

A. Protest: Appeal of Final Decision of the Mississippi Division of Medicaid on Medical Transportation Management, Inc.'s Protest of the Mississippi Division of Medicaid's Notice of Intent to Award IFB #20230113 to ModivCare Solutions, LLC

1. MTM (Protestor): 20 MINUTES

- Mr. Kidd presented arguments on behalf of the Protester and reserved three (3) minutes for rebuttal.

2. Medicaid: 20 Minutes

- Ms. McMurtray presented arguments on behalf of the Agency.

3. Modivcare: 10 Minutes

- Mr. Smith presented arguments on behalf of the Intended Awardee.

4. MTM Rebuttal

- Mr. Kidd presented rebuttal for the Protester.

B. Record on Appeal

Protest Brief Medical Transportation Management, Inc. Exhibits A (Parts 1-3) and B	PPRB 000001-000403
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Response Brief Mississippi Division of Medicaid Exhibits A through G	PPRB 000404-001277
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Response Brief ModivCare Solutions, LLC Exhibits A through H	PPRB 001278-001371
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Reply Brief Medical Transportation Management, Inc. Exhibits A and B	PPRB 001372-001387
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The Record on Appeal is attached to these Minutes as Exhibit B, the protest documents are voluminous and not attached to these Minutes but are included by reference.

Action: A motion was made by Mr. McLeod to close the meeting to deliberate whether or not to declare an executive session. The motion was seconded by Mr. Katool and unanimously approved by all members present.

Mrs. Thompson excused the public so that the Board could consider going into Executive Session. Only DFA staff and Board members remained while Board members determined

whether an executive session was appropriate.

Action: A motion was made by Mr. McLeod to closed session only to discuss whether to go into executive session. The motion was seconded by Mr. Katool and unanimously approved by all members present.

Action: Mr. Russell made a motion to go into Executive Session in accordance with Mississippi Code Section 25-41-7(4)(b) for the purpose of strategy sessions or negotiations with respect to issuance of an appealable order when an open meeting would have a detrimental effect on the litigating position of the PPRB. The motion was seconded by Mr. Mcleod and unanimously approved by all members present.

Executive Session

While the public was excused from the meeting, only discussion of the protest was had.

Action: A motion was made by Mr. McLeod to deny the protest and uphold the intended award to Modivcare. The motion was seconded by Mr. Morehead and unanimously approved by all members present.

The public returned to an open meeting and Mr. Russell announced that in Executive Session the Board voted to deny the protest and uphold the intended award to Modivcare.

The Board's Order denying the protest is attached to these minutes as Exhibit A.

III. Other Business

A. Mr. David Russell announced the next Regular PPRB Meeting will be March 6, 2024 at 9:00 a.m.

IV. Adjournment

Action: A motion was made by Mr. Morehead to adjourn. The motion was seconded by Mr. Russell and unanimously approved by all members present.

These Minutes of the Public Procurement Review Board were approved by the members on the 3rd of April 2024.



David Russell, Chair

4/3/24

Date



STATE OF MISSISSIPPI
GOVERNOR TATE REEVES
DEPARTMENT OF FINANCE AND ADMINISTRATION
LIZ WELCH
EXECUTIVE DIRECTOR

NOTICE

A Special Meeting of the

PUBLIC PROCUREMENT REVIEW BOARD

will be held Tuesday, February 20, 2024, 9:00 a.m. in
Room 138
Woolfolk State Office Building

**This Meeting will be held virtually.
Public access to the meeting will be provided via a link on DFA's website.*

<i>Vance McLeod</i>	<i>Member</i>
DAVID RUSSELL	"
Billy Macleese	"
Norman P Kutzal	"
<i>[Signature]</i>	



**Regular Meeting
Tuesday, February 20, 2024
9:00 a.m.**

(Please Print)

OFFICE/DIVISION

James Sawyer	GIT
Shantina Chambers	DFA
Carmie Boyd	DFA/OPSCR
Bethany Thompson	DFA/OPTFM
Kimberly Burse	DFA/ORSCIC
Ross Campbell	DFA/OPSCR
Janny Lynch	
Amelia Gamble	
Aiz Bolin	



PPRB

PUBLIC PROCUREMENT
REVIEW BOARD

PUBLIC PROCUREMENT REVIEW BOARD

Regular Meeting
Tuesday, February 20, 2024
9:00 a.m.

