

CHAPTER 5530

BUREAU OF MEDIATION SERVICES

ARBITRATION ROSTER

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5530.0100 APPLICATION.

This chapter applies to the empanelment, referral, conduct, and removal of persons on the arbitrator roster maintained by the commissioner. This chapter applies to all persons on the arbitrator roster, to all applicants for placement on the roster, to all users of the roster, and to all arbitration proceedings conducted as the result of a referral from the roster. Nothing in this chapter is intended to limit the right of the parties to jointly select any arbitrator or arbitration procedure which is acceptable to them.

Statutory Authority: *MS s 179.02*

History: *14 SR 1383*

5530.0200 POLICY.

It is the policy of the state of Minnesota to promote orderly and constructive relationships between labor and management and to avoid unresolved disputes that can be injurious to the public as well as the parties. The use of collective bargaining procedures and binding arbitration to resolve grievances and certain interest disputes between labor and management are specifically encouraged. This chapter shall be liberally construed to effectuate these policies and the provisions of Minnesota Statutes, chapters 179 and 179A.

Statutory Authority: *MS s 179.02*

History: *14 SR 1383*

5530.0300 DEFINITIONS.

Subpart 1. Advisory committee. "Advisory committee" means a committee consisting of three union representatives, three employer representatives, and two roster members appointed by the commissioner under Minnesota Statutes, section 15.014, to advise the commissioner regarding the appointment and removal of persons to the arbitrator roster. The committee shall not expire as provided by Minnesota Statutes, section 15.059.

Subp. 2. Applicant. "Applicant" means an individual who is seeking appointment to the roster.

Subp. 3. Arbitrator roster or roster. "Arbitrator roster" or "roster" means a listing of persons determined by the commissioner to be qualified and available for referral as an arbitrator of labor disputes under this chapter.

Subp. 4. Bureau. "Bureau" means the Bureau of Mediation Services.

Subp. 5. Close of the record. "Close of the record" means the last date of hearing or the final date for posthearing submission of written material, if any, whichever is later.

Subp. 6. Commissioner. "Commissioner" means the commissioner of the Bureau of Mediation Services.

Subp. 7. Expedited panel. "Expedited panel" means a list established by the

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commissioner of roster members who are willing and able to handle expedited cases under part 5530.1100.

Subp. 8. Initial appointment. "Initial appointment" means a new appointment to the roster of a person who is not listed on the roster at the time application for appointment is made.

Subp. 9. Issuance of award. "Issuance of award" means the date an award is signed and issued by the arbitrator. If an award is undated, the date of receipt by the commissioner is considered the date of issuance for purposes of this chapter.

Subp. 10. Panel. "Panel" means a listing of roster members compiled by the commissioner for referral to the parties, from which they may subsequently select an arbitrator.

Subp. 11. Party or parties. "Party" or "parties" means an employer or exclusive representative directly involved and affected by a dispute for which a roster member has been requested or referred, or a designated representative.

Subp. 12. Probationary appointment. "Probationary appointment" means a temporary appointment not exceeding 24 months in duration for purposes of further evaluating the performance, acceptability, or conduct of a roster member.

Subp. 13. Renewal appointment. "Renewal appointment" means the appointment of an existing roster member to an additional term as a roster member.

Statutory Authority: *MS s 179.02*

History: *14 SR 1383*

5530.0400 ROLE OF BUREAU.

The role of the bureau under this chapter is limited to matters relating to the appointment of persons to and removal or referral of names from the arbitrator roster. The bureau has no role, responsibility, or authority under this chapter to:

- A. compel parties to agree to arbitrate;
- B. enforce an agreement to arbitrate;
- C. compel parties to appear before an arbitrator;
- D. influence, alter, enforce, or set aside the decisions or awards of arbitrators; or
- E. compel, deny, or modify the payment of fees and expenses to an arbitrator, except as provided in part 5530.1000, subpart 6.

Statutory Authority: *MS s 179.02*

History: *14 SR 1383*

5530.0500 STATUS OF ARBITRATORS.

Persons listed on the roster, whether or not selected or appointed to hear matters under this chapter, do not become employees or agents of the state of Minnesota or the bureau by virtue of their placement on the roster or their subsequent selection or appointment as an arbitrator. Except for the reporting and performance requirements of this chapter, the arbitrator's relationship is solely with the parties to a dispute.

