



Suggested Best Practices for Minnesota No-Fault Arbitrators

Table of Contents

Preamble	3
Best Practices	4
I. Arbitrator Qualifications	4
II. Arbitrator Disclosures – Conflict of Interest	5
III. Time and Availability for Hearing	8
IV. Hearings and Proceedings	9
V. Decisions, Orders, and Awards	14



Preamble

The Minnesota Supreme Court has promulgated Standards of Conduct for Minnesota No-Fault arbitrators serving under the Minnesota No-Fault Rules. These Standards were created to promote the overarching goal of providing a fair, neutral, and impartial process in resolving disputes arising out of contested No-Fault claims.

The No-Fault Standing Committee is charged with the duty to investigate complaints about arbitrators alleged to have violated the Standards of Conduct. In the event of a finding that a violation has occurred, the Standing Committee shall determine what sanctions, if any, should be imposed.

Occasionally, the Standing Committee may issue a Best Practices letter, even when a sanction is not imposed. The purpose of a Best Practices letter is to offer the arbitrator future guidance in situations which may involve the interpretation of and adherence to these Standards. It has occurred to the Standing Committee that an offering of suggested Best Practices to all arbitrators on the No-Fault panel would be helpful and informative. These suggested Best Practices are offered as a guide to arbitrators faced with questions involving compliance with the Standards of Conduct and the Rules. They are not intended to be controlling principles or as precedent in any future proceedings, each of which will be determined based upon the specific facts of each case.

Various hypothetical scenarios, many based upon actual case histories, are set forth below. They are presented in the order that reflects the stages of the typical proceeding from the arbitrator's qualifications through awards and post award considerations. These scenarios are used to illustrate the implication of the Standards of Conduct, the Minnesota No-Fault Rules and, in some situations, the Policy Statement of the No-Fault Standing Committee.



Best Practices

I. Arbitrator Qualifications

Hypo 1: In his recertification form, Arbitrator, who has been on the arbitration panel for over ten (10) years, indicates his current percentage of practice meets the requirements even when this has not been the case for several years.

- **Implicates Rule 10(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**. Requirements for qualification as an arbitrator shall be: (1) at least 5 years in practice in this state; (2) at least **one-quarter**, based upon a **five (5) year average**, of the attorney's **practice is with auto insurance claims** or, for an attorney not actively representing clients, at least **one-quarter**, based upon a **five (5) year average**, of an **ADR practice is with motor vehicle claims or No-Fault matters**; (3) completion of an arbitrator training program approved by the No-Fault Standing Committee prior to appointment to the panel; (4) at least **three CLE hours on No-Fault issues within the 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.
- **Implicates Rule 10(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 practice change**, and for **a retired attorney or judge serving as an arbitrator, at any time**, if the following requirements are satisfied:

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

1. He or she is an **attorney licensed to practice law in Minnesota and is in good standing or a retired attorney or judge in good standing**;
2. He or she has retained **current knowledge** of the Minnesota No-Fault Act (Minn. Stat. §§ 65B.41-65B.71), Minnesota appellate court decisions interpreting the Act, the Minnesota No-Fault Arbitration Rules, and the Arbitrators' Standards of Conduct; and
3. He or she has attended at **least three CLE hours on No-Fault issues within the reporting period**, regardless of whether he or she is in CLE active or inactive status.

Best Practice Suggestion:

In the majority of cases, arbitrator conduct giving rise to complaints arises out of complacency and lack of diligence rather than intentional misconduct. This scenario illustrates just that. Complacency often arises because of routine, the assumption that past experience is a sufficient fund of knowledge.

The arbitrator, having served on the panel for many years, was simply repeating information contained in previous recertifications. This, despite the fact that, over the years, his practice had changed in terms of the nature of cases he was handling. In addition, his practice was winding down. The arbitrator could have qualified under Rule 10(c), but did not



know of that option. Likewise, the recertification should have disclosed changes in, for example, the professional associations in which the arbitrator was a member.

