

CONSTRUCTION INDUSTRY ARBITRATION COMMISSION

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Telephone No. 897-0853 / Telefax: 897-9313



RESOLUTION NO. 09-2006

**Policy on the Automatic Re-Allocation of Fees
of an Arbitrator Who Fails to Attend Scheduled
Executive Meetings, Preliminary Conferences or Hearings**

WHEREAS, it has come to the attention of the Commission that some arbitrators who are appointed for specific cases have failed to attend scheduled executive meetings/hearings which are earlier agreed upon by them;

WHEREAS, such attitude impairs the speedy disposition of cases assigned these arbitrators and eventually negates the good reputation of the CIAC as a forum where speedy disposition of cases is the hallmark of its ADR services;

WHEREAS, Sections 6 and 21 of Executive Order No. 1008 empowers the Construction Industry Arbitration Commission (CIAC) " to enunciate policies and prescribe rules and procedures for construction arbitration" and "to formulate necessary rules and procedures for construction arbitration";

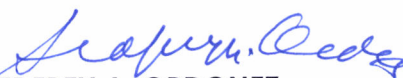
NOW THEREFORE, WE the undersigned Commissioners, by virtue of the powers vested in US by law, do hereby **RESOLVES**, as it hereby **RESOLVED**, to adopt the attached policy guideline marked as **Annex A** hereof, which shall form part of this resolution.

BE IT RESOLVED FURTHER that said policy shall become effective immediately upon its approval and shall cover all on-going cases and those to be filed thereafter.

UNANIMOUSLY APPROVED.

Makati City, 17 March 2006.

THE COMMISSION


SEDFREY A. ORDONEZ
Chairman


ISAAC S. DAVID
Member


SAMSON C. LAZO
Member

**Policy on the Automatic Re-Allocation of Fees
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1. RATIONALE

- 1.1 Arbitration proceedings are divided into three stages namely: [1] filing to TOR signing; [2] hearing; and [3] drafting of award to execution. The Arbitral Tribunal, upon its constitution, is deemed to have assumed control over the progress of the case. As such, the Arbitrators' fees are allocated as follows: **22 %** upon TOR signing; **38%** at the last hearing; and **40%** after promulgation of decision.
- 1.2 The Arbitral Tribunal is paid for actual services rendered. The member who is absent does not render the expected service; therefore, he is not entitled to collect his fees. The service that should have been rendered by the absent member is picked-up and added on as additional burden by the other two members. The fee of an arbitrator who is absent or does not participate in any scheduled meetings/ hearings/deliberations shall be re-allocated in favor of the remaining members of the Tribunal.

2. Method of Application

2.1 Mechanics for the re-allocation of fees due an arbitrator who fails to attend any scheduled meetings/hearings/deliberations in favor of the remaining members of the Tribunal.

- 2.1.1 The following formula as recommended by PICA and approved by CIAC per its Resolution No. 05-1996 shall be applied in computing the amount of deduction (D) from the fee due an absent arbitrator/s, to wit:

$$D = \frac{\text{Arbitrator's Fee Due per Stage of Proceedings}}{\text{Total number of meetings/stage}} \times \text{No. of absences/stage}$$

- 2.1.2 Unless there is a different mode agreed upon by the Arbitral Tribunal as to the sharing of arbitrator's fees, the Chairman and the two members shall receive 40% and 30%, respectively.

- Absences, whether justified or not, shall be counted in making the above computation.
- The amount deducted shall be **re-allocated** in favor of the remaining members of the Tribunal in the following proportion: **60%** for the Chairman (or the one who acts as Chairman) and **40 %** for the remaining member

Illustrative Example No. 1:

The Tribunal had scheduled 3 hearing dates. One member failed to attend 2 hearing dates. The total arbitrators' fee is P100, 000.000. It is shared as follows: 40% for the Chairman and 30% for each Member. The fee due for the hearing stage is 38% or P38, 000 to be shared as follows: P

15,200 (Chairman) and P 11,400 (for each Member). Applying the formula, the total deduction due from an absent member is **P 7,600**.

The amount of P7,600 will be re-allocated between the Chairman and the remaining Member in the following proportion: Chairman - **60% or P 4,560** and Member - **40% or P 3,040**

Illustrative Example No. 2:

The total arbitrators' fee of a case is **P100,000.00**. The arbitrators' fee due for the award drafting stage is **40% or P40,000.00** to be shared as follows: **40% Chairman** (P16,000) **30% for each Member** (P12,000 each) . The Tribunal met three times to draft and finalize the award. One member was absent in one meeting. Applying the same formula, the amount to be deducted from the remaining fee of an absent arbitrator is **P4,000.00**, which shall be re-allocated to and shared by the two remaining arbitrators as follows: **P2,400.00** for the Chairman/Presiding Chairman, and **P 1,600.00** for the Member.

3. MONITORING

- 3.1 Attendance of arbitrators in scheduled executive meetings/hearings shall be monitored by the staff-in-charge and a report thereon shall be made periodically to CIAC, with a copy thereof furnished to PICA.
- 3.2 Automatic deductions shall be effected at every stage of proceedings when payment to arbitrators becomes due.
- 3.3 Accidents and serious illness are considered valid excuses but shall not be a ground for the non-imposition of re-allocation of fees, the concept of the mode being "payment for services rendered".

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