

STATE OF MINNESOTA  
IN SUPREME COURT

OFFICE OF  
APPELLATE COURTS

SEP 25 1990

**FILED**

---

In re Proposed Rule Changes for  
No-Fault Arbitration

---

PETITION OF THE STANDING  
COMMITTEE FOR ADMINISTRATION  
OF ARBITRATION UNDER  
MINNESOTA NO-FAULT ACT  
Court File No: C6-74-45550

TO: The Minnesota Supreme Court:

WHEREAS, Minnesota Statutes Section 65B.525 authorizes the Supreme Court to promulgate rules of court providing for the submission to arbitration of certain cases arising under the provisions of the Minnesota No-Fault Insurance Act, and

WHEREAS, the Supreme Court in 1974 appointed an advisory committee to formulate proposed rules of procedure for arbitration of these cases, and

WHEREAS, the Standing Committee on Arbitration has formulated such rules which, by Supreme Court order, have previously been promulgated and are presently in effect, and

WHEREAS, the rules as promulgated and presently in effect authorize the Standing Committee on Arbitration to propose to this Court amendments to these rules as circumstances may require and,

WHEREAS, to accommodate legislative amendments to the No-Fault Arbitration Law, the Standing Committee petitioned this Court in 1986 and again in 1987 to amend certain of the existing

rules, which respective proposals were approved by the Supreme Court on June 17, 1986 and on March 24, 1988 and,

**WHEREAS**, at a meeting of the Standing Committee on Arbitration held on April 5, 1989 certain members of the staff of the American Arbitration Association, (the agency designated by the Standing Committee to oversee the day-to-day administration of arbitration under the No-Fault Insurance Act); contending parties to the arbitration process, as well as certain members of the Standing Committee considered recurrent problems occurring in the hearing of no-fault arbitrations and after much discussion resolved that a subcommittee be appointed to propose rule changes for the accommodation of developments in the law, practices and teachings gained over years of administering the arbitration provisions of the No-Fault Automobile Insurance Act.

**WHEREAS**, the subcommittee so appointed after hearing requests for change from various sources including representatives of claimants and respondents, as well as the administrative staff of American Arbitration Association, submitted draft proposals for rule changes to members of the Standing Committee and following many laborious sessions seeking a resolution of differences relating to proposed rule changes, a consensus was reached for submission of proposed amendments to these rules hereto attached for review and approval by this Court, and,

**WHEREAS**, members of the Standing Committee in the past have been invited to make oral presentations relating to the

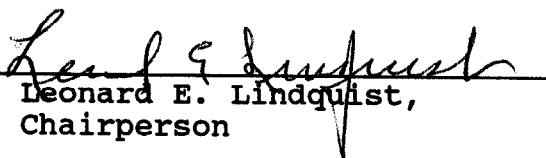
proposed amendments to the No-Fault Rules and the rationale therefor at public hearings held before this Court;

NOW THEREFORE, the Standing Committee on arbitration respectfully petitions the Minnesota Supreme Court to review and approve the proposed rule changes for no-fault arbitration.

Dated: September 24, 1990.

Respectfully submitted,

STANDING COMMITTEE FOR  
ADMINISTRATION OF ARBITRATION  
UNDER THE MINNESOTA NO-FAULT  
INSURANCE ACT

By:   
Leonard E. Lindquist,  
Chairperson

PROPOSED RULE CHANGES FOR NO-FAULT ARBITRATION

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 commencing on January 1 of each succeeding year. After July 1, 1988, no member shall serve more than two full terms and any partial term.

(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.

2. **Appointment Of Arbitrator.** The standing committee may conditionally approve and submit to the AAA new nominees to the panel of arbitrators quarterly in March, June, September, and December of each year, commencing March, 1988. These new nominees then may be included in the panel of arbitrators which the standing committee shall nominate annually for approval by the Supreme Court. The panel appointed by the Supreme Court shall be certified by the standing committee to the AAA.