Best Practice is to carefully review, at least annually, the Rules, Standards of Conduct, and the Policy Statement. The Rules and Standards of Conduct are provided to an arbitrator at the time of recertification. Be aware of changes in these directives. The arbitrator's online resume should be kept up to date so that parties may make informed decisions about the arbitrator's services. It is important that arbitrator know the Rules and Standards and comply with them.

II. Arbitrator Disclosures – Conflict of Interest

A. Potential Conflict of Interest is a Financial, Singular Occurrence Distant in Time

Hypo 1: Arbitrator is invited to serve. Arbitrator served as an expert witness for respondent's counsel's firm in an unrelated matter 15 years earlier, but has no other relationship with respondent's counsel or her firm.

- **Implicates Rule 10(b).** No person shall serve as an arbitrator in any arbitration in which he or she has a **financial or personal conflict of interest**. Under procedures established by the Standing Committee and immediately following appointment to a case, every arbitrator shall be required **to disclose any circumstances likely to create a presumption or possibility of bias or conflict that may disqualify the person as a potential arbitrator**. Every arbitrator **shall supplement the disclosures** as circumstances require. The fact that an arbitrator or the arbitrator's firm represents automobile accident claimants against insurance companies or self-insureds, including the respondent, does not create a presumption of bias. It is a financial conflict of interest if, within the last year, the appointed arbitrator or the arbitrator's firm has been hired by the respondent to represent the respondent or respondent's insureds in a dispute for which the respondent provides insurance coverage. It is a financial conflict of interest if the appointed arbitrator received referrals within the last year from officers, employees or agents of any entity whose bills are in dispute in the arbitration or the arbitrator's firm has received such referrals.
- **Implicates Standard of Conduct II-A.** An arbitrator shall make all disclosures as required under Rule 10. Any doubts as to whether or not disclosure should be made shall be resolved in favor of disclosure.
- **Implicates Policy Statement No. 3.** In a challenge to an arbitrator's appointment, "[t]he AAA reviews whether the potential conflict is continuing, intermittent or a singular occurrence, whether it is recent or distant in time, the nature of the relationship, the frequency of contact, whether or not it is substantial or whether it is direct or indirect."

Best Practice Suggestion:

While it is unlikely that this prior, singular occurrence distant in time would give rise to the level of an actual conflict, the parties are entitled to know about this situation to act in a manner the party sees fit. Best Practice is to be thorough in disclosing situations which might create even the appearance of partiality, no matter how remote. The byword is "if in doubt, get it out."



Hypo 2: Arbitrator, over 20 years ago, practiced with claimant’s counsel but has had no professional interactions with him since then. Arbitrator and claimant’s counsel are acquaintances but do not socialize with one another.

- **Implicates Rule 10(b).** 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.
- **Implicates Standard of Conduct II-A.** An arbitrator shall make all disclosures as required under Rule 10. Any doubts as to whether or not disclosure should be made shall be resolved in favor of disclosure.
- **Implicates Policy Statement No. 3.** In a challenge to an arbitrator’s appointment, “[t]he AAA reviews whether the potential conflict is continuing, intermittent or a singular occurrence, whether it is recent or distant in time, the nature of the relationship, the frequency of contact, whether or not it is substantial or whether it is direct or indirect.”

Best Practice Suggestion:

While it is unlikely that this prior, singular occurrence distant in time would give rise to the level of an actual conflict, the parties are entitled to know about this situation to act in a manner the party sees fit. Best Practice is to be thorough in disclosing situations that might create even the appearance of partiality, no matter how remote. The byword is “if in doubt, get it out.”

B. Potential Conflict of Interest is Professional, Continuing, and Recent In Time

Hypo 1: Arbitrator has several pending cases against respondent. Some of them have been contentious with several motions seeking sanctions against respondent directly for dilatory practices in district court litigation.

- **Implicates Rule 10(b).** 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.
- **Implicates Standard of Conduct II-A.** An arbitrator shall make all disclosures as required under Rule 10. Any doubts as to whether or not disclosure should be made shall be resolved in favor of disclosure.

