

ORIGINAL

Republic of the Philippines
Department of Finance
INSURANCE COMMISSION
Insurance Commission Building
1071 United Nations Avenue, Manila

PRE-NEED MEMORANDUM CIRCULAR NO. 01-10

Pursuant to the provisions of **RULE 15** of Republic Act No. 9829, otherwise known as the **PRE-NEED CODE OF THE PHILIPPINES** the following Rules of Procedure Governing Pre-Need Hearings Before the Insurance Commission are hereby adopted and promulgated:

RULE 1

TITLE, DEFINITION, CONSTRUCTION, AND SCOPE

SECTION 1. Title of the Rules. – These Rules shall be known as the “Rules of Procedure Governing Pre Need Hearings Before the Insurance Commission,” and hereinafter referred to for brevity as the “Rules”.

SECTION 2. Definition – For purposes of these Rules, the word “Commission” shall refer to the Insurance Commission and the word “Commissioner” shall refer to the Insurance Commissioner.

SECTION 3. Construction. – These Rules shall be liberally construed in order to promote and attain the principal objective of adjudication or settling claims and complaints and/or assisting the parties in obtaining a just, expeditious and inexpensive determination of claims and complaints involving pre-need plans.

SECTION 4. Scope – The Commission shall have the primary and exclusive power to adjudicate any and all claims involving pre-need plans. If the amount of benefits does not exceed One Hundred Thousand Pesos (₱100,000.00), the decision of the Commission shall be final and executory.

RULE 2

PARTIES TO THE ACTION OR PROCEEDINGS

SECTION 1. Parties in Interest. – A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to avails of the suit. Every action filed with the Commission must be prosecuted in the name of the real party in interest, who may be natural or juridical persons or entities authorized by law.

SECTION 2. Who may be parties; complainant and respondent. – In all cases filed in the Commission or any of its District Offices, the party initiating the action shall be called the “**Complainant**” and the opposing party the “**Respondent.**”

RULE 3

COMMENCEMENT OF ACTION AND PLEADINGS

SECTION 1. Commencement of Action. – Any person seeking relief from the

pre-need company shall file with the Commission a verified complaint stating that the allegations thereof are true of his own knowledge.

SECTION 2. Form of Pleadings: copies. – All pleadings filed with the Commission shall be legibly written or printed on legal size paper. The original and three (3) signed copies of every pleading shall be accepted by the Commission if they conform to the formal requirements provided by these Rules.

SECTION 3. Contents of Complaint. – The complaint shall state the full names and addresses of the real parties in interest, the substance of the claim, the time of actual need or agreed maturity date, the amount of the claim, the grounds of action and the relief sought.

SECTION 4. Issuance of Summons. – Immediately after receipt of a case assigned to him, the Hearing Officer concerned shall issue the required notification and summons, attaching thereto a copy of the complaint.

RULE 4

DOCKET FEE

SECTION 1. Docketing Fee. – Upon filing of any action or proceedings, or a permissive or compulsory counterclaim or cross-claim or money claim against a co-party for any claim arising out of the same transaction or occurrence that is the subject matter of the original action or counter claim therein, a third party complaint and a complaint in intervention and for all services in the same, inclusive of damages, consisting of actual damages, attorney's fees, legal interest and costs, the complainant shall pay the Commission docket fee to be determined on the basis of the total sum claimed, to wit:

- | | |
|--|------------|
| (1) Less than ₱100,000.00 ----- | ₱ 1,000.00 |
| (2) ₱100,000.00 or more but less than ₱150,000.00 ---- | ₱ 1,600.00 |
| (3) ₱150,000.00 or more but less than ₱200,000.00 --- | ₱ 2,000.00 |
| (4) ₱200,000.00 or more but less than ₱250,000.00 --- | ₱ 3,000.00 |
| (5) ₱ 250,000.00 or more but less than ₱300,000.00 -- | ₱ 3,500.00 |
| (6) ₱ 300,000.00 or more but less than ₱350,000.00 – | ₱ 4,000.00 |
| (7) ₱ 350,000.00 or more but not more than ₱400,000.00 - | ₱ 4,500.00 |
| (8) For each ₱1,000.00 in excess of ₱ 400,000.00 ----- | ₱ 20.00 |

