

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 218

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 8/11
DATE FOR REVIEW _____
DATE DUE 8/19

Adopted w/a hearing _____
Adopted w/o a hearing _____
Temporary rule X

Approved _____ Disapproved 8/18 Returned to Agency _____

Resubmitted 8/19 Due _____
Approved 8/19 Disapproved _____ Returned to Agency _____

Date filed w/Secretary of State 8/19

✓ Rule as Adopted

✓ Rule as Proposed See SR.

✓ Order Adopting 8.10.81

✓ Notice of Intent to Solicit Outside Opinion not submitted but published 5.5.81

✓ Order for rulemaking
_____ Date of Hearing

N/A Certificate of Board's Authorizing Resolution

N/A Notice of rulemaking
_____ Sufficiency

N/A Affidavit of Mailing Notice or rulemaking
_____ At least 30 days prior to hearing/adoption

N/A Mailing list Certificate

✓ Publication in State Register
6.29.81 At least ~~30~~/20 days prior to ~~hearing~~/adoption

N/A Hearing Examiner's Report

N/A Chief Hearing Examiner's Report(s)
_____ Approving H.E.'s Report
_____ Approving agency action

✓ Agency's Findings of Fact see Order Adopting - contains FofF.

N/A LCRAR Report or agency Affidavit

N/A Certificate of Board's Resolution Adopting Rules

N/A Order Approving Incorporation by Reference

N/A Statement of Need and Reasonableness

N/A Petition for Adoption of a Rule

✓ Record (~~includes transcript or tape, exhibits,~~ comments received ~~by agency, requests for a hearing, and other relevant materials~~)

✓ Certificate of Compliance w/Rulemaking Procedures

N/A Affidavit of Mailing Notice of Submission to Attorney General

N/A Notice of Submission to the Attorney General

SF-00006-02

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT ATTORNEY GENERAL

TO : DUANE HARVES
Chief Hearing Examiner
Office of Administrative Hearings

DATE: August 19, 1981

ATTN : J. Michael Miles
Assistant Attorney General

FROM : Ted A. Martinez
Special Assistant
Attorney General

PHONE: 6-0315

SUBJECT: In the Matter of the Adoption of Temporary Rules Relating to Workers' Compensation

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Please note that they have not been filed with the State Register; this must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of stamps of the Attorney General and Secretary of State to the last page of the rules;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages to the rules in the approved set.

If you have any questions in this regard, please contact me.

TAM:rjg

Enc.

cc: Susan Robertson

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : DUANE HARVES
Chief Hearing Examiner
Office of Administrative Hearings

DATE: August 18,1981

ATTN: J. Michael Miles
Assistant Attorney General

FROM : Ted A. Martinez
Special Assistant Attorney General

PHONE: 296-0315

SUBJECT: In the Matter of the Adoption of Temporary Rules Relating to Workers' Compensation

The rules in the above-entitled matter have not been approved by this office for the following reasons:

1. Laws 1981, Chapter 346, section 5 amending Minn. Stat. 1980, § 15.052, subd. 4 grants to the Chief hearing examiner temporary rule making authority for the purpose of implementing sections 2 to 6, 103 to 122, 127 to 135 and 141 of the same chapter of the session laws of 1981. The rule in question, 9 MCAR § 2.306, addresses the Notice of Intention to Discontinue Compensation Payments. The corresponding statute regarding said notice is amended by Laws 1981, Chapter 346, section 100 (emphasis added). This section (§100) was not included in those specific enumerated sections where the chief hearing examiner is given authority to adopt temporary rules. Therefore, this rule appears to be outside the statutory authority granted.

2. The use of the word "moving" in 9 MCAR § 2.315C. is inconsistant with the rest of the language contained in the rule. It appears that the more appropriate word should be "petitioning."

After consideration of the above comments and agency action, if any, these rules may be resubmitted for review. Upon resubmission, please include two copies of a new or supplemental Order Adopting, and the original and two copies of the new Rule as Adopted.

Please be advised that pursuant to Minn. Stat. § 15.0412 subd. 4g effective July 1, 1981, "(n)o rule shall be filed with the secretary of state or published in the state register unless the revisor of statutes has endorsed on the rule that it is approved as to form." Therefore, at the time when you resubmit the new rule to this office, you must submit two copies of the same to the revisor of statutes.