Statutory Authority: *MS s 179.02*

History: *14 SR 1383*

5530.0600 ARBITRATOR QUALIFICATIONS.

Subpart 1. General labor relations background. Persons seeking appointment to the arbitrator roster must have substantial knowledge of collective bargaining and labor relations matters in the public or private sectors, be well versed in applicable state and federal law, and be experienced and knowledgeable in the field of labor arbitration.

Subp. 2. General abilities. Potential applicants for placement on the roster must be willing and able to travel throughout Minnesota, conduct hearings in a fair and impartial manner, analyze and evaluate testimony and exhibits, write clear and concise awards in a timely manner, and be available for hearings within a reasonable time after the request of the parties.

Subp. 3. Advocacy disqualification. No applicant or roster member may currently, or within the preceding 12 months, have functioned as an advocate for any public or private sector employer, employee, or employee organization in any phase of labor management relations. This prohibition applies to employee discharge or disciplinary appeal proceedings, whether or not the employee is represented by an exclusive representative. The commissioner shall disqualify individuals who are closely associated with firms or organizations that function as advocates from appointment to particular panels, when the appointment would present the appearance of a conflict of interest.

Subp. 4. Demonstrating qualifications. The burden for establishing qualifications for appointment on the roster is on the person seeking appointment. The commissioner will examine the evidence to determine the complexity of issues the applicant claims experience in, and the technical, theoretical understanding the applicant has demonstrated in handling such matters, and shall make appointments to the roster pursuant to part 5530.0700, subpart 6. Evidence of an applicant's qualification may be advanced in one or a combination of the following ways:

A. submission of six or more arbitration awards or contested case decisions that were authored and signed by the applicant in the 24-month period preceding application;

B. a minimum of six years' experience as a full-time labor relations advocate and submission of six arbitration awards in which the applicant acted as the principal representative for either labor or management;

C. a minimum of six years' experience as a full-time labor mediator, including substantial grievance mediation experience;

D. a minimum of six years' experience as a practitioner or full-time instructor of labor law or industrial relations, including substantial content in the area of collective bargaining, labor agreements, and contract administration;

E. membership in the National Academy of Arbitrators; and

F. satisfactory completion of a formalized course of instruction and internship in a program that has been approved by the commissioner in advance of participation or enrollment by the applicant. The program must include the writing of not less than two mock awards under the supervision and guidance of an arbitrator already admitted to the roster or otherwise approved in advance by the commissioner.

Subp. 5. Domicile. To be eligible for appointment or continuation on the roster, individuals must maintain a principal place of residence in Minnesota or one of its contiguous states. The maintenance of a mail box or mail delivery point is not sufficient to satisfy the requirement of this subpart.

Statutory Authority: *MS s 179.02*

History: *14 SR 1383*

5530.0700 APPOINTMENT TO ROSTER.

Subpart 1. Size of roster. The size of the arbitrator roster shall be not fewer than 25 nor more than 50 members. Annually, the commissioner shall determine whether or not to add members to the roster based on the number of referrals over the preceding 12 months and projected referrals from the roster over the next 12 months.

Subp. 2. Procedure; initial appointments. When, pursuant to subpart 1, the commissioner determines that it is appropriate to make additional appointments to the roster, the commissioner shall:

A. publish notice in the State Register for not less than 30 days, indicating that applications for appointment are being accepted and establishing a deadline for the applications;

B. in conjunction with the advisory committee, conduct interviews of applicants selected for further consideration, to further assess the applicant's qualifications and suitability for appointment to the roster;

C. advise all applicants in writing regarding the commissioner's final determination with respect to their application;

D. actively solicit qualified applicants who will help provide balance in the racial and gender composition of the roster; and

E. conduct an initial review of applications received and, based on the information provided in the application, reference checks, and the arbitrator qualification requirements of this chapter, select or reject applications for further consideration. The commissioner may conduct additional investigations regarding the application if necessary to obtain a full understanding of the applicant's qualifications.

