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June 11, 2007

OFFICE OF  
APPELLATE COURTS

JUN 22 2007

FILED

Ms. Kate Stifter  
American Arbitration Association  
Minnesota Insurance Center  
200 S. Sixth Street, Suite 700  
Minneapolis, MN 55402

Re: *In the Matter of the Proposed Amendments to the Minnesota No-Fault  
Arbitration Rules*

Dear Ms. Stifter:

Enclosed herewith please find the original Petition, executed by Mr. Gilbert, with regard to the above-referenced matter.

Sincerely,

JAMES H. GILBERT LAW GROUP P.L.L.C.

*Nancy M. Vold*

Nancy M. Vold  
Legal Assistant

Enclosure

RECEIVED

JUN 12 2007

AMERICAN ARBITRATION

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**In the Matter of the Proposed Amendments to the  
Minnesota No-fault Arbitration Rules**

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**PETITION**

TO: THE SUPREME COURT OF THE STATE OF MINNESOTA

The Standing Committee on No-Fault Arbitration does hereby Petition the Court to amend the No-Fault Rules as follows:

**Rule 10. Qualification of Arbitrator and Disclosure Procedure**

- (a) Every member of the panel shall be a licensed attorney at law of this state or a retired attorney or judge in good standing. Effective January 1, 2004, requirements for qualification as an arbitrator shall be: (1) at least 5 years in practice in this state; (2) at least one-third of the attorney's practice is with auto insurance claims or, for an attorney not actively representing clients, at least one-third of an ADR practice is with motor vehicle claims or not-fault matters; (3) completion of an arbitrator training program approved by the No-fault Standing Committee prior to appointment to the panel; (4) at least three CLE hours on no-fault issues within their reporting period; and (5) arbitrators will be required to re-certify each year, confirming at the time of recertification that they continue to meet the above requirements. 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 that may disqualify the person as a potential arbitrator. Each member shall supplement the disclosures as circumstances require. The following facts, in and of themselves, do not create a presumption of bias or conflict of interest: That an attorney or the attorney's firm represents auto accident claimants against insurance companies, including the insurance company which is the respondent in the pending matter. That an attorney or an attorney's firm represents or has represented insurance companies.
- (b) If a panel arbitrator has been certified and met the requirements of subdivision (a) for the past five years but they become ineligible for certification under Rule 10(a) because they have retired or there has been a change in their practice, they may continue to seek annual certification for up to five years from the date of retirement or practice change if they satisfy the following requirements:
1. The arbitrator completes and files an annual No-Fault Arbitrator Recertification form; and
  2. In that form, the arbitrator certifies that he/she is an attorney licensed to practice law in Minnesota and is in good standing; and
  3. The arbitrator certifies that he/she has retained current knowledge of the Minnesota No-Fault Act (Minn. Stat. §§ 65B.41-65B.71), Minnesota appellate court decisions interpreting the Act, the Minnesota No-Fault Arbitration Rules and the Arbitrators' Standards of Conduct; and
  4. The arbitrator certifies that he/she has attended CLE course(s) in the last year containing at least three credits relating to no-fault matters.
- (c) The rules regarding bias and conflict of interest as set forth in subdivision (a) remain applicable to arbitrators who are recertified under subdivision (b).

**Rule 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 the 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. However, pre-hearing exhibits can be sent directly to the arbitrator, delivered in the same manner and at the same time to the opposing party. Parties are encouraged to submit any pre-hearing exhibits at least 24 hours in advance of the scheduled hearing. If the exhibits are not provided to opposing counsel and the arbitrator at least 24 hours before the hearing or, if the exhibits contain new information and opposing counsel has not had a reasonable amount of time to review and respond to the information, the arbitrator may hold the record open until the parties have had time to review and respond to the material or reconvene the arbitration at a later date. Any other oral or written communication from the parties to the arbitrator shall be directed to the arbitration organization for transmittal to the arbitrator.

**Rule 40. Arbitrator's Fees**

(a) An arbitrator shall be compensated for services and for any use of office facilities in the amount of \$300 per case.

(b) If the arbitration organization is notified of a settlement or a withdrawal of a claim at any time up to 24 hours prior to the scheduled hearing, but after the appointment of the arbitrator, the arbitrator's fee shall be \$50. If the arbitration organization is notified of a postponement, settlement or a withdrawal of a claim 24 hours or less prior to the scheduled hearing, the arbitrator's fee shall be \$300. Unless the parties agree otherwise, the fee in a settlement shall be assessed equally to the parties, the fee in a withdrawal shall be borne by claimant, and the fee in a postponement shall be borne by the requesting party. Regardless of the resolution of the case, the arbitrator's fee shall not exceed \$300 and is subject to the provisions of Rule 15.

(c) Once a hearing is commenced, the arbitrator shall direct assessment of the fee.

WHEREFORE, Petitioner respectfully requests that the Court grant the relief requested. Attached hereto is Appendix A, a commentary on the proposed amendments.

The Standing Committee on No-Fault Arbitration

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
Committee Chair

### **Comment to Rule 10 Amendment**

In order to maintain a well-qualified and expert panel of arbitrators, as well as keep a sufficient number of arbitrators from outside the Twin Cities metropolitan area, the Committee finds it necessary to allow for a second basis upon which to qualify as a No-Fault Arbitrator. These secondary qualifications allow seasoned arbitrators to remain on the panel while not penalizing those who choose to slow down their practice. It also allows arbitrators in smaller communities to meet the level of expertise we require who, because of the nature of their practice, may not meet the percentage requirement of Section (a).

### **Comment to Rule 21 Amendment**

The change in Rule 21 merely formalizes a practice common to the No-Fault arena. More often parties are delaying the submission of their pre-hearing exhibits until the day of the hearing, which does not allow the arbitrator ample time to prepare before the hearing. This rule not only discourages that practice, it allows time for the other party to refute new claims presented by opposing counsel.

### **Comment to Rule 40 Amendment**

It is becoming increasingly common for parties to request a last-minute postponement of a hearing, sometimes on multiple occasions. This change encourages the parties to consider the time the arbitrator has set aside to hear the matter and places postponed hearings more in line with the fee structure for settled cases. This rule also formalizes the practice of assessing the postponement fee to the requesting party. Finally, this rule specifies that the arbitrator's fee shall not exceed \$300. This has become necessary as an increasing number of arbitrators have requested a larger fee because of time devoted to a particular case.