



## **NMI SETTLEMENT FUND APPEAL RULES AND PROCEDURES**

### **Rule 1. Authority; Title; Scope of Rules.**

(a) Authority. These rules are issued by the Trustee of the NMI Settlement Fund (“Settlement Fund”). The Settlement Fund was created as a result of a Final Amended Stipulation and Agreement of Settlement (“Settlement Agreement”) approved by the court in the class action lawsuit filed in the United States District Court for the Northern Mariana Islands, Case No. 09-000023 (the “Retirement Fund Litigation”). The rules are issued pursuant to Section 10.0(k) of the Settlement Agreement which provides that the Settlement Fund Trustee shall have the following powers and duties: “To establish policies and appoint hearing officers for the resolution of all disputes between individual Members of the Settlement Fund and the Settlement Fund consistent with due process and a right to a final appeal to an independent arbitrator selected by the Trustee and approved by the District Court, there shall be no further appeal from the decision of the arbitrator.”

(b) Title; Effective Date; Amendments. These rules shall be known as the NMI Settlement Fund Appeal Rules and Procedures (“Rules”), and shall go into effect upon approval of these Rules by the District Court in the Retirement Fund Litigation (the “Effective Date”). Any amendment to the Rules after the Effective Date must be presented to and approved by the District Court in the Retirement Fund Litigation.

(c) Scope. These Rules shall govern the procedure for appeals of decisions of the Administrator of the Settlement Fund. The Trustee shall establish and maintain a panel of Hearing Officers and Arbitrators to preside over and decide appeals as provided in these Rules.

### **Rule 2. Definitions.**

The following definitions apply to capitalized terms as used in these Rules:

(a) “Administrator” means the Administrator of the Settlement Fund.

(b) “Appeals Coordinator” means the person appointed by the Trustee as the coordinator to administer any appeal brought under these Rules. The authority and obligations of the Appeals Coordinator are provided in these rules. The duties of the Appeals Coordinator may be carried out through such other representatives as the Trustee may direct.

(c) “Arbitrator” means the arbitrator(s) appointed by the Trustee and approved by the Court in the Retirement Fund Litigation to hear appeals of decisions of the Hearing Officer(s).

(d) “Fee Schedule” means the schedule of fees attached as Appendix A to these Rules, setting the fees required to be paid under these Rules.

(e) “Hearing Officer” means the hearing officer(s) appointed by the Trustee and approved by the Court in the Retirement Fund Litigation to hear appeals of decisions of the Administrator.

(f) “Member” means a member of the Settlement Class pursuant to the terms of the Settlement Agreement.

(g) “NMI Retirement Fund” means the Northern Mariana Islands Retirement Fund.

(h) “NMI Retirement Fund Appeal” means any pending administrative appeal of a decision of the administrator of the NMI Retirement Fund previously filed by a Member pursuant to the CNMI Administrative Code § 110-10-501 et seq.

(i) “Party” means a party to an appeal under these Rules and their counsel or representatives.

(j) “Settlement Fund Appeal” means an appeal by any individual Member aggrieved by a decision of the Administrator.

(k) “Trustee” means the Trustee of the Settlement Fund.

### **Rule 3. Conflict with Law.**

If any of these Rules is determined to be in conflict with a provision of applicable law, the provision of law will govern over the Rule in conflict, and no other Rule will be affected.

### **Rule 4. Proceedings in Which These Rules Apply.**

These Rules govern:

(a) All NMI Retirement Fund Appeals, which shall proceed as provided under Rule 22; and

(b) All Settlement Fund Appeals.

### **Rule 5. No Stay Pending Appeal.**

(a) No Stay of Decision of Administrator or Hearing Officer. A decision of the Administrator or the Hearing Officer which is the subject of an appeal under these Rules shall not be stayed pending the resolution of the appeal proceedings unless a motion for stay is filed in accordance with this Rule.

(b) Motion for Stay. The filing of the motion for stay shall automatically stay the decision until the motion is decided. A stay of the Administrator's decision must be filed with and decided by the Hearing Officer. If granted, such stay shall remain in effect until the time for appeal to the Arbitrator expires. Any party seeking a stay of the Hearing Officer's decision pending appeal to the Arbitrator must file a new motion for stay at the time of filing the Notice of Appeal. The motion for stay of the Hearing Officer decision shall be filed with and decided by the Hearing Officer in the first instance. For any stay requested under this Rule, whether of a decision of the Administrator or the Hearing Officer, if the Hearing Officer denies the motion or fails to afford the relief requested, or, in the case of a stay of the Hearing Officer's decision, if moving for a stay first before the Hearing Officer would be impracticable, a motion for stay setting forth these reasons may be filed with the Arbitrator.

(c) Standards for Granting a Stay. A stay may be granted only upon a showing of good cause, which shall take into account the likelihood that the movant will prevail on the merits, the relative harm to each party interested in the proceeding, and the public interest if the stay is granted. Conditions may be imposed in granting the stay, including, but not limited to, requiring that the appeal proceedings be expedited.

(d) Stays in NMI Retirement Fund Appeals. A stay previously issued in any NMI Retirement Fund Appeal shall remain in effect during the pendency of either the Hearing Officer or Arbitrator proceedings under these Rules, as applicable. Upon expiration of the stay at the conclusion of the Hearing Officer proceedings, or if no stay was ~~not~~ previously granted, then any request for a stay must comply with the requirements of this Rule 5.

## **Rule 6. Appeal from Decision of Administrator.**

Appeals of a decision of the Administrator to the Hearing Officer shall proceed in accordance with this Rule 6.