Plus ₱ 50.00 LEGAL RESEARCH FUND

SECTION 2. Delay or Default. In case of any litigation for the enforcement of any pre-need plan, it shall be the duty of the Commission to determine whether the payment of the claim to the planholder has been unreasonably denied or withheld. If found to have been unreasonably denied or withheld, the pre-need company shall be liable to pay damages, consisting of actual damages, attorney's fees and legal interest, to be computed from the date the claim is made until it is fully satisfied: Provided, that the failure to pay any such claim within the time prescribed in Section 28 of the Pre-Need Code shall be considered prima facie evidence of unreasonable delay in payment.

SECTION 3. Trust Fund. The benefits received by the planholders shall be exempt from all taxes and the trust fund shall not be held liable for attachment, garnishment, levy or seizure by or under any legal or equitable processes except to pay for the debt of the planholder to the benefit plan or that arising from criminal liability imposed in a criminal action.

SECTION 4. Pauper Litigant. The Commission may authorize a complainant to prosecute his action as pauper litigant upon proper showing, through verified motion that he has no means to pay the legal expenses as provided for in these Rules. Such authority once given shall include an exemption from payment of docketing and other legal fees. The legal fees shall be a lien to any judgment rendered in the case favorably to the pauper, unless the Commission otherwise decides.

SECTION 5. Filing of Pleadings. – All pleadings in connection with the case shall be filed with the appropriate docketing unit of the District Offices; or the Commission, as the case may be.

Upon filing of the Formal Charge, the complaint shall be docketed as a Pre-Need Claim for purposes of adjudication.

RULE 5

VENUE AND DISPOSITION OF CASES

SECTION 1. Venue – a) All pre-need cases may be commenced and tried in the Commission's main office or District Offices where the complainant resides.

b) Where two or more District Offices have jurisdiction over the case, the District Office that shall first acquire jurisdiction and has taken cognizance thereof shall exclude the others.

c) The venue of an action may be changed or transferred to a different District Office other than where the complaint was filed by written agreement of the parties or when the Commission or Hearing Officer before whom the case is pending so orders, upon motion by the proper party in meritorious cases.

SECTION 2. Disposition of Cases. – Subject to the provision of RULE 15, Sec. 58 (a) of the Pre-Need Code when a case is assigned to a Hearing Officer of the District Office, the entire case and any or all incidents thereto shall be considered assigned to him; and the same shall be disposed of in the same proceeding to avoid multiplicity of suits or proceedings.

RULE 6

ANSWER

SECTION 1. Answer.—Upon receipt of the complaint, the Commission shall forward a copy thereof to the respondent requiring him to file his answer within fifteen (15) days from receipt thereof. The respondent must answer the complaint in writing by admitting or denying specifically the material allegations therein or alleging any lawful defense.

SECTION 2. Completeness of Service. – Personal service is complete upon actual delivery. Service by ordinary mail is complete upon the expiration of five (5) days after mailing, unless the Commission otherwise provides. Service by registered mail is complete upon actual receipt by the addressee; but if he fails to claim his mail from the post office within five (5) days from the date of first notice of the postmaster, service shall take effect at the expiration of such time.

RULE 7

MOTION TO DISMISS

SECTION 1. Grounds. – The respondent may within the time for filing answer, file a motion to dismiss the complaint on any of the following grounds:

- a) The Commission has no jurisdiction over the subject matter or nature of the action, improper venue, res adjudicata or prescription
- b) Pendency of another action before the court between the same parties for the same cause of action.
- c) The complaint does not allege facts which involve any claim or complaint about pre-need plans.

SECTION 2. Disposition of Motion. – The Commission, in its discretion, may deny or grant the motion or allow amendment of pleadings, or may defer determination of the motion until after hearing if the ground alleged therein does not appear to be indubitable. An order denying the motion to dismiss or suspending its resolution until the final determination of the case is not appealable.