Best Practice Suggestion:

The mere fact that the arbitrator has cases against the respondent does not create a presumption of bias. Rule 10(b). However, in this situation, the appearance of possible bias may be inferred from the contentious sanctions motions the arbitrator has brought against respondent in the pending district court cases. As such, the arbitrator should consider declining or withdrawing from the arbitration. At a minimum, if the arbitrator does not decline or withdraw, the arbitrator has a duty to disclose the situation so that the parties and counsel may act as they see fit. Rule 10(b) and Standard II-A require disclosure of “any circumstances likely to create a presumption or possibility of bias.” Moreover, both Rule 10(b) and Standard II-B require supplementation of a previous disclosure. Thus, if the facts suggesting possible bias arises after the arbitrator’s selection, there is a duty to supplement the arbitrator’s disclosure.



Hypo 2: Arbitrator selected on a case represents a client (Jones) in an unrelated No-Fault arbitration where counsel for one of the parties in the case pending before the arbitrator has been selected to serve as the arbitrator in the Jones arbitration.

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

Best Practice Suggestion:

Here, the facts suggest the appearance of possible bias, as the scenario creates the situation of possible *quid pro quo* for awards. The arbitrator in both cases should consider declining the case, or withdrawing from the arbitration. At a minimum, both arbitrators should disclose this situation so that the parties and counsel in both cases may act as they see fit.

C. Potential Conflict of Interest is Financial, Continuing, and Recent in Time

Hypo 1: Arbitrator is invited to serve. Arbitrator is represented by an attorney in claimant's counsel's law firm in a different matter.

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

Best Practice Suggestion:

Here, the arbitrator has an existing, ongoing financial and personal relationship with one of the law firm's advocating at the arbitration suggesting, at a minimum, the appearance of possible bias. Best Practice would be for the arbitrator to decline the appointment. If the arbitrator does not decline service, at a minimum, the arbitrator should make full disclosure of the relationship between the arbitrator and the claimant's counsel's law firm so that counsel and parties to the arbitration may act accordingly.



Hypo 2: Arbitrator is currently co-counsel with claimant's counsel on two completely unrelated matters in other areas of the law.

- **Implicates Rule 10(b).** 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.
- **Implicates Standard of Conduct II-A.** An arbitrator shall make all disclosures as required under Rule 10(c). Any doubts as to whether or not disclosure should be made shall be resolved in favor of disclosure.

Best Practice Suggestion:

Here, the arbitrator has an existing, ongoing financial and personal relationship with one of the law firms advocating at the arbitration suggesting, at a minimum, the appearance of possible bias. The arbitrator should consider declining service. At a minimum, the arbitrator should make full disclosure of the relationship pursuant to Rule 10(b) and Standard II-A so that counsel and parties may act accordingly.

D. Potential Conflict of Interest is Personal, Continuing, and Intermittent

Hypo 1: Arbitrator attended law school with respondent's counsel and has remained friends since then. She and respondent's counsel socialize occasionally for lunch (1-2 times per year).

- **Implicates Rule 10(b).** 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.
- **Implicates Standard of Conduct II-A.** An arbitrator shall make all disclosures as required under Rule 10-C. Any doubts as to whether or not disclosure should be made shall be resolved in favor of disclosure.

Best Practice Suggestion:

Here, the arbitrator has an existing, intermittent, but ongoing relationship with one of the lawyers advocating at the arbitration. The arbitrator should consider declining service, or, at a minimum, should make full disclosure of the relationship so counsel and the parties may act as they see fit.

III. Time and Availability for Hearing

Hypo 1: An arbitration hearing is noticed for a date certain. The parties appear at Arbitrator's office. Arbitrator fails to appear. A new Notice of Hearing is issued, rescheduling the hearing for a second date. The parties appear at Arbitrator's office. Arbitrator does not appear because he claims his assistant did not put the hearing on his calendar.

