

FILED

July 13, 2022

**OFFICE OF
APPELLATE COURTS**

STATE OF MINNESOTA

IN SUPREME COURT

ADM09-8011

**ORDER PROMULGATING AMENDMENTS TO THE
RULES FOR NO-FAULT INSURANCE ARBITRATION**

The Minnesota Supreme Court No-Fault Standing Committee on the Rules of No-Fault Insurance Arbitration has recommended amendments that establish an appeal process when discipline or other adverse actions are imposed on arbitrators. A public comment period was opened; no objections or comments regarding the recommendation were filed during the public comment period.

The supreme court is responsible for promulgating rules to facilitate the use of arbitration for claims that fall under Minn. Stat. § 65B.525 (2020). Having carefully considered the Minnesota Supreme Court No-Fault Standing Committee's recommended amendments and the reasons for the proposed amendments, we conclude that a review process should be adopted; this review process will be consistent with the revised alternative dispute resolution procedures adopted for neutrals contained in the Minnesota General Rules of Practice, Rule 114.13.B, subd. 3 (effective Jan. 1, 2023).

Based on all the files, records, and proceedings herein,

IT IS HEREBY ORDERED that Article IX of the Standards of Conduct for Minnesota No-Fault Arbitrators, contained within the Appendix to the Minnesota Rules of

No-Fault Insurance Arbitration Procedure, are amended as shown in the attachments. The amendments are effective as of January 1, 2023.

Dated: July 13, 2022

BY THE COURT:

A handwritten signature in black ink, appearing to read "Lorie S. Gildea". The signature is written in a cursive style with a large initial "L".

Lorie S. Gildea
Chief Justice

RULES OF NO-FAULT INSURANCE ARBITRATION PROCEDURE

[Note: In the following amendments, deletions are indicated by a line drawn through the words and additions are indicated by a line drawn under the words.]

APPENDIX

Standards of Conduct

Minnesota No-Fault Arbitrators

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IX. Enforcement Procedures

Preamble

No-Fault Arbitrators are given broad discretion to make decisions and oversee the No-Fault arbitration process. Therefore, in order to ensure the protection of the public, an arbitrator who violates the above Standards is subject to the procedures outlined below.

Application: Inclusion on the No-Fault Panel of Arbitrators is a conditional privilege, revocable for cause.

Scope: These procedures apply to complaints against any No-Fault Arbitrator who has been approved to serve on the No-Fault Panel by the Minnesota Supreme Court, as well as those conditionally approved by the No-Fault Standing Committee.

A. Complaint

1. A complaint must be in writing, signed by the complainant and filed with the arbitration organization. The complaint shall identify the arbitrator and the basis for the complaint.
2. Alternatively, if the arbitration organization becomes aware of a violation of these Standards of Conduct and is unable to remedy such violation, the organization shall notify the No-Fault Standing Committee as outlined in these procedures.
3. The arbitration organization shall provide a copy of the complaint and supporting documents to the arbitrator.
4. The arbitration organization shall notify the No-Fault Standing Committee, which will assign an investigative member or members to investigate the allegation(s).

B. Investigation

1. The assigned committee member(s) will undertake such review, investigation, and action as it deems appropriate. In all such cases, the member(s) will contact the arbitrator and complainant to review the allegations and may request additional notes, records, or recollection of the arbitration process. It shall not be considered a violation of these Standards for the arbitrator to make such disclosures as part of the investigation. The member(s) may also request the arbitration organization disclose any records pertinent to the investigation.
2. Once the investigation has been completed, the member(s) will draft a written memorandum, which shall include findings, conclusions, and recommendations. This memorandum will be provided to the full Committee at the next quarterly meeting.
3. If the recommendation is for removal, suspension, or a public reprimand, the arbitrator shall be notified, and shall have the right to appear before the No-Fault Standing Committee prior to deliberations on the complaint.
4. The No-Fault Standing Committee shall review the memorandum and determine whether the allegation(s) constitute a violation of the Standards of Conduct, and if so, ~~determine~~ recommend what sanction(s) would be appropriate. The Committee shall select a member to draft a Notice of the Committee's decision. The decision must include the findings, conclusions, and sanctions, if any.
5. The arbitration organization shall circulate the Notice to the arbitrator and complainant.

C. Sanctions

The No-Fault Standing Committee may impose sanctions, including, but not limited to:

1. Removal from the Panel with set conditions for reinstatement, if appropriate. Should the Committee determine that removal is appropriate, such recommendation will be made to the Minnesota Supreme Court;
2. Suspension for a period of time;
3. The issuance of a public reprimand. The reprimand will be posted on the arbitration organization's Web site, which shall include publishing the arbitrator's name, a summary of the violation, and any sanctions imposed. The public reprimand may also be published elsewhere;
4. The issuance of a private reprimand;
5. The provision of "Best Practices" Information;
6. The imposition of retraining requirements;

7. Supervision of the arbitrator's service for a period of time by a designee of the No-Fault Standing Committee; and
8. The notification of any professional licensing authority with which the arbitrator is affiliated, of the complaint and its disposition.

