

CHAPTER 5530
BUREAU OF MEDIATION SERVICES
ARBITRATION ROSTER

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5530.0100 APPLICABILITY.

A. This chapter applies to:

(1) the empanelment, referral, conduct, and removal of arbitrators on the commissioner-maintained roster under Minnesota Statutes, sections 179.02, subdivision 4; and 179A.04, subdivision 3, paragraph (a), clause (13); and

(2) the roster of arbitrators under Minnesota Statutes, section 626.892, except as provided under Minnesota Statutes, section 626.892, subdivisions 3 to 6 and 11.

B. This chapter does not apply to the list of arbitrators maintained under Minnesota Statutes, section 179A.04, subdivision 3, paragraph (b), for teacher discharge or termination hearings.

C. This chapter applies to all:

- (1) roster members;
- (2) applicants for placement on the roster;
- (3) parties and users of the roster; and
- (4) proceedings conducted as the result of a referral from the roster.

D. Nothing in this chapter limits the right of parties to jointly select an arbitrator or arbitration procedure acceptable to them.

Statutory Authority: *MS s 179.02; 179.82; 179A.04; 179A.16; 626.892*

History: *14 SR 1383; 21 SR 583; 46 SR 1387*

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5530.0200 POLICY.

A. 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 encouraged.

B. This chapter is to be liberally construed to effectuate collective bargaining procedures and binding arbitration and the provisions of Minnesota Statutes, chapters 179 and 179A.

Statutory Authority: *MS s 179.02; 179.82; 179A.04; 179A.16; 626.892*

History: *14 SR 1383; 21 SR 583; 46 SR 1387*

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5530.0300 DEFINITIONS.

Subpart 1. **Scope.** The terms used in this chapter have the meanings given them in this part.

Subp. 1a. **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, subdivision 2, to advise the commissioner on appointing arbitrators to and removing arbitrators from the roster.

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

Subp. 2a. **Arbitrator.** "Arbitrator" means an individual who is selected, assigned, or appointed to arbitrate a dispute.

Subp. 3. **Arbitrator roster or roster.** "Arbitrator roster" or "roster" means a list of arbitrators the commissioner determines qualified and available for referral as an arbitrator under this chapter.

Subp. 3a. **Award.** "Award" means an opinion or decision, including any damages, relief, and remedies, rendered by an arbitrator in a dispute among two or more parties under an agreement to arbitrate or referral to arbitration.

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

Subp. 5. [Repealed, 46 SR 1387]

Subp. 6. **Commissioner.** "Commissioner" means the commissioner of the bureau.

Subp. 6a. **Exclusive representative.** "Exclusive representative" has the meaning given in Minnesota Statutes, section 179A.03, subdivision 8.

Subp. 7. [Repealed, 21 SR 583]

Subp. 8. [Repealed, 46 SR 1387]

Subp. 9. [Repealed, 46 SR 1387]

Subp. 9a. **Grievance procedure.** "Grievance procedure" means the grievance procedure required under Minnesota Statutes, section 179A.20, subdivision 4, paragraph (a).

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

Subp. 11. **Party.** "Party" means:

A. an employer or exclusive representative directly involved and affected by a dispute for which a roster member has been requested or referred; or

B. the employer's or exclusive representative's designated representative.

Subp. 12. [Repealed, 46 SR 1387]

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

Subp. 14. **Roster member.** "Roster member" means an arbitrator who is on the roster.

Statutory Authority: *MS s 179.02; 179.82; 179A.04; 179A.16; 626.892*

History: *14 SR 1383; 21 SR 583; 46 SR 1387*

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5530.0400 BUREAU'S ROLE.

A. The bureau's role under this chapter is limited to appointing arbitrators to the roster, removing arbitrators from the roster, and referring arbitrators from the roster.