- **Implicates Standard of Conduct I-C.** An arbitrator shall conduct the arbitration process in a manner which advances the fair and efficient resolution of the matters submitted for decision.



- **Implicates Standard of Conduct VII.** An arbitrator shall promptly schedule and be prepared for hearings; an arbitrator shall not delay the process, and shall not postpone a hearing except for good cause.

Best Practice Suggestion:

Here, the arbitration hearing could not be timely held as the result of the arbitrator's conduct. The matter of scheduling is the arbitrator's responsibility. This requires an accurate, functioning calendaring system. Best Practice is for the arbitrator to put in place such a calendaring system and use it. If the arbitrator is unable to do this, either because of personal limitations or other reasons, Best Practice would be for the arbitrator not to serve until the situation is remedied. It is a disservice to the parties, counsel, and the efficient administration of justice for delays to occur because of an arbitrator's failure to have and use a functioning calendar system.

IV. Hearings and Proceedings

A. Arbitrator Questioning of Witnesses

Hypo 1: Claimant is a minority non-native English speaker. She gives her testimony through a qualified interpreter. Arbitrator asks claimant whether she is trying to study English and whether she can understand English.

- **Implicates Standard of Conduct I-B.** Arbitrator must avoid statements and conduct which give the appearance of partiality.
- **Implicates Standard of Conduct IV-A.** Hearing must be conducted in evenhanded manner.
- **Implicates Rule 18.** Any party desiring an interpreter shall make all arrangements directly with the interpreter... 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.

Best Practice Suggestion:

Here, the arbitrator is asking questions that are not relevant to the proceedings while creating the appearance of being partial and not evenhanded. It is the right of any party to have an interpreter. Rule 18. The decision to have an interpreter rests with the party, not the arbitrator. Interpreters are often sought by a party to ensure the party's full understanding of proceedings that occur in the party's non-native language. Therefore, in this instance, the arbitrator should not be asking any questions about the party's understanding or use of the English language.

The arbitrator should confine her inquiry regarding the use of an interpreter to whether the interpreter has any relationship with the parties or counsel and also confirm with the interpreter that the interpreter will abide by Code of Professional Responsibility for Interpreters in the Minnesota State Court System, as these are the only Rule 18 limitations on the use of an interpreter.



Hypo 2: After the direct and cross-examination of the claimant at the No-Fault hearing, Arbitrator proceeds to question the claimant. The Arbitrator questions the claimant using documents and materials not submitted by any of the parties, but which the Arbitrator obtained through the Arbitrator's own investigation of the claimant prior to the hearing.

- **Implicates Standards of Conduct I-A.** An arbitrator has a responsibility not only to the parties but also to the process of arbitration itself unless and must observe high standards of conduct so that the integrity and fairness of the process will be preserved.
- **Implicates Standards of Conduct I-B.** Arbitrator shall conduct themselves in a way that is fair to all parties. Arbitrator shall avoid conduct and statements which give the appearance of partiality.
- **Implicates Standards of Conduct I-C.** An arbitrator shall conduct the arbitration process in a manner which advances the fair and efficient resolution of the matter submitted for decision.
- **Implicates Standards of Conduct V-A.** The arbitrator shall, after careful deliberation, decide only those issues submitted for determination.
- **Implicates Standards of Conduct V-B.** An arbitrator shall decide matters justly, exercising independent judgment, and shall not permit outside pressure or other considerations to affect the decision.
- **Implicates Standards of Conduct V-D.** An arbitrator shall make a determination based on the evidence presented. An award must be supported by the evidence.
- **Implicates Rule 21.** 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.

Best Practice Suggestion:

While it is appropriate for the arbitrator to ask limited questions for clarification, that must be done in an evenhanded, open, and courteous manner. The parties present witnesses and exhibits at the hearing, not the arbitrator. Rule 21. Here, by doing his own investigation, using materials he found in that investigation to question the claimant, Arbitrator has converted himself into a partial advocate to the detriment to the integrity and fairness of the process. An arbitrator should not do his or her own investigation nor question witnesses with materials the arbitrator has found. The arbitrator's decision should be based on the evidence presented by the parties.

