# MISCELLANEOUS

## Special Rules of Procedure Governing Proceedings Under the Minnesota Commitment and Treatment Act



## Special Rules for Appointment and Compensation of Counsel in Isolation and Quarantine Cases



## Minnesota No-Fault, Comprehensive or Collision Damage Automobile Insurance Arbitration Rules



## Legal Services Advisory Committee Membership Rules



## Rules Relating to Distribution of Civil Surcharge Funds

## Facsimile Transmission



## Interest Rates on State Court Judgments and Arbitration Awards



## Cost of Living Adjustment to Child Support Guidelines



## Rule on the Provision of Legal Services Following the Determination of a Major Disaster

# Special Rules of Procedure Governing Proceedings Under the Minnesota Commitment and Treatment Act

Effective January 1, 2000
With amendments received through August 1, 2010

## TABLE OF HEADNOTES



## TEXT OF RULES

### Rule 1. General

**(a) Scope.** The Special Rules shall apply in proceedings under the 1997 Minnesota Commitment and Treatment Act, Minnesota Statutes, chapter 253B, and its amendments.

**(b) Rules Superseded.** The Special Rules shall supersede any other body of rules otherwise applicable (e.g., the Rules of Civil Procedure for the District Courts, Probate Court Rules, etc.) in conflict with these Special Rules.

**(c) Citation.** These Special Rules may be cited as Commitment and Treatment Act Rules.

***Advisory Committee Comment - 1999***

*The Act, as codified under Minnesota Statutes, chapter 253B, is detailed and the practitioner must be familiar with both the Act and these rules.*

**Rule 2. Computation of Time**

Except as provided by these Special Rules, the Minnesota Rules of Civil Procedure govern the computation of any time periods prescribed by Minnesota Statutes, chapter 253B. If a respondent is represented by an attorney, whenever an act is required within a certain time after a written demand or service of a document upon a party or entity other than the court, time shall begin to run once both the party and the parties' attorneys have received notice of the document, regardless of the method of service, and shall not include weekends and holidays. The 72-hour absence that triggers missing respondent procedures under Minnesota Statutes, section 253B.141, subdivision 1, commences when the respondent was due to return to the facility and includes weekends and holidays.

***Advisory Committee Comment - 1999***

*These rules contemplate that service may be effected personally, by mail, or by fax. There are instances in the statute when a notice or a report does not need to be "given" to an attorney. The rule ensures that the attorneys know the basis of any hearing scheduled by the court upon receipt of a filed document. When a party requests a hearing after notice that the treatment center or designated agency intends to take some action (as in the case of revocation of provisional discharge), this rule expands the period of time if the notice was mailed to the attorneys. If the notice was faxed, the time to request the hearing is not expanded.*

**Rule 3. Service**

Whenever a person is required to give or serve any document under this chapter to any party, attorney, or entity other than the court, service may be made in any manner allowed under the Minnesota Rules of Civil Procedure. Attorneys for both parties must also be served whether or not service upon counsel is specifically required by statute.

***Advisory Committee Comment - 1999***

*See comment to Rule 2.*

**Rule 4. Consecutive Hold Orders Prohibited**

A person held under a 72-hour emergency hold must be released by the facility within 72 hours unless a court order to hold the person is obtained. A consecutive hold order not issued by the district court is expressly prohibited, whether or not issued by the same physician or other authority.

**Rule 5. Case Captions**

Civil commitment proceedings shall be captioned in the name of the person subject to the petition as follows: *In the Matter of the Civil Commitment of: (Full Name of Respondent), Respondent.*

***Advisory Committee Comment - 1999***

*A person subject to commitment proceedings is referred to as the respondent throughout these rules. The court and counsel shall be sensitive to the correct pronunciation of a respondent's name.*

**Rule 6. Commencement**

A proceeding for commitment or early intervention is commenced upon filing a petition with the District Court pursuant to Minnesota Statutes, chapter 253B.

The petition should be filed in the county of financial responsibility as defined in Minnesota Statutes, section 253B.045, subdivision 2. If the county of financial responsibility refuses to file a petition, the county where the respondent is present must file the petition

if statutory conditions for commitment are present. Financial responsibility for the costs of the proceedings and treatment will be resolved by subsequent administrative process.

***Advisory Committee Comment - 1999***

*The committee has attempted to address concerns where conflicts occur between the county of financial responsibility (respondent's residence) and the county where respondent is present, regarding who shall file the petitions, and to provide guidance in light of short statutory time constraints. The committee did not intend to remove discretion from the county attorney in the county where the respondent is present. If statutory conditions are present for commitment and the county attorney in the county where the respondent is present determines that a commitment is necessary and reasonable for the protection of the respondent or others, then the petition must be filed. Ultimate financial responsibility will be resolved in accordance with Minnesota Statutes, sections 256G.01 to 256G.12.*

*See also Minnesota Statutes, section 253B.07, subdivision 2a, when dealing with a person subject to Minn. R. Crim. P. 20.01 or 20.02. It is not the intent of the committee to affect venue when the person is subject to a proceeding governed by Minn. R. Crim. P. 20.01 or 20.02 or Minn. R. Juv. Del. P. 20.01 or 20.02.*

*A petition for commitment as a sexual psychopathic personality or a sexually dangerous person may also be filed in a county where a related criminal conviction was entered. See Minnesota Statutes, section 253B.185, subdivision 1.*

**Rule 7. Petitions**

A petition filed pursuant to Minn. R. Crim. P. 20.01 or Minn. R. Juv. Del. P. 20.01 is sufficient if it contains a judicial determination that the defendant is incompetent to stand trial or be sentenced for the offense. A petition filed pursuant to Minn. R. Crim. P. 20.02 or Minn. R. Juv. Del. P. 20.02 is sufficient if it contains a judicial determination that the defendant was found not guilty, by reason of mental illness or mental deficiency, of the crime with which the defendant was charged.

***Advisory Committee Comment - 1999***

*This rule clarifies that petitions pursuant to Minn. R. Crim. P. 20 or Minn. R. Juv. Del. P. 20 need not include all of the specific requirements of the law relating to petitions for judicial commitment, which arise from referrals to thepre-petition screening team. For example, an examiner's statement in support of commitment is not required, since the basis of the petition is a judicial determination.*

**Rule 8. Summons**

Once a petition has been filed, the court shall issue a summons to be personally served upon the respondent. The summons shall direct the respondent to appear at the times and places stated in the summons for psychiatric, psychological, and medical examination and court hearing. The summons shall state in bold print that an order to apprehend and hold the respondent may be issued if the respondent does not appear as directed. The court need not issue a summons if the respondent is already under a medical or judicial hold.

The court shall direct that a copy of the pre-petition screening report, the petition, and the examiner's supporting statement be personally served upon the respondent with the summons if issued, and that a copy be distributed to the petitioner, the proposed patient, the patient's counsel, the county attorney, and any person authorized by the patient, and any other person as the court directs.

**Rule 9. Appointment and Role of Counsel**

Immediately upon the filing of a petition for commitment or early intervention the court shall appoint a qualified attorney to represent the respondent at public expense at any subsequent proceeding under this chapter. The attorney shall represent the respondent until the court dismisses the petition or the commitment and discharges the attorney.

The respondent may employ private counsel at the respondent's expense. If private counsel is employed, the court shall discharge the appointed attorney.

In order to withdraw, counsel must file a motion and obtain the court's approval.

Counsel for the respondent is not required to file an appeal or commence any proceeding under Minnesota Statutes, chapter 253B, if, in the opinion of counsel, there is an insufficient basis for proceeding.

**Rule 10. Attorney-Client Privilege**

The content of attorney-client communications by telephone, mail, or conference at the facility, shall not be monitored, censored, or made part of a respondent's medical record. The facility may open and inspect, but not read, a letter or package, and must do so in the respondent's presence.

**Rule 11. Examiner's List**

The court administrator shall prepare and maintain a list of examiners. A statement of the manner and rate of compensation of examiners shall be attached to the list. Examiners shall be paid at a rate of compensation fixed by the court. If a party seeks appointment of an examiner not on the list, or at a rate of compensation exceeding that fixed by the court, the party shall seek approval of the court prior to appointment.

**Rule 12. Examiner Reports**

Each court-appointed examiner shall examine the respondent and prepare a separate report stating the examiner's opinion and the facts upon which the opinion is based. The report shall address:

(a) Whether the respondent is mentally ill, mentally retarded, chemically dependent, mentally ill and dangerous to the public, a sexually dangerous person, or a sexual psychopathic personality;

(b) Whether the examiner recommends commitment;

(c) The appropriate form, location, and conditions of treatment, including likelihood of the need for treatment with neuroleptic medication;

(d) The respondent's capacity to make decisions about neuroleptic medication, if needed; and

(e) If the petition alleges that the respondent is mentally ill and dangerous to the public, whether there is a substantial likelihood that respondent will engage in acts capable of inflicting serious physical harm on another.