GUEST ATTENDANCE SHEET

(Please Print)

NAME AND TITLE

AGENCY/ENTITY

Guranne Hudson

AGO

Janet McManis

Medicaid attorney

Mimi Speyerer

Medicaid atty

Sterling Hall

MTD atty

Brant Ryan

Medicaid attorney

JAY WOODS

AGO

Kristen Jones

AGO

Delucien Smith

Balch + English LLP

Kayla McKnight

DOM

Bryan Wardlaw

DOM

Laura Gibbs

DOM



SPECIAL MEETING AGENDA

Tuesday, February 20, 2024

9:00 a.m.

Woolfolk Office Building, Room 138

I. Call to Order

II. Consideration of Protest

A. Protest: Appeal of Final Decision of the Mississippi Division of Medicaid on Medical Transportation Management, Inc.'s Protest of the Mississippi Division of Medicaid's Notice of Intent to Award IFB #20230113 to ModivCare Solutions, LLC

III. Other Business

A. Next Regular PPRB Meeting March 6, 2024 at 9:00 a.m.

IV. Adjournment

Attachment A

Protest Order

BEFORE THE PUBLIC PROCUREMENT REVIEW BOARD

**In the Matter of the Mississippi Division of Medicaid
Invitation for Bids for Non-Emergency Transportation Services**

**IFB# 20230113
RFx# 3160005602**

**ORDER OF THE PUBLIC PROCUREMENT REVIEW BOARD ON THE
PROTEST APPEAL BY MEDICAL TRANSPORTATION MANAGEMENT, INC.**

THIS MATTER is before the Public Procurement Review Board (PPRB or Board) on appeal of the Mississippi Division of Medicaid's protest decision in the above referenced procurement. The record before PPRB consists of the following:

Protest Brief	PPRB 000001-000403
Medical Transportation Management, Inc.	
Exhibits A (Parts 1-3) and B	

Response Brief	PPRB 000404-001277
Mississippi Division of Medicaid	
Exhibits A through G	

Response Brief	PPRB 001278-001371
ModivCare Solutions, LLC	
Exhibits A through H	

Reply Brief	PPRB 001372-001387
Medical Transportation Management, Inc.	
Exhibits A and B	

After consideration of the briefs and exhibits and hearing arguments of the parties, the Board makes the following finding of facts:

On January 13, 2023, Medicaid issued an Invitation for Bids (IFB) seeking an independent contractor to provide non-emergency transportation (NET) services. Medicaid received bids from: (1) Medical Transportation Management, Inc. (MTM); (2) ModivCare Solutions, LLC (ModivCare); and (3) Verida, Inc. (Verida). Medicaid deemed Verida non-responsive and disqualified Verida from further consideration. Verida did not protest that decision.

Medicaid determined MTM and ModivCare were both responsive and responsible bidders. MTM's total bid price was \$195,984,069.96. ModivCare's total bid price was \$160,907,679.15. On April 10, 2023, Medicaid issued a notice of intent to award the contract to ModivCare as the lowest responsive and responsible bidder.

On April 19, 2023, MTM filed a protest at Medicaid challenging the award to ModivCare. On October 4, 2023, Medicaid issued its protest decision affirming the award to ModivCare. On October 11, 2023, MTM filed a protest appeal with this Board.

Having made the findings of facts described herein, the Board makes the following conclusions of law:

I. Public Records Requests

MTM filed a request pursuant to the *Mississippi Public Records Act of 1983*¹ seeking, among other things, a copy of the bid Verida submitted in response to Medicaid IFB # 20230113. Verida filed a petition for protective order in the Chancery Court of Hinds County, Mississippi in Cause No. 25CH1:23-cv-00479 seeking to prevent disclosure of its bid as confidential commercial and financial information and/or trade secrets.