B. The bureau has no role, responsibility, or authority under this chapter to:

(1) compel parties to agree to arbitrate;

(2) enforce an agreement to arbitrate;

(3) compel parties to appear before an arbitrator;

(4) influence, alter, enforce, or set aside the decisions or awards of arbitrators; or

(5) except as provided under part 5510.5295, compel, deny, or modify the payment of fees and expenses to an arbitrator.

Statutory Authority: *MS s 179.02; 179.82; 179A.04; 179A.16; 626.892*

History: *14 SR 1383; 46 SR 1387*

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5530.0410 ADVISORY COMMITTEE.

The advisory committee continues after its initial expiration under the commissioner's discretionary authority given under Minnesota Statutes, section 15.059, subdivision 6.

Statutory Authority: *MS s 179.02; 179.82; 179A.04; 179A.16; 626.892*

History: *46 SR 1387*

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5530.0500 STATUS OF ARBITRATORS.

Roster members, whether or not selected, appointed, or assigned to hear matters under this chapter, do not become employees or agents of the state of Minnesota or the bureau by virtue of being placed on the roster or selected, appointed, or assigned as an arbitrator. Except for the reporting and performance requirements under parts 5530.0800, subpart 10, and 5530.1200, the roster member's relationship is solely with the parties to a dispute.

Statutory Authority: *MS s 179.02; 179.82; 179A.04; 179A.16; 626.892*

History: *14 SR 1383; 46 SR 1387*

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5530.0600 APPLICANT QUALIFICATIONS.

Subpart 1. **Labor relations background.** An applicant must have a labor relations background in the public sector and be qualified according to Minnesota Statutes, section 179A.04, subdivision 3, paragraph (a), clause (13).

Subp. 2. **General abilities.** An applicant must be willing and able to:

- A. travel throughout Minnesota;
- B. fairly and impartially conduct hearings;
- C. analyze and evaluate testimony and exhibits;
- D. write clear and concise awards in a timely manner; and
- E. be available for hearings within a reasonable time after the request of the parties.

Subp. 3. [Repealed, 46 SR 1387]

Subp. 4. **Demonstrating qualifications.**

A. An applicant has the burden to demonstrate qualifications for appointment to the roster. The commissioner must make appointments to the roster according to part 5530.0700, subpart 6.

B. An applicant must demonstrate the applicant's qualifications for appointment to the roster in one or a combination of the following ways:

(1) by submitting six or more arbitration awards or contested case decisions that were authored and signed by the applicant in the 24-month period preceding application;

(2) by having at least six years' experience as a full-time labor relations advocate and by submitting six arbitration awards in which the applicant acted as the principal representative for either the labor organization or the employer;

(3) by having at least six years' experience as a full-time labor mediator, including grievance mediation experience;

(4) by having at least six years' experience as a practitioner or full-time instructor of labor law or industrial relations, including collective bargaining, labor agreements, and contract administration;

(5) by being a member of the National Academy of Arbitrators; or

(6) by completing a mentorship with a roster member.

C. The mentorship under item B, subitem (6), must include writing no less than two mock arbitration awards under the supervision and guidance of a roster member and must be approved in advance by the commissioner.

Subp. 5. Residency requirement.

A. To be eligible for appointment to the roster, an applicant must maintain a principal place of residence in Minnesota or one of its contiguous states. Maintaining a mailbox or mail delivery point does not satisfy this subpart.

B. The residency requirement under item A may be waived on an appointment-by-appointment basis by the commissioner.

Statutory Authority: *MS s 179.02; 179.82; 179A.04; 179A.16; 626.892*

History: *14 SR 1383; 21 SR 583; 27 SR 529; 46 SR 1387*

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5530.0610 ARBITRATOR QUALIFICATIONS.

Subpart 1. **Advocacy disqualification.** A roster member may not advocate for a public- or private-sector employer, employee, or employee organization in labor management relations.

Subp. 2. **Residency requirement.** To be eligible to remain on the roster, a roster member must comply with part 5530.0600, subpart 5.

Statutory Authority: *MS s 179.02; 179.82; 179A.04; 179A.16; 626.892*

History: *46 SR 1387*

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5530.0700 INITIAL AND RENEWAL APPOINTMENTS TO ROSTER.