(f) If the petition alleges that the respondent is a sexual psychopathic personality and/or a sexually dangerous person, the report shall address each element set out in Minnesota Statutes, section 253B.02, subdivisions 18b and 18c, respectively, including an opinion as to the likelihood that the respondent will engage in future dangerous behavior.

The court shall send a copy of the examiner's report to the petitioner's attorney, the respondent and respondent's attorney immediately upon receiving the report.

**Rule 13. Medical Records**

The county attorney, respondent, respondent's attorney, court-appointed examiner, guardian ad litem, substitute decision-maker, and their agents and experts retained by them shall have access to all of the respondent's medical records and the reports of the court-appointed examiners. The records and reports may not be disclosed to any other person without court authorization or the respondent's signed consent. Except for a preliminary hearing, each party shall disclose to the other party or parties at least 24 hours in advance of the hearing which of the respondent's medical records the party intends to introduce at hearing.

**Rule 14. Location of Hearing, Rules of Decorum, Alternative Methods of Presenting Evidence**

The judge or judicial officer shall assure the decorum and orderliness of any hearing held pursuant to Minnesota Statutes, chapter 253B. The judge or judicial officer shall afford to respondent an opportunity to be dressed in conformity with the dignity of court appearances.

A hearing may be conducted or an attorney for a party, a party, or a witness may appear by telephone, audiovisual, or other electronic means if the party intending to use electronic means notifies the other party or parties at least 24 hours in advance of the hearing and the court approves. If a witness will be testifying electronically, the notice must include the name, address, and telephone number where the witness may be reached in advance of the hearing. This rule does not supersede Minnesota Statutes, sections 595.02 to 595.08 (competency and privilege). Respondent's counsel will be physically present with the patient. The court shall insure that the respondent has adequate opportunity to speak privately with counsel, including, where appropriate, suspension of the audio recording or allowing counsel to leave the conference table to communicate with the client in private.

(Amended effective March 1, 2009; amended effective January 1, 2010.)

***Advisory Committee Comment - 2009***

*Rule 14 is amended to change the amount of notice required to be given by a litigant desiring to have a matter heard by electronic means, typically either telephone or interactive television. The 24 hours required by the rule represents the bare minimum of what may be necessary to allow for necessary electronic equipment to be made available. This deadline can be adjusted by the court if necessary.*

***Advisory Committee Comment - 2008***

*Rule 14 is amended to lengthen the amount of notice required to be given by a litigant desiring to have a matter heard by electronic means, typically either telephone or interactive television. The seven days required by the rule can be adjusted by the court if necessary.*

**Rule 15. Evidence**

The Court may admit all relevant, reliable evidence, including but not limited to the respondent's medical records, without requiring foundation witnesses.

**Rule 16. Rights of Patients**

In every order for commitment, the committing court shall order that the Rights of Patients, provided at Minnesota Statutes, section 253B.03, be incorporated in the order by reference.

**Rule 17. Petition to Determine Need for Continued Care**

Upon the filing of a petition to determine the need for continued care pursuant to Minnesota Statutes, section 253B.17, the court shall cause the hearing to be held within 14 days of filing. The hearing may be continued for up to 30 days upon showing of good cause. The court shall give the respondent, respondent's attorney, county attorney, guardian ad litem, and substitute decision-maker, as well as such other interested persons as the court may direct, at least 10 days notice of the date and time of the hearing.

**Rule 18. Recommitment**

For recommitments pursuant to Minnesota Statutes, section 253B.13, the court shall append the immediately preceding commitment file to the file on the new petition.

**Rule 19. Termination of Early Intervention**

Any petition for involuntary commitment filed at the termination of court-ordered early intervention under Minnesota Statutes, section 253B.065, shall be treated as an initial commitment petition and not a recommitment.

**Rule 20. Termination of Commitment**

The court shall order termination of the commitment when the commitment expires, or upon a direct discharge by the treatment facility, or upon a discharge by the Commissioner of Human Services.

The order shall also discharge the court-appointed attorney.

***Advisory Committee Comment - 1999***

*Minnesota Statutes, section 253B.12, subdivision 1, paragraph (e), provides for an order terminating the commitment if a 60-90 day report is not timely filed or if the report describes the respondent as not in need of further institutional care and treatment. There is no similar provision for terminating the commitment if the report required by Minnesota Statutes, section 253B.16, is not filed or if there is a final discharge under Minnesota Statutes, section 253B.16, or if a provisional discharge expires under Minnesota Statutes, section 253B.15, subdivision 9. This rule insures a formal termination of the proceeding and discharge of the respondent's court-appointed attorney.*

**Rule 21. Public Access to Records**

(a) Except as provided in these Special Rules, and as limited by court order, all court files relating to civil commitment shall be available to the public for inspection, copying, or release.

(b) The court administrator shall create a separate section or file in which the pre-petition screening report, court appointed examiner's report, and all medical records shall be filed. Records in that section or file shall not be disclosed to the public except by express order of the district court. This provision shall not limit the parties' ability to mention the contents of the pre-petition screening report, court appointed examiner's report and medical records in the course of proceedings under Minnesota Statutes, chapter 253B.

**Rule 22. Stayed Orders (Mentally Ill and Dangerous to the Public, Sexually Dangerous Persons, and Sexual Psychopathic Personalities)**

Stayed orders for commitment as mentally ill and dangerous to the public, sexually dangerous person, or a sexual psychopathic personality may be issued only by agreement of the parties and approval by the court.

**Rule 23. Evaluation and Final Hearings in Cases Governed by Minnesota Statutes, Section 253B.18, and Minnesota Statutes, Section 253B.185**

(a) For persons who have been committed as mentally ill and dangerous to the public, sexually dangerous persons, or as sexual psychopathic personalities, the head of the treatment facility shall file the report required by Minnesota Statutes, section 253B.18. The evaluation may be conducted at a secure treatment or at a correctional facility. If transport is needed, the court shall designate the agency responsible to do it.

(b) Prior to making the final determination with regard to a person initially committed as mentally ill and dangerous to the public, as a sexually dangerous person, or as a sexual psychopathic personality, the court shall hold a hearing. The head of the treatment facility shall file the report required by Minnesota Statutes, section 253B.18, subdivision 2. The hearing for final determination shall be held within 14 days of the court's receipt of the report from the head of the treatment facility or within 90 days of the date of initial commitment, whichever is earlier, unless continued by agreement of the parties, or by the court for good cause shown. As its final determination, the court may, subject to Minn. R. Crim. P. 20.01 subd 4:

(1) Discharge the respondent's commitment;

(2) Commit the respondent as mentally ill only, in which case the respondent's commitment shall be deemed to have commenced upon the date of initial commitment, for purposes of determining the maximum length of the determinate commitment; or

(3) Commit the respondent for an indeterminate period as mentally ill and dangerous to the public, as a sexually dangerous person, or as a sexual psychopathic personality.

(c) At the request of respondent, the court shall appoint an examiner of the respondent's choice for purposes of the hearing required by this rule.

(d) The written report of the head of the treatment facility pursuant to Minnesota Statutes, section 253B.18, subdivision 2, shall address the criteria for commitment and whether there has been any change in the respondent's condition since the commitment hearing. The report shall provide the following information:

(1) the respondent's diagnosis;

(2) the respondent's present condition and behavior;

(3) the facts, if any, that establish that the respondent continues to satisfy the statutory requirements for commitment;

(4) a description of treatment efforts and response to treatment by the respondent during hospitalization;

(5) the respondent's prognosis;

(6) the respondent's individual treatment plan;

(7) an opinion as to whether the respondent is in need of further care and treatment;

(8) an opinion as to the program or facility best able to provide further care and treatment, if needed;

(9) an opinion as to whether respondent is dangerous to the public or himself. All supportive data and documentation shall be attached to the report.

(e) At the hearing, the court shall consider all competent evidence relevant to the respondent's present need for continued commitment. The burden of proof at the hearing is upon the proponent of indeterminate commitment to establish by clear and convincing evidence that the statutory requirements for commitment under Minnesota Statutes, chapter 253B, continue to be met.