### **Rule 6.1. Filing an Appeal of Decision of Administrator.**

(a) Any person aggrieved by a decision of the Administrator shall appeal the decision to the Hearing Officer by filing a written Notice of Review with the Appeals Coordinator within thirty (30) days of the date of the Administrator's decision. A failure to file a timely appeal will result in its dismissal.

(b) Unless payment of the fee is waived under Rule 21, the administrative filing fee as set forth in the Fee Schedule must be paid at the time of the filing of the Notice of Review.

(c) Form A in the Appendix of Forms is the suggested form of a Notice of Review.

**Rule 6.2. Contents of Notice of Review to Hearing Officer.**

The Notice of Review shall include:

- (a) The name of the party appealing;
- (b) A copy of the written decision of the Administrator if a written decision was issued;
- (c) A brief statement of any disputed factual matters in the decision of the Administrator; and
- (d) A brief statement of any disputed legal issues in the decision of the Administrator.

**Rule 6.3. Notice to the Administrator; Compiling of the Settlement Fund Hearing Record.**

(a) Upon receipt by the Appeals Coordinator of the Notice of Review, the Appeals Coordinator shall send to the Administrator written notice that an appeal has been filed, together with a copy of the Notice of Review showing the date of filing.

(b) The Appeals Coordinator shall compile the Settlement Fund Hearing Record comprising of all documents which are part of the Settlement Fund's records and files necessary for the hearing officer proceeding. The Settlement Fund Hearing Record shall be numbered and arranged in chronological order by document date, and identified by title of the document. A copy of the Settlement Fund Hearing Record shall be provided to the appealing party and the Administrator, within twenty-one (21) days after the filing of the Notice of Review. On payment of costs set forth in the Fee Schedule, additional copies of the Settlement Fund Hearing Record, or any part thereof, shall be made available to any party upon request within a reasonable time.

**Rule 6.4. Mandatory Mediation; Rules and Procedures.**

Upon completion of and transmittal of the Settlement Fund Hearing Record to the parties, the matter on appeal shall be submitted to mandatory meditation in accordance with the following rules and procedures:

(a) Assignment of Mediator. The Appeals Coordinator shall promptly assign a mediator to mediate the dispute and provide a copy of the Settlement Fund Hearing Record to the mediator, and shall issue a mediation schedule setting forth the name of the mediator, date of the mediation, and required submissions;

(b) Disclosures and Disqualification of Mediator. Rule 15 shall govern the disclosures and disqualification of the mediator, provided, however, that any objection made to the mediator shall be determined by a Hearing Officer, as assigned by the Appeals Coordinator on a rotational basis;

(c) Conduct of Mediation. Each party, and its respective counsel, if any, shall be present at the mediation, and shall be prepared to present the following at the mediation:

- (i) provide a brief description of the substance of the suit, addressing the party's views of the key liability issues and damages and discussing the key evidence;
- (ii) identify the discovery or motions that promise to contribute most to equipping the parties for meaningful settlement negotiations;
- (iii) describe the history and current status of any settlement negotiations except to the extent prohibited by applicable laws of privilege;
- (iv) provide additional information about any needs, interests or other considerations not described elsewhere in the statement that might be pertinent to settlement; and
- (v) provide copies of documents likely to make the mediation more productive or to materially advance settlement prospects.

(d) Confidentiality. Notwithstanding any other provision of these Rules, no information used or discussed in mediation shall be communicated to the assigned Hearing Officer or Arbitrator appointed to hear the matter, unless consented to by all parties. No writing of the mediator, except the Mediation Statement, shall be disclosed to anyone other than the parties unless all parties consent to the disclosure. All information disclosed, admissions of the parties, and documents produced in mediation shall be inadmissible and protected from disclosure at all times before, during or after mediation, except as permitted by law or these Rules.

(e) Inadmissibility of Evidence. Evidence which is inadmissible or not otherwise subject to discovery outside of mediation which is disclosed during mediation proceedings, or any admission made by the parties or document produced in the course of mediation, shall not become by its use in mediation admissible in evidence at a later proceeding in the case, nor can any disclosure therein made be compelled in any administrative, civil or criminal action, except upon consent of the parties.

(f) Mediation Statement. Within 10 calendar days of the completion of mediation services, or termination of mediation by all the parties, the mediator shall issue and provide to the Appeals Coordinator a statement ("Mediation Statement") regarding the outcome of the mediation, including whether the parties have entered into a settlement agreement with respect to the matter.

(g) Voluntary Mediation. If the initial mandatory mediation is unsuccessful, the parties may mutually agree to submit the matter to mediation at any time during pendency of the proceedings before a Hearing Officer or Arbitrator, in which case the Hearing Officer or Arbitrator, as applicable, may stay the proceedings.

(h) Rule 5 Motion for Stay. If a Rule 5 motion for stay is filed prior to the issuance of a Mediation Statement under Rule 6.4(f), the Appeals Coordinator shall assign the case to a Hearing Officer in accordance with Rule 14 for the purpose of addressing the motion for stay. The same Hearing Officer shall be assigned to review and decide the case under Rule 6.5.

**Rule 6.5. Appointment of Hearing Officer.**

Upon receipt by the Appeals Coordinator of the Mediation Statement indicating that the parties have not settled the matter in the mediation, the Appeals Coordinator shall assign the case for review and decision by a Hearing Officer in accordance with Rule 14. If the matter was previously assigned to a Hearing Office under Rule 6.4(h), then the case shall proceed before the previously-appointed Hearing Officer. The Appeals Coordinator shall provide a copy of the Settlement Fund Hearing Record to the Hearing Officer upon assignment.

