STATE OF MINNESOTA

IN SUPREME COURT

ADM09-8011

ORDER PROMULGATING AMENDMENTS TO THE RULES OF NO-FAULT INSURANCE ARBITRATION

The supreme court is responsible for promulgating rules to facilitate the use of arbitration for claims that fall under Minn. Stat. § 65B.525 (2018). In two reports filed on June 6, 2019, the Standing Committee on the Rules of No-Fault Insurance Arbitration recommended amendments to Rule 10, which governs the qualifications of arbitrators; and Rules 12 and 40, which govern motion practice and procedures. We opened a public comment period on the recommended amendments, which closed on August 27, 2019, with no comments filed and no requests to speak at the public hearing scheduled for September 25. We therefore cancelled the public hearing. Having reviewed the Standing Committee's recommendations and the rules, we agree with the committee that amendments to Rules 10, 12, and 40 will promote efficiency in the arbitration process and the effective and fair administration of justice in these proceedings. *See* Minn. No-Fault Ins. Arb. R. 43 (requiring the committee to propose amendments "as circumstances may require," which are subject to this court's review and approval).

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

IT IS HEREBY ORDERED that the Minnesota No-Fault, Comprehensive, or Collision Damage Automobile Insurance Arbitration Rules are amended as shown in the

attachment. The amendments are effective as of February 1, 2020 and apply to all proceedings filed on or after that date.

Dated: November 26, 2019

BY THE COURT:

Lorie S. Gildea
Chief Justice

MINNESOTA NO-FAULT, COMPREHENSIVE, OR COLLISION DAMAGE AUTOMOBILE INSURANCE ARBITRATION RULES

[*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.*]

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 no-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 in the last year; 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.

b. No person shall serve as an arbitrator in any arbitration in which he or she has a financial or personal conflict of interest. Under procedures established by the Standing Committee and immediately following appointment to a case, every arbitrator 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. Every arbitrator shall supplement the disclosures as circumstances require. The fact that an arbitrator or the arbitrator's firm represents automobile accident claimants against insurance companies or self-insureds, including the respondent, does not create a presumption of bias. It is a financial conflict of interest if, within the last year, the appointed arbitrator or the arbitrator's firm has been hired by the respondent to represent the respondent or respondent's insureds in a dispute for which the respondent provides insurance coverage. It is a financial conflict of interest if the appointed arbitrator received referrals within the last year from officers, employees or agents of any entity whose bills are in dispute in the arbitration or the arbitrator's firm has received such referrals.

c. If an arbitrator has been certified and has met the requirements of subdivision (a) for the past five years but becomes ineligible for certification under Rule 10(a) due to retirement or change in practice, the arbitrator may continue to seek annual certification for up to five years from the date <u>of practice change, and for a retired attorney or judge serving as an arbitrator, at any time,</u> ~~of retirement licensure or practice change~~ if the following requirements are satisfied:

> The arbitrator completes and files an annual No-Fault Arbitrator Recertification form which certifies that:

1. He or she is an attorney licensed to practice law in Minnesota and is in good standing or a retired attorney or judge in good standing;

2. 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

3. He or she has attended CLE course(s) in the last year containing at least three credits relating to no-fault matters.

The rules regarding bias and conflict of interest as set forth in subdivision (b) remain applicable to arbitrators who are recertified under this subdivision (c).

* * *

Rule 12. Discovery, Motions, and Applications.

a) Discovery

The voluntary exchange of information is encouraged. Formal discovery is discouraged except that a party is entitled to the following within 30 days of receipt of the request:

1. exchange of medical reports;
2. medical authorizations directed to all medical providers consulted by the claimant in the seven years prior to the accident;
3. employment records and authorizations for two years prior to the accident, when wage loss is in dispute;
4. supporting documentation required under No-Fault Arbitration Rule 5; and
5. other exhibits to be offered at the hearing.

However, upon application and good cause shown by any party, the arbitrator may permit any discovery allowable under the Minnesota Rules of Civil Procedure for the District Courts. Any medical examination for which the respondent can establish good cause shall be completed within 90 days following the commencement of the case unless extended by the arbitrator for good cause.

The Minnesota Rules of Civil Procedure shall apply to claims for comprehensive or collision damage coverage.

b) Motions and Applications

Motions and Applications are discouraged. No prehearing motion or application may be submitted by any party for consideration until:

1. The parties have conferred either in person, or by telephone, or in writing in an attempt to resolve their differences. The moving/applying party shall initiate the conference. The moving/applying party shall include with its moving/application papers a certification that the movant/applicant has conferred with the other party and which states the outcome of that conference;
2. An arbitrator has been appointed in accordance with Rule 8; and
3. The fees required by Rule 40(a) have been deposited with the arbitration organization.

If a party, or an officer, director, employee, or managing agent of a party fails to obey an order issued by the arbitrator, the arbitrator may issue such orders in regard to the failure as are just, and among others, those authorized by Minn. R. Civ. P. 37.02(b)(1)–(3). However, where the failure to comply is with an order for a medical examination that requires a party to produce another for the examination, orders authorized by Minn. R. Civ. P. 37.02(b)(1)–(3) shall not be available if the party failing to comply shows that the party is unable to produce such person for examination.

Consistent with Rule 32, an arbitrator shall not award attorney's fees to any party.

