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STATE OF MINNESOTA  
IN SUPREME COURT  
C6-74-45550

In Re Proposed Rules Regarding  
Arbitration Under the Minnesota  
No-Fault Insurance Act.

WHEREAS, the Standing Committee on Arbitration has proposed amendments to the Rules of Procedure for No-Fault Arbitration and has submitted the proposed amendments to the Supreme Court, and

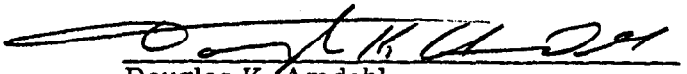
WHEREAS, advance notice was published in Finance and Commerce, Bench and Bar, and St. Paul Legal Ledger of a hearing before the court in the courtroom of the Minnesota Supreme Court on Thursday, April 10, 1986, at 9:00 a.m., for the purpose of hearing proponents or opponents of the proposed amendments, and

WHEREAS, after such hearing the court has given due consideration to such amendments and is fully advised in the premises,

NOW, THEREFORE, IT IS HEREBY ORDERED that the annexed amended Rules be, and the same hereby are, adopted, prescribed, and promulgated to be effective on July 1, 1986, for the administration of the Rules of Procedure for No-Fault Arbitration.

Dated: June 17, 1986.

BY THE COURT:

  
Douglas K. Amdahl  
Chief Justice

OFFICE OF  
APPELLATE COURTS  
FILED

JUN 17 1986

WAYNE TSCHIMPERLE  
CLERK

**RULES OF PROCEDURE FOR NO-FAULT ARBITRATION**  
As Amended July 1, 1986

**RULE 1. ADMINISTRATION**

(a) Arbitration under Minn. Stat. § 65B.525 shall be administered by a standing committee of twelve members to be appointed by the Minnesota Supreme Court. Initially, the twelve members shall be appointed for terms to commence January 1, 1975, and the supreme court shall designate three such members for a one-year term, three for a two-year term, three for a three-year term, and three for a four-year term. Thereafter, three members shall be appointed for a four-year term commencing on January 1 of each succeeding year.

(b) The day-to-day administration of arbitration under Minn. Stat. § 65B.525 shall be by the American Arbitration Association (AAA) or such other agency as shall be subsequently designated by the standing committee. The administration shall be subject to the continuing supervision of the standing committee.

**RULE 2. APPOINTMENT OF ARBITRATOR**

The standing committee shall nominate annually a panel of arbitrators, which nominees shall be subject to approval by the supreme court. The panel appointed by the supreme court shall be certified by the standing committee to the AAA.

**RULE 3. QUALIFICATIONS OF ARBITRATORS**

Every member of the panel shall be a licensed attorney at law of this state. No person shall serve as an arbitrator in any arbitration in which he or she has a financial or personal conflict of interest, whether actual or potential. Under procedures established by the standing committee and immediately following appointment to the panel, each member shall be required to disclose any circumstances likely to create a presumption or possibility of bias or conflict which may disqualify the person as a potential arbitrator. Each member shall supplement the disclosures as circumstances require. A party to an arbitration may advise the AAA of any reason why the arbitrator should withdraw or be disqualified from serving prior to exercising strikes. An objection to a potential arbitrator shall be determined initially by the AAA, subject to appeal to the standing committee. If any arbitrator should resign, be disqualified or unable to perform the duties of the office, the AAA shall appoint another arbitrator to the case.

**RULE 4. SELECTION OF ARBITRATOR**

On procedures to be adopted by the standing committee, the AAA, upon initiation of an arbitration, shall select from the panel three potential arbitrators and shall notify the insurer and the claimant of the selection. Each party may strike one of the potential arbitrators and an arbitrator shall be selected by the AAA from the remaining names of potential arbitrators. In the event of multiparty arbitration, the AAA may increase the number of potential arbitrators and divide the strikes so as to afford an equal number of strikes to each adverse interest. If the selected arbitrator is unable or unwilling to serve

for any reason, the AAA may appoint an arbitrator. Such appointment will be subject to challenge for cause only.

#### **RULE 5. OATHS**

Arbitrators, upon accepting appointment to the panel, shall take an oath or affirmation of office. The arbitrator may require witnesses to testify under oath or affirmation.

#### **RULE 6. INITIATION OF ARBITRATION**

(a) **MANDATORY ARBITRATION (for claims of \$5,000 or less).** At such time as the insurer denies a claim, the insurer shall advise the claimant of claimant's right to demand arbitration.