Subp. 3. Procedure; renewal appointments. The commissioner shall notify all roster members not less than 120 days before the expiration of their appointment of the procedures necessary for reappointment to the roster. The appointment of one-third of the members on the roster at the time this chapter is adopted shall expire on July 30, 1991; an additional one-third shall expire on July 30, 1992; and the final one-third shall expire on July 30, 1993. The names of roster members falling into each one-third shall be determined by lot. Persons desiring to renew their appointment on the roster shall submit a written application and fee to the commissioner not less than 60 days before the expiration of their appointment. Following receipt of a renewal application, the commissioner shall review available referral, performance, and activity records of the applicant and proceed according to subpart 6.

Subp. 4. Application forms. Individuals who wish to be considered for initial or renewal appointment to the roster must complete an application on forms available from the bureau. Writing samples must accompany the application.

Subp. 5. Application fee. A nonrefundable application fee of \$50 for initial appointments and \$25 for renewals must accompany each application for appointment or renewal. The fee must be in the form of a check or money order made payable to "State of Minnesota, Bureau of Mediation Services."

Subp. 6. Standards for appointment. In determining whether or not to appoint a member to the roster, the commissioner shall evaluate each application for evidence of the applicant's competence, proficiency, and qualifications in the following areas:

A. knowledge and understanding of labor relations systems and collective bargaining processes and dynamics;

B. knowledge and understanding of applicable contract, employment, and labor relations law and rules;

C. ability to hear and decide complex labor relations issues in a fair and objective manner;

D. ability to communicate, both orally and in writing, in a clear and concise manner;

E. ability to conduct orderly and effective arbitration hearings in a variety of settings and locations throughout Minnesota; and

F. high moral character and integrity.

In addition to meeting these standards for appointment, roster members seeking reappointment must satisfy the requirements of part 5530.1200.

Subp. 7. Disposition of applications. If an applicant has satisfied the requirements of subpart 6, the commissioner shall appoint or reappoint the applicant

to the roster. If the applicant has failed to satisfy the requirements of subpart 6, the commissioner shall reject the application in writing, including the reasons for the rejection. In the event that there are more qualified applicants than vacancies on the roster, the commissioner shall appoint applicants in rank order of their qualifications or by lottery where qualifications are relatively equal.

Subp. 8. Term of appointment. Initial appointments to the roster shall be for a term of five years. Renewal appointments to the roster shall be for a term of three years. The commissioner shall establish a common July 30 expiration date for all appointments for purposes of administrative convenience.

Statutory Authority: *MS s 179.02*

History: *14 SR 1383*

5530.0800 ARBITRATOR CONDUCT AND STANDARDS.

Subpart 1. Scope. The criteria and standards in subparts 2 to 10 apply to all persons on the roster. Failure to comply with these provisions constitutes grounds for disciplinary action or removal from the roster under part 5530.1300.

Subp. 2. Professional and ethical responsibilities. Except as otherwise provided in this chapter, the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes approved and published by the National Academy of Arbitrators is incorporated by reference and is applicable to and shall govern the professional behavior of persons appointed to the roster. The code was adopted in 1975 and amended in 1985 and is not subject to frequent change. Single copies of the code are available without charge from the commissioner, and are available through the Minitex interlibrary loan system.

Subp. 3. Conflicts of interest. The arbitrator must disclose any personal or professional relationships, including direct or indirect past employment, consultative relationships, or affiliation with one of the parties, which may give an appearance of partiality. The burden of disclosure is on the arbitrator.

Subp. 4. Communication with parties. Arbitrators shall not solicit parties for selection to cases. All matters involving a case or contact with the parties must be handled in a manner that fosters the impartiality of the arbitrator. The arbitrator shall not communicate, directly or indirectly, in connection with any issue of fact or law with any person or party, except upon notice and opportunity for all parties to participate. When this chapter authorizes communications contrary to this part, the communications shall be limited to only those matters permitted by this chapter. The arbitrator may communicate regarding dates or procedures for the hearing without violating this part.

Subp. 5. Use of assistants or associates. An arbitrator may, without prior consent of the parties, delegate research, clerical, and preliminary drafting responsibilities to an assistant. However, the assistant may not be delegated decision-making functions or authority, and the arbitrator retains responsibility and accountability for all aspects of the award and its handling.

