

[IC PRE-NEED MEMORANDUM CIRCULAR NO. 01-10, October 08, 2010]

**RULES OF PROCEDURE GOVERNING PRE-NEED HEARINGS
BEFORE THE INSURANCE COMMISSION**

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 I

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 (P100,000.00), 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 P100,000.00	- P1,000.00
(2) P100,000.00 or more but less than P150,000.00	- P1,600.00
(3) P150,000.00 or more but less than P200,000.00	- P2,000.00
(4) P200,000.00 or more but less than P250,000.00	- P3,000.00
(5) P250,000.00 or more but less than P300,000.00	- P3,500.00
(6) P300,000.00 or more but less than P350,000.00	- P4,000.00
(7) P350,000.00 or more but not more than P400,000.00	- P4,500.00
(8) For each P1,000.00 in excess of P400,000.00	- P20.00

Plus P50.00 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 not 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;