If you have any questions concerning the issues raised in this memorandum, please do not hesitate to call me.

TAM:cae

Enc.

cc: Susan Robertson
Ann Bateson

Office of Administrative Hearings

Workers' Compensation Division

Adopted Temporary Rules Governing Workers' Compensation

Temporary Rules as Adopted

9 MCAR S 2.301 Scope and purpose.

The procedures contained herein shall govern all hearings required to be conducted pursuant to the provisions of the Minnesota Workers' Compensation Laws, Laws of 1981, ch. 346, S 52 and Minn. Stat. SS ~~176.001 to~~ 176.011-176.82, and the Minnesota Administrative Procedure Act, Minn. Stat. SS 15.0411 ~~to~~-15.052, as those provisions might apply.

9 MCAR S 2.302 General authority and definitions.

A. Assignment or transfer of cases. The chief hearing examiner has full responsibility for the assignment of cases for trial to the compensation judges. The chief hearing examiner may transfer to another compensation judge the proceedings on any case in the event of the death, extended absence, or disqualification of the compensation judge to whom it has been assigned, and may otherwise reassign such cases if necessary to expedite the proceedings if no oral testimony has been received therein. ~~To the extent practicable, supplemental proceedings (rehearings) shall be assigned to the compensation judge who heard the original proceedings except where the rehearing has~~

~~been granted by the Workers' Compensation Court of Appeals contrary to the compensation judge's initial order, in which instance the rehearing may be assigned to another compensation judge.~~

B. Authority of compensation judges. In any case which has been regularly assigned to him/her for trial, a compensation judge shall have full power, jurisdiction and authority to hear and determine all issues of fact and law presented to him/her and to issue such interlocutory and final orders, findings, decisions and awards as may be necessary to the full adjudication of the case.

C. Definitions.

1. ~~"Applicant" means the party initiating an application by the serving and filing of a petition.~~

~~2.~~ "Calendar judge" means a workers' compensation judge from the Office of Administrative Hearings.

~~3.~~ 2. "Chief hearing examiner" means the Chief Hearing Examiner of the Office of Administrative Hearings.

~~4.~~ 3. "Commissioner" means the Commissioner of the Department of Labor and Industry.

~~5.~~ 4. "Compensation judge" means a workers' compensation judge from the Office of Administrative Hearings.

~~6.~~ 5. "Division" means the Workers' Compensation Division of the Department of Labor and Industry.

~~7.~~ 6. "Petition" means ~~an application~~ a claim filed by or on behalf of an injured or deceased employee, employer or insurer which initiates a contested workers' compensation case requiring assignment for hearing.

7. "Petitioner" means the injured employee, an heir or dependent of a deceased employee or a party filing on their behalf or an employee or insurer.

8. "Settlement ~~judges~~ judge" means a workers' compensation judge from the Department of Labor and Industry.

9 MCAR S 2.303 Joinder of parties.

A. ~~Necessary parties. In all cases except cases arising~~

~~from the death of an employee, any person, other than the injured employee, initiating a proceeding must join the injured person as a party, including in the petition the injured party's address, if known, and if not known, a statement of that fact.~~

~~For purposes of these rules, the following shall be deemed necessary parties:~~

~~1. The employee or dependents;~~

~~2. All insurers or self-insured named in the petition;~~

~~3. Any employer who is uninsured or whose insurer for the date of the alleged injury in that employment is unknown;~~

~~4. The State Treasurer, as custodian of the Special Compensation Fund, if petition is made pursuant to Minn. Stat. § 176.191, subd. 2.~~

~~B. Parties applicant. Any person in whom any right to relief is alleged to exist may appear, or be joined, as a party applicant, in any case or controversy before a settlement or compensation judge.~~

~~C. Parties defendant. Any person or insurer against whom the right to relief is alleged to exist shall be named or joined as a defendant.~~

~~D. Parties in death cases. In death cases, all persons who might be considered dependents should either join or be joined as parties applicant or defendant so that the entire liability of the employer or the insurer may be determined in one proceeding.~~

~~E. Joinder of parties.~~

~~1.~~ Upon a motion of any party or upon his/her own motion, a settlement or ~~compensation~~ calendar judge may order the joinder of additional parties necessary for the full adjudication of the case. A party not present or represented at the time of joinder shall forthwith be served by the party requesting joinder with copies of the order of joinder~~, the summary of evidence, if any,~~ and ~~the~~ all pleadings in the case.