Hypo 3: Arbitrator questions claimant, but does not provide counsel with an opportunity for follow up. Arbitrator questions respondent's counsel about quantum of proof. Arbitrator makes disparaging comments about respondent for whom counsel appeared. Arbitrator states before respondent's counsel's closing argument, "I know what I'm going to do."

- **Implicates Standard of Conduct I-B.** Arbitrator shall conduct themselves in a way that is fair to all parties. Arbitrator shall avoid conduct and statements which give the appearance of partiality.



- **Implicates Standard of Conduct IV-A.** An arbitrator shall conduct the proceedings in an evenhanded manner and shall be patient and courteous to the parties, their representatives, and the witnesses.
- **Implicates Standard of Conduct V-A.** The arbitrator shall, after careful deliberation, decide only those issues submitted for determination.
- **Implicates Standard of Conduct V-D.** An arbitrator shall make a determination based on the evidence presented. An award must be supported by the evidence.

Best Practice Suggestion:

While it is appropriate for the arbitrator to ask limited questions for clarification, that must be done in an evenhanded, open, and courteous manner, and which allows for follow up by counsel/representatives for both parties. Otherwise, it is the responsibility of counsel for the parties (or parties appearing *pro se*) to present the evidence. It is not the arbitrator's responsibility to present evidence or to comment on the quantum proof or the method or manner in which the evidence is presented. Particularly, under Standard of Conduct V-D, the arbitrator's responsibility is to make a determination "based on the evidence presented."

B. Arbitrator Statements at the Hearing

Hypo I: At the scheduled hearing, the claimant has a nine-month old child with her. The child is fussing and Arbitrator states the claimant's attorney has two choices: either postpone the hearing or call his/her office and get a staff member to come and babysit the child. Arbitrator allegedly is rude and tells the claimant and her counsel they have to "keep the kid under control." Arbitrator comments that bringing a disruptive child to a hearing is "bull****." Claimant is upset and crying. Both parties agreed to seek a continuance and to remove the arbitrator.

- **Implicates Standard of Conduct I-A.** An arbitrator has a responsibility not only to the parties but also to the process of arbitration itself unless and must observe high standards of conduct so that the integrity and fairness of the process will be preserved.
- **Implicates Standard of Conduct I-B.** Arbitrators shall conduct themselves in a way that is fair to all parties...and Arbitrators shall avoid conduct and statements which give the appearance of partiality.
- **Implicates Standard of Conduct IV-A.** An arbitrator shall conduct the proceedings in an evenhanded manner. The arbitrator should be patient and courteous to the parties, their representatives, and the witnesses and should encourage similar conduct by all participants.

Best Practice Suggestion:

Here, the arbitrator made statements and acted in a discourteous way that gave or could have given the appearance of partiality, thereby negatively implicating the integrity and fairness of the process. Best Practice would have been for the arbitrator to refrain from the angry statements he made, to inform the parties that the arbitrator must be able to hear the testimony and arguments of counsel in order to come to an informed decision, and to politely inquire if someone is



available to sit with the child outside of the hearing room. If not, then the arbitrator could politely suggest the parties continue the hearing to such time when a sitter can be found to watch the child. The parties and the public must have complete confidence in the impartiality of the process.

Hypo 2: Following respondent's counsel's argument, Arbitrator declares that claimant's attorney need not make a closing argument, as he would be making a full award in the case. Arbitrator also criticizes the respondent's insurer's handling of the claim and the lack of evidence presented by respondent.

