

MEMORANDUM CIRCULAR NO. 74

TO : ALL SHIPOWNERS/OPERATORS OF PUBLIC WATER TRANSPORTATION IN THE INTER-ISLAND TRADE AND PERSONS APPEARING BEFORE THE MARINA IN THE EXERCISE OF ITS QUASI-JUDICIAL FUNCTION

SUBJECT : RULES OF PRACTICE INSTITUTING SUMMARY PROCEDURES IN APPLICATIONS FOR CERTIFICATE OF PUBLIC CONVENIENCE (CPC), OR PROVISIONAL AUTHORITY (PA) OR SPECIAL PERMIT (SP), AMENDMENTS OR RENEWALS THEREOF, SUBSTITUTIONS/REPLACEMENTS OF VESSELS UNDER A VALID CERTIFICATE OF PUBLIC CONVENIENCE AND FOR COMPLAINT CASES AND PETITIONS FOR RATES

Pursuant to paragraph 2 of Executive Order No. 26 dated October 7, 1992, signed by the President of the Philippines, prescribing procedures and sanctions to ensure speedy disposition of administration cases, and in furtherance of the policy of the MARINA for economical, speedy, and equitable disposition of cases before it, the MARINA Board in its meeting last January 14, 1993, order the implementation of the following summary procedures:

1. Scope Of Coverage

The procedure set forth under this Circular shall apply to applications or petitions for issuance of Certificate of Public Convenience(CPC), Provisional Authority(PA), or Special Permit(SP), granting authority or permitting the operation of inter-island vessels as public service in the domestic trade, for carriage of cargo, or cargo/passenger, or both, either as liner or tramp service, for petitions for rates increase/adjustments and to complaint cases filed by aggrieved person(s) on the basis of official reports.

The procedures herein implemented shall be limited to the quasi-judicial hearings/dispositions/resolutions/decisions of the MARINA in the exercise of its quasi-judicial powers vested by law under Executive Order No. 1011, series of 1985, and further re-confirmed by Executive Order No. 125, as amended by Executive Order No. 125-A, both series of 1987, and the Public Service Act (Com. Act No. 146 as amended).

2. Requisites Before An Authority To Operate Interisland Vessel In The Domestic Trade May Be Granted

Under Section 16(a), Chapter II of the Public Service Act (C. A. No. 146, as amended), the following requisites must be complied with before any Certificate of public Convenience(CPC), maybe granted; (1) the applicant must be citizen of the

Philippines, or a corporation or co-partnership, association or joint-stock company constituted and organized under the laws of the Philippines, sixty(60) per centum at least of the stock or paid-up capital of which belongs entirely to citizens of the Philippines; (2) the applicant must be financially capable of undertaking the proposed shipping service; and (3) the applicant must prove that the operation of the proposed service will promote the public interest in a proper and suitable manner.

3. Abbreviation Of Proceedings

3.1 Compromise and Arbitration in Contested Cases.

In accordance with Section 10, Chapter 3, Book VII of the Administrative Code of 1987, in the applications for Certificate of Public Convenience (CPC), Provisional Authority (PA), or special Permit to operate a vessel or vessels for public service, and to expedite administrative proceedings involving conflicting rights and claims and to obviate expensive litigation, the parties are encouraged and enjoined to enter into an amicable settlement, compromise, and arbitration.

3.2 Pre-trial Conference

After the applicant has submitted proofs of compliance with jurisdictional requirements of publication of the notice of hearing and service of notice to the affected parties, the Hearing Officer shall direct the parties to appear before it for a pre-trial conference, to consider the following: a) possibility of arriving at an amicable settlement or for submission of arbitration; b) possible stipulation of facts, in order to simplify the issues; c) the number of witnesses and the nature of their written testimonies; d) the evidence to be presented, e) agreement on re-setting of the subsequent hearing(s); and f) such other matters as may aid for the prompt disposition of the case. Applicants or Oppositors who failed to attend at the Pre-Trial Conference may be declared non-suited or in default, respectively.