~~2.~~ B. Any party requesting joinder of additional parties shall ~~make a motion for such joinder,~~ serve a copy of the ~~motion~~ request on all existing parties, and the party to be joined, and

file the original with proof of service with the settlement or calendar judge no later than ~~45~~ 10 days prior to the ~~hearing date~~ pre-trial or settlement conference, unless the ~~calendar~~ judge allows a shorter time when the moving party has shown that the party is a necessary party, that the moving party was unable, through due diligence, to previously ascertain the name of or necessity of joining the party, and that the joinder is necessary to a full and final determination of the rights or liabilities of all persons. When this ~~motion~~ request is served on the party to be joined, it shall be accompanied by copies of all pleadings and ~~a~~ the notice of the date, time and place set for a settlement conference~~,~~ or prehearing conference ~~or hearing~~.

~~3.~~ C. When a party requests joinder less than ~~45~~ 10 days prior to the ~~hearing~~ pre-trial or settlement conference date, the ~~motion~~ request shall include an affidavit of the ~~moving~~ requesting party stating the facts necessary to show cause why the lesser time should be allowed.

~~4.~~ D. In cases where the settlement or calendar judge has denied the joinder because of the ~~moving~~ requesting party's failure to meet the ~~45-day~~ 10-day time requirement, the case shall not be stricken, continued or otherwise delayed for the purposes of joinder, unless the ~~applicant or applicant's~~ attorney for the employee or dependent consents thereto.

~~5.~~ E. All motions for joinder shall contain at least the following:

~~a.~~ 1. The party to be joined and its insurer, if any;

~~b.~~ 2. The date and nature of the claimed personal injury or impairment;

~~c.~~ 3. The detailed circumstances, in affidavit form, showing that the party to be joined is a necessary party;

~~d.~~ 4. The supporting medical opinions relied upon, if applicable; ~~or~~

~~e.~~ 5. If the party to be joined is the Special Compensation Fund, the detailed circumstances, in affidavit form, showing the specific basis claimed for joinder, including the date of registration of prior impairment or injury where

applicable.

~~6.~~ F. A party contesting joinder under these rules may do so by objection filed with the settlement or calendar judge within 10 days of service, requesting a hearing thereon; otherwise, an ex parte order may be issued granting or denying this joinder.

9 MCAR S 2.304 Pleadings.

A. Commencement of proceedings. Original proceedings for the adjudication of compensation rights and liabilities are commenced by the service ~~and filing~~ of a petition as provided by Minn. Stat. S 176.305 ~~and which shall be on forms provided by the commissioner. The petition~~ Any petition filed on behalf of an employee or his/her dependents shall certify that ~~the~~ prior notice of intention to initiate proceedings has been sent to the adverse party, pursuant to Minn. Stat. S 176.271, subd. 2, and the date of that notice. Supporting medical reports shall be attached to the petition.

~~B. Separate petitions for each injury. A separate petition shall be filed for each separate injury for which benefits are claimed even though the employer be the same in each case. Separate pleadings shall be filed in each case.~~

~~C.~~ Consolidation of claims. ~~All claims of all persons arising out of the same injury to the same employee shall be filed in the same proceeding~~ Claims by several employees arising out of the same accident may be consolidated in one proceeding only by consent of all parties or by order on appropriate motion.

~~D.~~ C. Forms of petition. Petitions shall conform to the ~~forms~~ format heretofore prescribed by the commissioner ~~and provided by the division~~.

