

PHILIPPINE DISPUTE RESOLUTION CENTER, INC.

GUIDELINES ON FILE COUNSEL
(as of June 20, 2022)

1. Scope

- 1.1 This Guidelines shall apply to the appointment, duties, and compensation of a Counsel-in-Charge of the File ("File Counsel").
- 1.2 PDRCI may interpret the terms as well as the scope of application of this Guidelines as it considers appropriate.

2. General Principles

- 2.1. A File Counsel shall be appointed in all arbitrations administered by PDRCI.¹
- 2.2. The File Counsel, who is independent of the arbitral tribunal, shall monitor the arbitration on behalf of PDRCI.
- 2.3. A File Counsel shall not act as Tribunal Secretary in the same arbitration, but may be appointed as Tribunal Secretary in another arbitration.
- 2.4. The File Counsel shall not be liable to any person for any act or omission in connection with the arbitration, except upon a clear showing of bad faith, malice, or gross negligence.
- 2.5. The File Counsel may not be compelled to disclose confidential information obtained during the arbitration, and no party shall seek to make the File Counsel a party or witness in any judicial or other proceeding relating to the arbitration.

3. Appointment and Removal

- 3.1. The File Counsel shall be appointed by the Secretary General upon commencement of the arbitration from a list of qualified individuals recommended by the Executive Director. The Secretary General may remove a File Counsel at any stage of the arbitration.
- 3.2. As a policy, a File Counsel shall not be appointed to more than two (2) pending arbitrations at the same time.

¹ PDRCI administered arbitrations include all arbitrations administered by PDRCI, whether under PDRCI Arbitration Rules or other arbitration rules. This Guidelines shall not apply to *ad hoc* and other arbitrations except with the consent of PDRCI, the parties, and the arbitral tribunal.

- 3.3. A person who is notified of a possible appointment as File Counsel shall immediately inform the Secretariat, in writing, of their availability or non-availability.
- 3.4. The appointment of the File Counsel shall become effective upon notice to the Secretariat of their signed (a) acceptance of the Notice of Appointment, (b) oath, (c) declaration of impartiality and independence, and (d) terms of appointment.
- 3.5. The Secretariat shall notify the parties of the appointment of the File Counsel and invite them to submit a challenge, if any, within three days. In the absence of any challenge or if the challenge is denied by the Secretary General, the File Counsel shall be given a secure email and access to the case file.
- 3.6. A File Counsel shall have a continuing obligation to disclose any circumstances likely to give rise to justifiable doubts about their independence and impartiality. The disclosure of such circumstances shall not be a cause to disqualify the File Counsel, unless the Secretary General determines otherwise, or the File Counsel declines or withdraws the acceptance of the appointment.
- 3.7. Articles 17 (Disclosure), 18 (**Challenge of Arbitrator**), and 19 (**Notice of Challenge**) of the PDRCI Rules shall apply to a File Counsel. **Any challenge to the File Counsel shall be finally resolved by the Secretary General, subject to payment of the challenge fee.**
- 3.8. The Secretariat shall provide the File Counsel with this Guidelines and their terms of appointment.
- 3.9. Where two or more arbitrations are consolidated pursuant to Article 10 of the PDRCI Rules, or an additional party is joined to an arbitration pursuant to Article 7 of the of the PDRCI Rules, the Secretary General may continue the appointment of an existing File Counsel or appoint a new File Counsel to the arbitration.
- 3.10. The Secretary General may, in appropriate cases, appoint more than one File Counsel to an arbitration.
- 3.11. The File Counsel shall serve for the duration of the arbitration, unless earlier removed or replaced by the Secretary General.

4. Duties

- 4.1. Unless the Secretary General directs otherwise, the File Counsel shall act upon the instructions of, and shall report directly to, the Executive Director. The File Counsel shall perform their functions personally without aid or assistance from any third person.
- 4.2. The File Counsel shall monitor the arbitration and perform administrative tasks on behalf of the Secretariat, such as:

- (a) Assist in the constitution of the arbitral tribunal;
 - (b) Prepare, issue, and monitor the Provisional, Final, and Supplemental Advances on Costs;
 - (c) Monitor the parties' and the arbitral tribunal's compliance with timelines in the Rules, especially the making of the Final Award on time;
 - (d) Deal with the arbitral tribunal and the parties on behalf of the Secretariat;
 - (e) Manage the case file;
 - (f) Submit monthly reports on the status of the arbitration, including matters of concern to the Secretariat;
 - (g) Recommend the release of arbitrator's fees; and
 - (h) Prepare the case summary for publication.
- 4.3. The File Counsel may attend the case management conference and hearings.
- 4.4. The File Counsel shall transmit the case file to the arbitral tribunal immediately upon its constitution.
- 4.5. Except for communications requiring the exercise by PDRCI of its discretion, all communications relating to the arbitration shall originate from, and shall be signed by, the File Counsel. All communications by the File Counsel shall be reviewed and approved by the Executive Director.
- 4.6. The File Counsel shall not accept, and politely decline, a request from the arbitral tribunal to perform any essential duties of a Tribunal Secretary.
- 4.7. In the performance of their duties, the File Counsel shall act promptly and without delay. All communications to the File Counsel shall be acknowledged immediately.
- 4.8. The File Counsel shall promptly advise the Executive Director of any issues encountered during the arbitration and recommend the appropriate response or courses of action.
- 4.9. The File Counsel shall prepare a notice of the Final Award and confirm its receipt by all the parties to the arbitration.
- 4.10. When directed by the Executive Director, the File Counsel shall prepare a brief summary of the award for publication. Before publication, the File Counsel shall provide the summary to the parties for an opportunity to comment.

