

STATE OF MINNESOTA

IN SUPREME COURT

C6-74-45550

**ORDER ESTABLISHING DEADLINE FOR SUBMITTING COMMENTS ON
THE PROPOSED AMENDMENT TO THE RULES OF PROCEDURE FOR NO-
FAULT ARBITRATION**

The National Arbitration Forum has filed a petition requesting the Court to amend the Rules of Procedure for No-Fault Arbitration. The petitioner requests that it be named an approved administrator for arbitrations or, in the alternative, that it be allowed to bid to be exclusive provider for a term deemed appropriate by the Court. The American Arbitration Association currently serves as the exclusive provider for no-fault arbitrations. This court will consider the proposed amendment without a hearing after soliciting and reviewing comments on the petition. A copy of the petition is annexed to this order.

IT IS HEREBY ORDERED that any individual wishing to provide statements in support or opposition to the proposed amendment shall submit fourteen copies in writing addressed to Frederick K. Grittner, Clerk of the Appellate Courts, 25 Rev. Dr. Martin Luther King, Jr. Boulevard, St. Paul, Minnesota 55155, no later than January 10, 2003.

Dated: November 20, 2002

BY THE COURT:

OFFICE OF
APPELLATE COURTS

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FILED



Kathleen A. Blatz
Chief Justice

**No. C6-74-45550
STATE OF MINNESOTA
IN SUPREME COURT**

In re:

Amendment to Rules of Procedure
for No-Fault Arbitration

PETITION OF NATIONAL ARBITRATION FORUM

TO THE HONORABLE JUSTICES OF THE MINNESOTA SUPREME COURT:

Petitioner National Arbitration Forum (the "Forum") respectfully petitions this Honorable Court to amend the Minnesota No-Fault Comprehensive or Collision Damage Automobile Insurance Arbitration Rules for the reasons set forth below.

1. The Forum is a leading provider of alternative dispute resolution ("ADR") services and is one of the leading providers of all ADR services throughout the United States. The Forum's world headquarters are in Roseville, Minnesota. The Forum has substantial experience in ADR in Minnesota. Principals of the Forum are Edward Anderson and Roger Haydock, both experienced Minnesota lawyers.
2. By statute, this Court has exclusive authority over the administration of arbitration proceedings required or established under the Minnesota No-Fault Act, MINN. STAT. §§ 65B.525 (2000).
3. This Court has established Minnesota No-Fault Comprehensive or Collision Damage Automobile Insurance Arbitration Rules, most recently amended by Order dated and effective September 7, 1999.

4. Under the existing rules, the American Arbitration Association ("AAA") is made the exclusive statewide administrator of no-fault arbitration. The AAA has had an exclusive monopoly on providing ADR administrative services under the No-Fault Act since the formation of the system in 1975.

5. The Forum has requested that it be allowed to compete to serve as administrator of no-fault arbitration under the rules. *See* Petition to Amend Rules of Procedure for No-Fault Arbitration transmitted to this Court's Standing Committee on July 16, 1997. True and correct copies of this petition and transmittal letter are attached as Exhibit A to this Petition. This petition was denied by the advisory committee, and the Forum has not had an opportunity to compete to provide no-fault ADR administrative services in Minnesota.

6. The Forum is uniquely qualified to provide outstanding ADR administrative services. Among its other qualifications are the following:

a) The Forum has been an approved ADR organization under Minnesota Supreme Court Rule 114 since 1994; the Forum has been selected by hundreds of judges and attorneys to administer ADR proceedings under Rule 114.

b) The Forum was selected by the Minnesota Department of Labor and Industry to be the administrator of Workers Compensation arbitration under MINN. STAT.

§ 176.191.

c) The Forum has been selected by the Office of the Minnesota Attorney General to administer arbitration of settlement issues in litigated cases.

d) The Forum has been selected by the Internet Corporation for Assigned Names and Numbers ("ICANN") to administer international arbitration of Internet domain name disputes, including those in Minnesota.

e) Forum neutrals have been appointed as Special Masters in federal court cases in the District of Minnesota.

f) The Forum has administered thousands of arbitrations and mediation proceedings in Minnesota under these programs and the contracts of the parties.

g) Nationally, the Forum has been selected to be the neutral administrator of arbitration services in over half a billion contracts, with arbitrations provided by a national panel of experienced lawyers and former judges, including former state supreme court, intermediate appellate court, and trial court judges.

h) Nationally, the Forum provides mediation services to parties by a national panel of experienced lawyers and former judges, including former federal circuit and district court judges who are members of FedNet.