~~E. Declaration of Readiness to Proceed.~~

~~1. At the time the petition is filed with the commissioner, a Declaration of Readiness to Proceed shall be included. The declaration shall have been previously served either personally or by first class mail on all other parties.~~

~~2. Objections. Any objection to the proceedings requested by a Declaration of Readiness to Proceed shall be~~

~~served and filed with the commissioner within ten (10) days after service of the declaration.~~

~~3. The Declaration of Readiness to Proceed shall be on a form provided by the Division and shall contain the following information:~~

~~a. The names of all parties applicant or defendant;~~

~~b. The geographic location requested for the hearing;~~

~~c. Whether a settlement conference is requested and the reasons therefor;~~

~~d. What issues remain to be determined;~~

~~e. Whether the applicant is presently receiving compensation payments;~~

~~f. The number of witnesses expected to be presented, divided between lay and medical witnesses;~~

~~g. An estimate of the number of hours necessary to complete the hearing;~~

~~h. A statement that all medical reports in the applicant's possession have been provided to the defendant(s);~~

~~i. A proof of service of the declaration; and~~

~~j. The typed or hand printed name of the person filing the declaration, together with the address and telephone number where the person filing can be reached between the hours of 8:00 a.m. and 4:30 p.m.~~

D. Unless otherwise provided by law, all requests for action by the commissioner, a settlement, calendar or compensation judge after the filing of a petition shall contain the title and appropriate identification number of the case and shall indicate the type of action requested.

9 MCAR S 2.305 Settlement judge review and settlement conferences.

A. Upon the filing of a petition ~~and a Declaration of Readiness to Proceed~~, the commissioner, within 10 days, shall refer the ~~case~~ matter to a settlement judge who shall review the filing to determine whether a settlement conference is appropriate~~, which determination shall be made within twenty~~

~~(20) days of the date of filing~~.

B. If a settlement conference has been requested or is deemed appropriate by the settlement judge, he/she shall notify all parties of the date, time and place where the settlement conference will be conducted. The settlement ~~conferences~~ conference shall be completed within sixty (60) days of the date ~~of the filing~~ of referral of the petition ~~and the Declaration of Readiness to Proceed~~ by the commissioner. If a settlement conference has not been requested or is deemed to be inappropriate, the settlement judge shall ~~return the file to the commissioner who shall refer~~ certify the ~~file~~ matter to the chief hearing examiner ~~within 10 calendar days of receipt of the file from the settlement judge~~.

C. If the settlement conference cannot be concluded within sixty (60) days, the settlement judge shall ~~return the file to the commissioner who shall refer~~ certify the ~~file~~ matter to the chief hearing examiner~~.~~; provided, however, that with the ~~written~~ consent of the ~~applicant~~ petitioner or his/her representative, the settlement judge may retain jurisdiction for an additional ~~thirty (30)~~ sixty (60) days for purposes of receiving a full settlement of all issues.

~~D. If the settlement judge determines that a settlement conference will not resolve the issues in the case or that, because the number of cases filed or scheduled for settlement conferences are such that a settlement conference cannot be concluded within the required time, the settlement judge shall return the file to the commissioner who shall refer the file to the chief hearing examiner within 10 calendar days of receipt of the file from the settlement judge.~~

~~E.~~ Nothing contained in this rule shall preclude any party from requesting that a settlement conference be scheduled at any time prior to a hearing by a compensation judge, nor shall it prohibit the chief hearing examiner or calendar judge from setting a settlement conference on their own motion once the ~~file~~ matter has been received from the commissioner.

~~F.~~ E. At any settlement conference conducted before a

settlement, calendar or compensation judge, all parties shall attend and shall, if they are a representative of a party, be authorized to reach a full settlement on all or any issues in the case.

~~C.~~ F. If, following a settlement conference, a ~~full and final~~ settlement has not been reached but the parties have reached agreement on any facts, legal or medical issues, or levels of benefits, the settlement, calendar or compensation judge presiding over the settlement conference shall, if he/she approves of those matters ~~settled~~ agreed upon, issue an order confirming and approving those matters ~~settled~~ agreed upon, which order shall be binding on any compensation judge who may subsequently be assigned to hear the case. Issues once ~~settled~~ agreed upon and approved may be reopened by the compensation judge only upon motion of any party on the basis of newly discovered evidence ~~or a material change in circumstances~~ which was not reasonably discoverable at the earlier time.

