

MSBA



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Ms. AnnMarie O'Neill
Clerk of Appellate Courts
25 Dr. Rev. Martin Luther King Jr. Blvd.
Room 305
St. Paul, MN 55155-1500

Re: ADM09-8011

Dear Ms. O'Neill,

This letter is submitted in response to the request for comments issued by the Court regarding proposed amendments to the Minnesota No-Fault Rules of Insurance Arbitration. The Minnesota State Bar Association has reviewed the proposed amendments and submits comments as reflected in this letter, which may be considered the official position of the MSBA. These comments were developed by our newly reorganized Court Rules and Administration Committee, chaired by attorney Charles Bird of Rochester, Minnesota. The Committee consists of volunteers from many practice backgrounds, including representatives of various Section Councils of the MSBA which may be affected by court rules and policies, and our liaisons to the Supreme Court's different Advisory Committees on rules of procedure or practice. The Committee's proposed comments were then reviewed and adopted without change by the MSBA Council, which is empowered to act for the MSBA when the Court's deadlines do not permit review by the Assembly at one of its four regularly scheduled meetings.

A. Rule 12 Discovery

The MSBA believes that, as written, the proposed amendment to Rule 12 relating to expanded discovery in comprehensive or collision damage cases may engender expansive use of discovery, and attendant motion practice for the parties and arbitrator, contrary to the spirit of low-cost, no-fault procedures. This will potentially add significant burdens to the parties and to the assigned arbitrator that are not in alignment with the magnitude of the case or the compensation of the arbitrator. It is noted that Rule 40 addresses the issue of arbitrator compensation, but that is limited to consolidated glass cases while Rule 12 applies to any comprehensive or collision damage matter.

The MSBA therefore recommends that the last sentence of the proposed rule be stricken, as well as the first sentence of the preceding paragraph, and that the following language be substituted at the beginning of the preceding paragraph:

"Similarly, the voluntary exchange of information is encouraged for comprehensive or collision damage claims. Upon application and good cause shown by any party, the arbitrator may permit any discovery allowable under the Minnesota Rules of Civil Procedure for such claims."

The last paragraph of Rule 12 would then read as follows:

~~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.~~ Similarly, the voluntary exchange of information is encouraged for comprehensive or collision damage claims. Upon application and good cause shown by any party, the arbitrator may permit any discovery allowable under the Minnesota Rules of Civil Procedure for such claims. 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. Rule 16 - Representation

The MSBA believes that as a result of the proposed amendments, a case could be dismissed in a situation where a lawyer withdraws and the client either does not know about the withdrawal or is not advised of the new requirement to obtain counsel or proceed pro se within 30 days. Consequently, the MSBA recommends the following changes to the proposed amendment to Rule 16:

"If counsel or other representative named by the claimant withdraws representation of any pending matter, the claim shall be dismissed, unless the claimant advises the arbitration organization of the intention to proceed pro se or a replacement counsel or representative is named within 30 days of the ~~notice of withdrawal~~ date that claimant received notice of such withdrawal and notice of the requirements of this rule."

C. Rule 18 - Interpreters

While the MSBA understands and supports the reasoning behind the proposed change to Rule 18, the MSBA is concerned that the high cost of interpreters that are truly "independent" may cause disabled or limited English speaking persons to be unable to afford engaging in the no-fault insurance arbitration process.

Waiting until costs are assessed does not provide any certainty to claimants in advance of filing a petition. The proposed amendment would not be necessary if Rule 18 included a guarantee that interpreters would be paid for by the state, at least in instances of hardship. The MSBA recommends that language be added to the Rule similar to that provided in Rule 43.07 of the Minnesota Rules of Civil Procedure.¹ Accessibility of the No Fault Arbitration system should not be materially less than accessibility of the courts.

If the Court is not amenable to this recommendation, the MSBA suggests in the alternative that the arbitrator be given discretion to allow family members or others to act as an interpreter in certain situations. This could be accomplished by adding the following sentence to the end of the proposed amendment to Rule 18:

Upon application and for good cause shown, or upon the agreement of the parties, the arbitrator may waive the requirement of having an independent interpreter.

D. Rule 40 – Arbitrator's Fees

The MSBA is concerned that the scope of this rule does not mirror the change in Rule 12 providing for more extensive discovery in certain cases. Rule 40 provides for increased fees in a consolidated glass case. If the MSBA's perception is correct, a "consolidated glass case" is a subset of those cases for which expanded discovery may be allowed under Rule 12 ("comprehensive or collision damage coverage" cases). The MSBA believes that the arbitrator should be allowed additional compensation in any case involving full discovery under the Minnesota Rules of Civil Procedure. The MSBA therefore recommends the following changes to the proposed amendment to Rule 40.c:

"An arbitrator serving on a court-ordered consolidated glass case or in any case where full discovery is allowed under Rule 12, shall be compensated at a rate of \$200 per hour."

¹ 43.07 Interpreters

The court may appoint an interpreter of its own selection and may fix reasonable compensation. The compensation shall be paid out of funds provided by law.

E. Rule 41 – Rescheduling or Cancellation Fees

The MSBA has concerns that the proposed changes to the current “postponement fee”, by broadening to include any “cancellation”, may inadvertently penalize parties who settle. This concern would be alleviated by clarifying that the request to reschedule or cancel a hearing does not fall within Rule 40.b. The MSBA suggests the current Rule 41 language be replaced with the following language:

A party requesting to reschedule or cancel a hearing shall be charged a fee of \$100.00, provided that the request does not fall within the parameters of Rule 40.b, which relates to settlement and withdrawals of claims.

The MSBA appreciates the Court’s consideration of these comments, and hopes the Court finds these comments to be helpful.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael W. Unger". The signature is fluid and cursive, with a prominent loop at the end.

Michael W. Unger
President
Minnesota State Bar Association