- **Implicates Standard of Conduct I-B.** Arbitrators shall conduct themselves in a way that is fair to all parties and should avoid conduct and statements which give the appearance of partiality.
- **Implicates Standard of Conduct IV-A.** An arbitrator shall conduct the proceedings in an evenhanded manner and shall be patient and courteous to the parties, their representatives, and the witnesses.
- **Implicates Standard of Conduct IV-B.** The arbitrator shall afford to all parties the right to be heard. The arbitrator shall allow each party a fair opportunity to present evidence.
- **Implicates Standard of Conduct V.** An arbitrator shall make decisions in a just, independent and deliberate manner.
- A. The arbitrator shall, after careful deliberation, decide only those issues submitted for determination.

Best Practice Suggestion:

Here, the arbitrator made statements that suggest partiality, lack of evenhandedness, and not being deliberative, thereby negatively implicating the integrity and fairness of the process. Best Practice would have been for the arbitrator to not comment on the evidence (or lack thereof) or about any of the parties or their counsel. An arbitrator should hear argument by both sides and inform the parties that a decision will be forthcoming after a complete review of the evidence and testimony. An arbitrator's function is to serve in a neutral capacity and to decide the case without comment about the arbitrator's own personal views, as well as without providing assistance or causing detriment to either side. The parties and the public must have complete confidence in the impartiality of the process.

Hypo 3: Arbitrator, after the hearing, asks claimant's counsel whether he "had something" for the Arbitrator. Arbitrator does not explain the basis for the comment to claimant's counsel.

- **Implicates Standard of Conduct I-B.** An arbitrator shall avoid conduct and statements which give the appearance of partiality.

Hypo 4: Arbitrator, during respondent's closing argument, questions counsel as to the basis for the respondent's investigation into the No-Fault claim and comments that her son, who was recently involved in a motor vehicle accident, was treated much better by his No-Fault insurer than claimant in this case was treated by respondent.

- **Implicates Standard of Conduct I-A.** An arbitrator has the responsibility not only to the parties, but also to the process of arbitration itself and must observe high standards of conduct so that the integrity and fairness of the process will be preserved.



- **Implicates Standard of Conduct I-B.** An arbitrator shall conduct themselves in a way that is fair to all parties. Arbitrator shall avoid conduct and statements which give the appearance of partiality.
- **Implicates Standard of Conduct IV-A.** An arbitrator shall conduct the proceedings in an evenhanded manner.
- **Implicates Standard of Conduct IV-B.** The arbitrator shall afford to all parties the right to be heard. The arbitrator shall allow each party a fair opportunity to present evidence and arguments.

Best Practice Suggestion:

Here, the arbitrator made statements that suggest partiality and a lack of evenhandedness, thereby negatively implicating the integrity and fairness of the process. Best Practice would have been for the arbitrator to make no comment about the parties or the arbitrator's personal views. An arbitrator's function is to serve in a neutral capacity and to decide the case without comment about the arbitrator's own personal views, as well as without providing assistance or causing detriment to either side. The parties and the public must have complete confidence in the impartiality of the process.

Hypo 5: Respondent, after providing a Rule 17 notice, has a court reporter at the hearing. At the start of the hearing, Arbitrator states that the reporter will only be allowed to record the questioning of the claimant and witnesses, but that there would be no record made of the closing arguments by counsel. Arbitrator states this is to make it easier for the court reporter. No one objects. There is no record made of claimant's counsel's closing argument. During the respondent's counsel's closing argument, Arbitrator asks a question. Respondent's counsel directs the court reporter to resume recording. Arbitrator directs the court reporter not to make a record and none is made.

- **Implicates Rule 17.** A party is entitled to a stenographic record upon making such arrangements with the stenographer and for payment of the stenographer.
- **Implicates Standard of Conduct I-B.** An arbitrator shall conduct themselves in a way that is fair to all parties.
- **Implicates Standard of Conduct IV-A.** An arbitrator shall conduct the proceedings in an evenhanded manner.
- **Implicates Standard of Conduct IV-B.** The arbitrator shall afford to all parties the right to be heard. The arbitrator shall allow each party a fair opportunity to present evidence and arguments.