Subp. 6. Timeliness. It is the responsibility of the arbitrator to schedule time commitments in a manner consistent with the needs of the parties and the expeditious handling of disputes. The arbitrator must adhere to the time limits of the parties' arbitration procedure. When initially accepting and scheduling a case, or at the first reasonable opportunity to become aware of the time limits, the arbitrator must indicate whether or not the time limits specified in the arbitration procedure will present a problem in the timely handling of the case. Although the time limits specified in an arbitration procedure may be waived or extended by the parties, it is improper for an arbitrator to routinely request or suggest extensions. If, after accepting and hearing a case, the arbitrator discovers that he or she will be unable to render an award within the time limits specified in the arbitration procedure, the arbitrator shall notify each party in writing of the reason for the delay and shall seek approval for establishing an alternate date for completion of the award.

Subp. 7. Administrative or cancellation fees. Arbitrators may charge an administrative fee for establishing a case file and cancellation fees for hearings that are canceled or rescheduled by one or both parties with less than 21 calendar days' notice, provided the fees and policies are clearly noted on the biographic sketch for that arbitrator that is on file with the bureau.

Subp. 8. Arbitration fees. All fees charged by an arbitrator selected under this chapter shall be based on the per diem fee schedule in the biographic sketch on file with the commissioner. The arbitrator shall maintain reasonable time and expense records related to each case and, in the event of a dispute over the reasonableness of fees and expenses in a case, shall make the records available to the parties or the commissioner, upon written demand. Disputes over the reasonableness of fees may be resolved under part 5530.1000, subpart 6.

Subp. 9. Filing copies of awards. Unless one or both private sector parties have specifically requested that an award not be provided to the commissioner, arbitrators shall submit copies of all awards involving Minnesota work sites to the commissioner, regardless of the source of appointment or selection. Awards filed with the commissioner are public documents.

Subp. 10. Arbitrator fee and summary report. For each award filed with the commissioner, whether originating from a bureau referral or other source, the arbitrator shall provide a summary report that discloses the following:

A. case identification information, including:

- (1) arbitrator's name;
- (2) case file number or bureau case number, if any;
- (3) name and location of employer and name of employer's representative; and
- (4) name of exclusive representative and agent of the exclusive representative;

B. case processing date information, including:

- (1) date the grievance was filed or first made known to the employer;
- (2) date arbitrator was notified of selection by parties;
- (3) date of hearing;
- (4) final date for submission of briefs or other written material, if any; and
- (5) date award was issued; and

C. arbitrator fee and expense information for all awards resulting from a referral by the commissioner, including:

- (1) number of days of hearing billed;
- (2) number of days of study and preparation of award billed;
- (3) number of days billed for travel;
- (4) per diem rate for billing;
- (5) travel expenses billed;
- (6) other expenses billed;
- (7) total fees and expenses charged; and
- (8) amount of the total costs to be paid by each party.

Forms for reporting this information must be furnished by the bureau.

Statutory Authority: *MS s 179.02*

History: *14 SR 1383*

5530.0900 PANEL SELECTIONS AND REFERRALS.

Subpart 1. Request for panels. Individuals or organizations desiring a panel of arbitrators drawn from the roster shall submit individual or joint written requests that include the following:

A. the name and location of the employer and the name, address, and telephone number of the employer's representative;

B. the name of the employee organization and the name, address, and telephone number of the employee organization's representative;

C. a brief statement of the nature of the dispute being submitted to arbitration, for example, discharge or overtime pay;

D. the nature or type of business of the employer;

E. a description of the type of bargaining unit involved, for example, clerical, maintenance, dietary, or teacher; and

F. the date the grievance or dispute was first made known to the employer.

Subp. 2. Size and selection of panels. Unless a single arbitrator is to be appointed under subpart 3, all panels submitted by the commissioner shall contain seven names. When the parties' arbitration agreement provides for panels of fewer than seven names, the parties may use the striking procedures in subpart 5 to reduce the size of a seven-member panel. In assembling panels, the commissioner shall use a random selection system that results in a reasonably equal number of opportunities for referral among roster members who have been on the roster for three or more years. When possible, no more than three arbitrators who have been on the roster for less than three years shall be included on a single panel, but the commissioner shall provide greater referral opportunities for those individuals. In assembling panels, the commissioner shall seek to avoid potential conflicts of interest and shall include or exclude roster members pursuant to mutual requests of the parties. Geographic location or unique and special circumstances and technical expertise must be considered by the commissioner when the parties request that those factors be considered. At least five members of the panel must be residents of Minnesota.