Subpart 1. **Roster size.** The roster is not fewer than 25 nor more than 60 arbitrators.

Subp. 2. **Procedure; initial appointments.**

A. If the commissioner must increase the size of the roster, the commissioner must:

(1) publish notice on the bureau's website for at least 30 calendar days, indicating that applications for appointment are being accepted and establishing a deadline for the applications;

(2) together with the advisory committee, assess an applicant's qualifications and suitability for appointment to the roster according to subpart 6;

(3) advise each applicant in writing on the commissioner's final determination on the applicant's application;

(4) actively solicit qualified applicants who will help provide balance in the roster's racial and gender composition; and

(5) conduct an initial review of applications received and select or reject applicants for further consideration based on the:

(a) information provided in the application and reference checks; and

(b) arbitrator qualification requirements under part 5530.0600.

B. If the commissioner determines that additional information is needed after reviewing the information under item A, subitems (2) and (5), the applicant must provide additional information on the applicant's:

(1) qualifications according to subpart 6; and

(2) arbitrator qualification requirements under part 5530.0600, application, and reference checks.

Subp. 3. **Procedure; renewal appointments.**

A. The commissioner must notify all roster members at least 120 calendar days before their appointment expires of the procedures necessary for a renewal appointment.

B. A roster member seeking a renewal appointment must submit a written application and a fee to the commissioner at least 60 calendar days before the roster member's appointment expires.

C. After receiving a renewal application under item B, the commissioner must review the roster member's performance measures under part 5530.1200 and evaluate the roster member according to subpart 6.

Subp. 4. **Application forms.**

A. An applicant or a roster member seeking a renewal appointment must complete an application on forms available from the bureau.

B. Writing samples must accompany the application.

Subp. 5. Application and renewal fees.

A. Application and renewal fees are as provided under Minnesota Statutes, section 179A.04, subdivision 3, paragraph (a), clause (10).

B. 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.

A. When determining whether to appoint or reappoint a member to the roster, the commissioner must evaluate each application for evidence of the applicant's competence, proficiency, and qualifications in the following areas:

(1) knowledge and understanding of labor relations systems and collective bargaining processes and dynamics;

(2) knowledge and understanding of applicable contract, employment, and labor relations law;

(3) ability to hear and decide complex labor relations issues fairly and objectively;

(4) ability to communicate clearly and concisely in writing and orally;

(5) ability to conduct orderly and effective arbitration hearings in various settings and locations throughout Minnesota; and

(6) reputation in the labor-management community for high professional standards of competence, ethics, and integrity.

B. In addition to meeting the standards under item A, a roster member seeking a renewal appointment must satisfy the requirements under part 5530.1200, subparts 2, 3, and 7.

Subp. 7. Appointing applicants.

A. If the commissioner determines that the applicant or roster member has satisfied the requirements of subparts 3 to 6, if applicable, the commissioner must appoint the applicant or reappoint the roster member to the roster.

B. If the applicant or roster member fails to satisfy the requirements of subparts 3 to 6, the commissioner must reject the application in writing, including the reasons for the rejection. If there are more qualified applicants than vacancies on the roster, the commissioner must appoint applicants in rank order of their qualifications or by lottery where qualifications are relatively equal.

Subp. 8. Term of appointment. An appointment to the roster is for a term of three years.

Statutory Authority: *MS s 179.02; 179.82; 179A.04; 179A.16; 626.892*

History: *14 SR 1383; 21 SR 583; 46 SR 1387*

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5530.0800 ARBITRATOR CONDUCT AND STANDARDS.

Subpart 1. **Scope.** The criteria and standards under this part apply to all roster members, and failure to comply constitutes grounds for disciplinary action or removal from the roster according to part 5530.1300.