Standing Committee Comment (2019)

No-Fault Arbitration is intended to be a "speedy, informal and relatively inexpensive procedure for resolving controversies." Western National Ins. Co. v Thompson, 797 N.W.2d 201, 205 (Minn. 2011); Weaver v. State Farm Ins. Companies, 609 N.W.2d 878, 884 (Minn. 2000). However, prehearing motion practice has been increasing. This has increased administrative work for the arbitration organization, bogged down the efficient processing of filed arbitrations, and has caused arbitrators to expend extra time and resources to analyze the motions and submissions, conduct prehearing legal research and file review, and issue rulings. It has also increased the work and time of the parties to the arbitration. The addition of the part (b) language to the Rule will reaffirm that motion practice is discouraged and stem prehearing motion practice by requiring conditions be met before submitting a prehearing motion, other than for postponement. The conditions are 1) a meet and confer requirement consistent with Minn. R. Civ. P. 37.01(b) and Minn. Gen. R. Pract.115.10; 2) the deposit of a motion fee by all parties to the motion from which the arbitration organization and the arbitrator will be compensated; and 3) preventing the filing of any motion prior to the appointment of an arbitrator. The additional language also provides the arbitrator with authority to enforce the arbitrator's orders, consistent with Minn. R. Civ. P. 37.02(b)(1)-(3) and the authorities interpreting the same. However, consistent with No-Fault Rule 32, attorney's fees shall not be awarded to any party. Added to part (a) of the Rule is language that parties are entitled to the five Rule 12 items within 30 days of a receipt of a request.

* * *

Rule 40. Arbitrator[~~'s~~] Motion, and Application Fees

a. Motion Fees: If prior to any scheduled hearing, a motion or application is brought for the arbitrator to decide (other than a motion to postpone a hearing), the following fees shall be paid: ~~An arbitrator shall be compensated for services and for any use of office facilities in the amount of $300 per case.~~

1. The movant/applicant shall pay to (deposit with) the arbitration organization a motion fee in the amount of $125.00 at the time the movant submits its motion/application papers to the arbitration organization.
2. The party opposing the motion/application shall pay to (deposit with) the arbitration organization a motion fee in the amount of $125.00 at the time the opposing party submits its opposition/responsive papers to the arbitration organization.

Upon the arbitration organization's receipt of all papers and required motion fees from the parties, the arbitration organization shall deliver the submissions to the arbitrator. No motion shall be heard or decided by the arbitrator until all required fees have been deposited and papers submitted to the arbitration organization.

In the event there is no response to a motion (filed with the arbitration organization and for which a motion fee has been deposited) by the deadline to respond as set forth in the arbitration organization's written notice to the parties, the motion papers shall be submitted to the arbitrator for consideration.

For each motion in which there are submissions by both parties to the motion, the arbitrator shall be compensated $100.00 and the arbitration organization shall be compensated a $25.00 administrative fee. The arbitrator shall direct which party is responsible for the arbitrator and administrative fees, which shall be paid from that party's previously deposited motion fee. The party not responsible for the arbitrator and administrative fees shall be refunded the motion fee that was previously deposited with the arbitration organization.

For each motion in which there is no response from the responding party, the arbitrator shall be compensated $50.00 for the motion and the arbitration organization shall be compensated a $25.00 administrative fee, which shall be paid from the moving party's deposited motion fee. The moving party may assert a claim at the hearing for the portion of the motion fee deposited with the arbitration organization that is not subject to refund from the arbitration organization.

In the event the arbitration organization is notified prior to submission to the arbitrator that the motion is withdrawn or resolved, the arbitration organization shall be compensated a $25 administrative fee, which shall be paid from the moving party's deposited motion fee. The remaining $100 shall be refunded to the moving party. The moving party may assert a claim at the hearing for the $25 administrative fee paid to the arbitration organization.

(b) In addition to compensation as in (a) above, except as otherwise provided by the Rules, an arbitrator shall be compensated for services and for any use of office facilities in the amount of $300 per case.

~~b~~(c). 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~~(d). An arbitrator serving on a court-ordered consolidated glass case shall be compensated at a rate of $200.00 per hour.

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

Standing Committee Comment (2019)

Rule 40(a) is rewritten to now establish the motion fee referenced in Rule 12(b)3 and the arbitrator's authority to direct which party's deposited motion fee will be used to pay the arbitrator and administrative fee in cases when there are submissions from both parties to the motion, with refund of motion fee deposit to the party(s) not responsible. The rule also provides that in cases where there is no response to the motion, the arbitrator is compensated $50.00 and the arbitration organization is compensated $25.00 from the moving party's motion fee, with refund of the remaining $50.00 to the moving party. As only one-half of the submissions are being considered by the arbitrator, arbitrator compensation for the motion is reduced by one-half. The moving party is entitled to bring a claim at the evidentiary hearing for the amount of the motion fee (deposited but not subject to refund from the arbitration organization) that is paid as arbitrator compensation and administrative fee. If the motion is withdrawn or resolved prior to submission to the arbitrator for consideration, then only the $25.00 administrative fee is nonrefundable.

The arbitration organization, in accordance with its customary procedures, shall issue compensation to the arbitrator and the arbitration organization along with applicable refund after the proceedings have concluded. The former Rule 40(b)–(d) are renumbered 40(c)–(e), respectively.