The Board stayed this protest appeal at the January 3, 2024 PPRB meeting because Verida's petition for protective order remained pending. Rule 3-202.11.3² of the *Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations* (Rules) requires that the protest be heard after the Court rules upon the petition for protective order. On January 18, 2024, the Court entered an order on Verida's petition for protective order. MTM subsequently notified Medicaid that MTM did not intend to supplement its protest. Therefore, the stay of this protest appeal was lifted under the terms of this Board's January 3, 2024 Order.

MTM is now requesting that the Board further delay resolution of the protest appeal due to a separate request for public records submitted to Medicaid on October 5, 2024 – the day after Medicaid issued its protest decision. The request was submitted months after the Agency issued its Notice of Intent to Award and there is no indication the request involves a pending petition for protective order. This Board is not required by law or regulation to delay resolution of this protest due to such a records request. Because a request for public records can be made at any time by any person – including unsuccessful bidders seeking to contract with a state entity – it is both impractical and unreasonable to allow every request for public records to delay finality of an Agency's competitive procurement where no law or regulation requires this Board to do so.

II. Standard of Review

The Rules are silent as to the standard of review when a protest is initially filed with the procuring Agency and subsequently appealed to the PPRB. However, the Rules provide that where the protest is filed directly with the PPRB (i.e., initially protested to PPRB rather than to the procuring Agency), the PPRB "shall decide whether the ... award was made in accordance with the Constitution, statutes, rules and regulations, and the terms and conditions of the solicitation."³ The Board finds that this is the appropriate framework to evaluate any protest which is pending before it – whether as a direct protest or an appeal of the procuring Agency's protest decision.

¹ Mississippi Code Sections 25-61-1, *et seq.*

² Rule 3-202.11.3 adopts language from Mississippi Code Section 25-61-5 into the regulations governing IFBs.

³ Rule 7-112.02.

III. Applicable Law

Pursuant to the authority granted to this Board in Mississippi Code Section 27-104-7, an IFB issued to procure personal and professional services is governed by this Board's Rules. Specifically, the Rules applicable to this protest are:

- "The contract shall be awarded ... to the lowest responsive and responsible bidder whose bid meets the requirements and criteria set forth in the [IFB]."⁴
- "Responsive Bidder ... means a person who has submitted a bid ... which conforms in all material respects to the [IFB]..."⁵
- "Responsible Bidder ... means a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance."⁶
- "Bids shall be evaluated based on the requirements set forth in the [IFB]...The [IFB] shall set forth the evaluation criteria to be used. *No criteria may be used in an evaluation that is not set forth in the [IFB].*"⁷
- "The contract is to be awarded to the lowest responsive and responsible bidder. ... The [IFB] shall set forth the requirements and criteria which will be used to determine the lowest responsive and responsible bidder. *No bids shall be evaluated for any requirement or criterion that is not disclosed in the [IFB].*"⁸
- "The [IFB] shall set forth any evaluation criterion to be used in determining acceptability. ... The acceptability evaluation is not conducted for the purpose of determining whether one bidder's item is superior to another but only to determine that a bidder's offering is acceptable as set forth in the [IFB]. Any bidder's offering which does not meet the acceptability requirements shall be rejected as non-responsive."⁹
- "Following determination of acceptability ... bids will be evaluated to determine which bidder offers the lowest cost to the state in accordance with the evaluation criteria set forth in the [IFB]. *Only objectively measurable criteria which are set forth in the [IFB] shall be applied in determining the lowest bidder.*"¹⁰

⁴ Rule 3-202.01(g).

⁵ Rule 3-101.01(cc).

⁶ Rule 3-101.01(bb).

⁷ Rule 3-202.01(e) (emphasis added).

⁸ Rule 3-202.13.1 (emphasis added).

⁹ Rule 3-202.13.2.

¹⁰ Rule 3-202.13.3 (emphasis added).