Subp. 3. Direct appointment by commissioner. The commissioner shall appoint one person from the roster to serve as the arbitrator whenever the agreement to arbitrate or other joint agreement of the parties provides for direct appointments.

Subp. 4. Replacement panels or names. Upon the joint request of the parties, the commissioner shall issue a new panel of seven names to replace a prior panel. No more than one replacement panel will be provided in any one case. Single-party requests for replacement panels will not be honored unless the commissioner determines that a bona fide conflict of interest exists regarding the matter in dispute between one or more parties and two or more members of the panel. If a conflict is found by the commissioner, a single replacement panel will be issued.

Subp. 5. Selection from panels. The parties shall select an arbitrator or arbitrators from the panel under the terms of their agreement or grievance procedure. In the absence of an agreement, the selection shall be made by alternately deleting names from the panel until the required number of names remain. Determining which party shall delete the first name shall be accomplished by a toss of a coin.

Subp. 6. Scheduling. Notifying the arbitrators of their selection and the scheduling of the arbitration hearing is the responsibility of the parties. Once the initial arbitration hearing has been established, the party who requested the panel shall notify the commissioner of the arbitrators selected, the date the selection was made, and the date of the initial arbitration hearing.

Subp. 7. Biographic data. The bureau shall review and prepare a biographic sketch of each member on the roster annually, based on information provided by that member and other information available to the commissioner. The sketches must include information about the arbitrator's background, education, and experience, as well as data regarding the arbitrator's fee schedule and acceptance of hearing officer duties under Minnesota Statutes, section 125.12. The

mean number of calendar days required by each arbitrator to issue an award during the preceding year, as well as the upper and lower limits and number of cases used to determine that mean, based on records on file with the bureau, shall be included on the biographic sketch for that arbitrator beginning July 30, 1991. Arbitrators are responsible for ensuring the accuracy of all other biographic and fee data on the sketch. Single copies of the sketches will be made available to parties with the referral of panels.

Subp. 8. Jurisdiction of bureau. Submission of a panel or appointment of an arbitrator under this chapter signifies nothing more than compliance with a request and is not a determination as to the legitimacy of the dispute or the competency of the arbitrators to resolve it. The bureau does not have jurisdiction or responsibility for enforcement, resolution, or compliance with any aspect of the arbitration process other than providing the services specifically established by this chapter.

Statutory Authority: *MS s 179.02*

History: *14 SR 1383*

5530.1000 ARBITRATION PROCEEDINGS.

Subpart 1. Responsibility of arbitrators. Arbitrators selected as a result of referral on a bureau panel must ensure that a fair, adequate, and timely hearing is conducted in a manner that reasonably minimizes cost and expense to the parties.

Subp. 2. Transcripts or recordings. Official verbatim recordings or transcripts of an arbitration proceeding shall not be encouraged by the arbitrator. If a single party requests a transcript be made, and the matter is not addressed in the contract or grievance procedure, the arbitrator shall permit the record to be made if the party requesting the transcript makes the necessary arrangements, pays for all costs associated with the transcript, and provides copies to the other party and the arbitrator.

Subp. 3. Tape recordings. An arbitrator may use a tape recording of a hearing as a supplement to his or her notes. The tape of the hearing shall be regarded as the personal property of the arbitrator, but must be maintained by the arbitrator for not less than 90 days following issuance of the award.

Subp. 4. Briefs. Arbitrators should not encourage the submission of post-hearing briefs unless the arbitrator determines that the case is of a sufficiently complex nature and warrants the need for a written summation of evidence and argument. If one or both parties desire to submit briefs, the arbitrator shall establish a prompt schedule.

Subp. 5. Payment of fees and costs. Parties requesting panels under this chapter must pay the reasonable fees and costs of the arbitrator promptly. Each party to the dispute is responsible for their pro rata share of the arbitrator's fees and costs, except as otherwise provided by the express terms of the agreement to arbitrate. In the event of a dispute between one or both parties and the arbitrator over the arbitrator's fees or costs, the party contesting the fee may request arbitration of the fee dispute under subpart 6.