**Rule 6.6. Hearing Officer Proceedings: Conduct of Hearings.**

(a) The Hearing Officer shall fix the time and place for each hearing; provided, however, that in accordance with Rule 10 the Hearing Officer may, on its own motion or upon stipulation of the parties, order that the matter be decided without a hearing. At least twenty-one (21) days in advance of the hearing, the Hearing Officer shall cause to be delivered to each party a notice stating:

- (i) The time, place, and nature of the hearing;
- (ii) The particular sections of the statutes and regulations involved; and
- (iii) A statement of the issues involved.

(b) Upon request of any party and, on a statement or showing of general relevance and reasonable scope of the subject sought, the Hearing Officer shall issue subpoenas to compel the attendance of persons at a hearing or in taking depositions and in a proper case to bring with him or them any book, record, document, or paper which may be deemed material as evidence in the case. On contest, any party may petition the Court in the Retirement Fund Litigation or any other court with jurisdiction thereof to sustain the subpoena or similar process or demand to the extent that it is found to be in accordance with law, and to issue an order requiring the appearance of the witness or the production of the evidence or data within a reasonable time under penalty of punishment for contempt in case of failure to comply.

(c) The Hearing Officer appointed to the matter shall preside at the taking of evidence. The hearing shall be conducted in an impartial manner, and in accordance with Rule 9 regarding ex parte and other contacts.

(d) The Hearing Officer may:

- (i) Administer oaths and affirmations;
- (ii) Issue subpoenas as authorized by law;
- (iii) Rule on offers of proof and receive relevant evidence;
- (iv) Take depositions or have depositions taken or issue other written discovery when the ends of justice would be served;
- (v) Set pre-hearing discovery and briefing deadlines
- (vi) Dispose of procedural requests or similar matters;
- (vii) Hold conferences for the settlement or simplification of the issues;
- (viii) Regulate the course of the hearing;

- (ix) Make orders or decisions in accordance with these Rules; and
- (x) Take such other action authorized by law consistent with these Rules to ensure the timely disposition of the proceedings.

(e) The aggrieved party has the burden of proof by a preponderance of the evidence. Any oral or documentary evidence may be received, but the Hearing Officer may exclude irrelevant, immaterial, or unduly repetitious evidence. Except as otherwise provided by law, privileges relating to evidence in the United States District Court for the District of the NMI shall apply in the conduct of hearings. A decision may not be issued except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with reliable, probative, and substantial evidence. A party is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(f) The record in a hearing before the Hearing Officer shall include:

- (i) The Settlement Fund Hearing Record compiled pursuant to Rule 6.3(b)
- (ii) Any pleadings, motions, and intermediate rulings;
- (iii) Evidence received or considered;
- (iv) A statement of matters officially noticed;
- (v) Questions and offers of proof, objections, and rulings on them;
- (vi) Any order or decision, opinion, or report by the Hearing Officer;
- (vii) All staff memoranda or data submitted to the Hearing Officer in connection with its consideration of the case;
- (viii) Transcript or summary of testimony and exhibits; and
- (ix) All papers and requests filed in the proceeding which are not specifically mentioned above.

(g) The documents comprising the record for each proceeding before the Hearing Officer shall be maintained by the Appeals Coordinator and made available for inspection and use by the Hearing Officer and the parties. On payment of costs set forth in the Fee Schedule, copies of the record, or any part thereof, shall be made available to any party upon request within a reasonable time.

(h) Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

#### **Rule 6.7. Issuance of Decisions by Hearing Officer.**

(a) The Hearing Officer may, before issuing his or her decision, permit the parties to submit for the Hearing Officer's consideration:

- (i) Proposed findings of facts and conclusions of law; and
- (ii) Supporting reasons for the proposed findings of facts and conclusions of law.

(b) A Hearing Officer shall issue its written decision within thirty (30) days of the hearing.

(c) Within 14 days from the date the Hearing Officer issues his or her order or decision, the parties are entitled to submit for the Hearing Officer's consideration, exceptions to the order or decision. The Hearing Officer shall issue a decision on the exceptions within thirty (30) days of the filing of the exceptions.

(d) The record shall show the ruling or decision on each finding of fact, conclusion of law, or exception presented. All orders or decisions are a part of the record and shall include a statement of:

- (i) Findings of facts and conclusions of law, and the reasons or basis for them, on all the material issues of fact, law, or discretion presented on the record; and
- (ii) The appropriate decision, order, sanction, relief, or denial thereof.

(e) The Hearing Officer's written decision is final without further proceedings unless there is an appeal to the Arbitrator within the time provided by Rules 7.1 and 7.5.

#### **Rule 7. Appeal to the Arbitrator.**

Appeals of a decision of the Hearing Officer to the Arbitrator shall proceed in accordance with this Rule 7.

##### **Rule 7.1. Filing an Appeal of Decision of Hearing Officer.**

(a) Any person aggrieved by a decision of the Hearing Officer shall appeal the decision to the Arbitrator by filing a written Notice of Appeal with the Appeals Coordinator within thirty (30) days from the date of the Hearing Officer's written decision. If exceptions are filed to the Hearing Officer's decision under Rule 6.7(c), the time to appeal from both the initial final decision and the Hearing Officer's decision on the exceptions shall run from the date of the Hearing Officer's decision on the exceptions. A failure to file a timely appeal will result in its dismissal.

(b) Unless payment of the fee is waived under Rule 21, the administrative filing fee as set forth in the Fee Schedule must be paid at the time of the filing of the Notice of Appeal.