Subp. 2. **Professional and ethical responsibilities; incorporation by reference.** Except as otherwise provided in this chapter or chapter 5510, the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes published by the Federal Mediation and Conciliation Service, 2007 and as subsequently amended, is incorporated by reference and is applicable to and governs the professional behavior of roster members. The code is not subject to frequent change and is available from the bureau's website.

Subp. 3. **Conflicts of interest.** A roster member must disclose to the parties and the commissioner any personal or professional relationships, including direct or indirect past employment, consultative relationships, or affiliations with one of the parties that may give an appearance of partiality. The burden of disclosure is on the roster member.

Subp. 3a. **Biographic sketch.**

A. Annually, the commissioner must review and publish on the bureau's website a biographic sketch of each roster member using information provided by the roster member and from other publicly available information. A biographic sketch must include:

- (1) information on the roster member's background, education, and experience; and
- (2) data on the roster member's fee schedule.

B. Roster members must ensure the accuracy of all biographic and fee data under item A.

Subp. 4. **Communicating with parties.**

A. A roster member may 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 roster member's impartiality.

B. A roster member may 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. This item does not apply when an arbitrator discusses a case with another arbitrator, consistent with the incorporated code under subpart 2.

C. When this chapter authorizes communications contrary to this subpart, the communications are limited to only those matters permitted by this chapter. The roster member may communicate regarding dates or procedures for the hearing without violating this subpart.

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.** A roster member must:

A. schedule time commitments in a manner consistent with the needs of the parties and the expeditious handling of disputes; and

B. adhere to the time limits under Minnesota Statutes, section 179A.16, subdivision 7.

Subp. 7. **Administrative or cancellation fees.** If any administrative or cancellation fees are noted on the biographic sketch under subpart 3a, the roster member may charge:

A. an administrative fee for establishing a case file; and

B. cancellation fees for hearings that are canceled or rescheduled by one or both parties with less than 28 calendar days' notice.

Subp. 8. **Arbitration fees and expenses.**

A. Except as provided under subpart 7, all fees charged by a roster member must be based on the per diem fee schedule in the biographic sketch under subpart 3a.

B. A roster member must maintain reasonable time and expense records related to each case and, if there is a dispute over the reasonableness of fees and expenses in a case, must make the records available to the parties or the commissioner, upon written demand. A dispute over the reasonableness of fees may be resolved according to part 5510.5295.

Subp. 9. **Filing copies of awards.**

A. Unless one or both private-sector parties have requested that an award not be provided to the commissioner, a roster member must electronically submit to the commissioner an award involving a Minnesota work site or location, regardless of the source of appointment, selection, or assignment.

B. Except as provided under item A, public- and private-sector awards must be submitted electronically to the commissioner.

C. Except as otherwise limited by law, awards under items A and B filed with the commissioner are public documents.

D. An award submitted electronically is subject to part 5510.0320.

Subp. 10. **Arbitrator fee and summary report.** For each award filed with the commissioner, a roster member must provide a fee and summary report in a form prescribed by the commissioner that discloses:

A. case identification information, including the:

(1) roster member's name;

(2) case file number or, if any, bureau case number;

(3) name and location of the employer and employer's representative; and

(4) name and location of the exclusive representative and the exclusive representative's agent;

B. information on the case-processing date, including the:

- (1) date that the roster member was notified of selection by parties;
- (2) date of hearing;
- (3) final date for submitting briefs or other written material, if any; and
- (4) date that the award was issued; and

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

- (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.

Statutory Authority: *MS s 179.02; 179.82; 179A.04; 179A.16; 626.892*

History: *14 SR 1383; 21 SR 583; 46 SR 1387*

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5530.0810 TRAINING FOR PEACE OFFICER ARBITRATORS; DISCIPLINE GRIEVANCES.

Subpart 1. **Applicability.** This part applies only to a roster member under Minnesota Statutes, section 626.892.

Subp. 2. **Definitions.** For purposes of this part, the terms defined in this subpart have the meanings given them.

2. A. "Agency" has the meaning given in Minnesota Statutes, section 16A.011, subdivision 2.
- B. "CE" means continuing education.
- C. "CLE" means continuing legal education.