- 4.11. When an arbitration is not fully and completely decided by an arbitral tribunal in a Final Award or in a final order of dismissal within one year from the constitution of the arbitral tribunal, the File Counsel shall submit a written report to the Secretary General.
- 4.12. The File Counsel shall be bound by the same duties of confidentiality and privacy as the arbitral tribunal.
- 4.13. When in doubt about which tasks may be performed by a File Counsel, the advice of the Executive Director shall be sought.

5. Conditions of Appointment

- 5.1. The File Counsel's email account provided by PDRCI shall be used only for the arbitration. The contents of this email account are confidential. The Secretariat may, at any time, suspend and terminate the email account and may retrieve, view, inspect, and examine its contents.
- 5.2. Unless earlier terminated, the appointment of the File Counsel shall *ipso facto* terminate upon the lapse of the period for a party to request an interpretation, correction, or additional award if no such request is made, or when such request is made and is finally decided.
- 5.3. Upon termination of the appointment, the File Counsel shall return to PDRCI for destruction all documents relating to the arbitration and shall delete from their server, computer, smartphone, or any storage device all files relating to the arbitration. The File Counsel shall certify to the return of such documents and the deletion of all data related to the arbitration. After such time, the File Counsel shall cease to use or have access to the case file and their PDRCI email accounts.
- 5.4. The File Counsel shall submit a final report to the Executive Director, which shall include a summary of the award for publication and recommendations on how to improve the arbitration process, within twenty (20) days from notice of the award by PDRCI.

6. Compensation

- 6.1. The File Counsel shall be entitled to a fee of not less than one thousand pesos (PhP1,000.00) nor more than three thousand pesos (PhP3,000.00) per hour actually devoted to the arbitration, or such other fees as PDRCI may subsequently determine. The compensation of the File Counsel shall be charged to the parties.
- 6.2. Payments to a File Counsel shall be made on the basis of completion of billable events in accordance with Schedule A of this Guidelines and the performance of their duties, including the timely submission of periodic and final reports.

- 6.3. A File Counsel shall provide a record of their time spent on tasks, which shall be subject to evaluation and approval by the Executive Director.
- 6.4. In all instances, the File Counsel's reasonable expenses in connection with the performance of their duties shall be supported by receipts and shall be reimbursed by the parties at cost, unless otherwise agreed.
- 6.5. Any matter raised in connection with the compensation of the File Counsel shall be resolved by the Secretary General, whose decision shall be final.

SCHEDULE A

SCHEDULE OF PAYMENT OF FILE COUNSEL'S FEES

Article 1. Arbitration Phases and Billable Events

Phase	Percentage or Breakdown of the Arbitrator's Work per Stage / Billable Events	%	Cumulative
1.	PRE-CONSTITUTION OF TRIBUNAL Preparation of File Counsel's Report Assess Claimant for Provisional Advance on Cost (PAOC) Notice of Arbitration to Respondent Assess Respondent for PAOC, SAOC, FAOC Notice of Appointment of Second Arbitrator Emergency Relief Consolidation Request for Joinder Expedited Procedure	40	
2.	CONSTITUTION OF THE TRIBUNAL: Appointment of Arbitrators Challenge of Arbitrators Confirmation of Arbitrators Consolidation Update File Counsel's Report	25	65
3.	POST-CONSTITUTION MONITORING Case Management Conference Hearings Liaise between PDRCI and Tribunal Submission of monthly reports (2 nd Wednesday of the month) or special reports Update File Counsel's Report	25	90
4.	AWARD Monitor deadline for Award Review of Award Update File Counsel's Report Case Summary	10	100

Article 2. Reasonable Out-Of-Pocket Expenses

The File Counsel shall be entitled to reimbursement of reasonable out-of-pocket expenses such as postage, communication charges, printing, reproduction of documents, transportation, meals and other expenses incurred in attending hearings or conferences and performing work

related to the arbitration. The Secretary General may disallow a claim for reimbursement for expenses that are not reasonable.

The reimbursement of the File Counsel's expenses shall as far as practicable coincide with the payment of fees as provided in Article 1 above.