***Advisory Committee Comment - 1999***

*This rule is intended to require final resolution, with due diligence, of the commitment process of a respondent who is mentally ill and dangerous to the public, a sexually dangerous person, or a sexual psychopathic personality. An initial hearing should not be "reviewed" years later. The rule is not intended to dictate where a committed person should be confined. If a commitment is sustained upon review and the individual is still subject to commitment to the Commissioner of Corrections the balance of the sentence is to be served in a correctional institution.*

**Rule 24. Expediting Transcripts for Chapter 253B Appeals**

In addition to satisfying the requirements of the Rules of Civil Appellate Procedure, any party initiating an appeal of an order entered under Minnesota Statutes, chapter 253B, shall, at or before the date of filing the notice of appeal, (a) serve on each court reporter who recorded the proceedings a copy of the notice of appeal and a request for transcripts the appellant deems necessary for the appeal and (b) file with the notice of appeal a copy of the request(s) for transcripts, along with an affidavit of service of the request(s) on opposing counsel, the court administrator of the court that issued the order appealed, and the court reporter or reporters, unless at the time of filing the notice of appeal all transcripts necessary for the appeal have already been transcribed. The transcript request(s) shall require completion of the transcripts no more than 25 days after the filing of the notice of appeal, unless the 25th day falls on a Saturday, Sunday, or a holiday, in which case the transcripts shall be completed on the next business day. The Court of Appeals may modify the deadline for completion of the transcripts if necessary. Failure of an appellant who intends to order a transcript to serve on the court reporter(s) a request for transcripts the appellant deems

necessary for the appeal at the date of filing the notice of appeal does not deprive the Court of Appeals of jurisdiction over the appeal, but extends the time for the Court of Appeals to hear the appeal by the period of delay between the filing of the appeal and service of the transcript request(s).

(Added effective July 1, 2009.)

**Rule 25. Subpoena for Production of Records**

Where a party in a proceeding under Minnesota Statutes, chapter 253B, uses a subpoena to obtain the production of records, the advance-service and advance-notice requirements under Minn. R. Civ. P. 45.02(a) and 45.04(a)(5) shall be 24 hours, rather than seven days.

(Added effective July 1, 2010.)

# INDEX - COMMITMENT AND TREATMENT ACT

# Special Rules for Appointment and Compensation of Counsel in Isolation and Quarantine Cases

Effective September 14, 2009

## TABLE OF HEADNOTES



## TEXT OF RULES

### Rule 1. General

**(a) Scope.** These special rules shall apply in proceedings under Minnesota Statutes, sections 144.419 to 144.4196.

**(b) Definition.** For purposes of these rules, a "Respondent" is a person subject to isolation or quarantine under Minnesota Statutes, sections 144.419 to 144.4196.

**(c) Citation.** These special rules may be cited as the Isolation and Quarantine Rules.

(Added effective September 14, 2009)

### Rule 2. Appointment and Compensation of counsel

**(a) Appointment.** The court shall appoint counsel upon request of a Respondent in any district court proceedings under Minnesota Statutes, section 144.4195, subdivision 3, or 144.4195, subdivision 4. The court shall appoint counsel for purposes of an appeal of an order under Minnesota Statutes, section 144.4195, subdivision 3, or 144.4195, subdivision 4, only after making the required indigency determination under Rule 4(a). The court may appoint one attorney to represent a group of Respondents if the court determines the group of Respondents is similarly situated. When appointing an attorney to represent a Respondent, or a group of similarly situated Respondents, the court shall first attempt to appoint an attorney from the Isolation and Quarantine Defense Panel; if no attorneys on the Panel are available, the court shall appoint an otherwise qualified attorney.

**(b) Compensation.** Court-appointed counsel shall submit timely invoices to the court administrator in the county of venue reflecting the hours worked and all reasonably necessary expenses incurred in preparation of a defense. The hourly compensation rate and expense reimbursement limit shall be as established by the Supreme Court under Rule 3(b). Invoices approved by the court administrator shall be forwarded to the State Court Administrator, who shall forward the invoices to the Department of Health for payment under Minnesota Statutes, section 144.4195, subdivision 5, paragraph (b).

**(c) Private Counsel.** A Respondent may retain private counsel at the Respondent's expense. If private counsel is retained, the court shall discharge any court-appointed counsel. Where one or more Respondents belonging to a similarly situated group represented by one court-appointed attorney retain private counsel, this does not affect the right of the other Respondents in the group to court-appointed counsel.

**(d) Withdrawal.** Under Minnesota Statutes, section 144.4195, subdivision 5, paragraph (b), upon request the court shall allow court-appointed counsel to withdraw from representing a Respondent on appeal if, in the opinion of counsel, there is insufficient basis for proceeding. Withdrawal of any counsel for any other reason shall be governed by Minn. Gen. R. Prac. 105 and Minn. R. Prof. Cond. 1.16.

(Added effective September 14, 2009)

**Rule 3. Isolation and Quarantine Defense Panel**

**(a) Recruitment and Training.** Every three years, the State Court Administrator's Office shall recruit a panel of attorneys, verify their qualifications, and train the attorneys to serve as court-appointed counsel in isolation and quarantine cases.

**(b) Appointment Order.** At the request of the State Court Administrator, the Supreme court by an Order shall appoint these qualified and trained attorneys to the Isolation and Quarantine Defense Panel for three-year terms, and establish the hourly compensation rate and expense reimbursement limit.*

(Added effective September 14, 2009)

**Note: Per Supreme Court Order ADM-09-8004, dated and effective September 14, 2009, court-appointed panel lawyers shall be compensated at an hourly rate of one hundred fifty dollars ($150) an hour, with total fees and expenses not to exceed five thousand dollars ($5,000) for each appointment without prior written approval of the chief judge.*

**Rule 4. Determination of Indigency for Appeal**

**(a) Indigency Standard.** The court shall appoint counsel for purposes of appeal of an order under Minnesota Statutes, section 144.4195, subdivision 3 or 4, only if the Respondent has requested and the court has allowed proceeding in forma pauperis under Minnesota Statutes, section 563.01.

(Added effective September 14, 2009)

# INDEX - ISOLATION AND QUARANTINE

# Minnesota No-Fault, Comprehensive or Collision Damage Automobile Insurance Arbitration Rules

Substantially revised effective January 1, 1991
With amendments received through August 1, 2010

## TABLE OF HEADNOTES

**Rule**

## TEXT OF RULES

### Rule 1. Purpose and Administration

(a) The purpose of the Minnesota no-fault arbitration system is to promote the orderly and efficient administration of justice in this State. To this end, the Court, pursuant to Minnesota Statutes, section 65B.525, and in the exercise of its rule making responsibilities, does hereby adopt these rules. These rules are intended to implement the Minnesota No-Fault Act.

(b) Arbitration under Minnesota Statutes, section 65B.525, shall be administered by a standing committee of twelve members to be appointed by the Minnesota Supreme Court. Initially, the twelve members shall be appointed for terms to commence January 1, 1975, and the supreme court shall designate three such members for a one-year term, three for a two-year term, three for a three-year term, and three for a four-year term. Thereafter, three members shall be appointed for a four-year term commencing on January 1 of each succeeding year. After July 1, 1988, no member shall serve more than two full terms and any partial term.

(c) The day-to-day administration of arbitration under Minnesota Statutes, section 65B.525, shall be by an arbitration organization designated by the Standing Committee with the concurrence of the Supreme Court. The administration shall be subject to the continuing supervision of the Standing Committee.

(Amended effective September 7, 1999; amended effective August 5, 2003.)

### Rule 2. Appointment of Arbitrator

The standing committee may conditionally approve and submit to the arbitration organization nominees to the panel of arbitrators quarterly in March, June, September, and December of each year, commencing March 1988. These nominees then may be included in the panel of arbitrators which the standing committee shall nominate annually for approval by the supreme court. The panel appointed by the supreme court shall be certified by the standing committee to the arbitration organization.

(Amended effective August 5, 2003.)

### Rule 3. Name of Tribunal

Any tribunal constituted by the parties for the settlement of their dispute under these rules shall be called the Minnesota No-Fault Arbitration Tribunal.

### Rule 4. Administrator

When parties agree to arbitrate under these rules, or when they provide for arbitration by the arbitration organization and an arbitration is initiated thereunder, they thereby constitute the arbitration organization the administrator of the arbitration.

(Amended effective August 5, 2003.)

### Rule 5. Initiation of Arbitration

**(a) Mandatory arbitration (for claims of $10,000 or less at the commencement of arbitration).** At such time as the respondent denies a claim, the respondent shall advise the claimant of claimant's right to demand arbitration.

**(b) Nonmandatory arbitration (for claims over $10,000).** At such time as the respondent denies a claim, the respondent shall advise the claimant whether or not it is willing to submit the claim to arbitration.

