

STATE OF MINNESOTA
IN SUPREME COURT
ADM 09-8011



**ORDER ESTABLISHING COMMENT PERIOD ON
PROPOSED AMENDMENTS TO
STANDARDS OF CONDUCT FOR NO-FAULT ARBITRATORS**

The Minnesota Supreme Court No-Fault Standing Committee on the Rules of No-Fault Insurance Arbitration has recommended amendments to the Standards of Conduct for No-Fault Arbitrators. The Committee's report with the proposed amended version of the Standards of Conduct is attached to this order. The Committee recommends, and the court agrees, that a public comment period be opened on the proposed amended version of the Standards of Conduct.

IT IS HEREBY ORDERED that any person or organization wishing to provide written comments in support of or opposition to any of the proposed amended Standards of Conduct for Minnesota No-Fault Arbitrators shall file one copy of those comments with AnnMarie O'Neill, Clerk of the Appellate Courts, 25 Rev. Dr. Martin Luther King Jr. Blvd., Saint Paul, Minnesota 55155. The written comments shall be filed so as to be received by the Clerk of the Appellate Courts no later than September 13, 2017.

Dated: July 14, 2017

BY THE COURT:

A handwritten signature in black ink, appearing to read "Lorie S. Gildea".

Lorie S. Gildea
Chief Justice

**STATE OF MINNESOTA
IN SUPREME COURT**

In re:

**Supreme Court No-Fault Standing Committee
on Amended Standards of Conduct for No-Fault Arbitrators**

**Recommendations of Minnesota Supreme Court No-Fault
Standing Committee on Amendments to the Standards of
Conduct for No-Fault Arbitrators**

February 14, 2017

**Hon. Joseph Klein, Minneapolis
Chair**

**Hon. Anne K. McKeig, St. Paul
Liaison Justice**

No-Fault Standing Committee

Jane Anderson, Bloomington

David Bolt, Anoka

John Corey, St. Paul

James F. Dunn, Eagan

Denise S.S. Fullerton, Roseville

John Gores, Shoreview

Shayne Hamann, Minneapolis

Eric Hayes, Minneapolis

Darrold Persson, Hibbing

Markus Yira, Hutchinson

**Krista Peach
American Arbitration Association**

NO-FAULT STANDING COMMITTEE ON AMENDED STANDARDS OF CONDUCT FOR NO-FAULT ARBITRATORS

Summary of Committee Recommendations

In order to promote the utmost confidence in the arbitration process and the arbitrators who serve on the No-Fault Panel, the No-Fault Standing Committee, on January 22, 2016, charged a subcommittee to review the existing Standards of Conduct for No-Fault Arbitrators and establish clear disciplinary standards to address arbitrator misconduct. The subcommittee proposed to the full Committee on July 22, 2016 for approval, an amended set of standards, which included enforcement procedures. The Committee unanimously approved the proposed standards and procedures and recommends that the proposal be adopted by the Court. A copy of the proposed Standards of Conduct for No-Fault Arbitrators is attached.

History

The No-Fault Standing Committee is responsible for the oversight of the No-Fault Panel of Arbitrators. As part of this responsibility, the Committee reviews allegations of misconduct by No-Fault arbitrators as it relates to their service on the No-Fault Panel. In 2007, the No-Fault Standing Committee established the Standards of Conduct for No-Fault Arbitrators to provide guidance during No-Fault arbitration proceedings. In conjunction with these standards, the Committee incorporated the *American Arbitration Association's Code of Ethics for Commercial Arbitrators (AAA's Code of Ethics.)* to provide ethical guidance

for arbitrators. A copy of the 2007 Standards of Conduct and the AAA's *Code of Ethics* is attached.

Amended Standards of Conduct

The Committee proposes a more comprehensive set of standards, which combines the existing standards and portions of the AAA's *Code of Ethics*. The items incorporated from the AAA's *Code of Ethics* are tailored for Minnesota No-Fault arbitration.

The purpose of these Standards is to provide guidance for arbitrators and parties in order to promote a fair, neutral, and impartial panel of arbitrators. The Committee believes it will also advance the appearance of neutrality and confidence in the public.

In addition, the Committee changed advisory language such as "should", to mandatory language such as "shall". The Committee believes that if an arbitrator may be disciplined for failing to uphold these standards, it must be clear to the arbitrator that discipline may result for such conduct.

Enforcement Procedures

In addition to the Amended Standards, the Committee proposes to include enforcement procedures as part of the Standards of Conduct. These procedures provide a clear process for filing a complaint, conducting an investigation, notice to arbitrators, and sanctions.

No-Fault arbitrators are given broad discretion to make decisions and oversee the arbitration process. Therefore, in order to ensure the protection of the public, an arbitrator who violates the Standards must be subject to discipline. The

Committee believes that it is necessary to implement a clear and consistent disciplinary policy, in order to ensure a fair and consistent process for complainants and arbitrators.

Placement of the Standards of Conduct

Finally, the No-Fault Standing Committee proposes that these Standards be incorporated into the Minnesota Rules of No-Fault Arbitration Procedure as an appendix.

Public Comment

The proposed amendments have not been put out for public comment; however, the Committee does recommend that the public be provided with a period of time for comment on the changes.

Effective Date

The Committee recommends that the proposed rule amendments be made effective as of January 1, 2017, or earlier. This would allow for a notice and public comment period, as well as sufficient time for consideration and promulgation by the Court.

Respectfully submitted,

MINNESOTA SUPREME COURT
NO-FAULT STANDING
COMMITTEE

A handwritten signature in black ink, appearing to read "Joe Klein", is written over a horizontal line.