~~9 MCAR S 2.306 Motions to compensation judge. [Reserved for future use.]~~

~~A. Generally. All requests for action by the commissioner, a settlement, calendar of compensation judge other than petitions or answers shall be called motions. The caption of each motion shall contain the title and number of the case and shall indicate the type of relief sought.~~

~~B. Motion to reopen. Motions requesting that a matter be reopened shall set forth specifically and in detail the facts relied upon to establish good cause for reopening.~~

~~C. Motion to discontinue compensation.~~

~~1. A motion to discontinue compensation for temporary total disability filed pursuant to Minn. Stat. S 176.241 shall conform to the form provided by the division and shall contain the information required by law or rule of the commissioner.~~

~~2. Objections; hearing; interim order.~~

~~a. Written objections shall be filed with and contain the information required by law or rule of the commissioner.~~

~~b. Upon such timely objection and where it appears to the commissioner that the right to compensation may not have terminated, the motion to discontinue shall be referred to the chief hearing examiner who shall set the matter for hearing on a priority basis not less then ten (10) nor more than thirty (30) days from the date of the receipt of the motion and objection from the commissioner.~~

~~c. If complete disposition of the motion to discontinue cannot be made at such hearing, the compensation judge assigned thereto, based on the record before him/her including the allegations of the motion, the objection thereto, and the evidence (if any) at said hearing, shall forthwith issue an interim order directing whether compensation shall or shall not continue during the pendency of proceedings on the motion to discontinue. Said interim order shall not be considered a final order, and will not preclude a complete adjudication of the issues raised by the motion upon the full hearing of the case, after notice in the regular course and full opportunity to prepare.~~

~~d. Following the issuance of an interim order upon the motion to discontinue, the case shall be set by the chief hearing examiner in the customary manner upon the filing of an appropriate Declaration of Readiness by the employer or insurer.~~

9 MCAR S 2.307 Answers.

A. An answer to each petition shall be served and filed within twenty (20) days after service of the application unless a waiver has been obtained pursuant to Minn. Stat. S 176.321, subd. 3.

B. ~~The answer used by parties shall conform to the form prescribed by the commissioner. A general denial is not an answer within this rule.~~ The answer shall be accompanied by an ~~affidavit~~ proof of service upon the opposing parties. ~~Evidence upon matters and affirmative defenses not pleaded by answer will be allowed only upon such terms and conditions as the compensation judge shall impose.~~

C. The answer shall contain the following:

1. Specific responses to allegations regarding the date and nature of the injury, the employment status, notice, wage, relationship of the injury to employment, insurance, benefits paid, matters in dispute, affirmative defenses and additional matters as deemed necessary by the answering party;

2. Any medical report upon which the answer is based, if available;

3. If a medical examination by ~~the employer or insurer's doctor~~ a doctor chosen by the employer or insurer has not already been completed, the date, time and place for the exam which shall be scheduled to take place within 75 days from the date of service of the ~~petition~~ notice of intent to initiate proceedings. Any request for an extension ~~in~~ of time for scheduling the examination shall be subject to the approval of the calendar or settlement judge, whichever has jurisdiction of the matter at the time the request is made.

~~D. Requests for an extension of time within which to answer shall be made to a settlement judge who shall act on such requests on behalf of the commissioner.~~

9 MCAR S 2.308 Service.

A. Service by state. The commissioner, the chief hearing examiner, and settlement, calendar or compensation judges shall serve all notices, findings, orders, decisions or awards upon the parties or their attorneys or agents of record by first class mail at their addresses of record or by personal service. ~~Service may also be satisfied by placing the materials to be served with the Central Mailing Section of the Department of Administration.~~

B. Service by parties. A party may accomplish service of any document either by first class mail or by personal service. Service of any document required to be served by a party may be served by the party's attorney or authorized agent. Upon filing of the document served, it shall be accompanied by an affidavit or proof of service which shall be in the form ~~accepted by~~

acceptable to the district courts.

C. Service by mail. Service of all documents and pleadings may be made by first class United States mail upon all parties to a proceeding whether residents of the same city, town or otherwise. Computation of time in such instances shall be in accordance with the provisions of Minn. Stat. S 645.15.