**(c) All cases.** In all cases the respondent shall also advise the claimant that information on arbitration procedures may be obtained from the arbitration organization, giving the arbitration organization's current address. On request, the arbitration organization will provide a claimant with a petition form for initiating arbitration together with a copy of these rules. Arbitration is commenced by the filing of the signed, executed form, together with the required filing fee, with the arbitration organization. If the claimant asserts a claim against more than one insurer, claimant shall so designate upon the arbitration petition. In the event that a respondent claims or asserts that another insurer bears some or all of the responsibility for the claim, respondent shall file a petition identifying the insurer and setting forth the amount of the claim that it claims is the responsibility of another insurer. Regardless of the number of respondents identified on the claim petition, the claim is subject to the jurisdictional limits set forth in Rule 6.

**(d) Denial of claim.** If a respondent fails to respond in writing within 30 days after reasonable proof of the fact and the amount of loss is duly presented to the respondent, the claim shall be deemed denied for the purpose of activating these rules.

**(e) Itemization of claim.** At the time of filing the arbitration form, or within 30 days after, the claimant shall file an itemization of benefits claimed and supporting documentation. Medical and replacement services claims must detail the name of providers, dates of services claimed, and total amounts owing. Income loss claims must detail employers, rates of pay, dates of loss, method of calculation, and total amounts owing.

**(f) Insurer's response.** Within 30 days after receipt of the itemization of benefits claimed and supporting documentation from claimant, respondent shall serve a response to the petition setting forth all grounds upon which the claim is denied and accompanied by all documents supporting denial of the benefits claimed.

(Amended September 12, 1991; amended effective August 31, 1993; amended effective May 19, 1997; amended effective August 5, 2003.)

**Rule 6. Jurisdiction in Mandatory Cases**

By statute, mandatory arbitration applies to all claims for no-fault benefits or comprehensive or collision damage coverage where the total amount of the claim, at the commencement of arbitration, is in an amount of $10,000.00 or less. In cases where the amount of the claim continues to accrue after the petition is filed, the arbitrator shall have jurisdiction to determine all amounts claimed including those in excess of $10,000.00. If the claimant waives a portion of the claim in order to come within the $10,000.00 jurisdictional limit, the claimant must specify within thirty (30) days of filing the claims in excess of the $10,000.00 being waived.

(Amended September 12, 1991; amended effective September 7, 1999.)

**Rule 7. Notice**

Upon the filing of the petition form by either party, the arbitration organization shall send a copy of the petition to the other party together with a request for payment of the filing fee. The responding party will then have 20 days to notify the arbitration organization of the name of counsel, if any.

(Amended effective August 5, 2003.)

**Rule 8. Selection of Arbitrator and Challenge Procedure**

The arbitration organization shall send simultaneously to each party to the dispute an identical list of four names of persons chosen from the panel. Each party to the dispute shall have seven business days from the mailing date in which to cross out a maximum of one name objected to, number the remaining names in order of preference, and return the list to the arbitration organization. In the event of multiparty arbitration, the arbitration organization may increase the number of potential arbitrators and divide the strikes so as to afford an equal number of strikes to each adverse interest. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable.

One of the persons who has been approved on both lists shall be invited by the arbitration organization to serve in accordance with the designated order of the mutual preference. Any objection to an arbitrator based on the arbitrator's post-appointment disclosure must be made within seven business days from the mailing date of the arbitrator disclosure form. Failure to object to the appointed arbitrator based upon the post-appointment disclosure within seven business days constitutes waiver of any objections based on the post-appointment disclosure. An objection to a potential arbitrator shall be determined initially by the arbitration organization, subject to appeal to the Standing Committee. If an acceptable arbitrator is unable to act, or for any other reason the appointment cannot be made from the submitted list, the arbitration organization shall have the power to make the appointment from among other members of the panel without the submission of additional lists. If any arbitrator should resign, be disqualified or unable to perform the duties of the office, the arbitration organization shall appoint another arbitrator from the no-fault panel to the case.

(Amended effective May 19, 1997; amended effective September 7, 1999; amended effective August 5, 2003.)

**Rule 9. Notice to Arbitrator of Appointment**

Notice of the appointment of the neutral arbitrator, whether appointed mutually by the parties or by the arbitration organization, shall be mailed to the arbitrator by the arbitration organization, together with a copy of these rules, and the signed acceptance of the arbitrator shall be filed with the arbitration organization prior to the opening of the first hearing.

(Amended effective August 5, 2003.)

**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 five 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 not-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 within their reporting period; and (5) arbitrators will be required to recertify 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 respondent provides insurance coverage. It is a financial conflict of interest if the appointed arbitrator is aware of having 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 and the arbitrator is aware of them.

(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 of retirement 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;

(2) He or she has retained current knowledge of the Minnesota No-Fault Act (Minnesota Statutes, sections 65B.41 to 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).

(Amended effective December 1, 1995; amended effective September 7, 1999; amended effective August 5, 2003; amended effective September 10, 2003; amended effective January 1, 2008; amended effective June 1, 2010.)

***Comment - 2008***

*In order to maintain a well-qualified and expert panel of arbitrators, as well as keep a sufficient number of arbitrators from outside the Twin Cities metropolitan area, the Committee finds it necessary to allow for a second basis upon which to qualify as a No-Fault Arbitrator. These secondary qualifications allow seasoned arbitrators to remain on the panel while not penalizing those who choose to slow down their practice. It also allows arbitrators in smaller communities to meet the level of expertise we require who, because of the nature of their practice, may not meet the percentage requirement of Section (a).*

***Committee Comment - 2010 Amendment***

*In recent years, there have been inconsistencies in district court rulings and in determinations by the Standing Committee as to what constitutes a conflict of interest for no-fault arbitrators. In response, the Standing Committee wishes to clarify what constitutes a conflict of interest for both respondents' and claimants' attorneys. The Committee recognizes that the Amendments will limit the number of arbitrators, especially in certain out state areas. But the Amendments are necessary to clarify the law and stem the tide of parties seeking removal of arbitrators in the district court. The Amendments also establish, for the first time, that a conflict exists if an arbitrator who is to rule on a disputed bill for a medical provider is aware that the provider has made referrals to the arbitrator within the last year.*

**Rule 11. Vacancies**

If for any reason an arbitrator should be unable to perform the duties of the office, the arbitration organization may, on proof satisfactory to it, declare the office vacant. Vacancies shall be filed in accordance with the applicable provisions of these rules.

(Amended effective August 5, 2003.)

**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.

**Rule 13. Withdrawal**

A claimant may withdraw a petition up until ten (10) days prior to the hearing. The claimant will be responsible for the arbitrator's fee, if any, upon withdrawal. If the petition is withdrawn after a panel of arbitrators is submitted and if the claimant shall file another petition arising from the same accident against the same insurer, the same panel of arbitrators shall be resubmitted to the claimant and the respondent. If the petition is withdrawn after the arbitrator is selected and if the claimant shall file another petition arising from the same accident against the same insurer, the same arbitrator who was earlier assigned shall be reassigned. The claimant who withdraws a petition shall be responsible for all parties' filing fees incurred upon the refiling of the petition.

(Amended effective September 7, 1999.)

**Rule 14. Time and Place of Arbitration**

An informal arbitration hearing will be held in the arbitrator's office or some other appropriate place in the general locale within a 50-mile radius of the claimant's residence, or other place agreed upon by the parties. If the claimant resides outside of the state of Minnesota, arbitration organization shall designate the appropriate place for the hearing. The arbitrator shall fix the time and place for the hearing. At least 14 days prior to the hearing, the arbitration organization shall mail notice thereof to each party or to a party's designated representative. Notice of hearing may be waived by any party. When an arbitration hearing has been scheduled for a day certain, the courts of the state shall recognize the date as the equivalent of a day certain court trial date in the scheduling of their calendars.

(Amended effective September 7, 1999; amended effective August 5, 2003.)

**Rule 15. Postponements**

The arbitrator, for good cause shown, may postpone any hearing upon the request of a party or upon the arbitrator's own initiative, and shall also grant such postponement when all of the parties agree thereto. The party requesting a postponement will be billed for the cost of the rescheduling; if, however, the arbitrator determines that a postponement was necessitated by a party's failure to cooperate in providing information required under Rule 5 or Rule 12, the arbitrator may assess the rescheduling fee to that party.

(Amended effective December 19, 2005.)

**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 address of the representative 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.

(Amended effective August 5, 2003.)