(c) Form B in the Appendix of Forms is the suggested form of a Notice of Appeal.

##### **Rule 7.2. Denomination of the Parties.**

The party filing the Notice of Appeal shall be denominated the "Appellant", and all other parties to the Hearing Officer proceeding shall be denominated the "Appellees".



**Rule 7.3. Contents of Notice of Appeal.**

The Notice of Appeal shall include:

- (a) The name of the Appellant and Appellee(s);
- (b) The contact information for each Party, and, if applicable, each Party's representative, including, if known, telephone number, fax number, and email address;
- (c) A copy of the Hearing Officer's decision being appealed; and
- (d) A statement setting forth the portion or portions of the Hearing Officer's decision being appealed and the errors alleged.

**Rule 7.4. Notice to Parties.**

Upon receipt by the Appeals Coordinator of the Notice of Appeal (or Notice of Cross-Appeal under Rule 7.5), the Appeals Coordinator shall send to the non-appealing parties (or their representatives if so named) written notice that an appeal to the Arbitrator has been filed, together with a copy of the Notice of Appeal (or Notice of Cross-Appeal) showing the date of filing.

**Rule 7.5. Cross-Appeal.**

(a) The Appellee may file a Notice of Cross-Appeal with the Appeals Coordinator within ten (10) days after the date of filing of a Notice of Appeal, or within thirty (30) days from the date of the Hearing Officer's written decision, whichever is later. The Notice of Cross-Appeal shall include the information required under Rule 7.3.

(b) Unless the fee is waived under Rule 21, the administrative filing fee as set forth in the Fee Schedule must be paid at the time of the filing of any cross-appeal.

(c) Form C in the Appendix of Forms is the suggested form of a Notice of Cross-Appeal.

**Rule 7.6. Appointment of Arbitrator.**

Upon receipt by the Appeals Coordinator of the Notice of Appeal, the Appeals Coordinator shall assign the case for review and decision by a single Arbitrator in accordance with Rule 14.

**Rule 7.7. Notice of Briefing and Argument.**

(a) Briefs shall be filed in accordance with the deadlines set forth under Rule 7.9. The Appeals Coordinator may issue a courtesy briefing schedule to the parties setting forth the due dates for the briefs.

(b) The Arbitrator shall fix the time and place for each oral argument, provided, however, that in accordance with Rule 10 the Arbitrator may, on its own motion or upon stipulation of the parties, order that the matter be decided without a hearing. At least twenty-one (21) days in advance of the hearing, the Arbitrator shall cause to be delivered to each party a notice stating the date, time and place of the oral argument.

**Rule 7.8. Record on Appeal; Content; Record Appendix.**

(a) Content. The record on appeal shall be comprised of all documents that are part of the record of proceedings before the Hearing Officer as provided under Rule 6.6(f). The documents comprising the record for each proceeding before the Arbitrator shall be compiled by the Appeals Coordinator, and numbered and arranged in chronological order by document date or filing date, as applicable, and identified by title of the document. The record shall be made available for inspection and use by the parties. On payment of costs set forth in the Fee Schedule, copies of the record, or any part thereof, shall be made available to any party upon request within a reasonable time.

(b) Record Appendix. The parties may, but are not required to, submit together with its initial brief an Appendix with the record documents that are necessary to determine the appeal.

(c) Content of Appendix. In compiling the Appendix, each party may request record documents in accordance with Rule 7.8(a). Each party may include as part of the Appendix any paper or exhibit filed or submitted as evidence in the Hearing Officer proceeding, any transcripts or portions thereof of proceedings before the Hearing Officer, any briefs filed by the parties before the Hearing Officer, or any other evidence relevant to the appeal that was presented at the Hearing Officer hearing.

(d) Format of Appendix. The Appendix documents shall be accompanied by a table of contents identifying the title of the document and date, and shall be compiled in chronological order by document date or filing date, as applicable. If a party refers to a record document in its brief, the document should be identified with reference to whether it was submitted as part of the Appellant's Appendix or Appellee's Supplemental Appendix (as applicable), and the title, date, and page number of the document. A party may not include in the Appendix evidence that was not submitted during the Hearing Officer proceeding.

(e) The Arbitrator shall determine any disputes concerning whether a document included in the Appendix or otherwise relied on by any party is part of the record on appeal to the Arbitrator.

**Rule 7.9. Appeal Briefs.**

(a) Filing Dates if No Cross Appeal is Filed. If a cross-appeal has not been filed, appellate briefs shall be filed with the Appeals Coordinator, and served on each Party to the appeal, as follows:

(i) Appellant's Initial Brief is due within thirty (30) days after filing of the Notice of Appeal;

(ii) Appellee's Response Brief is due within thirty (30) days after service of Appellant's Initial Brief;

(iii) Appellant's Reply Brief to Appellee's Response Brief, if any, is due within fourteen (14) days of service of Appellee's Response Brief.

(b) Filing Dates if Cross-Appeal is Filed. If a cross-appeal has been filed, appellate briefs shall be filed with the Appeals Coordinator, and served on each Party to the appeal, as follows:

(i) Appellant's Initial Brief is due within thirty (30) days after filing of the Notice of Appeal;

(ii) Appellee's Response Brief and Appellee's Initial Cross-Appeal Brief, are due within thirty (30) days after service of Appellant's Initial Brief, and may be combined;

(iii) Appellant's Reply Brief to Appellee's Response Brief, if any, and Appellant's Response Brief to Appellee's Initial Cross-Appeal Brief, are due within thirty (30) days after service of Appellee's Response Brief and Initial Cross-Appeal Brief, and may be combined.