D. "Office of Higher Education" or "office" means the Minnesota Office of Higher Education under Minnesota Statutes, chapter 136A.

E. "School" has the meaning given in Minnesota Statutes, section 136A.62, subdivision 3.

Subp. 3. **Training required.** A roster member must complete training as required under Minnesota Statutes, section 626.892, subdivision 10.

Subp. 4. **Training providers.**

A. Required training must be obtained from any of the following:

(1) the American Arbitration Association, the Federal Mediation and Conciliation Service, or the United States Federal Labor Relations Authority;

(2) another state agency;

(3) a CLE or CE provider that provides training for licensed professionals;

(4) one of the following:

(a) a school registered with the office under chapter 4840;

(b) a school licensed with the office under chapter 4880;

(c) the University of Minnesota under Minnesota Statutes, chapter 135A;

(d) an exempt school under Minnesota Statutes, sections 136A.653 to 136A.658;

or

(e) a designated college or university under Minnesota Statutes, section 136F.10;

or

(5) a nonprofit company or a training provider, either of which has a stated mission of providing training on cultural competency, racism, implicit bias, community diversity, or peace-officer-related training.

B. For a roster member to comply with this part, the roster member must receive training on specified topics under Minnesota Statutes, section 626.892, subdivision 10, paragraph (a), clauses (1) and (2).

C. A roster member may receive training from one or more providers under item A to achieve the number of required training hours under Minnesota Statutes, section 626.892, subdivision 10, paragraph (a), clauses (1) and (2).

D. If a roster member is completing a certificate or other program lasting longer than six months, the roster member must still receive the number of required training hours under Minnesota Statutes, section 626.892, subdivision 10, paragraph (a), clauses (1) and (2), by the deadline under Minnesota Statutes, section 626.892, subdivision 10, paragraph (b).

Subp. 5. Proof of training.

A. For each training provider under subpart 4, item A, that a roster member receives training from, the roster member must submit to the commissioner proof of training by providing:

- (1) the training's title and description;
- (2) the completed hours of training;
- (3) information on whether the training was in person, online, hybrid in person and online, or some other format;
- (4) the training start and end dates; and
- (5) the individual who provided the training, and, if available, the training provider's name, address, e-mail address, and telephone number.

B. If the commissioner determines that the information under item A does not prove that the roster member has complied with this part, the commissioner must notify the roster member in writing and the roster member must complete the training according to this part.

C. If the commissioner cannot determine proof of training with the provided information under item A, the roster member must provide any other training information necessary for the commissioner to determine whether the roster member has complied with this part.

Subp. 6. Record required. A roster member must maintain proof of training for the duration of the roster member's appointment.

Statutory Authority: *MS s 179.02; 179.82; 179A.04; 179A.16; 626.892*

History: *46 SR 1387*

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5530.0900 PANEL SELECTIONS AND REFERRALS.

Subpart 1. Request for panels. A party or parties that request a panel must submit to the commissioner individual or joint written requests that include:

- A. the employer's name and location and the employer's representative's name, address, e-mail address, and telephone number;
- B. the employee organization's name and the organization's representative's name, address, e-mail address, and telephone number;
- C. a brief statement of the nature of the dispute being submitted to arbitration;
- D. the nature or type of business of the employer;
- E. a description of the type of bargaining unit involved; and
- F. the date the dispute was first made known to the employer.

Subp. 2. Size and selection of panels.

A. All panels submitted by the commissioner must contain seven roster members. If the parties' arbitration agreement provides for panels of fewer than seven roster members, the parties may use the striking procedures in subpart 5 to reduce the size of a seven-member panel. This item does not apply:

- (1) if a single roster member is appointed under subpart 3, item A;
- (2) if a single roster member is mutually agreed on according to Minnesota Statutes, section 179A.16, subdivision 4;
- (3) if the arbitration proceeding is as provided under Minnesota Statutes, section 179.09 or 179.38; or
- (4) as otherwise provided by law.

