

Report of the Court Rules and Administration Committee to the Minnesota State Bar Association Council regarding the proposed changes to the Minnesota No-Fault Arbitration Rules

August 14, 2015

The Court Rules and Administration Committee has the following comments and recommendations regarding the proposed changes to the Minnesota No-Fault Insurance Arbitration Rules.

Rule 12. Discovery

The voluntary exchange of information is encouraged. Formal discovery is discouraged except that a party is entitled to:

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.

The Committee is concerned that, as written, the 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 not co-extensive 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 this rule applies to any comprehensive or collision damage matter.

The Committee 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 rule 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.~~

Rule 16. Representation

Any party may be represented by counsel or other representative named by that party. A party intending to be so represented shall notify the other party and the arbitration organization of the name, ~~and mailing address and email address~~ of the representative or firm, at least three days prior to the date set for the hearing at which that person is first to appear. When such a representative initiates an arbitration or responds for a party, notice is deemed to have been given.

Comment: This addition would be consistent with the trend of facilitating electronic communications. A similar change has been recommended for the Rules of Civil Procedure.

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.

Comment: There have been an increasing number of representatives withdrawing representation of claimants. This has resulted in a number of unresponsive or unreachable pro se claimants. The additional language will provide a clear process to follow for arbitrators, the arbitration organization and pro se claimants in the event of a withdrawal.

The Committee is concerned that a case could be dismissed in a situation where a lawyer withdraws and the client either doesn't know about the withdrawal or isn't advised of the new

requirement to obtain counsel or proceed pro se within 30 days. Consequently, the Committee 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.

Rule 18. Interpreters

Any party desiring an interpreter shall make all arrangements directly with the interpreter and shall assume the costs of the service. The arbitrator may assess the cost of an interpreter pursuant to Rule 42.

Interpreters must be independent of the parties, counsel and named representatives. All interpreters must abide by the Code of Professional Responsibility for Interpreters in the Minnesota State Court System.

While the Committee understands the reasoning behind the proposed change to Rule 18, the Committee is concerned that the high cost of interpreters that are truly "independent" may cause disabled persons to be unable to afford engaging in this process. Waiting until costs are assessed doesn't provide any certainty to claimants in advance of filing a petition. The proposed language 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 Committee recommends that language be added to the Rule similar to that provided in Rule 43.07 of the Minnesota Rules of Civil Procedure.¹

Alternatively, the Committee recommends that the arbitrator be given discretion to allow family members or others to act as an interpreter in some situations. The Committee recommends that the following sentence be added 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.

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.

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. An arbitrator serving on a court-ordered consolidated glass case shall be compensated at a rate of \$200.00 per hour.
- d. Once a hearing is commenced, the arbitrator shall direct assessment of the fee.

Comment: In response to Glass Illinois Farmers Insurance Company v. Glass Service Co., 683 NW2d 792 (Minn. 2004), the Minnesota No-Fault Standing Committee issued a resolution in which a rate of \$200.00 per hour may be charged on court-ordered consolidated glass cases.

The Committee has concerns that the scope of this rule does not mirror the change in Rule 12 providing for more extensive discovery in certain cases. This rule provides for increased fees in a consolidated glass case. If the Committee'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 Committee believes that the arbitrator should be allowed additional compensation in any case involving full discovery under the Minnesota Rules of Civil Procedure. The Committee 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."

Rule 41. ~~Postponement~~ Rescheduling or Cancellation Fees

A ~~postponement~~ fee of \$100.00 shall be charged against each party requesting a rescheduling or cancellation of a scheduled hearing, ~~for their first, second and additional postponements respectively.~~

Comment: Fees are at a flat rate of \$100.00.

The Committee has concerns that the proposed changes 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 Committee 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.