3. **Name of Tribunal.** Any tribunal constituted by the parties for the settlement of their dispute under these rules shall be called the Minnesota No-Fault Arbitration Tribunal.

4. **Administrator.** When parties agree to arbitrate under these rules, or when they provide for arbitration by the American Arbitration Association and an arbitration is initiated thereunder, they thereby constitute the AAA the administrator of the arbitration.

~~6~~ 5. **Initiation of Arbitration.**

(a) **Mandatory Arbitration (for claims of \$5,000 or less at the commencement of arbitration).** At such time as the respondent denies a claim, the respondent shall advise the claimant of claimant's right to demand arbitration.

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

(c) **All Cases.** In all cases the respondent 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 respondent fails to respond in writing within 30 days after a claim reasonable proof of the fact and the amount of loss is duly presented to the respondent, the claim shall be deemed denied for the purpose of activating these rules.

(e) At the time of filing the arbitration form, or within 30 days after, the claimant shall file an itemization of benefits claimed and supporting documentation.

(f) Within 30 days after receipt of the itemization of benefits claimed and supporting documentation from claimant, respondent shall serve a response to the petition setting forth all grounds upon which the claim is denied and accompanied by all documents supporting denial of the benefits claimed.

**7-6. Jurisdiction in Mandatory Cases.** By statute, mandatory arbitration applies to all claims for no-fault benefits or comprehensive or collision damage coverage where the total amount of the claim, at the commencement of arbitration, is in an amount of \$5,000 or less. 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 including those in excess of \$5,000.

**9-7. 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. The responding party will then have 20 days to notify the AAA of the name of counsel, if any.

**4-8. Selection of Arbitrator and Challenge Procedure.** ~~On the 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. The AAA shall send simultaneously to each party to the dispute an identical list of four names of persons chosen from the panel. Each party to the dispute shall have 7 business days from the mailing date in which to cross out a maximum of one name objected to, number the remaining names in order of preference, and to return the list to the AAA. 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. A party to an arbitration may advise the AAA of any reason why an 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 a party does not return the list within the time specified, all persons named therein shall be deemed acceptable. One of the persons who have been approved on both lists shall be invited by the AAA to serve in accordance with the designated order of the mutual preference. If an acceptable arbitrator is unable to act, or for any other reason the appointment cannot be made from the submitted list, the AAA shall have the power to make the appointment from among other members of the panel without the submission of additional lists. If any arbitrator should resign, be disqualified or unable to perform the duties of the office, the AAA shall appoint another arbitrator from the no-fault panel to the case.

9. Notice to Arbitrator of Appointment. Notice of the appointment of the neutral arbitrator, whether appointed mutually by the parties or by the AAA, shall be mailed to the arbitrator by the AAA, together with a copy of these rules, and the signed acceptance of the arbitrator shall be filed with the AAA prior to the opening of the first hearing.

9-10. Qualification of Arbitrator and Disclosure Procedure. 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.~~

11. Vacancies. If for any reason an arbitrator should be unable to perform the duties of the office, the AAA may, on proof satisfactory to it, declare the office vacant. Vacancies shall be filed in accordance with the applicable provisions of these rules.

14-12. Discovery. The voluntary exchange of information is encouraged. Formal discovery is discouraged except that a party is entitled to :

- 1) exchange of medical reports;
- 2) medical authorizations directed to all medical providers consulted by the claimant in the 7 years prior to the accident;
- 3) employment records and authorizations for 2 years prior to the accident, when wage loss is in dispute;
- 4) supporting documentation required under No-Fault Arbitration Rule 5; and
- 5) other exhibits to be offered at the hearing.

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 for which the respondent can establish good cause shall be completed within 90 days following the commencement of the case unless extended by the arbitrator for good cause.