(b) **NONMANDATORY ARBITRATION (for claims over \$5,000).** At such time as the insurer denies a claim, the insurer shall advise the claimant whether or not it is willing to submit the claim to arbitration.

(c) **ALL CASES.** In all cases the insurer shall also advise the claimant that information on arbitration procedures may be obtained from the AAA, giving the AAA's current address. On request, the AAA will provide a claimant with a petition form for initiating arbitration together with a copy of these rules. Arbitration is commenced by the filing of the signed, executed form, together with the required filing fee, with the AAA.

(d) **DENIAL OF CLAIM.** If an insurer fails to respond in writing within 30 days after a claim is duly presented to the insurer, the claim shall be deemed denied for the purpose of activating these rules.

#### **RULE 7. JURISDICTION IN MANDATORY CASES**

By statute, mandatory arbitration applies to all claims in the amount of \$5,000 or less.

(a) In cases where the amount of the claim continues to accrue after the petition is filed, the arbitrator shall have jurisdiction to determine all amounts claimed up to \$5,000, including amounts which have accrued from the time of filing the petition. If the aggregate amounts claimed do not exceed the jurisdictional limit, the arbitrator shall determine all claims existing between the parties on the day of the hearing, including amounts accruing since the filing of the petition, unless the arbitrator for good cause decides otherwise.

(b) If the claim has accrued to more than \$5,000 by the time of the arbitration hearing, the arbitrator shall notify the parties and request a stipulation that he or she be empowered to hear and decide the full claim. If the parties do not so stipulate, the arbitrator will then hear and decide the claim as of the date the petition was filed or such other date as the parties may agree. The prior determination of an arbitrator of a claim

of \$5,000 or less shall not bar the parties from seeking later arbitration of additional claims arising after the period of time covered by the prior arbitration award.

#### **RULE 8. FILING FEE**

The filing fee to be paid shall be as follows: By the claimant - \$50; by the insurer - \$150.

#### **RULE 9. NOTICE**

Upon the filing of the petition form by either party, the AAA shall send a copy of the petition to the other party together with a request for payment of the filing fee.

#### **RULE 10. CONCILIATION AND PREHEARING PROCEDURES.**

Through prehearing conference or other joint communication to the parties, the arbitrator may conciliate the claim, and is encouraged to do so. The arbitrator shall encourage the parties to narrow the issues so far as possible in an effort to shorten the hearing. At least ten days before the hearing, the arbitrator shall ask the parties to stipulate to facts not in dispute, and may ask each party to furnish the other parties with copies of each document or exhibit which that party intends to offer in evidence.

#### **RULE 11. COMMUNICATION WITH ARBITRATOR**

All communication, oral or written, from a party to the arbitrator, must be through the AAA for transmittal to the arbitrator. In any and all cases, oral communication with the arbitrator must be done jointly and with the knowledge of the opposing party.

#### **RULE 12. TIME AND PLACE OF ARBITRATION**

(a) If conciliation is not successful, an informal arbitration hearing will be held in the arbitrator's office or some other appropriate place in the general locale of the claimant's residence, or other place agreed upon by the parties. The arbitrator shall fix the time and place for the hearing. At least 14 days prior to the hearing, the AAA shall mail notice thereof to each party or to a party's designated representative. Notice of hearing may be waived by any party. When an arbitration hearing has been scheduled for a day certain, the courts of the state shall recognize the date as the equivalent of a day certain court trial date in the scheduling of their calendars.

(b) A party requesting postponement shall make his request to the arbitrator, through the AAA, who shall rule on all such requests.

(c) A postponement fee of \$100 shall be charged against the party causing the postponement.

### **RULE 13. WITNESSES, SUBPOENAS, DEPOSITIONS**

(a) The arbitrator may, on his or her own initiative or at the request of any party, issue subpoenas for the attendance of witnesses and the production of books, records, documents, and other evidence. The subpoenas so issued shall be served, and upon application to the district court by either party or the arbitrator, enforced, in the manner provided by law for the service and enforcement of subpoenas for a civil action.

(b) All provisions of law compelling a person under subpoena to testify are applicable.

(c) Fees for attendance as a witness shall be the same as for a witness in the district courts.