Best Practice Suggestion:

Here, the arbitrator made statements or engaged in conduct that gave or could have given the appearance of partiality against the party seeking to make a stenographic record. Best Practice would be for the arbitrator to take no action on counsel's instruction to her court reporter to make a record of the arbitrator's question and the exchange of communication between counsel and the arbitrator. An arbitrator's function is to serve in a neutral capacity, as well as without providing assistance or cause detriment to either side. The parties and the public must have complete confidence in the impartiality of the process.



V. Decisions, Orders, and Awards

A. Award Must Be Based Upon Evidence

Hypo 1: At the hearing, claimant submits medical bills for determination for which there is no supporting evidence in the form of medical records or otherwise. Arbitrator issues an award of these medical bills.

- **Implicates Standard of Conduct V-D.** Determination must be based on evidence submitted and award must be supported by the evidence.
- **Implicates Standard of Conduct I-A.** An arbitrator has a responsibility not only to the parties but also to the process of arbitration itself unless and must observe high standards of conduct so that the integrity and fairness of the process will be preserved.
- **Implicates Standard of Conduct I-B.** Arbitrators shall conduct themselves in a way that is fair to all parties...and Arbitrators shall avoid conduct and statements which give the appearance of partiality.

Best Practice Suggestion:

Here, the arbitrator, in awarding bills for which there was no evidentiary support whatsoever, engaged in conduct suggesting the appearance of partiality, impugning the integrity and fairness of the process. Best Practice would be to carefully review evidence and make awards based on the evidence and not make an award for which there is no evidence. The arbitrator's function is to serve in a neutral capacity. The parties and the public must have complete confidence in the impartiality of the process.

B. Arbitrator Post-Hearing Conduct

Hypo 1: Arbitrator, after presiding over the hearing, declares that the record is closed. After the record is closed, claimant's attorney sends an e-mail to only the Arbitrator seeking to add an expense that was not submitted at the hearing. Arbitrator issues an award including the expense submitted *ex parte* after the hearing. After respondent objects, Arbitrator issues an amended award that removes the subsequently submitted expense.

- **Implicates Standard of Conduct I-A.** An arbitrator has a responsibility not only to the parties, but also the process of arbitration itself and must observe high standards of conduct so that the integrity and fairness of the process will be preserved.
- **Implicates Standard of Conduct I-B.** An arbitrator shall conduct themselves in a way that is fair to all parties. An arbitrator shall avoid conduct and statements which give the appearance of partiality.
- **Implicates Standard of Conduct III-B.** An arbitrator shall not have any direct communications with any party or attorney other than what is prescribed in Rule 21.
- **Implicates Standard of Conduct III-C.** If a party or attorney attempts to communicate directly with the arbitrator, the arbitrator shall notify the arbitration organization.



- **Implicates Standard of Conduct IV-A.** An arbitrator shall conduct the proceedings in an evenhanded manner.
- **Implicates Standard of Conduct IV-B.** The arbitrator shall afford to all parties the right to be heard. The arbitrator shall allow each party a fair opportunity to present evidence and arguments.
- **Implicates Standard of Conduct V-A.** The arbitrator shall, after careful deliberation, decide only those issues submitted for determination.
- **Implicates Standard of Conduct IV-D.** An arbitrator shall make a determination based on the evidence presented and an award must be supported by the evidence.

Best Practice Suggestion:

Here, the arbitrator received and relied upon an *ex parte* communication after the record closed to award an expense not based on evidence in the record but only upon the *ex parte* communication, suggesting the appearance of partiality, lack of evenhandedness, thereby negatively implicating the integrity and fairness of the process.

Best Practice would be for the arbitrator to inquire of the parties at the hearing whether there is a reason to keep the record open. If no party requests to keep the record open, the arbitrator should declare the record closed and advise the parties that a decision will be forthcoming within 30 days of closing of the record. Upon receipt of the *ex parte* post-hearing communication, Arbitrator should have notified the case administrator of the *ex parte* communication and take no further action on it. If one of the parties thereafter requested to re-open the hearing to submit a missed claim or evidence in accordance with No-Fault Arbitration Rule 26, the arbitrator may address the request at that time. The parties and the public must have complete confidence in the impartiality of the process.