6. The Forum continues to believe it can provide higher quality administrative services to the no-fault program, at a lower cost to the participants, than the current administrator. The Forum requests that it be allowed to be an alternative provider of services or, if the Court determines that an exclusive provider should be named, that the Forum be allowed to compete to be the exclusive provider on terms that will benefit the parties to no-fault arbitrations.

7. The Forum is in fact capable of administering arbitration under the Minnesota No-Fault Act in a modern, fair, and efficient manner. Its procedures have been recognized by many courts as models of fairness. For example, in *Green Tree Financial Corp. v. Randolph*, 531 U.S. 79 (2000), the Court cited the Forum arbitration code and stated: “[O]ther national arbitration organizations (Example: The National Arbitration Forum) have developed similar models for fair cost and fee allocation.” 531 U.S. at 95 (Ginsburg, J., concurring in part and dissenting in part). Similarly, the Third Circuit observed the NAF Code provides for “the full range of remedies available under” controlling law, *Johnson v. West Suburban Bank*, 225 F.3d 366, 375 n.2 (3d Cir. 2000), and that “the [NAF] clause did not create an arbitration procedure that favors one party over another.” *Id.* at 378 n.5.

8. The ability of the Forum to deliver ADR services efficiently (and at a cost lower than the AAA) has also been recognized by the courts. In a recent decision, the Eleventh Circuit stated: “Under the National Arbitration Forum *Code of Procedure*, “statutory remedies are not proscribed and there is no evidence that the fees and costs of the NAF will approach those of the American Arbitration Association in *Paladino*,” where the Eleventh Circuit had found the AAA’s fees excessive. *Baron v. Best Buy*, 260 F.3d 625 (11th Cir. 2001) (unpublished table decision) (citing *Paladino v. Avnet Computer Techs., Inc.*, 134 F.3d 1054, 1062 (11th Cir. 1998)). See also *Marsh v. First USA Bank*, 103 F. Supp. 2d 909, 925 (N.D. Tex. 2000) (“NAF boasts an impressive assembly of qualified arbitrators.”); *Vera v. First USA Bank*, No. Civ. A. 00-89-GMS, 2001 WL 640979, at *1 (D. Del. Apr. 19, 2001) (“[T]he NAF is a model for fair cost and fee allocation.”).

9. The Forum submits that it is not in the public interest to allow a single entity to maintain a virtual monopoly over administration of the no-fault arbitration process mandated by the Minnesota No-Fault Act. The Forum requests that the rules be amended to allow litigants a choice among approved administrators. This process would encourage competition and allow no-fault litigants a choice of providers. In the alternative, and only if the Court determines that the use of a single provider is necessary or desirable, then the Forum requests that it be allowed to bid to be the exclusive provider for a term deemed appropriate by the Court. Although not binding on this Court or in this situation, the Legislature has in many contexts required either competitive bidding or periodic review and reassignment of contracts to provide services under government auspices. For example, MINN. STAT. § 16C.03 requires the executive to use competitive bidding, unless there is a determination that an alternative method would determine "best value." Similarly, MINN. STAT. § 16C.09 limits service contracts to two years, with extensions up to a total of five years. These expressions of public policy should also guide the administration of the No-Fault arbitration system.

Based upon the foregoing, Petitioner National Arbitration Forum respectfully requests this Court to amend the Minnesota No-Fault Comprehensive or Collision Damage Automobile Insurance Arbitration Rules to allow The National Arbitration Forum, based in Roseville, Minnesota, to be an approved administrator for arbitrations under the Minnesota Arbitration. In the alternative, and only if the Court determines that the use of a single provider is necessary or desirable, then the Forum requests that it be allowed to bid to be exclusive provider for a term deemed appropriate by the Court.

Dated: September 20, 2002.

Respectfully submitted,

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