IV. Allegations Raised in the Protest

A. Conditional Bid

MTM first argues that ModivCare's bid price was conditioned on the accuracy of Medicaid's assumptions regarding beneficiary need for NET services over the contract period. MTM quotes several sections of the ModivCare bid documents to support this assertion.¹¹ Even if this were true, the IFB plainly states that any inaccuracies in data Medicaid provided in the IFB shall *not* "constitute a basis for renegotiation of payment rate after contract award."¹²

ModivCare's bid further undermines MTM's argument. Rather than listing conditions upon which its pricing is based, ModivCare's bid clearly states the "factors considered in our price development"¹³ and further summarizes the manner in which ModivCare reached its fixed bid rate:

ModivCare performed its due diligence performing in depth analyses of multiple factors that comprise the potential stewardship of the Mississippi program. Reasonability and accuracy are paramount when deriving the cost numbers driving bid rates. All considerations/insights spoken to in this proposal, as well as our national experience as an NET broker were utilized in developing rates that are deemed fair and reasonable. It is paramount that these rates be actuarially sound to support the taxpayer base of Mississippi and the vulnerable population covered under the Mississippi program. It is with confidence and much respect that ModivCare proposes the following bid rates for the 2023 Mississippi Division of Medicaid NET IFB.¹⁴

Finally, by signing the Bid Form, ModivCare affirmatively acknowledged that "in no case will the contract payments exceed the Total Bid amount for the applicable contract period" and ModivCare "agree[d] to all provisions of [the] IFB *without reservation* and *without expectation of negotiation* and is able to provide each required component and deliverable as detailed in the Scope of Services."¹⁵ ModivCare further certified it would "*perform*, without delay, the services required *at the prices quoted* [on the Bid Form]."¹⁶

There is no reasonable reading of the ModivCare bid documents which lends itself to a determination that the bid prices are conditional and would require adjustment if the underlying assumptions are incorrect. Each of the statements MTM identified as conditional were instead risks ModivCare considered in the underwriting process to develop what it considers to be actuarially sound pricing.¹⁷ The Board finds no factual support for MTM's argument that the ModivCare bid is conditional.

¹¹ PPRB Record 000007.

¹² PPRB Record 000039.

¹³ PPRB Record 000164.

¹⁴ PPRB Record 001277.

¹⁵ PPRB Record 000146 (emphasis added).

¹⁶ PPRB Record 000149 (emphasis added).

¹⁷ PPRB Record 001276 – 001277.

B. Unreasonable Bid Price

MTM argues ModivCare's bid price is unreasonably low because ModivCare bid approximately \$9 million less in response to Medicaid's 2023 NET IFB than it bid in response to Medicaid's 2018 NET IFB. MTM points to changing financial conditions since 2018, especially inflationary pressure in the marketplace, as the basis for the allegation that ModivCare's pricing is unreasonable.¹⁸ Both Medicaid and ModivCare explain that Medicaid's pricing structure under the 2023 contract was different than the pricing structure under the 2018 contract.¹⁹

The Medicaid IFB stated, "Reasons for rejecting a bid *may* include ... The bid price is clearly unreasonable *based on [Medicaid's] assessment* of the Contractor's anticipated level of effort necessary to perform the work."²⁰ Thus, pursuant to the terms of the solicitation, the determination as to whether a bid price is reasonable belongs exclusively to Medicaid. Even if Medicaid determines a bid price is unreasonable, the solicitation language allows Medicaid to reject the bid *or not*, at the Agency's discretion.

The only Rule relevant to this issue states that the procuring Agency should request confirmation from the bidder if the Agency has reason to conclude a mistake has been made, such as when a bid submitted is "unreasonably lower than the other bids submitted."²¹ Again, it is left to the discretion of the procuring Agency to determine whether there is reason to believe a bid contains a mistake. Further, even had Medicaid chosen to request confirmation of ModivCare's bid price – which it was not required by the Rules or the terms of the IFB to do – it is clear ModivCare would have confirmed its price since ModivCare is now requesting the contract award be affirmed.²²

In support of its position that ModivCare's bid price is unreasonably low, MTM also relies heavily on what it characterizes as ModivCare's business model. MTM alleges ModivCare underbids contracts and – once the contract is in place – ModivCare demands a price increase to continue to provide services.²³ Here, ModivCare bound itself to the terms of the 2023 IFB regardless of the profitability at which it will operate. If ModivCare seeks an increase in the bid rates in the future, such an increase is prohibited by the Rules. Contract "[m]odifications *shall not* grant extra compensation, fee, or allowance to any contractor after service is rendered or contract is made, unless contemplated within the contract itself or unless the scope of services is increased."²⁴ Thus, the Board finds this issue is without merit.