D. Request for Appearance

If the recommendation by the investigative member(s) is to remove, suspend, or issue a public reprimand, an arbitrator may make a written request to the arbitration organization to appear before the No-Fault Standing Committee. After the arbitrator has been notified of the recommendation, the arbitrator has 15 calendar days from the date of the notice to request an appearance.

E. Request for Reconsideration

If the No-Fault Standing Committee finds a violation of the Standards of Conduct for Minnesota No-Fault Arbitrators, the arbitrator may request in writing reconsideration of the findings, conclusions, and sanctions. The request shall be submitted within 14 days after the arbitrator has been notified of the findings, conclusions, and sanctions. The request shall be no longer than 2 pages in length, a copy of which must be sent to the complainant. Complainants may file a response of no longer than 2 pages in length within 7 days of notification of the arbitrator's request. The No-Fault Standing Committee shall address reconsideration requests in a timely manner. Requests for reconsideration will only be granted upon a showing of compelling circumstances.

F. Review Hearing.

1. Request for Hearing. The arbitrator shall have 28 days after the arbitrator has been notified of the No-Fault Standing Committee's findings, conclusions, and sanctions, or 28 days from the date of the final resolution of a Request for Reconsideration, whichever is later, to request a hearing. The request for a hearing shall be in writing and be submitted to the No-Fault Standing Committee. The hearing will be de novo and will be limited to the arbitrator's violations of the Standards of Conduct for Minnesota No-Fault Arbitrators as found by the No-Fault Standing Committee.

2. Appointment of the Referee. The State Court Administrator's Office shall notify the Supreme Court of the request for hearing. The court shall appoint a referee to conduct the hearing. Unless the court otherwise directs, the proceedings shall be conducted in accordance with the Minnesota Rules of Civil Procedure and Minnesota Rules of Evidence and the referee shall have all powers of a district court judge. All prehearing conferences and hearings shall be held at the Minnesota Judicial Center, shall be recorded electronically by staff of the State Court Administrator's Office, and shall not be accessible by the public.

3. Timing of Prehearing Conference. The referee shall schedule a prehearing conference within 28 days of being appointed. Notice of this prehearing conference shall be sent to the arbitrator and the No-Fault Standing Committee.

4. Right to Counsel. An attorney designated by the State Court Administrator's Office shall represent the No-Fault Standing Committee at the hearing. The arbitrator shall have the right to be represented by an attorney at the arbitrator's expense.

5. Settlement Efforts. At the prehearing conference, the referee should encourage alternative dispute resolution between representatives of the No-Fault Standing Committee and the arbitrator.

6. Discovery, Scheduling Order. At the prehearing conference, discovery shall be discussed. The parties shall have the right to conduct discovery, which must be completed within the time limits as set by the referee. The referee will issue a scheduling order setting forth the extent and scope and time for discovery. The scheduling order will set the hearing date and deadlines for the exchange of witness and exhibit lists. The referee may issue subpoenas for the attendance of witnesses and production of documents or other evidentiary material.

7. Burden of Proof. At the hearing, the No-Fault Standing Committee has the burden to prove by clear and convincing evidence that the arbitrator committed a violation of the Standards of Conduct for Minnesota No-Fault Arbitrators.

8. Order. Within 60 days of the closing of the record, the referee shall issue written findings and conclusions as to whether there was a violation of the Standards of Conduct for Minnesota No-Fault Arbitrators. Copies of the decision shall be sent to the complainant, the arbitrator, the arbitration organization, and the No-Fault Standing Committee. If the referee determines that there is a violation of the Standards of Conduct for Minnesota No-Fault Arbitrators, the referee may impose the following sanctions:

(A) Removal from the Panel with set conditions for reinstatement, if appropriate. Should the Committee determine that removal is appropriate, such recommendation will be made to the Minnesota Supreme Court;

(B) Suspension for a period of time;

(C) The issuance of a public reprimand. The reprimand will be posted on the arbitration organization's Web site, which shall include publishing the arbitrator's name, a summary of the violation, and any sanctions imposed. The public reprimand may also be published elsewhere;

(D) The issuance of a private reprimand;

(E) The provision of “Best Practices” Information;

(F) The imposition of retraining requirements;

(G) Supervision of the arbitrator’s service for a period of time by a designee of the No-Fault Standing Committee;

(H) The notification of any professional licensing authority with which the arbitrator is affiliated, of the complaint and its disposition; and

(I) The requirement of the arbitrator to pay costs and disbursements and reasonable attorney fees in those cases in which it is determined that the arbitrator acted in bad faith in these proceedings.

G. Final Decision.

The decision of the referee is final.

EH. Confidentiality

All files, records, and proceedings of the No-Fault Standing Committee which relate to or arise out of any complaint shall be confidential, except:

1. As between Committee members and the arbitration organization;
2. As otherwise required by law, by rule, or by statute.

If the Committee designates a sanction as public, the sanction and the grounds for the sanction shall be of public record, but the Committee’s file shall remain confidential. Confidential documents, memoranda, and communications shall include the deliberations, mental processes, and communications of the Committee and arbitration organization.

EI. Immunity

The members of the No-Fault Standing Committee and the arbitration organization shall be immune from suit for any conduct in the course of their official duties.