B. When assembling a panel, the commissioner must:

- (1) use a random selection system that results in a reasonably equal number of opportunities for referral among roster members; and
- (2) seek to avoid potential conflicts of interest and include or exclude roster members according to mutual requests of the parties.

C. If requested by all parties to the dispute, the commissioner must consider geographic location or unique and special circumstances and technical expertise.

D. At least five members of the panel must be residents of Minnesota.

Subp. 3. Direct appointment by commissioner. The commissioner must appoint or assign a roster member to serve as an arbitrator when:

- A. the agreement to arbitrate or other joint agreement of the parties provides for direct appointments;
- B. applicable under Minnesota Statutes, section 179.09; or
- C. otherwise required by law.

Subp. 4. Replacement names or panels.

A. Upon the joint request of the parties, the commissioner must appoint a new roster member or issue a new panel of seven roster members to replace a prior roster member or panel under subpart 2 or 3.

B. The commissioner may not honor single-party requests for replacement roster members or panels unless the commissioner determines that a bona fide conflict of interest exists regarding the matter in dispute between one or more parties and one or more members of the panel. If the commissioner determines that a conflict exists, the commissioner must issue a replacement roster member or panel.

Subp. 5. **Selecting from panels.** The parties must select a roster member or panel according to Minnesota Statutes, section 179A.16, subdivision 4, or their grievance procedure. If there is no grievance procedure for binding arbitration, the selection must be made according to part 5510.5170, subpart 2.

Subp. 6. **Scheduling hearing.**

A. When the parties select one or more roster members according to this part, they must notify the roster members and work with the roster members to schedule the hearing.

B. Once the hearing has been scheduled, the party that requested the panel must notify the commissioner of the:

- (1) roster members selected;
- (2) date that the selection was made; and
- (3) date of the hearing.

C. After the commissioner assigns or appoints a roster member according to this part or statute, the parties must work with the roster member to schedule a hearing and then notify the commissioner of the hearing date.

D. When a roster member is selected, assigned, or appointed, the roster member must offer the parties at least three dates on which the roster member is available to hear the case. The three dates must be within 90 calendar days of the arbitrator's selection, assignment, or appointment. Nothing in this item requires the parties to hold a hearing within a period that is inconsistent with their needs.

Subp. 7. [Repealed, 46 SR 1387]

Subp. 8. **Bureau jurisdiction.**

A. Submitting a panel or appointing a roster member 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 panel or roster member to resolve it.

B. 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 established under this chapter.

Statutory Authority: *MS s 179.02; 179.82; 179A.04; 179A.16; 626.892*

History: *14 SR 1383; 21 SR 583; 46 SR 1387*

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5530.1000 ARBITRATION PROCEEDINGS.

Subpart 1. **Responsibility of arbitrators.** For purposes of Minnesota Statutes, section 626.892, subdivision 7, clause (3), this subpart is recodified at part 5510.5230, subpart 1.

Subp. 2. **Transcripts or recordings.** For purposes of Minnesota Statutes, section 626.892, subdivision 7, clause (3), this subpart is recodified at part 5510.5230, subpart 4.

Subp. 3. **Tape recordings.** For purposes of Minnesota Statutes, section 626.892, subdivision 7, clause (3), this subpart is recodified at part 5510.5220, subpart 2.

Subp. 4. **Briefs.** For purposes of Minnesota Statutes, section 626.892, subdivision 7, clause (3), this subpart is recodified at part 5510.5260.

Subp. 5. **Payment of fees and costs.** For purposes of Minnesota Statutes, section 626.892, subdivision 7, clause (3), this subpart is recodified at part 5510.5295, subpart 1.

Subp. 6. **Dispute over fees.** For purposes of Minnesota Statutes, section 626.892, subdivision 7, clause (3), this subpart is recodified at part 5510.5295, subpart 2.