Hon. Joseph Klein
No-Fault Standing Committee Chair



Standards of Conduct Minnesota No-Fault Arbitrators

The Standards of Conduct for Minnesota No-Fault Arbitrators was prepared through the joint effort of the Minnesota Supreme Court's No-Fault Standing Committee and the American Arbitration Association®.

Preamble

No-Fault Arbitrators, like judges, have the power to decide cases. Therefore, arbitrators undertake serious responsibilities to the public, as well as to the parties. In order for the system to succeed, the public must have the utmost confidence in the arbitration process and the arbitrators who serve on the No-Fault Panel. To this end, these Standards of Conduct for Minnesota No-Fault Arbitrators have been established by the No-Fault Standing Committee. The purpose of these Standards is to provide guidance in order to promote a fair, neutral, and impartial panel of arbitrators.

I. Integrity and Fairness

An arbitrator shall at all times act in a manner that promotes public confidence in the integrity and impartiality of the arbitration process.

A. An arbitrator has a responsibility not only to the parties but also to the process of arbitration itself, and must observe high standards of conduct so that the integrity and fairness of the process will be preserved. Accordingly, an arbitrator should recognize a responsibility to the public, to the parties whose rights will be decided, and to all other participants in the proceedings.

B. Arbitrators shall conduct themselves in a way that is fair to all parties and should not be swayed by outside pressure, public clamor, fear of criticism or self-interest. Arbitrators shall avoid conduct and statements which give the appearance of partiality.

C. An arbitrator shall conduct the arbitration process in a manner which advances the fair and efficient resolution of the matters submitted for decision. An arbitrator shall make all reasonable efforts to prevent delaying tactics, harassment of parties or other participants, or other abuse or disruption of the arbitration process.

D. An arbitrator who withdraws prior the completion of the arbitration, whether upon the arbitrator's initiative or upon the request of one or more of the parties, shall take reasonable steps to protect the interests of the parties in the arbitration, including return or destruction of evidentiary materials and the protection of confidentiality.



II. Disclosures

An arbitrator shall make a full and complete disclosure of any interests or relationships pursuant to Rule 10.

- A. An arbitrator shall make all disclosures as required under Rule 10.
- B. The obligation to disclose interests or relationships described in paragraph A is a continuing duty which requires the arbitrator to disclose, as soon as practicable, at any stage of the arbitration, any such interests or relationships which may arise, or which are called or discovered.
- C. Any doubts as to whether or not disclosure should be made shall be resolved in favor of disclosure.

III. Communications

An arbitrator shall avoid impropriety or even the appearance of impropriety in communicating with parties.

- A. An arbitrator shall not discuss a proceeding with any party or attorney in the absence of any other party or attorney.
- B. An arbitrator shall not have any direct communication other than what is prescribed in Rule 21.
- C. If a party or attorney attempts to communicate directly with the arbitrator, the arbitrator shall notify the arbitration organization.
- D. When an arbitrator communicates in writing with one party, the arbitrator shall at the same time send a copy of the communication to every other party.

IV. Hearing Proceedings

An arbitrator shall conduct the proceedings fairly and diligently.

- A. An arbitrator shall conduct the proceedings in an even-handed manner. The arbitrator should be patient and courteous to the parties, their representatives, and the witnesses and should encourage similar conduct by all participants.
- B. The arbitrator shall afford to all parties the right to be heard. The arbitrator shall allow each party a fair opportunity to present evidence and arguments.



C. If a party fails to appear after due notice, the arbitrator may proceed with the arbitration when authorized to do so, but only after receiving assurance that appropriate notice has been given to the absent party. Arbitrators must comply with Rule 22.

D. An arbitrator shall not exert pressure on any party to settle or to utilize other dispute resolution processes. An arbitrator shall not be present or otherwise participate in settlement discussions or act as a mediator unless requested to do so, in writing, by all parties and their representatives.

V. Decisions, Orders and Awards

An arbitrator shall make decisions in a just, independent and deliberate manner.

A. The arbitrator shall, after careful deliberation, decide only those issues submitted for determination.

B. An arbitrator shall decide all matters justly, exercising independent judgement, and shall not permit outside pressure or other considerations to affect the decision.

C. An arbitrator shall not delegate the duty to decide to any other person.

D. An arbitrator shall make a determination based on the evidence presented. An award must be supported by the evidence.

VI. Trust and Confidentiality

An arbitrator shall be faithful to the relationship of trust and confidentiality inherent in that office.

A. An arbitrator is in a relationship of trust to the parties and shall not, at any time, use confidential information acquired during the arbitration proceeding to gain personal advantage or advantage for others, or to affect adversely the interest of another.

B. The arbitrator shall keep confidential all matters relating to the arbitration proceedings and decision.

C. It is improper, at any time, for an arbitrator to inform anyone of any decision in advance of the time it is given to all parties. After an arbitration award has been made, it is improper for an arbitrator to assist, in any way, in proceedings to enforce or challenge the award.

VII. Time and Availability

An arbitrator shall devote the time and attention to each case in order to promote efficiency.



- A. An arbitrator shall promptly schedule and be prepared for hearings.
- B. An arbitrator shall not delay the process and shall not postpone a hearing, except for good cause.
- C. An arbitrator shall promptly file decisions of any pending issues and shall issue an award within 30 calendar days of the closure of the record.

VIII: Arbitrator Qualifications

An arbitrator must continue to meet the qualifications under Rule 10 in order to serve on the Minnesota No-Fault Panel.

- A. An arbitrator shall be faithful to the law and shall maintain professional competence in it.
- B. An arbitrator shall file a timely and accurate recertification form on an annual basis.
- C. An arbitrator shall provide evidence of qualifications upon request by the arbitration organization, No-Fault Standing Committee or Minnesota Supreme Court.

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, 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 website, 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. 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 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.

F. Immunity

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