~~10-~~13. Conciliation and Prehearing Procedures. Within 30 days after service of the response provided in Rule 12 above, the parties shall confer by telephone or otherwise to discuss the following:

- a. Settlement of the case.
- b. Stipulation of issues.
- c. Stipulation of facts and/or evidence.

A copy of any settlement agreement or stipulation shall be forwarded to the AAA at least ten (10) days prior to the date of the hearing.

~~12-(a)~~14. Time and Place of Arbitration. 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 within a 50 mile radius 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.

~~12-(b)~~15. Postponements. The arbitrator for good cause shown may postpone any hearing upon the request of a party or upon the arbitrator's own initiative, and shall also grant such postponement when all of the parties agree thereto.

16. Representation. Any party may be represented by counsel or other representative named by that party. A party intending to be so represented shall notify the other party and the AAA of the name and address of the representative at least three days prior to the date set for the hearing at which that person is first to appear. When such a representative initiates an arbitration or responds for a party, notice is deemed to have been given.

17. Stenographic Record. Any party desiring a stenographic record shall make arrangements directly with a stenographer and shall notify the other party of these arrangements in advance of the hearing. The requesting party or parties shall pay the cost of the record. If the transcript is agreed by the parties to be, or determined by the arbitrator to be, the official record of the proceeding, it must be made available to the arbitrator and to the other parties for inspection, at a date, time and place determined by the arbitrator.

18. Interpreters. Any party desiring an interpreter shall make all arrangements directly with the interpreter and shall assume the costs of the service. The arbitrator may assess the cost of an interpreter pursuant to Rule 42.

19. Attendance at Hearings. The arbitrator shall maintain the privacy of the hearings. Any person having a direct interest in the arbitration is entitled to attend hearings. The arbitrator shall otherwise have the power to require the exclusion of any witness, other than a party or other essential person, during the testimony of any other witness.

5-20. 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.

~~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.

21. Order of Proceedings and Communication with Arbitrator. The hearing shall be opened by the recording of the date, time, and place of the hearing, and presence of the arbitrator, the parties, and their representatives, if any. Either party may make an opening statement regarding the claim. The claimant shall then present evidence to support the claim. The respondent shall then present evidence supporting the defense. Witnesses for each party shall submit to questions or other examination. The arbitrator has the discretion to vary this procedure, but shall afford a full and equal opportunity to all parties for the presentation of any material and relevant evidence.

Exhibits, when offered by either party, may be received in evidence by the arbitrator.

The names and addresses of all witnesses and description of the exhibits in the order received shall be made part of the record.

There shall be no direct communication between the arbitrator and the parties other than at the hearing, unless the parties and the arbitrator agree otherwise. Any other oral or written communication from the parties to the arbitrator shall be directed to the AAA for transmittal to the arbitrator.

22. Arbitration in the Absence of a Party or Representative. Unless the law provides to the contrary, the arbitration may proceed in the absence of any party or representative who, after due notice, fails to be present or fails to obtain a postponement. An award shall not be made solely on the default of a party. The arbitrator shall require the party who is present to submit such evidence as the arbitrator may require for the making of an award.

13-23. Witnesses, Subpoenas and Depositions.



(a) Through the AAA, the arbitrator may, on his-or-her own the arbitrator's initiative or at the request of any party, issue subpoenas for the attendance of witnesses at the arbitration hearing or at such deposition as ordered under Rule 12 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.

**15-24. 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.

**18-25. 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.

**19-26. Reopening the Hearing.** At any time before the award is made, a hearing may be reopened by the arbitrator on the arbitrator's own motion, or upon application of a party for good cause shown.

**27. Waiver of Oral Hearing.** The parties may provide, by written agreement, for the waiver of oral hearings in any case. If the parties are unable to agree as to the procedure, the AAA shall specify a fair and equitable procedure.

**28. Extensions of Time.** The parties may modify any period of time by mutual agreement. The AAA or the arbitrator may for good cause extend any period of time established by these rules, except the time for making the award. The AAA shall notify the parties of any extension.