Subp. 6. Dispute over fees. If a party believes that the fees or expenses charged by an arbitrator are inappropriate or incorrect and is unable to resolve the matter through discussion with the arbitrator, that party may submit a written statement of protest to the commissioner within 30 calendar days of receipt of the arbitrator's invoice. The protest shall provide the specific basis for the objection and a copy shall be provided to the arbitrator and the other party. The commissioner shall investigate and respond to the complaint promptly and if the commissioner believes further examination is necessary, the matter will be referred to a panel of the advisory committee consisting of one union representative, one employer representative, and one roster member, all of whom shall be

selected by the commissioner. The panel shall investigate the matter, provide all parties at interest an opportunity to be fairly heard, and issue a written decision that is final and binding upon the parties and the arbitrator.

Statutory Authority: *MS s 179.02*

History: *14 SR 1383*

5530.1100 EXPEDITED ARBITRATION.

Subpart 1. Request for expedited arbitration. Parties may use expedited procedures for arbitrating a dispute by filing a joint written request with the commissioner. The request must be signed by authorized representatives from both parties and contain the following information:

A. name, address, and telephone number of the employer and the employer's representative;

B. name, address, and telephone number of the exclusive representative and the agent of the exclusive representative; and

C. a brief statement of the nature of the dispute, for example, discharge, discipline, or holiday pay.

Subp. 2. Appointment of arbitrator. The commissioner shall appoint a single arbitrator from the expedited panel of roster members maintained for this purpose. The arbitrator appointed by the commissioner shall hear and decide the case according to this part.

Subp. 3. Disclosures. If, after appointment to a case, the arbitrator discovers any circumstance likely to prevent a prompt hearing or which presents a potential conflict of interest or other circumstance detrimental to the intent of this part, the arbitrator shall promptly notify the parties and the commissioner. Under such circumstances, the commissioner shall immediately appoint a new arbitrator from the expedited panel, unless the parties otherwise mutually agree.

Subp. 4. Scheduling of hearing. The commissioner shall fix the time and date for a hearing on the matter in dispute. The hearing will be held in the offices of the bureau, or at a location mutually agreed upon by the parties and the arbitrator, within 15 working days of receipt of the joint request. The commissioner shall provide at least 48 hours' advance notice, written or oral, before any hearing under this part.

Subp. 5. Conduct of hearing. All hearings under this part shall be closed to the public, pursuant to Minnesota Statutes, section 179A.14, subdivision 3, and no verbatim transcripts or audio-magnetic recordings shall be permitted. Each party may be represented by counsel or other representative, but each party shall be limited to a total of 90 minutes for presentation of its case and arguments. The arbitrator shall determine all procedural questions not addressed by this part, including order of presentation, framing of the issue, and sequestering of witnesses, if any. Under unusual circumstances and for demonstrated good cause, as determined by the arbitrator, the arbitrator may schedule an additional hearing on the matter, provided the hearing is conducted within five working days. The arbitrator may proceed in the absence of a party who, after due notice, fails to appear, but the arbitrator must rely on the evidence actually presented when reaching an award.

Subp. 6. Evidence. Parties shall limit the number and extent of exhibits to those that are essential and relevant to the contentions of that party. The arbitrator shall be the sole judge of the relevance, materiality, and weight of the evidence offered. The arbitrator may receive and consider evidence in the form of affidavit, but shall give appropriate weight to any objections raised by the other party. All written material to be considered by the arbitrator must be presented during the hearing. There shall be no prehearing or posthearing submissions.

Subp. 7. Written briefs. There shall be no posthearing briefs.

Subp. 8. Issuance of award. The arbitrator shall issue a brief written award

within five working days from the close of the hearing. The award shall be simultaneously mailed to both parties and the commissioner. The arbitrator may orally notify the parties of the decision at the time that the award is mailed, provided both parties are notified in a timely fashion.

Subp. 9. Precedential value. Awards issued under this expedited procedure shall have no precedential value.

Subp. 10. Fees and expenses. The arbitrator shall receive a total fee of \$450 per award issued under this part, plus reasonable and actual expenses. Unless otherwise specifically provided by the parties' contract or agreement to arbitrate, each party is responsible for one-half of the total fee and expenses.

Subp. 11. Cancellation fee. If the parties withdraw a request for expedited arbitration under this part within seven calendar days of a scheduled hearing, the parties are responsible for a cancellation fee of \$100 each, payable to the arbitrator.