**Rule 17. Stenographic Record**

Any party desiring a stenographic record shall make arrangements directly with a stenographer and shall notify the other party of these arrangements at least 24 hours in advance of the hearing. The requesting party or parties shall pay the cost of the record. If the transcript is agreed by the parties to be, or determined by the arbitrator to be, the official record of the proceeding, it must be made available to the arbitrator and to the other parties for inspection, at a date, time and place determined by the arbitrator.

(Amended effective December 1, 1995.)

**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.

**Rule 19. Attendance at Hearings**

The arbitrator shall maintain the privacy of the hearings. Any person having a direct interest in the arbitration is entitled to attend hearings. The arbitrator shall otherwise have the power to require the exclusion of any witness, other than a party or other essential person, during the testimony of any other witness.

**Rule 20. Oaths**

Arbitrators, upon accepting appointment to the panel, shall take an oath or affirmation of office. The arbitrator may require witnesses to testify under oath or affirmation.

**Rule 21. Order of Proceedings and Communication with Arbitrator**

The hearing shall be opened by the recording of the date, time and place of the hearing, and presence of the arbitrator, the parties and their representatives, if any. Either party may make an opening statement regarding the claim. The claimant shall then present evidence to support the claim. The respondent shall then present evidence supporting the defense. Witnesses for each party shall submit to questions or other examination. The arbitrator has the discretion to vary this procedure, but shall afford a full and equal opportunity to all parties for the presentation of any material and relevant evidence. Exhibits, when offered by either party, may be received in evidence by the arbitrator.

The names and addresses of all witnesses and description of the exhibits in the order received shall be made part of the record. There shall be no direct communication between the arbitrator and the parties other than at the hearing, unless the parties and the arbitrator agree otherwise. However, pre-hearing exhibits can be sent directly to the arbitrator, delivered in the same manner and at the same time to the opposing party. Parties are encouraged to submit any pre-hearing exhibits at least 24 hours in advance of the scheduled hearing. If the exhibits are not provided to opposing counsel and the arbitrator at least 24 hours before the hearing or if the exhibits contain new information and opposing counsel has not had a reasonable amount of time to review and respond to the information, the arbitrator may hold the record open until the parties have had time to review and respond to the material or reconvene the arbitration at a later date. Any other oral or written communication from the parties to the arbitrator shall be directed to the arbitration organization for transmittal to the arbitrator.

(Amended effective August 5, 2003; amended effective January 1, 2008.)

***Comment - 2008***

*The change in Rule 21 merely formalizes a practice common to the No-Fault arena. More often parties are delaying the submission of their pre-hearing exhibits until the day of the hearing, which does not allow the arbitrator ample time to prepare before the hearing. This rule not only discourages that practice, it allows time for the other party to refute new claims presented by opposing counsel.*

**Rule 22. Arbitration in the Absence of a Party or Representative**

Unless the law provides to the contrary, the arbitration may proceed in the absence of any party or representative who, after due notice, fails to be present or fails to obtain a postponement. An award shall not be made solely on the default of a party. The arbitrator shall require the party who is present to submit such evidence as the arbitrator may require for the making of an award.

**Rule 23. Witnesses, Subpoenas and Depositions**

(a) Through the arbitration organization, the arbitrator may, on the arbitrator's initiative or at the request of any party, issue subpoenas for the attendance of witnesses at the

arbitration hearing or at such deposition as ordered under Rule 12, and the production of books, records, documents and other evidence. The subpoenas so issued shall be served, and upon application to the district court by either party or the arbitrator, enforced in the manner provided by law for the service and enforcement of subpoenas for a civil action.

(b) All provisions of law compelling a person under subpoena to testify are applicable.

(c) Fees for attendance as a witness shall be the same as for a witness in the district courts.

(Amended effective August 5, 2003.)

**Rule 24. Evidence**

The parties may offer such evidence as they desire and shall produce such additional evidence as the arbitrator may deem necessary to an understanding and determination of the issues. The arbitrator shall be the judge of the relevancy and materiality of any evidence offered, and conformity to legal rules of evidence shall not be necessary. The parties shall be encouraged to offer, and the arbitrator shall be encouraged to receive and consider, evidence by affidavit or other document, including medical reports, statements of witnesses, officers, accident reports, medical texts, and other similar written documents that would not ordinarily be admissible as evidence in the courts of this state. In receiving this evidence, the arbitrator shall consider any objections to its admission in determining the weight to which he or she deems it is entitled.

**Rule 25. Close of Hearing**

The arbitrator shall specifically inquire of all parties as to whether they have any further evidence. If they do not, the arbitrator shall declare the hearing closed. If briefs or documents are to be filed, the hearing shall be declared closed as of the final date set by the arbitrator for the receipt of said briefs or documents. The time limit within which the arbitrator is required to make his award shall commence to run upon the close of the hearing.

**Rule 26. Reopening the Hearing**

At any time before the award is made, a hearing may be reopened by the arbitrator on the arbitrator's own motion, or upon application of a party for good cause shown.

**Rule 27. Waiver of Oral Hearing**

The parties may provide, by written agreement, for the waiver of oral hearings in any case. If the parties are unable to agree as to the procedure, the arbitration organization shall specify a fair and equitable procedure.

(Amended effective August 5, 2003.)

**Rule 28. Extensions of Time**

The parties may modify any period of time by mutual agreement. The arbitration organization or the arbitrator may for good cause extend any period of time established by these rules, except the time for making the award. The arbitration organization shall notify the parties of any extension.

(Amended effective August 5, 2003.)

**Rule 29. Serving of Notice**

Each party waives the requirements of Minnesota Statutes, section 572.23, and shall be deemed to have agreed that any papers, notices or process necessary or proper for the initiation or continuation of an arbitration under these rules; for any court action in connection herewith including application for the confirmation, vacation, modification or correction of an award issued hereunder as provided in Rule 38; or for the entry of judgment on any award made under these rules may be served on a party by mail or facsimile addressed to the party or its representative at the last known address or by personal service, in or outside the state where the arbitration is to be held, provided that reasonable opportunity to be heard with regard thereto has been granted to the party.

The arbitration organization and the parties may also use facsimile transmission, telex, telegram or other written forms of electronic communication to give the notices required by these rules and to serve process for an application for the confirmation, vacation, modification or correction of an award issued hereunder.

(Amended effective September 7, 1999; amended effective August 5, 2003.)

**Rule 30. Time of Award**

The award shall be made promptly by the arbitrator and, unless otherwise agreed by the parties or specified by law, no later than 30 days from the date of closing the hearing, or, if oral hearings have been waived, from the date of the arbitration organizations's transmittal of the final statements and proofs to the arbitrator.

(Amended effective August 5, 2003.)

**Rule 31. Form of Award**

The award shall be in writing and shall be signed by the arbitrator. It shall be executed in the manner required by law.

**Rule 32. Scope of Award**

The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable consistent with the Minnesota No-Fault Act. The arbitrator may, in the award, include arbitration fees, expenses, rescheduling fees and compensation as provided in Rules 39, 40, 41, and 42 in favor of any party and, in the event that any administrative fees or expenses are due the arbitration organization, in favor of the arbitration organization, except that the arbitrator must award interest when required by Minnesota Statutes, section 65B.54. The arbitrator may not, in the award, include attorneys fees for either party.

Given the informal nature of no-fault arbitration proceedings, the no-fault award shall not be the basis for a claim of estoppel or waiver in any other proceeding.

(Amended effective August 31, 1993; amended effective September 7, 1999; amended effective August 5, 2003.)

**Rule 33. Delivery of Award to Parties**

Parties shall accept as legal delivery of the award the placing of the award or a true copy thereof in the mail, addressed to a party or its representative at the last known address, personal service of the award, or the filing of the award in any other manner that is permitted by law.

**Rule 34. Waiver of Rules**

Any party who proceeds with the arbitration after knowledge that any provision or requirement of these rules has not been complied with and who fails to state an objection thereto in writing shall be deemed to have waived the right to object.

**Rule 35. Interpretation and Application of Rules**

The arbitrator shall interpret and apply these rules insofar as they relate to the arbitrator's powers and duties. All other rules shall be interpreted by the arbitration organization.

(Amended effective August 5, 2003.)

**Rule 36. Release of Documents for Judicial Proceedings**

The arbitration organization shall, upon the written request of a party, furnish to the party, at its expense, certified copies of any papers in the arbitration organization's possession that may be required in judicial proceedings relating to the arbitration.

(Amended effective August 5, 2003.)

**Rule 37. Applications to Court and Exclusion of Liability**

(a) No judicial proceedings by a party relating to the subject matter of the arbitration shall be deemed a waiver of the party's right to arbitrate.