C. Best Interest of the State

MTM further alleges ModivCare's bid is not in the best interest of the state. Medicaid reserved the right "to interpret the language of [the] IFB or its requirements in a manner that is in

¹⁸ PPRB Record 000005 – 000006.

¹⁹ PPRB Record 000406 – 000409 and 001288 – 0001290.

²⁰ PPRB Record 000100 – 000101 (emphasis added).

²¹ Rule 3-202.12.3.

²² PPRB Record 001278 – 001303.

²³ PPRB Record 000008 – 000009.

²⁴ Rule 7-110 (emphasis added).

the best interest of the state”²⁵ and to reject any bids “when in the best interest of the state.”²⁶ It can be assumed Medicaid determined acceptance of ModivCare’s bid was in the best interest of the state, otherwise Medicaid would have rejected ModivCare’s bid. This Board will not replace its judgment for that of the procuring Agency absent a law or regulation requiring it to do so.

To support its position that ModivCare’s bid was not in the best interest of the state, MTM raises the following allegations:

i. Allegations of Harm to the Provider Network

Medicaid’s NET contractor is a broker who schedules independent transportation providers to meet the transportation needs of the Medicaid population. Medicaid makes payment to the broker who sets reimbursement rates and makes payment to the individual providers. MTM hypothesizes that ModivCare’s reimbursement methodology will drive some transportation providers out of business, which MTM believes to be detrimental to the state’s interests.²⁷

However, the IFB does not require a specific number of individual transportation providers, but rather requires the NET broker to have a provider network which is “sufficient to provide adequate access to all services covered under the contract for all beneficiaries eligible to receive NET services ...”²⁸ Additionally, the IFB did not require that bidders specify what they will pay providers, rather the IFB leaves it to the successful bidder to negotiate payment with providers.²⁹ The IFB also “encouraged [the successful bidder] to develop innovative and creative strategies to ensure increased access to transportation for beneficiaries.”³⁰ Thus, Medicaid left it to the successful bidder to determine the most cost-efficient way to effectively provide an adequate provider network to meet the contract requirements.

A procuring agency cannot consider factors which are not included in the IFB. Here, the IFB did not require a minimum number of providers or a minimum reimbursement rate for providers. Thus, Medicaid could not have considered this issue when selecting the lowest responsive and responsible bidder. These allegations are without merit.

ii. Allegations of Performance Issues on Other Contracts

MTM next alleges that Medicaid did not consider performance issues ModivCare has had on other contracts, including lawsuits ModivCare has faced for failure to provide services under similar contracts.³¹ However, MTM did not specify what those issues were or cite any litigation arising out of such accusations. ModivCare

²⁵ PPRB Record 000098, IFB Section 3.1, Approach.

²⁶ PPRB Record 000130, IFB Section 3.7, Award.

²⁷ PPRB Record 000011 – 000015.

²⁸ PPRB Record 000056, IFB Section 2.8, NET Provider Network Requirements.

²⁹ PPRB Record 000418.

³⁰ PPRB Record 000056, IFB Section 2.8, NET Provider Network Requirements.

³¹ PPRB Record 000008 – 000009 and 000037.

denies any such litigation exists.³² Additionally, Medicaid required each bidder to provide a list of pending litigation and Medicaid claims it found no such litigation in its review.³³

MTM alleges that ModivCare was at least partially dishonest in reporting its litigation to Medicaid because ModivCare listed a *qui tam* action as closed rather than pending, and that such misrepresentation by ModivCare “should have at least made [Medicaid] ponder the wisdom of its myopic focus on price.”³⁴ However, ModivCare alleges that it settled the *qui tam* matter prior to the bid submission deadline for the IFB and thus, it was properly classified as closed.³⁵