After the pre-trial conference, the Hearing Officer shall issue an Order, stating the ultimate facts that the parties have agreed/stipulated on, the issues to be heard, number of witnesses, and the provisions of law involved. This Order shall govern the direction of the proceedings of the case.

Even in uncontested applications, a pre-hearing conference shall be called by the Hearing Officer for the purpose of shortening the period of the proceedings.

In complaint cases, pre-trial conference shall likewise be conducted for the same purposes as above-stated.

3.3 Summary Procedure applicable to contested and uncontested applications.

3.3.1 At the initial hearing of uncontested applications, the applicants shall submit to the MARINA, through the Hearing Officer(s), their formal written offer of exhibits, with the following documents attached thereto stating the nature and purpose of the offer:

- a. Documents showing compliance with the MARINA's jurisdictional requirements;
- b. Proofs that the affected operators or concerned parties have been served with a copy of the application/petition and the notice of hearing at least five(5) days before the scheduled hearing;
- c. Documents showing ownership by the applicant of the vessel(s) and vessels' document issued by the Philippine Coast Guard;
- d. Written testimonies under oath of applicant's witnesses proving public necessity for the applied public service and showing its financial capability, and
- e. In case of vessels required to be insured or classed, documents showing that the vessel has been classed, or has been insured by Insurance Commission –accredited insurance company or equivalent security, such as Protection and Indemnity (P & I Coverage), or any security satisfactory to the MARINA, including Radio Station License.

3.3.2 Upon the filing of the complaint, duly supported by affidavits of witnesses and other relevant documents, copy furnished the respondent, the latter shall be summoned to submit his counter-affidavit and supporting affidavits/documents, copy furnished the complainant, within ten(10) days from the receipt thereof.

3.4 Parties opposed to the grant of Certificate of Public Convenience/Provisional Authority/Special Permit or petitions for rates increase/adjustment, shall, at the hearing, submit counter-affidavit of their witnesses, controverting applicant's evidence.

Every part shall have the rights to cross examine witnesses presented against him and to submit rebuttal evidence.

With the submission by the parties of the foresaid documentary evidence and written testimonies under oath, the application shall deemed submitted for final decision. Witnesses may be called for clarificatory questions.

With prior agreement the parties may submit memorandum, or position paper, or even draft of the decision the seek, stating clearly and distinctly the facts and the law upon which it is based. Following the termination of the hearing, and after considering and appreciating the applicable laws, rules and regulations and the evidence submitted, the MARINA may adopt, in whole or in part, either of the parties draft decisions, or reject both. This requirement shall likewise be applied to motions or applications or orders other than the final judgement.

Postponements of hearing or trials are hereby discouraged. Henceforth, no motions for postponement will be entertained unless they comply with the three-day notice rule, proof of receipt of a copy of which by the other parties must be shown by the movants. Motion for postponement which do not comply with these 3-day notice rule requirements shall be treated as pro-form and shall be denied, unless convincing evidence shows there is cogent reason to grant the motion for postponement supported by affidavit.

4. Applicability - This procedure shall apply in all quasi-judicial cases before the MARINA Central Office in Manila or its Maritime Regional Offices; applications/petitions for rate increase or adjustment; and Show Cause Orders or Cease-and Desist Orders or complaint cases. In applications for CPC/PA/SP cognizable by the Maritime Regional Offices and in all applications for CPCs/PAs/SPs involving motorbancas, publication of Notice of Hearings in newspaper of regional circulation in the specific region at least ten (10) days before the hearing is deemed sufficient compliance, instead of newspaper of national circulation.
5. Provisional Relief - Upon filing of an application, complaint or petition or at any stage thereafter, the Authority may grant in motion of the pleaders or on its own initiative, the relief prayed for, based on the pleading, together with the affidavits and supporting documents attached thereto, without prejudice to a final decision which shall be rendered after termination of the hearing to be called within thirty(30) days from submission of the case for resolution. The Authority may exempt petitions for increase of rates from this rule and adopt the procedure or policy mentioned in Memorandum Circular No.71 s. of 1992.