(b) Neither the arbitration organization nor any arbitrator in a proceeding under these rules can be made a witness or is a necessary party in judicial proceedings related to the arbitration.

(c) Parties to these rules shall be deemed to have consented that judgment upon the arbitration award may be entered in any federal or state court having jurisdiction thereof.

(d) Neither the arbitration organization nor any arbitrator shall be liable to any party for any act or omission in connection with any arbitration conducted under these rules.

(Amended effective September 7, 1999; amended effective August 5, 2003.)

**Rule 38. Confirmation, Vacation, Modification or Correction of Award**

The provisions of Minnesota Statutes, sections 572.10 through 572.26 shall apply to the confirmation, vacation, modification or correction of award issued hereunder, except that service of process pursuant to Minnesota Statutes, section 572.23 shall be made as provided in Rule 29 of these rules.

(Amended effective September 7, 1999.)

**Rule 39. Administrative Fees**

The initial fee is due and payable at the time of filing and shall be paid as follows: By the CLAIMANT - $45.00, by the RESPONDENT - $155.00. In the event that there is more than one respondent in an action, each respondent shall pay the $155.00 fee.

The arbitration organization may, in the event of extreme hardship on the part of any party, defer or reduce the administrative fee.

(Amended effective August 31, 1993; amended effective August 5, 2003; amended effective July 1, 2004; amended effective July 1, 2008.)

**Rule 40. Arbitrator's Fees**

(a) An arbitrator shall be compensated for services and for any use of office facilities in the amount of $300.00 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 the sum of $50.00. 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 $300.00. Unless the parties agree otherwise, the fee in a settlement shall be assessed equally to the parties and 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) Once a hearing is commenced, the arbitrator shall direct assessment of the fee.

(Amended effective December 1, 1995; amended effective September 7, 1999; amended effective August 5, 2003; amended effective January 1, 2008.)

***Comment - 2008***

*It is becoming increasingly common for parties to request a last-minute postponement of a hearing, sometimes on multiple occasions. This change encourages the parties to consider the time the arbitrator has set aside to hear the matter and places postponed hearings more in line with the fee structure for settled cases. This rule also formalizes the practice of assessing the postponement fee to the requesting party. Finally, this rule specifies that the arbitrator's fee shall not exceed $300. This has become necessary as an increasing number of arbitrators have requested a larger fee because of time devoted to a particular case.*

**Rule 41. Postponement Fees**

A postponement fee of $100.00, $150.00, and $200.00 shall be charged against each party requesting a rescheduling for their first, second, and additional postponements respectively.

(Amended effective July 1, 2004; amended effective December 19, 2005; amended effective July 1, 2008.)

**Rule 42. Expenses**

Generally each side should pay its own expenses. An arbitrator does, however, have the discretion to direct a party or parties to pay expenses as part of an award.

(Amended effective August 5, 2003.)

**Rule 43. Amendment or Modification**

The Standing Committee may propose amendments to these rules as circumstances may require. All changes in these rules and all other determinations of the Standing Committee shall be subject to review and approval by the Minnesota Supreme Court.

# INDEX - NO-FAULT AUTOMOBILE INSURANCE ARBITRATION

# Legal Services Advisory Committee Membership Rules

Adopted May 24, 1982
With amendments received through August 1, 2009

## TABLE OF HEADNOTES



## TEXT OF RULES

### Rule 1. Definitions

As used in these rules:

1. Eligible client means an individual who is financially unable to afford legal assistance as determined by a recipient by applying Federal Legal Service Corporation standards in effect on July 1, 1982.

2. Qualified Legal Services Program means a nonprofit corporation which provides or proposes to provide legal services to eligible clients in civil matters and which is governed by a board of directors composed of attorneys at law and consumers of legal services.

3. Recipient means a qualified legal services program that receives funds from the Supreme Court to provide legal services to eligible clients.

### Rule 2. Purpose

It is of primary importance for all citizens to have access to our system of justice. The Minnesota Legislature has recognized this necessity by appropriating a surcharge on civil filings to fund legal services for persons unable to afford private counsel and to fund programs which organize members of the private bar to perform services for qualified alternative dispute resolution. The distribution of funds for such legal services and alternative dispute resolution programs shall be accomplished in accordance with these rules.

### Rule 3. Legal Services Advisory Committee

**A. Composition.** The Legal Services Advisory Committee shall consist of:

1. A chairman appointed by this Court for such time as it designates and serving at the pleasure of this Court but not more than six years as chairman; and

2. Effective July 1, 1982, ten members appointed by the Court for three year terms or until their successors are appointed, except that shorter terms shall be used where necessary to assure that as nearly as may be possible one third of all terms expire each June 30th. No person may serve more than two three-year terms in addition to any additional shorter terms to which he was originally appointed to fill a vacancy and any period served as chairman.

3. The members specified in subdivision 1 and 2 shall be constituted as follows: seven attorneys at law who are well acquainted with the provision of legal services in civil matters, four of whom shall be nominated by the state bar association in a manner determined by it, and three of whom shall be nominated by the programs in Minnesota providing legal services in civil matters on July 1, 1982, with funds provided by the Federal Legal Services Corporation in the manner determined by them; two public members who are not attorneys and two persons who could qualify as eligible clients. In making the appointments of the attorney-at-law members the Court shall not be bound by the nominations prescribed above.

**B. Vacancy.** In the event of a vacancy, the Court shall fill the vacancy from same constituency represented by the member being replaced. Any member who misses three consecutive regularly scheduled meetings will be deemed to have resigned from the committee and the Court will appoint a new member to fill the vacancy and complete the term.

**C. Members Expenses.** The members shall be paid their reasonable and necessary expenses incurred in the performance of their duties.

**D. Duties.** The committee shall have general supervisory authority over the administration of these rules, shall advise the Court on the distribution of funds to qualified legal services or alternative dispute resolution programs after a review of applications which meet the eligibility criteria established by the committee and perform such other duties as the Court may direct. The committee may elect a vice chairman and specify the duties of the position. The committee may also elect an executive committee and authorize it to perform specified duties of the Legal Services Advisory Committee between meetings.

**E. Staff.** The State Court Administrator or his designee(s) shall serve as staff to the Legal Services Advisory Committee. When authorized by the Court, the State Court Administrator may employ such additional personnel as necessary with funds appropriated for this purpose to administer these rules.

**F. Rules.** The committee may adopt rules for its operation not inconsistent with these rules.

(Amended effective January 1, 2009.)

# Rules Relating to Distribution of Civil Surcharge Funds

With amendments received through August 1, 2006

## TABLE OF HEADNOTES



## TEXT OF RULES

### Rule 4. Federal Legal Services Corporations

#### A. Eligible Entities - Mandatory Distribution

The Legal Services Corporations which have been identified by statute, Minnesota Statutes, section 480.242, subdivision 2, as recipients of 85 percent of the surcharge funds, are those qualified legal services programs which have demonstrated an ability as of July 1, 1982, to provide legal services to persons unable to afford private counsel with funds provided by the federal Legal Services Corporation.

Those programs are:

1. Southern Minnesota Regional Legal Services
   60 East Fourth Street
   St. Paul, MN 55101

2. Mid Minnesota Legal Assistance
   222 Grain Exchange Building
   323 South Fourth Street
   Minneapolis, MN 55415

3. Judicare of Anoka County
   403 Jackson Street
   Anoka, MN 55303

4. Legal Aid Service of Northeastern Minnesota
   302 Ordean Building
   424 West Superior Street
   Duluth, MN 55802

5. Northwest Minnesota Legal Services
   Eighth Street and Fourth Avenue South
   P.O. Box 714
   Moorhead, MN 56560

6. Anishinabe Legal Service
   Box 157
   Cass Lake, MN 56633

#### B. Frequency of Distribution

The mandatory distribution to the Legal Services Corporations shall be made of funds on deposit at the Supreme Court on October 15, January 15, April 15, May 15 and June 15

based upon the number of persons with incomes below the poverty level established by the United States Census Bureau who reside in the geographical area served by each program as determined by the Supreme Court on the basis of the 1980 national census. Until the 1980 figures are available, the 1970 census poverty level data shall be the basis for preliminary distributions.

An adjustment in funds disbursed shall be made to insure that total fiscal year 1983 disbursements are in accord with the 1980 census data applied for the entire year. The Legal Services Corporations shall, upon request by the Legal Services Advisory Committee, provide a report and recommendation in writing concerning the number of such persons in the areas served by each such program in accordance with the statutory criteria. The report shall set forth the bases for the enumerations.