~~D. Service on attorney or agent. Service, except as may otherwise be provided by any law or other rules, shall be made only on attorneys or agents of record, unless the party is unrepresented, in which event service shall be made on such party.~~

~~E. Proof of service by parties. Proof of service by parties may be made by:~~

~~1. An affidavit of service in the form acceptable to the district courts, or~~

~~2. A written statement enclosed upon the document served and signed by the party making the statement, or~~

~~3. A letter of transmittal.~~

~~In each case, there shall be set forth the names and addresses of persons served, the fact as to whether such service was made personally or by mail, the date of service, the place of personal service or the address to which mailing was made.~~

9 MCAR S 2.309 Hearings.

A. Definition of hearing. For the purposes of these rules, a hearing may be ~~either~~ called a settlement conference, a prehearing conference, or a regular hearing. Nothing contained herein is intended to change the statutory requirement that hearings, as defined by statute, be conducted by compensation judges from the Office of Administrative Hearings.

1. A settlement conference is a hearing ~~set~~ conducted by a settlement judge. It is ~~set~~ for the primary purpose of providing assistance to the parties in resolving disputes and securing a settlement of all issues, and for the secondary purpose of assisting the parties in narrowing the issues and of expediting preparation and trial of ~~a regular hearing if~~

~~necessary~~ the matter. The conference may be conducted by telephone and in those cases wherein the location of the settlement conference would require any party to travel more than 50 miles to attend, it shall be conducted by telephone unless all parties agree otherwise. Written notice of this hearing shall be given at least 20 days prior to the date of the hearing.

2. A prehearing conference may be required whether or not a settlement conference has been held and may be conducted by telephone. The purpose of a prehearing conference is to ascertain if there are genuine disputes requiring resolution by a calendar or compensation judge, of providing assistance to the parties in resolving disputes, of narrowing the issues, and of expediting preparation and trial if a regular hearing is necessary. A prehearing conference is conducted by a calendar or compensation judge. It ~~may~~ shall be conducted by telephone if the location set for the prehearing conference would require any party to travel more than 50 miles to attend. Written notice of this hearing shall be given at least 20 days prior to the date of the hearing.

3. A regular hearing is a hearing set for the purpose of receiving evidence and is conducted by a compensation judge.

B. Notice of hearing. Notice of the time and place for hearing shall be provided to all parties to a case as required by 9 MCAR S 2.308 A. except that oral or written notification of the date, time and place for a regular hearing which is given to the parties by a settlement, calendar or compensation judge at the time of a settlement or prehearing conference shall be sufficient notice. ~~Such notice~~ Each attorney receiving notice of the hearing date at a settlement or prehearing conference shall be responsible for notifying each party he/she represents of the hearing date. When a written notice is required, it shall be given at least ~~ten (10)~~ five (5) days prior to the date of hearing, except:

1. Where notice is waived by all parties;

2. Where a different time is expressly agreed to by all

parties; or

3. Where the notice is governed by contrary law or rule.

~~D.~~ C. Continuances.

1. Requests for continuances are inconsistent with the requirement that workers' compensation proceedings be expeditious and are, therefore, not favored and will be granted only upon a clear showing of good cause. The parties are expected to submit for decision all matters in controversy at a single hearing and to produce at such hearing all necessary evidence, including witnesses, documents, medical reports, payroll statements and all other matters considered essential in the proof of a party's claim or defense.

2. When a continuance is to be requested prior to the hearing date, the party requesting the continuance shall have first contacted all other parties to determine whether mutual agreement to the continuance can be reached~~,~~ and, if the continuance be granted, the availability of all parties for hearing at future specific dates. When all parties are in agreement with the request for continuance and have agreed to a date for a future hearing, ~~if~~ which date has been approved by the compensation, calender or settlement judge before whom the matter is pending, and when the continuance request is made no less than ten (10) working days prior to the hearing date, the continuance shall be granted.

3. If all parties have not agreed to a continuance, requests for continuances shall be made to the compensation, calendar or settlement judge ~~designated as the calendar judge~~ before whom the matter is pending. ~~If all parties have not agreed to the continuance,~~ When made more than ten (10) working days prior to the hearing date, the request shall be in writing in the form of a motion for continuance, and shall be served on all parties~~, and shall set a date, time and place for a hearing on the motion before the calendar judge when more then ten (10) working days prior to the regular hearing date~~. If less than ten (10) working days remain prior to the ~~regular~~ hearing date, notice of the motion may be made orally. A hearing on the

motion shall be conducted only if ordered by the settlement, compensation or calendar judge to whom the motion is made.