SECTION 3. Time to plead. – If the motion to dismiss is denied or if determination thereof is deferred, the movant shall file his answer within the period prescribed by these Rules, computed from the time he received notice of the denial or deferment, unless the Commission provides a different period.

RULE 8

PRE – TRIAL AND AMICABLE SETTLEMENT

SECTION 1. Pre-Trial Conference. – In any action, the Commission shall direct the parties and their counsels before the actual hearing to appear before him for a pre-trial conference to consider:

- a) the possibility of an amicable settlement or of a submission to alternative modes of dispute resolution;
- b) the simplification of the issues;
- c) the necessity or desirability of amendments to the pleadings;
- d) the possibility of obtaining stipulations or admissions of facts
- e) the exchange and acceptance of service of exhibits to be offered in evidence;
- f) the limitation of the number of witnesses;
- g) the admissibility and relevance of evidence proposed to be submitted by the parties;
- h) such other matters as may aid in the just, speedy and inexpensive disposition of the case.

All the parties and their attorneys shall attend the pre-trial conference. The presence of a party is indispensable unless his counsel is authorized to enter into agreement on any or all the above matters. The parties shall inform each other of the nature and character of evidence they propose to offer, indicating the purpose of each item of evidence.

SECTION 2. Records of Pre-Trial Conference.

After the pre-trial conference, the Commission shall issue an order which recites the action taken at the conference, the amendments allowed on the pleadings, and/or the agreements made by the parties as to any of the matters considered. Such order shall limit the issues for the formal hearing to those not disposed of by admissions and agreements of the parties and when entered, shall serve as the guide in the subsequent course of action or hearing unless modified before the formal hearing to prevent manifest injustice.

SECTION 3. Amicable Settlement – Unless it shall be prejudicial to public interest or to third parties, the Commission shall endeavor to effect an amicable settlement of the case at any stage of the proceedings, provided it shall not be contrary to any law, rule or regulation nor against public policy. The amicable settlement shall be reduced in writing duly signed by the parties and their respective counsels, which shall be the basis of an order or decision of the Commission.

RULE 9

HEARING AND POSTPONEMENT

SECTION 1. Notice of Hearing – After the respondent has filed his answer or after the time limit for filing answer has expired, the parties or their counsel, shall be served with notice of hearing at least five (5) days before the date set for hearing.

SECTION 2. Hearing Officer – The Commissioner or any hearing officer or officers designated by him in a proper order shall conduct hearings and shall be empowered to administer oaths and affirmations, to issue subpoena, take evidence and to compel attendance of parties and witnesses and the production of any books, papers, correspondence, memoranda or other records which the Commission deems relevant or material to the case or inquiry.

SECTION 3. Order of Hearing – Unless the Commission directs otherwise, the order of hearing shall be as follows:

- a) The complainant must produce the evidence in support of his complaint;
- b) The respondent shall then offer evidence in support of his defense or claim;
- c) The third, etc., party respondent, if any, shall introduce evidence of the material facts by him pleaded;
- d) The parties may then respectively offer rebutting evidence only, unless the Commission, for good reasons in the furtherance of justice, permits them to offer evidence upon their original case; and
- e) When the evidence is concluded, unless the parties agree to submit the case

without argument, the complainant or his counsel may take the opening argument, then the respondent, the third, etc., party or their respective counsel, and the complainant or his counsel may conclude the argument.

- f) The Commission has discretion to direct the parties to argue orally or to submit memoranda.
- g) If proper, a motion for judgment on the pleadings or summary judgment should be filed and heard in accordance with the Rules of Court.

Every party shall have the right to conduct such cross-examination of witness as may be required for the full and true disclosure of the facts of the case.

The hearing officer shall receive such relevant and material evidence, rule on offers of evidence and exclude all irrelevant matters, and shall act according to justice and fairness and shall not be bound by the technical rules of evidence.