Hypo 2: Following the hearing, Arbitrator files a record of hearing indicating the record is closed, but the fax cover instructs the case administrator to contact counsel regarding additional information. Claimant's counsel writes to the case administrator stating that the record was left open so that they could obtain billings and records from an additional provider. Those records were provided with the letter to the administrator. Administrator follows up with Arbitrator by voicemail and e-mail asking for clarification on instructions but does not get a response.

- **Implicates Standard of Conduct I-C.** An arbitrator shall conduct the arbitration process in a manner which advances the fair and efficient resolution of the matter submitted for decision.
- **Implicates Standard of Conduct V-A.** The arbitrator shall, after careful deliberation, decide only those issues submitted for determination.
- **Implicates Standard of Conduct V-D.** An arbitrator shall make a determination based upon the evidence presented. An award must be supported by the evidence.

Best Practice Suggestion:

Here, the arbitrator has inhibited the efficient resolution of the matter by requesting the arbitration organization obtain additional information from counsel while stating in the Record of Hearing that the record had closed and then not responding to the arbitration organization's repeated requests for clarification.



Best Practice would be for an arbitrator to inquire of the parties at the hearing whether there is a reason to keep the record open. If no party requests to keep the record open, the arbitrator should declare the record closed and advise the parties that a decision will be forthcoming within 30 days of closing of the record. If the record is to be kept open, the arbitrator should set a deadline for post-hearing submissions that are to be copied to opposing counsel and confirm when the record will close. Arbitrator should also inform the arbitration organization that the record remains open and indicate the deadlines for submissions and the date when the record closes. The arbitrator should timely follow up with the arbitration organization's requests for clarification. The parties and the public must have complete confidence in the impartiality of the process.

Hypo 3: Arbitrator contacts the case administrator after the hearing and states that he does not know why the parties sent additional documents and wants to know whether the case had settled. Arbitrator questions what is left for him to decide. Administrator advises arbitrator to contact the parties and make the requested inquiries. Arbitrator makes a comment to administrator that he is thinking of letting the case go beyond the due date so it may be heard in the district court. Parties provided Arbitrator with additional information. Administrator seeks advice from Arbitrator as to when the record was closed in order to calculate the award due date. Ultimately, after several unsuccessful attempts to contact Arbitrator, Administrator declared his office was vacant and removed Arbitrator from the case per Rule 11.

- **Implicates Standard of Conduct I-C.** An arbitrator shall conduct the arbitration process in a manner which advances the fair and efficient resolution of the matter submitted for determination.
- **Implicates Standard of Conduct VII.** An arbitrator shall devote the time and attention to each case in order to promote efficiency... .
- **Implicates Standard of Conduct VII.** An arbitrator shall not delay the process.

Best Practice Suggestion:

Here, the arbitrator has inhibited the efficient resolution of the matter through mixed communications, failure to respond to the arbitration organization inquiries, and stating he may let the case go beyond the due date. The arbitrator's actions necessitated the declaration of vacancy of the arbitrator office, which may require the parties to start the arbitration over again, thereby negatively implicating the integrity and fairness of the process.

Best Practice would be for an arbitrator to devote the necessary time and attention to the case to promote efficiency. If the arbitrator cannot do so, the arbitrator should decline the case or withdraw. If the arbitrator continues with the case, the arbitrator should inquire of the parties at the hearing whether there is a reason to keep the record open. If no party requests to keep the record open, the arbitrator should declare the record closed and advise the parties that a decision will be forthcoming within 30 days of closing of the record. If the record is to be kept open, the arbitrator should set a deadline for post-hearing submissions that are to be copied to opposing counsel and confirm when the record will close. The arbitrator should also inform the arbitration organization that the record remains open and indicate the deadlines for submissions and the date when the record closes. The arbitrator should timely follow up with the arbitration organization's requests for clarification. The parties and the public must have complete confidence in the impartiality of the process.