6. Decisions. The Authority shall render a decision, order, ruling or resolution:

a. In non-contested proceedings.

Subject to compliance with the relevant Memorandum Circulars, and when the Authority is satisfied that the pleading, together with the supporting affidavits and documents, establishes the right of the party to the relief prayed for, and there is no opposition thereto, the authority shall, within fifteen(15) days after the case has been submitted for resolution, render an order or decision thereon.

b. In contested proceedings

Subject to compliance with other relevant Memorandum Circulars, the Authority shall render a decision, ruling or resolution within thirty(30) days after the case have been submitted for decision, unless the evidence submitted is so voluminous and the issues so complicated requiring a longer period to prepare and render a decision or resolution.

c. In complaint cases

In all decisions, order, ruling or resolution, the Authority may impose such terms and conditions as it may deemed necessary in order to promote public interest, provided, that in complaint cases, and for purposes of imposing the fines, penalties and other sanctions, the Revised Schedule of Penalties and/or Administrative fines provided under Memorandum Circular No. 50, and its amendments thereto and other relevant MARINA rules and regulations shall apply. The Authority shall render a decision, ruling or resolution on the case within thirty(30) days after the case has been submitted for decision, unless the evidence submitted is so voluminous and the issues complicated requiring a longer period to prepare and render a decision or resolution.

The administrator or, in his absence, the Deputy Administrators, is delegated the Authority to sign decisions, resolutions, orders, CPC/PA/SP and matters pertaining to tankers, without prejudice to the exercise by the MARINA Board of its plenary powers to reverse or reconsider the Management's decision in question.

Subject to the limitations and conditions provided in these Rules, and except for tankers Regional Directors are hereby authorized to sign CPC decisions, Provisional Authority/ Special Permit in uncontested applications for issuance of CPC/PA/SP to operate liner or tramping vessels, Provided, that the vessels are homeported in their respective regional territorial boundaries as defined by MARINA issuance's, and operating within their region, Provided, finally that application for CPC/PA/SP covering liner or tramping vessels operating within two or more regions or inter-regionally shall be

heard only by the Regional Office where the vessel is homeported, at the exclusion of the other regions, and after hearing, the Regional Directors/OICs shall forward the records to the Central Office, including the brief minutes of the proceedings, and recommendation(s), for final resolution/decision/issuance.

Regional Directors shall have the authority to hear contested application/petition for CPC/PA/SP and matters pertaining to tankers following the summary procedure described in paragraph 3, above, provided, that after hearing, the records of the case shall be forwarded to the Central Office for Decision.

7. EXECUTION OF ORDER, RULING, DECISION OR RESOLUTION

The order, ruling, decision, or resolution of the Authority shall take effect immediately and shall become final fifteen(15) days from receipt of the copy by the party, and unless motu proprio reviewed by the MARINA Board en banc or a motion for reconsideration with this Authority or appeal to the Court is filed within fifteen(15) days from receipt of the order, ruling or decision.

Only one motion for reconsideration shall be allowed which shall be decided within fifteen (15) days from date of submission for resolution.

8. REPEALING CLAUSE

The provisions of memorandum Circular Nos. 53/53-A, and the Interim Rules of Practice and Procedure of this Authority are hereby repealed.

9. EFFECTIVITY

This Circular shall take effect fifteen(15) days after its publication once in a newspaper of general circulation in the Philippines.

BY AUTHORITY OF THE BOARD:

PHILIP S. TUAZON
Administrator

SECRETARY'S CERTIFICATE

This is to certify that the above-mentioned foregoing Memorandum Circular was submitted to, and approved for implementation by, the MARINA Board on January 14, 1993.

EMERSON M. LORENZO
Deputy Corporate Board Secretary