**C. Maintenance of Financial Records**

Each Legal Service Corporation shall maintain books and records in accord with generally accepted accounting principles. The books and records shall account for the receipts and expenditure of all funds appropriated from the surcharge. Within 90 days after the close of the state fiscal year the Legal Service Corporation shall return any unexpended funds to the Supreme Court. Books and records shall be maintained for a period of five years from the close of the fiscal year in question or until audited whichever is sooner.

**D. Budgets**

Each Legal Service Corporation shall submit a proposed budget to the legislature biennially. These budgets shall be submitted to the Supreme Court for inclusion in the agency's budget in the manner, form, and time prescribed for state agencies.

**Rule 5. Discretionary Grant Funds**

**A. Application Process**

The Legal Services Advisory Committee shall solicit applications for funding for the provision of qualified legal services in civil matters to eligible clients, including programs which organize members of the private bar to perform services and programs for qualified alternative dispute resolution.

**B. Requests for Proposal**

Requests for proposal shall be prepared by the Legal Services Advisory Committee specifying the requirements with which applicants must comply. At a minimum applicants must furnish statements about the nature of the proposed program, a proposed budget, and a description of the organizational structure of the sponsoring agency.

**C. Notice of Requests for Proposal**

Notice of the requests for proposal shall be posted in the Bench and Bar, Finance and Commerce, the St. Paul Legal Ledger and such other places as the Legal Services Advisory Committee deems likely to give adequate notice to potential applicants at least 30 days prior to the application deadline.

**D. Application Deadline**

The request for proposal shall clearly state the application deadline. The Legal Services Advisory Committee shall consider all applications submitted prior to the deadline.

**E. Review and Recommendation**

The Legal Services Advisory Committee shall review all applications within 90 days of the deadline and recommend in writing to the Supreme Court the agencies and dollar amount of the awards which it deems most suitable for receiving surcharge funding.

**F. Award of Surcharge Funds by the Supreme Court**

The Supreme Court, if it agrees with the recommendations of the Legal Services Advisory Committee, shall contract with the agency to execute the proposed program within

legal and budgetary limitations. The funds shall be disbursed in the manner provided by contract.

**G. Maintenance of Books and Records**

Each recipient of an award of legal services surcharge funds shall maintain books and records in accord with generally accepted accounting principles. The books and records shall account for the receipt and expenditure of all funds appropriated from the surcharge. Within 90 days after the close of the state fiscal year the recipient shall return any unexpended funds to the Supreme Court. Books and records shall be maintained for a period of five years from the close of the fiscal year in question or until audited whichever is sooner.

**Rule 6. Surcharge Appropriation Budget**

The responsibility for presenting the surcharge budget to the legislature shall reside with the Legal Services Advisory Committee.

# INDEX - CIVIL SURCHARGE FUNDS DISTRIBUTION

# Facsimile Transmission

## TABLE OF ORDERS

**STATE OF MINNESOTA**
**IN SUPREME COURT**

C2-87-1853

ORDER ADOPTING USE OF FACSIMILE TRANSMISSION AND REQUESTING CONSIDERATION BY RULES COMMITTEES

WHEREAS, by Order #C2-87-1853 dated October 3, 1988, this Court extended the authorization for filing of papers and issuance of orders and warrants by use of facsimile transmission equipment until January 1, 1989; and

WHEREAS, filing papers by the use of facsimile transmission has been incorporated into the Rules of Civil Procedure by an amendment effective January 1, 1989; and

WHEREAS, incorporation of the use of facsimile transmission, where appropriate, into other rules promulgated by this Court will provide clear notice of such use to all members of the practicing bar and the public;

NOW, THEREFORE, IT IS ORDERED that, effective January 1, 1989, facsimile transmission is allowed subject to the following conditions:

A. Equipment. Only facsimile transmission equipment that satisfies the published criteria of the Supreme Court shall be used for filing and issuance of orders and warrants under this Order.

B. Permitted Use.

(1) Issuance of Orders or Warrants.

(a) Facsimile transmission may be used for the issuance of all orders and warrants including, but not limited to, the following circumstances:

(i) Criminal matters for the issuance of arrest and search warrants;

(ii) Juvenile matters for the issuance of orders or warrants for taking a juvenile into custody and for the release or detention of the juvenile;

(iii) Family matters for the issuance of ex parte temporary orders for protection; and

(iv) Civil cases for the issuance of temporary restraining orders.

(b) All procedural and statutory requirements for the issuance of a warrant or order, including the making of a record of the proceedings, shall be met.

(c) For all procedural and statutory purposes, the facsimile shall have the same force and effect as the original.

(d) The original order or warrant, along with any other documents, including affidavits, shall be delivered to the court administrator of the county where the request or application for the order or warrant was made.

(2) Filing. Filing of all papers in the district court shall be permitted by use of facsimile transmission pursuant to the terms and conditions of Rule 5.05 of the Minnesota Rules of Civil Procedure for the District Court.

IT IS FURTHER ORDERED that all advisory committees established by this Court in regard to rules governing procedure in appeals and criminal, juvenile, probate, commitment, and family law matters shall consider the adoption of appropriate amendments that will incorporate the use of facsimile transmission into the rules of procedure and report their recommendations to this Court at the next available opportunity.

Dated: November 21, 1988

BY THE COURT

-s-Douglas K. Amdahl
Chief Justice
Minnesota Supreme Court

**STATE OF MINNESOTA**
**IN SUPREME COURT**

C2-87-1853

ORDER ADOPTING CRITERIA FOR COURT OPERATED FACSIMILE EQUIPMENT

WHEREAS, by Order #C2-87-1853 dated November 21, 1988, this Court authorized the filing of papers and issuance of warrants and orders by use of facsimile transmission equipment that satisfies the published criteria of this Court; and

WHEREAS, the fair and efficient administration of justice requires the establishment of a uniform standard for facsimile transmission equipment operated by the courts of this state; and

WHEREAS, the International Telegraph and Telephone Consultative Committee (CCITT) of the International Telecommunications Union has established standards for facsimile transmission equipment, and

WHEREAS, facsimile transmission equipment that meets the standards established for the CCITT category "Group 3" provides the highest operating speed and image resolution available for use over the public telephone network;

NOW, THEREFORE, IT IS HEREBY ORDERED that, until further order of this Court, facsimile transmission equipment operated by the courts of this state for the purposes of filing of papers and issuance of warrants and orders shall comply with the standards for Group 3 apparatus established by the CCITT [currently set forth in Recommendations T.4 and T.30, Vol. VII - Fascicle VII.3, CCITT Red Book; Malaga-Torremolinos 1984 (U.N. Bookstore Code ITU 6731)]. At the discretion of the court or judicial district operating such equipment, such equipment may also be compatible with machines in CCITT Groups 1 and 2.

IT IS FURTHER ORDERED that it is the responsibility of persons desiring to file documents with the courts of this state by the use of facsimile transmission equipment to utilize facsimile transmission equipment that is compatible with facsimile transmission equipment operated by the courts of this state.

Dated: January 31, 1989

BY THE COURT

-s-Douglas K. Amdahl
Chief Justice

## 2012 INTEREST RATES ON STATE COURT JUDGMENTS AND ARBITRATION AWARDS

Minnesota Statutes, section 549.09 directs the State Court Administrator to determine the annual interest rate applicable to certain state court judgments, verdicts, and arbitration awards. For judgments and awards governed by section 549.09[1] the annual interest rate for calendar year 2012 shall be 4%, provided that for judgments exceeding $50,000 that are finally entered on or after August 1, 2009, except a judgment or award for or against the state or a political subdivision of the state entered on or after April 16, 2010, the interest rate shall be 10% per year until paid.[2]

Minnesota Statutes, section 548.091, subdivision 1a, provides that the interest rate applicable to child support judgments shall be the rate provided in Minnesota Statutes, section 549.09, subject to a 18% maximum rate.