(iv) Appellee's Reply Brief to Appellant's Response Brief, if any, is due within fourteen (14) days of service of Appellant's Response Brief.

(c) Page Numbers and Formatting. Initial and response briefs shall not exceed 30 pages, and reply briefs shall not exceed 10 pages, excluding the cover page and table of contents. The page limits may be added together for combined briefs permitted under Rule 7.9 (ii) and (iii). All briefs shall be double-spaced and utilize no smaller than 12 point font, and shall contain a cover page identifying the name of the case, the case number, the parties and the title of the brief, followed by a table of contents with page numbers.

(d) For good cause shown, the time to file any brief may be extended by the Arbitrator upon motion by a party.

#### **Rule 7.10. Standard of Review.**

The Arbitrator shall apply the same standard of review that the first-level United States federal appellate court would apply to an appeal from a decision of the United States District Court for the NMI.

**Rule 7.11. Jurisdiction and Interpretation of Rules.**

The Arbitrator shall have the power to rule on its own jurisdiction. The Arbitrator shall interpret and apply these Rules insofar as they relate to the Arbitrator's powers and duties.

**Rule 7.12. Arbitrator's Decision.**

Within forty-five (45) days from the date of oral argument, or, if the matter was submitted without argument then within forty-five (45) days of service of the last brief, the Arbitrator shall issue a concise written decision on the appeal. The Arbitrator may affirm, reverse, or modify a decision of the Hearing Officer. The Arbitrator shall not normally remand the matter to the Hearing Officer, and may only remand the matter to the Hearing Officer if additional factual determination is required based on the Arbitrator's announcement on questions of substantive law.

**Rule 7.13. Request for Reconsideration.**

Within 14 days of the date the Arbitrator issues his or her decision, the parties are entitled to file a request for reconsideration of the decision. The request must state with particularity each point of law or fact that the party believes the Arbitrator has overlooked or misapprehended. An issue not previously raised by the parties cannot be raised for the first time in a request for reconsideration. The Arbitrator shall issue a decision on the request for reconsideration within thirty (30) days of the filing of the request.

**Rule 7.14. Arbitrator's Decision Final.**

Pursuant to Section 10.0(k) of the Settlement Agreement, the Arbitrator's decision, as may have been modified upon reconsideration, shall be final, and shall not be subject to further appeal.

**Rule 8. Impartiality.**

The Arbitrator and Hearing Officer shall hear and decide all matters impartially, and in accordance with Rule 9 governing ex parte and other contacts.

**Rule 9. Ex Parte and other Contacts.**

(a) Except to the extent required for the disposition of permissible ex parte matters, the Hearing Officer and Arbitrator, may not:

(i) Consult a person or party or representative of a person or party on a fact in issue or on applicable law, unless on notice and opportunity for all parties to participate;

(ii) Be responsible to or subject to the supervision or direction of an employee or agent engaged in the performance of investigative or prosecutory functions for the Settlement Fund.

(b) The Hearing Officer and Arbitrator may:

(i) Communicate with other members of the Settlement Fund, except as limited by subsection (a) of this Rule 9; and,

(ii) Have the aid and advice of one or more personal assistants if such assistance would not be in violation of subsection (a) of this Rule 9.

**Rule 10. Waiver of Oral Argument; Hearing on Documents Only; Consented Disposition and Settlement.**

(a) Hearing on the Documents Only. The parties may agree in writing to waive oral argument before the Hearing Officer or Arbitrator, provided, however, that notwithstanding such waiver, the Hearing Officer or Arbitrator may schedule a hearing if he or she determines that oral argument is necessary. The Hearing Officer or Arbitrator may on its own motion order that the matter be decided without a hearing. Any hearing on documents only shall be conducted pursuant to these Rules.

(b) Consented Disposition and Settlement of Disputes. Unless precluded by law, informal disposition may be made of any contested case before the Hearing Officer or Arbitrator by stipulation, agreed settlement, consent order, or default. At any time during the pendency of proceedings under these Rules, any party may submit to the other an offer for compromise or settlement of the matter, and nothing in these Rules shall preclude the parties from negotiating a settlement, or settling the dispute, during the pendency of proceedings.

**Rule 11. Requirement of Service of Documents; Manner of Service.**

(a) A party filing or submitting any document in any proceeding under these Rules shall contemporaneously serve the document on all other parties to the proceeding.

(b) For purposes of all proceedings under these Rules, service shall be accomplished by personal service or registered mail, or, subject to Rule 11(c), by electronic submission (including e-mail or facsimile).

(c) Any party may consent to being served by facsimile or electronic mail. Such consent shall be filed with the Appeals Coordinator and served on all parties upon the commencement of the proceeding.

**Rule 12. Computation of Days.**

(a) If service of any document is made by mail, the document shall be deemed served, for purposes of calculating responsive due dates, three (3) days from the date of mailing. If service is made by electronic mail, the document shall be deemed served, for purposes of calculating responsive due dates, one (1) day from the electronic transmittal.

(b) Unless otherwise provided in these Rules, all deadlines under these Rules shall be determined by calendar days. Any deadline shall be computed by excluding the first day and including the last day, except that if the last day of the time period is a Saturday, Sunday or federal legal holiday, the period shall be extended until the next day that is not a Saturday, Sunday or holiday.

**Rule 13. Extension of Due Dates.**

Other than the filing of an Notice of Review or Notice of Appeal/Cross-Appeal, any time period set forth in these Rules may be modified by the Hearing Officer or Arbitrator for good cause.

