STATE OF MINNESOTA

IN SUPREME COURT

C6-74-45550

ORDER PROMULGATING AMENDMENTS TO THE RULES OF PROCEDURE FOR NO-FAULT ARBITRATION

The Standing Committee for Administration of No-Fault Arbitration has recommended certain amendments to the Rules of Procedure for No-Fault Arbitration.

The court has reviewed the proposals and is advised in the premises.

IT IS HEREBY ORDERED that:

1. The attached amendments to the Rules of Procedure for No-Fault Arbitration be, and the same are, prescribed and promulgated to be effective on January 1, 2008.

2. These amendments shall apply to all actions or proceedings pending on or commenced on or after the effective date.

3. The inclusion of Advisory Committee comments is made for convenience and does not reflect court approval of the comments.

Dated: November 19th, 2007.

BY THE COURT:

Russell A. Anderson
Chief Justice

AMENDMENTS TO THE MINNESOTA RULES
OF PROCEDURE FOR NO-FAULT ARBITRATION
EFFECTIVE JANUARY 1, 2008

Note to publishers: Deletions are indicated by a line drawn through the words; additions are underlined.

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 he or she becomes ineligible for certification under Rule 10(a) because he or she has retired or there has been a change in his or her practice, the arbitrator may continue to seek annual certification for up to five years from the date of retirement or practice change if he or she satisfies 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 or she is an attorney licensed to practice law in Minnesota and is in good standing; and
3) The arbitrator certifies that he or 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 or 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).

Comment to Rule 10

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).

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.

Comment to Rule 21

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.

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.

Comment to Rule 40

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.