29. Serving of Notice. Each party shall be deemed to have consented that any papers, notices, or process necessary or proper for the initiation or continuation of an arbitration under these rules; for any court action in connection herewith; or for the entry of judgment on any award made under these rules may be served on a party by mail addressed to the party or its representative at the last known address or by personal service, in or outside the state where the arbitration is to be held, provided that reasonable opportunity to be heard with regard thereto has been granted to the party.

The AAA and the parties may also use facsimile transmission, telex, telegram, or other written forms of electronic communication to give the notices required by these rules.

30. Time of Award. The award shall be made promptly by the arbitrator and, unless otherwise agreed by the parties or specified by law, no later than thirty days from the date of closing the hearing, or, if oral hearings have been waived, from the date of the AAA's transmittal of the final statements and proofs to the arbitrator.

31. Form of Award. The award shall be in writing and shall be signed by the arbitrator. It shall be executed in the manner required by law.

32. Scope of Award. The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable consistent with the Minnesota No-Fault Act. The arbitrator may, in the award, include arbitration fees, expenses, rescheduling fees and compensation as provided in sections 39, 40, 41, and 42 in favor of any party and, in the event that any administrative fees or expenses are due the AAA, in favor of the AAA, except that the arbitrator must award interest when required by M.S.A. 65B.54.

~~21-33. 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.~~ Parties shall accept as legal delivery of the award the placing of the award or a true copy thereof in the mail addressed to a party or its representative at the last known address, personal service of the award, or the filing of the award in any other manner that is permitted by law.

34. Waiver of Rules. Any party who proceeds with the arbitration after knowledge that any provision or requirement of these rules has not been complied with and who fails to state an objection thereto in writing shall be deemed to have waived the right to object.

35. Interpretation and Application of Rules. The Arbitrator shall interpret and apply these rules insofar as they relate to the arbitrator's powers and duties. All other rules shall be interpreted by the AAA.

36. Release of Documents for Judicial Proceedings. The AAA shall, upon the written request of a party, furnish to the party, at its expense, certified copies of any papers in the AAA's possession that may be required in judicial proceedings relating to the arbitration.

37. Applications to Court and Exclusion of Liability.

(a) No judicial proceedings by a party relating to the subject matter of the arbitration shall be deemed a waiver of the party's right to arbitrate.

(b) Neither the AAA nor any arbitrator in a proceeding under these rules is a necessary party in judicial proceedings relating to the arbitration.

(c) Parties to these rules shall be deemed to have consented that judgment upon the arbitration award may be entered in any federal or state court having jurisdiction thereof.

(d) Neither the AAA nor any arbitrator shall be liable to any party for any act or omission in connection with any arbitration conducted under these rules.

22-38. 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.

**ADMINISTRATIVE FEES**

8-39. Administrative fees. The initial fee is due and payable at the time of filing and shall be paid as follows: By the CLAIMANT - \$60.00, by the RESPONDENT - \$180.00.

The AAA may, in the event of extreme hardship on the part of any party, defer or reduce the administrative fee.

16-40. Arbitrator's fees.

(a) An arbitrator shall be compensated for services and for any use of office facilities in the amount of \$300.00 per case.

(b) If a claim is settled prior to the day of the hearing, but after the appointment of the arbitrator, the arbitrator's fee shall not exceed the sum of \$50.00. If a claim is settled on the day of the hearing, the arbitrator's fee shall be \$150.00.

These fees shall be paid as directed by the arbitrator.

~~12-~~(c)41. Rescheduling fees. A rescheduling fee of \$100.00 shall be charged against the party requesting a postponement.

42. Expenses. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All expenses of the arbitration, including required travel and other expenses of the arbitrator, AAA representatives, and any witness and the cost of any

proof produced at the direct request of the arbitrator, shall be borne equally by the parties, unless they agree otherwise or unless the arbitrator in the award assesses such expenses or any part thereof against any specified party or parties.