**Rule 14. Appointments and Grouping of Claims for Hearing.**

(a) Subject to Rule 14(b), if more than one Hearing Officer or Arbitrator is appointed and approved to hear appeals under these Rules, the Appeals Coordinator shall assign the appeal to the Hearing Officers or Arbitrators on a rotational basis.

(b) The Appeals Coordinator may, in his or her reasonable discretion or upon request of a Hearing Officer or Arbitrator, designate certain cases, whether NMI Retirement Fund Appeals or Settlement Fund Appeals, involving common issues of fact or law for consolidation and hearing before the same Hearing Officer or Arbitrator.

(c) Upon motion of the parties or its own motion, the Hearing Officer or Arbitrator may consolidate one or more appeals pending before him or her involving common issues of fact or law.

**Rule 15. Qualifications of the Hearing Officer and Arbitrator; Pro Tempore Appointments.**

(a) Qualifications. No person with a personal, financial, or other interest in the outcome of the appeal shall serve as Hearing Officer or Arbitrator in any appeal.

(b) Disqualification.

(i) A Hearing Officer or Arbitrator may at any time disqualify himself or herself upon the filing of a timely and sufficient affidavit of personal bias and prejudice or other disqualification.

(ii) A Hearing Officer or Arbitrator shall disclose to the Appeals Coordinator any circumstance likely to create a presumption of bias that might disqualify that person from serving as an impartial Hearing Officer or Arbitrator. Upon receipt of such information, the Appeals Coordinator shall immediately disclose it to the parties.

(iii) If a party challenges a Hearing Officer or Arbitrator, the challenge shall be determined by another Hearing Officer or Arbitrator, as applicable, or if none is available then by a Hearing Officer (in the case of a challenge to an Arbitrator) or by an

Arbitrator (in the case of a challenge to the Hearing Officer), as assigned by the Appeals Coordinator on a rotational basis, which decision shall be conclusive.

**(c) Appointments in Event of Disqualification; Pro Tempore Appointments.**

If a Hearing Officer or Arbitrator should resign, be disqualified, or be otherwise unable to perform his or her duties, the Appeals Coordinator shall appoint another Hearing Officer or Arbitrator to hear and decide the matter in accordance with Rule 14. If no Hearing Officer or Arbitrator is available or qualified to hear the matter, the Appeals Coordinator shall submit a request to the Trustee for the appointment of a Hearing Officer or Arbitrator to hear the matter on a pro tempore basis.

**Rule 16. Pro Se Representation and Representation by Counsel.**

A party or any other person entitled to be present may represent himself or herself or may be represented by counsel of his or her own choosing at any proceeding under these Rules.

**Rule 17. Transcripts.**

All hearings under these Rules will be recorded. Upon payment of the prescribed fee set forth in the Fee Schedule, any party may obtain a copy of the recording. A party wishing to have any hearing separately transcribed by a transcriber or stenographer shall make arrangements directly with a transcriber and shall notify the Appeals Coordinator and all other parties of such arrangements in advance of the hearing. The requesting party or parties shall pay the cost of such transcription record.

**Rule 18. Interpreters**

Any party that will be using an interpreter at a hearing shall notify the Appeals Coordinator at least fourteen (14) days prior to the hearing. Any party desiring its own interpreter shall make all arrangements directly with an interpreter and shall assume the costs of such service, provided, however, that if a Member requests that all or part of the hearing be conducted in one of the official languages of the CNMI other than English, the Settlement Fund will provide an interpreter for the hearing.

**Rule 19. Attendance of Hearings**

Unless otherwise determined by the Hearing Officer or Arbitrator all proceedings under these Rules are open to the public.

**Rule 20. Costs and Expenses.**

Unless otherwise provided in these Rules or ordered by the Hearing Officer or Arbitrator, as applicable, each party shall be responsible for all costs and expenses, including attorney's fees, that party incurs in connection with proceedings under these Rules.

**Rule 21. Waiver of Fees Based on Indigency.**

(a) Application for Waiver of Fees. A Member who is unable to afford the filing fees or other fees prescribed in these Rules based on a claim of indigency may apply for a waiver of the fees. A determination of indigency shall be made by a Hearing Officer. A Member seeking a waiver of fees shall complete and submit to the Appeals Coordinator at or after the time of filing the Notice of Review the Financial Declaration, attached as Form D to these Rules. All statements made in the Financial Declaration or to the Hearing Officer in support of the request for a waiver of fees shall be under penalty of perjury.

(b) Standards for Determining Indigency. For purposes of determining eligibility for a waiver of fees, an indigent person is a person who, at the time need is determined, does not have sufficient assets, credit, or other means to provide for payment of fees in connection with appeal proceedings under these Rules without depriving the person or his dependents of food, shelter or clothing, and who has not disposed of any assets with the intent of establishing eligibility for a waiver of fees. A person shall be presumptively eligible for a waiver of fees if the person's income is equal to or below 125% of the most current U.S. Health and Human Services Poverty Guidelines for Hawaii, but the hearing officer may consider other factors, such as real or personal property owned, the age of dependents, outstanding debts or lifestyle. (The current U.S. Health and Human Services Poverty Guidelines may be found at - <http://aspe.hhs.gov/poverty/index.cfm>).