It was fully within Medicaid’s discretion to review the litigation lists provided by the bidders and decide which litigation would have been disqualifying – as long as Medicaid did so in a manner that was fair to all bidders. MTM has not alleged a fairness issue, nor has MTM pointed to any specific litigation to support its allegations that ModivCare has a history of failure to perform its contractual obligations. Thus, there is no factual support for this allegation.

iii. *Allegations of Low Scores in Out-of-State Procurements*

Finally, MTM alleges that ModivCare’s low score in a request for proposals in Rhode Island underpins MTM’s arguments that ModivCare’s bid was not in the best interest of the state.³⁶ A solicitation issued and evaluated by another state has no bearing on the procurement process run by an agency in Mississippi. Similarly, MTM is not prohibited from contracting with Medicaid agencies in other states simply because it was not awarded the NET contract in Mississippi.

Per the plain language of the IFB and the Rules, all bidders were on notice that the IFB criteria was the only criteria that could be used to evaluate bids.³⁷ MTM’s allegations regarding what Medicaid did and did not evaluate are ultimately a dispute as to what MTM perceives as the insufficiency of the IFB’s requirements to evaluate the bids submitted. MTM did not file a protest when the solicitation was initially issued and cannot now argue that the solicitation requirements were insufficient only because it was not awarded the contract.³⁸ These claims were waived when MTM failed to protest within seven days of the IFB being issued.

³² PPRB Record 001294.

³³ PPRB Record 000427.

³⁴ PPRB Record 000009 – 000010.

³⁵ PPRB Record 001295.

³⁶ PPRB Record 000014 – 000015.

³⁷ “Bids shall be evaluated based on the requirements set forth in this IFB. This IFB sets forth the evaluation criteria to be used. No criteria shall be used in an evaluation that is not set forth in this IFB.” PPRB Record 000102, IFB Section 3.5, Bid Evaluation.

³⁸ Rule 7-112.01.

D. Evaluation Factors

Finally, MTM alleges it was arbitrary and capricious for Medicaid to focus solely on price.³⁹ Rather, MTM believes Medicaid should have considered other factors, including but not limited to the issues previously discussed, to determine which bidder was awarded the NET contract. However, when a procuring agency issues an IFB – the statutorily preferred method of procurement⁴⁰ – the contract must be awarded to the lowest responsive and responsible bidder.⁴¹ As discussed in Section III of this Order, the responsive and responsible determination must be made by evaluating *only* the criteria set forth in the IFB. Further, there is no dispute ModivCare's bid price was lower than MTM's bid price.

If MTM felt the IFB requirements were insufficient to determine which bidder should be awarded the contract, MTM should have filed a protest within seven days of the solicitation being issued.⁴² The Rules governing this procurement clearly require that the criteria used to determine the responsive and responsible bidder must have been included in the solicitation, and Medicaid echoed this requirement in the language of its IFB. MTM's dispute here is with the requirements of the IFB, not Medicaid's application of those requirements. Thus, at best, this is an issue which should have been protested following issuance of the solicitation and is now time-barred.

V. Conclusion

MTM's protest has no basis in fact or in law. It is undisputed that ModivCare met the criteria *in the IFB* to be determined a responsive and responsible bidder. It is further undisputed that ModivCare submitted a lower total bid price than MTM. Thus, ModivCare was the lowest responsive and responsible bidder and was properly awarded the contract pursuant to the Rules and the terms of Medicaid's IFB.⁴³

Pursuant to the Board's findings of facts and conclusions of law, MTM's protest appeal is hereby **DENIED**. This Board approved Medicaid's contract with ModivCare at the February 7, 2024 PPRB meeting, as allowed by Rule 3-202.11.3. No further action is required of the parties hereto.

SO ORDERED, the 20th day of February, 2024.


Chair, Public Procurement Review Board

³⁹ PPRB Record 000002.

⁴⁰ Mississippi Code Section 31-7-403(1).

⁴¹ Rule 3-202.13.1, among others.

⁴² Rule 7-112.01.

⁴³ There are no allegations of Constitutional or statutory violations.