SECTION 4. Depositions – In any hearing, the Commission, upon appropriate order, may cause the deposition of witnesses residing within or without the Philippines to be taken in the manner prescribed under Rule 24 of the Rules of Court. Where witnesses reside in a place distant from Manila and it would be inconvenient and expensive for them to appear personally before the Commission, the Commissioner may, by proper order designate a Municipal Judge or any Clerk of Court of the Regional Trial Court to take depositions of such witnesses in any case pending before the Commission. It shall be the duty of the official to set promptly a date or dates for the taking of such depositions, giving timely notice to parties, and on said date to proceed to take the depositions, reducing them in writing. After the depositions have been taken, the official so designated shall certify to the correctness of the depositions thus taken and forward the same as soon as possible to the Commission. It shall be the duty of the respective parties to furnish stenographers for taking and transcribing the testimony taken. In case there are no stenographers available, the testimony shall be taken by such persons as the Municipal Judge or any Clerk of Court may designate. The Commissioner may also designate a notary public to take the deposition in the manner herein provided.

SECTION 5. Postponement – Any motion for postponement or continuance of hearing may be granted or denied by the Commission in its discretion. Such motion must be filed with the Commission and copy thereof furnished the other party at least five (5) days before the date of hearing, otherwise, it shall not be considered; provided, however, that no more than three (3) postponements shall be granted to any party.

RULE 10

DECISIONS OR ORDERS

SECTION 1. Decision or Order – Any decision or order determining the merits of a case shall be in writing and signed by the Commissioner stating clearly and distinctly the facts, the law and/or rules and regulations on which it is based and a copy thereof shall be served the parties either personally or by registered mail.

SECTION 2. Finality of Decision or Order – The decision or order of the Commission shall become final and executory after the lapse of fifteen (15) days from the date of receipt of a copy thereof by the parties unless a motion for reconsideration of the decision or order is filed within the period herein prescribed.

RULE 11

MOTION FOR RECONSIDERATION

SECTION 1. Motion for Reconsideration – Within fifteen (15) days from receipt of the decision or order of the Commission, the aggrieved party may be allowed to file a motion for reconsideration of such order, ruling or decision. If the motion is denied, the movant may appeal during the remaining period for appeal reckoned from notice of the resolution of denial.

SECTION 2. Opposition to Motion for Reconsideration – Within fifteen (15) days from receipt of a copy of the Motion for Reconsideration, the adverse party may file his opposition thereto and serve a copy thereof upon the movant.

SECTION 3. When Deemed Submitted. After the opposition is filed, or at the expiration of the period for filing the same without any such opposition having been filed, the motion for reconsideration shall be deemed submitted for resolution by the Commission unless the Commission shall consider it necessary to hear the oral arguments of the parties, in which case the Commission shall issue the corresponding order or notice to that effect.

RULE 12

APPEAL FROM ORDER OR DECISION

SECTION 1. How Appeal is Taken. – Any party affected by a final order, ruling or decision of the Commission may within fifteen (15) days from notice of such order, ruling or decision file a verified petition for review in six (6) legible copies with the Court of Appeals, a copy of which shall be served on the Commission and on the adverse party. Proof of service of the petition on the Commission and on the adverse party shall be attached to the petition.

SECTION 2. Contents of Petition. – The petition for review shall contain a concise statement of the facts and issues involved and the grounds relied upon for the review, and shall be accompanied by a duplicate original or a certified true copy of the ruling, award, order, decision or judgment appealed from, together with certified true copies of such material portions of record as are referred to therein and other supporting papers. The petition shall state the specific material dates showing that it was filed within the period fixed herein.

SECTION 3. Effect of Appeal. – The appeal shall not stay the order ruling or decision sought to be reviewed unless the Court of Appeals shall direct otherwise upon such terms as it may deem just.