(c) No Right to Payment of Fees or For Legal Counsel. A determination of indigency under this Rule 21 permits the indigent person to proceed without having to pay the prescribed filing fees and other fees prescribed under these Rules, including those fees set forth under the Fee Schedule. The Settlement Fund shall not be responsible to pay or reimburse any person for any fees, costs or expenses incurred by the person in connection with any matter brought under these Rules, including but not limited to attorney's fees, and nothing in these Rules shall be construed to impose such obligation. Nothing in these Rules shall confer upon any person the right to representation by counsel without expense in proceedings under these Rules or to payment or reimbursement by the Settlement Fund for such person's attorney's fees.

**Rule 22. Procedure for NMI Retirement Fund Appeals.**

All NMI Retirement Fund Appeals shall be determined as follows:

(a) The following NMI Retirement Fund Appeals shall be treated as a Settlement Fund Appeal, and, within thirty (30) days of the Effective Date of these Rules, the Appeals Coordinator shall assign each such NMI Retirement Fund Appeal to a Hearing Officer for disposition in accordance with Rule 6:

(i) an NMI Retirement Fund Appeal that was not heard by a hearing officer or the NMI Retirement Fund's Board of Trustees ("Retirement Board"); or



(ii) an NMI Retirement Fund Appeal that has been heard by a hearing officer, but in which the hearing officer has not issued a written recommended decision to the Retirement Board.

(b) An NMI Retirement Fund Appeal that has been heard by a hearing officer, and in which the hearing officer issued a written recommended decision to the Retirement Board, shall be subject to mandatory mediation under Rule 6.4, and appealable by the Member to the Arbitrator under Rule 7 if the mediation is unsuccessful. Within thirty (30) days of the Effective Date of these Rules, the Appeals Coordinator shall serve written notice to the Member and Administrator that a party shall have thirty (30) days of receipt of the notice to bring an appeal of the hearing officer's recommended decision to the Arbitrator in accordance with Rule 7 herein. For purposes of review under Rule 7, the hearing officer's recommended decision shall be deemed and treated as a final decision of a hearing officer. Upon the filing of the Notice of Appeal under Rule 7.1(a) and after the expiration of time for filing a Notice Cross-Appeal, the matter shall proceed to mandatory mediation in accordance with Rule 6.4. Upon receipt by the Appeals Coordinator of the Mediation Statement under Rule 6.4(f) indicating that the parties have not settled the matter in the mediation, the Appeals Coordinator shall assign the case for review and decision by a single Arbitrator in accordance with Rule 7.6, and the matter shall proceed to arbitration in accordance with Rule 7. Pursuant to Section 10.0(k) of the Settlement Agreement, the Arbitrator's decision shall be final and binding, with no further right to appeal. If no such appeal to the Arbitrator is taken, the recommended decision shall be deemed final and not subject to further appeal.

(c) For all NMI Retirement Fund Appeals, no filing fees shall be assessed for filing a Notice of Appeal.

**NMISF Appeal Rules and Procedures**

**Appendix A**

**Fee Schedule**

Notice of Review (Appeal to Hearing Officer)	\$100
Notice of Appeal (Appeal to Administrator)	\$100
Service of Subpoenas	\$35 each
Photocopy of any document	\$0.25 page
Transcripts	\$2.50 page (Original) \$1 page (Additional copies)

Form A

**APPEAL  
BEFORE THE NMI SETTLEMENT FUND  
HEARING OFFICER**

**IN RE** \_\_\_\_\_,

Applicant.

NMI SF Case No. HO \_\_\_\_\_

**NOTICE OF REVIEW  
TO HEARING OFFICER**

Pursuant to the NMI Settlement Fund Appeal Rules and Procedures (“Rules”),  
\_\_\_\_\_ [insert name of appealing party] (the “Applicant”), hereby  
submits this Notice of Review of a decision of the Administrator of the NMI Settlement Fund.

As required under Rule 6.2 of the Rules, the Applicant hereby states the following:

A. Name of the Applicant: \_\_\_\_\_

B: Information regarding decision of the Administrator being appealed (“Decision”):

1. Date of Decision: \_\_\_\_\_

2. Was the Decision in writing:

\_\_\_\_\_ Yes, a copy of the Decision is attached to this Notice.

\_\_\_\_\_ No

3. Brief statement of any disputed factual matters in the Decision of the  
Administrator:

4. Brief statement of any disputed legal issues in the Decision of the Administrator:

Dated, this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
[Print Name of Applicant]

Form B

**APPEAL  
BEFORE THE NMI SETTLEMENT FUND  
ARBITRATOR**

**IN RE** \_\_\_\_\_,  
 Applicant,  
 \_\_\_\_\_,  
 Appellant,  
 v.  
 \_\_\_\_\_,  
 Appellee.

NMI SF Case No. ARB \_\_\_\_\_  
 NMI SF Case No. HO \_\_\_\_\_

**NOTICE OF APPEAL  
TO ARBITRATOR**

Pursuant to the NMI Settlement Fund Appeal Rules and Procedures (“Rules”), notice is hereby given that \_\_\_\_\_ [insert name of appealing party] (the “Appellant”), hereby submits this Notice of Appeal to the Arbitrator from the decision of the Hearing Officer dated \_\_\_\_\_.

As required under Rule 7.3 of the Rules, the Appellant hereby states the following:

A. Name and contact information of the Appellant and his or her representative (e.g., attorney), if any (including telephone number, fax number, and email address, if known):

Appellant’s Information:

Appellant’s Representative (Attorney) Name and Contact Information:

B. Name(s) and contact information of all other parties to Hearing Officer proceeding (the “Appellee(s)”), and their respective representatives, if any, (including telephone number, fax number, and email address, if known):

Appellee(s)' Information:

Appellee(s)' Representative(s) (Attorney) Name and Contact Information:

C. A copy of the decision dated \_\_\_\_\_ of the Hearing Officer, which is appealed herein, is attached to this Notice of Appeal.