The following lists the judgment rates in effect for state courts:

| YEAR | M.S. 549.09 Annual Rate | M.S. 549.09 Rate for Judgment exceeding $50,000 Finally entered on or after 8/1/09 But not judgments for or against The state or a political subdivision Finally entered on or after 4/16/2010 | | M.S. 548.091 Rate for Child Support Judgments |
|---|---|---|---|---|
| 1997 | 5% | | | 7% |
| 1998 | 5% | | | 7% |
| 1999 | 4% | | | 6% |
| 2000 | 5% | | | 7% |
| 2001 | 6% | | | 8% |
| 2002 | 2% | | | 4% |
| 2003 | 4% | | | 6% |
| 2004 | 4% | | | 6% |
| 2005 | 4% | | | 6% |
| 2006 | 4% | | | 6% |
| 2007 | 5% | | | 7% |
| 2008 | 4% | | | 4% |
| 2009 | 4% | 10% | Follow 549.09 rate (but not more than 18%) | |
| 2010 | 4% | 10% | Follow 549.09 rate (but not more than 18%) | |
| 2011 | 4% | 10% | Follow 549.09 rate (but not more than 18%) | |
| 2012 | 4% | 10% | Follow 549.09 rate (but not more than 18%) | |

[1]The interest rate determined pursuant to Minnesota Statutes, section 549.09, does not apply to judgments for the recovery of taxes and employment arbitrations pursuant to Minnesota Statutes, chapter 179 or 179A, and may not apply to judgments in condemnation cases. In condemnation cases governed by Minnesota Statutes, section 117.195, the interest rate determined pursuant to Minnesota Statutes, section 549.09, is presumed to satisfy the constitutional requirement of just compensation unless the landowner shows that this rate does not provide what a reasonable and prudent investor would have earned while investing so as to maximize the rate of return, yet guarantee safety of principle. State by Humphrey v. Jim Lupient Oldsmobile Co., 509 N.W.2d 361, 364 (Minn. 1993).

The interest rate on judgments for the recovery of taxes owed to the Commissioner of the Department of Revenue, such as income, excise, and sales taxes, is established by the Commissioner pursuant to Minnesota Statutes, section 270C.40, subdivision 5. The interest rate for state tax judgments also applies to judgments for the recovery of real or personal property taxes, subject to a ten percent minimum and fourteen percent maximum, and double that in certain cases, pursuant to Minnesota Statutes, section 279.03, subdivision 1a. These rates may be obtained from the Department of Revenue.

Minnesota Statutes, section 549.09, subdivision 1, paragraph (d), provides that Minnesota Statutes, section 549.09, does not apply to arbitrations between employers and employees under Minnesota Statutes, chapter 179 or 179A, and that an arbitrator is neither required to nor prohibited from awarding interest under Minnesota Statutes, chapter 179, or Minnesota Statutes, section 179A.16, for essential employees.

[2]As amended by Minnesota Laws 2002, chapter 247, section 1, Minnesota Laws 2009, chapter 83, article 2, section 35, Minnesota Laws 2010, chapter 249, Minnesota Statutes, section 549.09, directs that the annual rate is to be determined by using the monthly one-year constant maturity treasury yield reported in the latest statistical release of the federal reserve board of governors rounded to the nearest one percent, subject to a four percent minimum; provided that for certain judgments exceeding $50,000 entered on or after August 1, 2009, the interest rate shall be 10% per year until paid.

**STATE OF MINNESOTA**
**IN SUPREME COURT**

C9-85-1134

COST OF LIVING ADJUSTMENT TO CHILD SUPPORT GUIDELINES

Minnesota Statutes 2004, section 518.551, subdivision 5, paragraph (k), requires the Supreme Court to change the dollar amount of the income limit for application of the child support guidelines on July 1 of each even numbered year, to reflect changes in the cost of living index.

This statute also requires that the Supreme Court select the index for the cost of living adjustment.

The adjustment to the income limit must be made available to courts and the public on or before April 30, 2006. Our order filed April 13, 2006, selecting the cost of living index and setting the new income limit is hereby amended to better reflect the relationship between existing statutory provisions and related new legislation.

Act of June 3, 2005, ch. 164, section 26, 2005 Minn. Laws 1878, 1919, adopts a new child support guidelines table that will provide an actual dollar amount, rather than a percentage amount, for the basic child support obligation as determined by the combined gross income of both parents. Under the new table, the combined parental income limit for application of the child support guidelines is $15,000. The new child support guidelines table, including the $15,000 income limit, is effective January 1, 2007, and applies to orders adopted or modified after that date. Act of June 3, 2005, ch. 164, section 32, 2005 Minn. Laws 1878, 1925.

**IT IS HEREBY ORDERED:**

1. That the Minneapolis - St. Paul (CPI-U) figure for the last half of 2005 shall be used to adjust the child support guidelines cap.

2. That the new dollar amount of the income limit for application of the child support guidelines, modified in accordance with Minnesota Statutes 2004, section 518.551, subdivision 5, paragraph (k), shall be $7,360.00, effective July 1, 2006.

Dated: May 16, 2006

By the court:

-s-Russell A. Anderson
Chief Justice

# Rule on the Provision of Legal Services Following the Determination of a Major Disaster

**Subd. 1. Determination of Existence of Major Disaster.** Solely for purposes of this rule, the Supreme Court shall determine when an emergency affecting the justice system, as a result of a natural or other major disaster has occurred in:

(1) This jurisdiction and whether the emergency caused by the major disaster affects the entirety or only a part of this jurisdiction, or

(2) Another jurisdiction but only after such a determination and its geographical scope have been made by the highest court of that jurisdiction. The authority to engage in the temporary practice of law in this jurisdiction pursuant to subdivision 3 shall extend only to lawyers who principally practice in the area of such other jurisdiction determined to have suffered a major disaster causing an emergency affecting the justice system and the provision of legal services.

**Subd. 2. Temporary Practice in this Jurisdiction Following Major Disaster.** Following the determination of an emergency affecting the justice system in this jurisdiction pursuant to subdivision 1 of this rule, or a determination that persons displaced by a major disaster in another jurisdiction and residing in this jurisdiction are in need of pro bono services and the assistance of lawyers from outside this jurisdiction is required to help provide such assistance, a lawyer authorized to practice law in another United States jurisdiction, and not disbarred, suspended from practice or otherwise restricted from practice in any jurisdiction, may provide legal services in this jurisdiction on a temporary basis. Such legal services must be provided on a pro bono basis without compensation, expectation of compensation or other direct or indirect pecuniary gain to the lawyer. Such legal services shall be assigned and supervised through an established not-for-profit bar association, pro bono program or legal services program or through such organizations specifically designated by the Supreme Court.

**Subd. 3. Temporary Practice in this Jurisdiction Following Major Disaster in Another Jurisdiction.** Following the determination of a major disaster in another United States jurisdiction, a lawyer who is authorized to practice law and who principally practices in that affected jurisdiction, and who is not disbarred, suspended from practice or otherwise restricted from practice in any jurisdiction, may provide legal services in this jurisdiction on a temporary basis. Those legal services must arise out of and be reasonably related to that lawyer's practice of law in the jurisdiction, or area of such other jurisdiction, where the major disaster occurred.

**Subd. 4. Duration of Authority for Temporary Practice.** The authority to practice law in this jurisdiction granted by subdivision 1 of this rule shall end when the Supreme Court determines that the conditions caused by the major disaster in this jurisdiction have ended except that a lawyer then representing clients in this jurisdiction pursuant to subdivision 2 is authorized to continue the provision of legal services for such time as is reasonably necessary to complete the representation, but the lawyer shall not thereafter accept new clients. The authority to practice law in this jurisdiction granted by subdivision 3 of this rule shall end 60 days after the Supreme Court declares that the conditions caused by the major disaster in the affected jurisdiction have ended.

**Subd. 5. Court Appearances.** The authority granted by this rule does not include appearances in court except:

(1) Pursuant to the court's pro hac vice admission rule and, if such authority is granted, any fees for such admission shall be waived; or

(2) If the Supreme Court, in any determination made under subdivision 1, grants blanket permission to appear in all or designated courts of this jurisdiction to lawyers providing legal services pursuant to subdivision 2. If such an authorization is included, any pro hac vice admission fees shall be waived.

**Subd. 6. Disciplinary Authority and Registration Requirement.** Lawyers providing legal services in this jurisdiction pursuant to subdivision 1 or 2 are subject to the Supreme Court's disciplinary authority and the Rules of Professional Conduct of this jurisdiction as provided in Minn. R. Prof. Cond. 8.5. Lawyers providing legal services in this jurisdiction under subdivision 1 or 2 shall, within 30 days from the commencement of the provision of legal services, file a registration statement with the Lawyer Registration Office. The registration statement shall be in a form prescribed by the Supreme Court. Any lawyer who provides legal services pursuant to this rule shall not be considered to be engaged in the unlawful practice of law in this jurisdiction.

**Subd. 7. Notification to Clients.** Lawyers authorized to practice law in another United States jurisdiction who provide legal services pursuant to this rule shall inform clients in this jurisdiction of the jurisdiction in which they are authorized to practice law, any limits of that authorization, and that they are not authorized to practice law in this jurisdiction except as permitted by this rule. They shall not state or imply to any person that they are otherwise authorized to practice law in this jurisdiction.

(Added effective January 1, 2010.)