### **RULE 14. DISCOVERY**

The voluntary exchange of information is encouraged. Formal discovery of any kind beyond exchange of medical reports and other exhibits to be offered at the hearing is discouraged. However, upon application and good cause shown by any party, the arbitrator may permit any discovery allowable under the Minnesota Rules of Civil Procedure for the District Courts. Any medical examination deemed necessary by the respondent shall be completed within 90 days following commencement of the case unless extended by the arbitrator for good cause.

### **RULE 15. EVIDENCE**

The parties may offer such evidence as they desire and shall produce such additional evidence as the arbitrator may deem necessary to an understanding and determination of the issues. The arbitrator shall be the judge of the relevancy and materiality of any evidence offered, and conformity to legal rules of evidence shall not be necessary. The parties shall be encouraged to offer, and the arbitrator shall be encouraged to receive and consider, evidence by affidavit or other document, including medical reports, statements of witnesses, officers, accident reports, medical texts, and other similar written documents which would not ordinarily be admissible as evidence in the courts of this state. In receiving this evidence, the arbitrator shall consider any objections to its admission in determining the weight to which he or she deems it is entitled.

### **RULE 16. ARBITRATOR'S FEES**

An arbitrator shall be compensated for services and for any use of office facilities in the amount of \$150 for each one-half day or part thereof spent in hearing. If a claim is settled prior to the commencement of the hearing, the arbitrator's fees shall not exceed the sum of \$50. These fees shall be paid by the insurer but may be taxed as a cost and disbursement as set out hereinafter.

#### **RULE 17. COSTS**

In addition to the award, there may be taxed, at the discretion of the arbitrator, the actual costs and disbursements incurred, or any part thereof.

#### **RULE 18. CLOSE OF HEARING**

The arbitrator shall specifically inquire of all parties as to whether they have any further evidence. If they do not, the arbitrator shall declare the hearing closed. If briefs or documents are to be filed, the hearing shall be declared closed as of the final date set by the arbitrator for the receipt of said briefs or documents. The time limit within which the arbitrator is required to make his award shall commence to run upon the close of the hearing.

#### **RULE 19. REOPENING OF HEARINGS**

At any time before the award is made, a hearing may be reopened by the arbitrator on his own motion, upon application of a party for good cause shown.

#### **RULE 20. TIME OF AWARD**

The arbitrator shall render his or her award promptly and, unless otherwise agreed to by the parties, not later than 30 days from the close of the hearing or the reopened hearings.

#### **RULE 21. DELIVERY OF AWARD TO PARTIES**

The placement of an award or a true copy thereof in the mail, addressed to the parties or their attorneys for delivery at their last known address, or personal service of an award upon a party or in any other manner which may be prescribed by law shall constitute legal delivery thereof.

#### **RULE 22. CONFIRMATION, VACATION, MODIFICATION OR CORRECTION OF AWARD**

The provisions of Minn. Stat. §§ 572.10 through 572.26 shall apply to the confirmation, vacation, modification or correction of award issued hereunder.

#### **RULE 23. AMENDMENT OR MODIFICATION**

The standing committee may propose amendments to these rules as circumstances may require. All changes in these rules, and all other determinations of the standing committee, shall be subject to review and approval by the Minnesota Supreme Court.

TO BE PRINTED ON BACK OF OATH OF ARBITRATOR FORM:

ARBITRATOR'S CONTINUING REPRESENTATION

THE ARBITRATOR ON OATH CERTIFIES THAT:

1. I will act in good faith and with integrity and fairness.
2. I have disclosed to the parties (and co-arbitrators) prior to this hearing any interest or relationship likely to affect impartiality or which might create an appearance of partiality or bias. (Canon II, Code of Ethics for Arbitrators in Commercial Disputes).

CANON II.

An Arbitrator should disclose any interests or relationship likely to affect impartiality or which might create an appearance of partiality or bias.

Safeco Insurance Co. v. Stariha, 346 N.W.2d 663 (Minn. Ct. App. 1984).

3. I have had no ex parte contacts with regard to this arbitration proceeding, either orally or in writing, with any of the parties to this arbitration or their counsel except:
  - a. Communications concerning scheduling and anticipated duration of arbitration hearing. (Rule 11).
  - b. Pre-arbitration proceedings as described in Rule 10 of Minnesota No-Fault Automobile Insurance Arbitration Rules.

Crosby-Ironton Federation of Teachers v. Independent School District No. 182, 285 N.W.2d 667 (Minn. 1979).

Beebout v. St. Paul Fire & Marine Ins. Co., 365 N.W.2d 271 (Minn. Ct. App. 1985).