Statutory Authority: *MS s 179.02; 179.82; 179A.04; 179A.16; 626.892*

History: *14 SR 1383; 46 SR 1387*

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5530.1100 [Repealed, 21 SR 583]

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5530.1200 PERFORMANCE MEASURES.

Subpart 1. **Renewal criteria.** When reviewing an application for a renewal appointment to the roster, the commissioner must use the criteria under this part when determining whether to reappoint.

Subp. 2. **Selection rate.**

A. The commissioner must develop and maintain reliable data concerning the frequency with which roster members are:

- (1) selected by parties from panels referred by the commissioner;
- (2) selected by parties' mutual agreement; and
- (3) appointed or assigned by the commissioner according to part 5530.0900, subpart 3.

B. A selection frequency that falls in the upper three quartiles of the frequencies of all roster members is evidence that a roster member has established acceptability among the parties who use the roster, but a selection rate in the lowest quartile is not the sole basis for failure to reappoint unless the roster member has been in the lowest quartile for three consecutive years.

Subp. 3. **Scheduling.** A lack of substantiated written complaints from parties that a roster member has failed to comply with part 5530.0900, subpart 6, item D, is evidence that the roster member is meeting the availability standards of this chapter.

Subp. 4. [Repealed, 46 SR 1387]

Subp. 5. **Party evaluation.** Parties may evaluate a roster member's performance. The commissioner must consider both individual and summary evaluation information.

Subp. 6. [Repealed, 46 SR 1387]

Subp. 7. **General professional criteria.** Each roster member must maintain proficiency and competency under the areas in part 5530.0700, subpart 6. Failure of a roster member to comply with this chapter, including failing to submit awards, fee and summary reports, or other information, is grounds for the commissioner to remove or to not reappoint a roster member.

Statutory Authority: *MS s 179.02; 179.82; 179A.04; 179A.16; 626.892*

History: *14 SR 1383; 21 SR 583; 46 SR 1387*

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5530.1300 ARBITRATOR DISCIPLINARY OR REMOVAL PROCEDURES.

Subpart 1. Commissioner authority.

A. The commissioner has authority to investigate all complaints and allegations against roster members regarding professional performance and compliance with this chapter.

B. The commissioner must advise, counsel, suspend, or remove a roster member when the results of an investigation demonstrate that a roster member has violated the performance, professional, or ethical standards under this chapter.

Subp. 2. Preliminary investigation.

A. When the commissioner receives a complaint of a roster member's violation of this chapter, the commissioner must conduct an informal investigation to determine if there is probable cause to believe that the roster member has violated a requirement of this chapter.

B. If there is no probable cause to believe that a violation occurred, the commissioner may not take further action.

C. If the commissioner determines that probable cause exists, the commissioner must suspend the roster member from further referrals pending the conclusion of proceedings under this part.

Subp. 3. Notice of violation.

A. When the commissioner finds probable cause to believe that a violation of this chapter has occurred that warrants the commissioner to remove or suspend the roster member, the commissioner must provide written notice to the roster member and the advisory committee.

B. The written notice must:

(1) state that the commissioner is determining whether to remove or suspend the roster member and the commissioner's rationale for the action;

(2) provide an opportunity for the roster member to respond in writing; and

(3) set 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 the disciplinary matter is requested by the affected roster member, the commissioner or the commissioner's representative must convene and conduct a hearing according to part 5510.1910, subparts 2a, 6, 8, 9, 10, 12, 13, and 14. Advisory committee members may attend the hearing or may review, if any, the hearing recording or transcript.

Subp. 5. **Commissioner determination.**

A. The commissioner must determine the action to be taken on the roster member's status on the roster on the basis of:

- (1) the hearing record if a hearing is conducted under subpart 4;
- (2) recommendations from the advisory committee; and
- (3) performance, professional, or ethical standards under this chapter.

B. The commissioner's determination is a final decision.

Statutory Authority: *MS s 179.02; 179.82; 179A.04; 179A.16; 626.892*

History: *14 SR 1383; 46 SR 1387*

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