RULE 13

CONTEMPT

SECTION 1. Direct Contempt. – a) The Commissioner may summarily adjudge guilty of direct contempt any person committing any act of misbehavior in the presence of or so near the Commissioner as to obstruct or interrupt the proceedings before the same, including disrespect and offensive acts toward others, or refusal to be sworn or to answer as a witness, or to subscribe to an affidavit or deposition when lawfully required to do so. If the offense is committed against the Commissioner thereof,

the same shall be punished by a fine not exceeding Two Thousand Pesos (₱2,000.00) or imprisonment not exceeding ten (10) days, or both, and if the offense is committed against any Hearing Officer the same shall be punished by a fine not exceeding Two Hundred Pesos (₱200.00) or imprisonment not exceeding one (1) day, or both.

b) Any person adjudged guilty of direct contempt by the Commission may not appeal therefrom, but may avail himself of the remedies of certiorari or prohibition. The execution of the judgment shall be suspended, pending resolution of such petition, provided such person files a bond fixed by the Commission which rendered the judgment and conditioned that he will abide by and perform the judgment should the petition be decided against him.

Section 2. Indirect Contempt. – The Commissioner or any Hearing Officer may also cite any person for indirect contempt upon grounds and in the manner prescribed under Rule 71 of the Revised Rules of Court.

RULE 14

APPEARANCE OF ATTORNEYS; STENOGRAPHERS

SECTION 1. Appearance of Attorneys in the Commission –

Every attorney appearing before any hearing or investigation conducted by the Commission shall manifest orally or in writing his appearance for a party indicating his name and exact address and exhibit his Privilege Tax Receipt for the current year and his IBP Number and any pleading filed and signed by him shall likewise contain such information; otherwise, he shall not be allowed to continue proceeding or defending any suit or claim, or deal with the Commission.

Any change in the address of counsel/representative should be filed with the records of the case and furnished the adverse party or counsel.

Any change or withdrawal of counsel/representative shall be made in accordance with the Rules of Court.

SECTION 2. Stenographic Notes. – It shall be the duty of the Stenographic Reporter who has attended the hearing conducted by the Commission to submit to the Hearing Officer within a reasonable period of time his transcript of stenographic notes duly initialed on each page and signed on the last page thereof.

RULE 15

EXECUTION

SECTION 1. Issuance of Writ. – Execution shall issue upon an order, resolution or decision that finally disposes of the action or proceedings after the counsels of record and the parties shall have been furnished with copies of the decision in accordance with these Rules but only after the expiration of the period of appeal, or if no appeal has been duly perfected.

The Commissioner, the District Officer, or the duly authorized Hearing Officer of origin shall, *motu proprio*, or upon motion of any interested party, issue a writ of

execution on a judgment from the date it becomes final and executory, so requiring the sheriff or a duly deputized officer to execute the same.

SECTION 2. Finality of Decisions of the Commission -- a) Finality of the decisions, resolutions or orders of the Commission – the decisions, resolutions or orders of the Commission/District shall become executory after fifteen (15) calendar days from receipt of the same.

b) **Entry of judgment.** -- Upon the expiration of the fifteen (15) calendar days period provided in the preceding paragraphs, the order/resolution shall, immediately thereafter, be entered in the book of entry of judgment.

SECTION 3. Enforcement of Writ. – In executing an order, resolution or decision, the sheriff or other officer acting as such, shall be guided by the applicable rules on the Rules of Court.

RULE 16

APPLICABILITY OF THE RULES OF COURT

SECTION 1. Applicability of the Rules of Court – The provisions of the Rules of Court shall apply in an analogous and suppletory character whenever practical and convenient.

RULE 17

EFFECTIVITY

SECTION 1. Applicability. – These Rules shall apply to all pre-need cases filed before the Commission as of effectivity hereof: Provided, however, notwithstanding any provision to the contrary, all pending claims, complaints and cases filed with the Securities and Exchange Commission (SEC) and the Court shall be continued to its full and final conclusion.

SECTION 2. Separability Clause. – Should any provision of this Circular be declared invalid or unconstitutional, the other provisions, so far as they are separable, shall remain in force.

SECTION 3. Effectivity. – This Circular shall take effect fifteen (15) days after its publication in a newspaper of general circulation and acknowledgement by the Office of the National Administrative Registry (ONAR).

Done in the City of Manila this 8th day of October, 2010.


VIDA Q. CHIONG

Deputy Insurance Commissioner
Officer-in-Charge 