Statutory Authority: *MS s 179.02*

History: *14 SR 1383*

5530.1200 PERFORMANCE MEASURES.

Subpart 1. Renewal criteria. When reviewing an application for renewal appointment to the roster, the commissioner shall use the criteria in subparts 2 to 7 in determining whether or not to reappoint.

Subp. 2. Selection rate. The commissioner shall develop and maintain reliable data concerning the frequency with which individuals are selected by parties from panels referred by the bureau. A selection frequency that falls in the upper three quartiles of the frequencies of all arbitrators on the roster is evidence that an arbitrator has established acceptability among the parties who use the roster. Appointments under part 5530.1100 shall not be considered in determining selection frequency. A selection rate in the lowest quartile shall not be the sole basis for failure to reappoint unless the arbitrator has been in the lowest quartile for two consecutive years and was selected for fewer than three cases in the most recent 12-month period.

Subp. 3. Scheduling. A lack of substantiated written complaints from parties that an arbitrator has failed to offer a reasonable number of dates on which the arbitrator is available to hear a case within 60 days of the arbitrator's notification of selection is evidence that an arbitrator is meeting the availability standards of this chapter.

Subp. 4. Timeliness. The commissioner shall consider the mean number of calendar days between the close of the record in a case and the issuance of an award during the preceding 12 months to determine whether or not roster members are meeting timeliness requirements. In evaluating the data, the commissioner shall rely on information provided by the arbitrator under part 5530.0800, subpart 9, and data available from awards on file with the commissioner, but shall not consider awards issued under part 5530.1100. A mean that exceeds 60 days is evidence that an arbitrator is not timely in the handling of cases, but shall not be the sole basis for a determination not to reappoint.

Subp. 5. Evaluation by parties. The commissioner shall encourage evaluations of the performance of roster members by the parties. Both individual and summary evaluation information shall be considered by the commissioner.

Subp. 6. Availability. Arbitrators who have been available to accept cases for at least 18 of the preceding 36 months, including at least six of the preceding 12 months, meet the availability requirements for reappointment.

Subp. 7. General professional criteria. All roster members are required to maintain proficiency and competency in the areas in part 5530.0700, subpart 2. Failure of an arbitrator to comply with this chapter, including the submission of information or reports, shall be grounds for removing or not reappointing a roster member.

Statutory Authority: *MS s 179.02*

History: *14 SR 1383*

5530.1300 DISCIPLINARY OR REMOVAL PROCEDURES.

Subpart 1. General. Membership on the roster is a privilege and no arbitrator has a right to placement on the roster. The commissioner has authority to investigate all complaints and allegations regarding the professional performance and compliance with this chapter by members of the roster. The commissioner shall advise, counsel, suspend, or remove roster members when the results of an investigation demonstrate violation by the arbitrator of the performance, professional, or ethical standards established by this chapter.

Subp. 2. Preliminary investigation. When the commissioner receives a complaint regarding violation of this chapter by a member of the roster, the commissioner shall conduct an informal investigation of the matter to determine if there is probable cause to believe that a roster member has violated any requirements of this chapter. In the absence of a violation, the commissioner shall take no further action. If further action on the matter is warranted, the commissioner shall suspend the roster member from further referrals pending the conclusion of proceedings under this chapter.

Subp. 3. Notice. When the commissioner finds probable cause to believe that a violation of this chapter has occurred and that removal or disciplinary suspension of a roster member should be considered, the commissioner shall provide written notice to the roster member and the advisory committee. The written notice must contain the nature of the action being considered and the reasons for it. The notice shall provide an opportunity for the roster member to respond in writing and shall fix a date for a hearing on the matter before the commissioner or a designated representative, if the roster member wishes to contest the proposed action.

Subp. 4. Hearing. If a hearing on a disciplinary matter is requested by the affected roster member, the commissioner or the commissioner's representative shall convene and conduct a hearing pursuant to part 5510.1910, subparts 6, 8, 9, 10, 12, 13, and 14. Advisory committee members may attend the hearing or review the audio-magnetic recording from the proceedings.

Subp. 5. Determination. The commissioner shall determine the action to be taken with respect to the member's status on the roster, based on the record of the hearing, the recommendations of the advisory committee, and this chapter. The determination is a final decision.

Statutory Authority: *MS s 179.02*

History: *14 SR 1383*