D. Statement setting forth the portion or portions of the Hearing Officer's decision being appealed and the errors alleged:

Dated, this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
[Print Name of Appellant]

Form C

**APPEAL  
BEFORE THE NMI SETTLEMENT FUND  
ARBITRATOR**

<b>IN RE</b> _____, Applicant, _____ Appellant/Cross-Appellee, _____ Appellee/Cross-Appellant.
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NMI SF Case No. ARB \_\_\_\_\_  
NMI SF Case No. HO \_\_\_\_\_

**NOTICE OF CROSS-APPEAL  
TO ARBITRATOR**

Pursuant to the NMI Settlement Fund Appeal Rules and Procedures (“Rules”), notice is hereby given that \_\_\_\_\_ [insert name of cross-appealing party] (the “Cross-Appellant”), hereby submits this Notice of Cross-Appeal to the Arbitrator from the decision of the Hearing Officer dated \_\_\_\_\_.

As required under Rules 7.5 and 7.3 of the Rules, the Cross-Appellant hereby states the following:

A. Name and contact information of the Cross-Appellant, and his or her representative (e.g., attorney), if any (including telephone number, fax number, and email address, if known):

Cross-Appellant’s Information:

Cross-Appellant’s Representative (Attorney) Name and Contact Information:

B. Name(s) and contact information of all other parties to Hearing Officer proceeding (the “Cross-Appellee(s)”), and their respective representatives, if any, (including telephone number, fax number, and email address, if known):

Cross-Appellee(s)’ Information:

Cross-Appellee(s)' Representative(s) (Attorney) Name and Contact Information:

C. A copy of the decision dated \_\_\_\_\_ of the Hearing Officer, which is cross-appealed herein, is attached to this Notice of Cross-Appeal.

D. Statement setting forth the portion or portions of the Hearing Officer's decision being cross-appealed and the errors alleged:

Dated, this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
[Print Name of Cross-Appellant]



**FORM "D"**  
**FINANCIAL DECLARATION**  
 IN SUPPORT OF REQUEST FOR WAIVER OF FEES  
 IN NMI SETTLEMENT FUND HEARING OFFICER AND ARBITRATOR APPEAL PROCEEDINGS

CASE NAME: <i>In re</i> _____	<b>DOCKET NUMBER</b>
NAME OF APPLICANT (show your full name): _____	
SOCIAL SECURITY NUMBER: _____	

**ANSWERS TO QUESTIONS REGARDING ABILITY TO PAY**

**EMPLOYMENT:**

Are you now employed?  Yes  No  Self Employed. Name and address of employer:

**IF YES**, how much do you earn per month?

**IF NO**, give month and year of last employment.

How much did you earn per month? \$ \_\_\_\_\_

If married, is your spouse employed?  Yes  No

**IF YES**, how much does your spouse earn per month? \$ \_\_\_\_\_

**OTHER INCOME:**

Have you received within the past year any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, retirement or annuity payments, spousal support payments, or other sources?  Yes  No

IF YES, GIVE THE AMOUNT RECEIVED & IDENTIFY THE SOURCES  Are you currently receiving welfare benefits of any kind? <input type="checkbox"/> Yes <input type="checkbox"/> No IF YES, give the amount per month and describe the benefit.	RECEIVED \$ _____ \$ _____ \$ _____ AMOUNT \$ _____ \$ _____ \$ _____	SOURCES _____ _____ _____ TYPE OF BENEFIT \$ _____ \$ _____ \$ _____

**CASH:**

Do you have any cash on hand or money in savings or checking accounts?  Yes  No **IF YES**, state total amount \$ \_\_\_\_\_

**PROPERTY:**

Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?  Yes  No

IF YES, GIVE VALUE AND DESCRIBE	VALUE \$ _____ \$ _____ \$ _____	DESCRIPTION _____ _____ _____

**DEPENDENTS:**

<b>MARITAL STATUS</b> <input type="checkbox"/> Single <input type="checkbox"/> Married <input type="checkbox"/> Widowed <input type="checkbox"/> Separated or Divorced	Total No. of Dependents:  (    )	List persons you actually support and your relationship to them: _____ _____ _____
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**DEBTS & MONTHLY BILLS:**

APARTMENT OR HOME; Other Creditors (List all creditors including banks, loan companies, charge accounts, etc.) _____ _____ _____	<b>TOTAL DEBTS</b> \$ _____ \$ _____ \$ _____	<b>MONTHLY PAYMENTS</b> \$ _____ \$ _____ \$ _____
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I declare under penalty of perjury that the foregoing is true and correct. In addition, by my signature below, I hereby agree to make available to the Settlement Fund any and all documents within my possession, or within the possession of other third party entities, including but not limited to the Bureau of Revenue and Taxation, relating to my financial status.

<b>SIGNATURE OF APPLICANT:</b> _____	Date: _____	<b>WARNING:</b> APPLICANTS PROVIDING A FALSE OR DISHONEST ANSWER TO A QUESTION IN THIS DECLARATION MAY BE ASSESSED ALL FILING AND OTHER FEES REQUIRED TO BE PAID UNDER THE NMI SETTLEMENT FUND APPEAL RULES, AND
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PROCEDURES AND SUBJECT TO CONTEMPT PROCEEDINGS FOR FAILURE TO PAY SUCH FEES, [AND MAY BE REFERRED FOR CRIMINAL PROSECUTION.](#)