4. Good cause shall not include:

a. Where an insurer retains more than one counsel on its own payroll who practice in the field of workers' compensation law, unavailability of the counsel assigned to the case because of engagement in another court or otherwise unless all such counsel are committed elsewhere;

b. Where a law firm consists of more than one member who practice in the field of workers' compensation law, unavailability of the counsel assigned to the case because of engagement in another court or otherwise unless all such counsel are committed elsewhere;

c. Unavailability of an individual law practitioner because of engagement in another court, if he has failed to notify the judge in charge of the trial court calendar of that court that he has been assigned to a date and time certain in a workers' compensation case;

d. Unavailability of a medical or other witness if the witness' deposition could have been taken between the time of receipt of the notice of the hearing date and the date of the hearing.

9 MCAR S 2.310 Intervention.

A. Any person desiring to intervene in a workers' compensation case as a party shall submit a timely motion to intervene to the settlement judge unless the ~~case~~ matter has been ~~submitted~~ referred to the chief hearing examiner for assignment, in which case the motion shall be submitted to the compensation judge to whom the case has been assigned or to the calendar judge if the case has not yet been assigned. The motion shall be served on all parties either personally or by first class mail. Timeliness will be determined by the settlement, calendar or compensation judge in each case based on circumstances at the time of filing. The motion shall show how the moving party's legal rights, duties or privileges may be

determined or affected by the case, shall set forth the grounds and purposes for which intervention is sought and shall indicate the moving party's statutory right to intervene if one should exist. The motion shall be accompanied by the following ~~information~~, if applicable~~.~~:

1. An itemization of disability payments showing the period during which the payments were or are being made, the weekly or monthly rate of the payments and the amount of reimbursement claimed;

2. A summary of the medical or treatment payments, broken down by medical or treatment creditor, showing the total bill submitted, the period of treatment covered by that bill, the amount of payment on that bill, and to whom the payment was made;

3. Copies of all medical or treatment bills on which some payment was made;

4. Copies of the worksheets or other information setting forth how the payments on medical or treatment bills were calculated;

5. A copy of the relevant policy or contract provisions upon which the claim for reimbursement is based~~.~~;

6. A proposed order allowing intervention with sufficient copies to serve on all parties;

7. A proof of service.

B. Objection. Any party may object to the motion for intervention by serving and filing an objection with the appropriate judge within ~~seven~~ twenty (20) days of service of the motion, which objection shall state the party's reasons for objection. If no objection is filed, the intervention shall be deemed granted.

C. The party requesting intervention or his/her attorney or representative shall attend all settlement or prehearing conferences ~~and~~. The requesting party shall also attend the regular hearing unless a written stipulation, signed by all parties, is filed with the ~~appropriate~~ compensation judge stating that all of the payments for which reimbursement is claimed are related to the injury or condition in dispute in the

case, and that, if the ~~applicant~~ petitioner is successful in proving the compensability of the claim, it is agreed that the sum shall be reimbursed to the intervenor. ~~If no objection is filed, the intervention shall be deemed granted.~~

D. If an objection to intervention remains following settlement and prehearing conferences, the calendar judge shall enter an order ruling on the intervention which order shall be binding on the compensation judge to whom the case is assigned for a regular hearing.

E. At the regular hearing on the claim petition where intervention has been granted, the intervenor shall present his/her evidence in support of his/her claim after the ~~applicant~~ petitioner has rested, unless otherwise ordered by the compensation judge, in order that the issue of intervention may be promptly determined with no undue delay that may prejudice the rights of the original parties.

F. Failure to comply with any provision of this rule shall result in a denial of the claim for reimbursement unless the compensation judge determines that the error or mistake is technical in nature and that the denial for this reason would result in unjust enrichment to the party from whom reimbursement is sought.

9 MCAR S 2.311 Consolidation.

A. Consolidation of two or more related cases may be ordered for the purpose of receiving evidence. Consolidation may be ordered upon motion by any party to the calendar or compensation judge or upon the calendar or compensation judge's own motion if the calendar or compensation judge determines:

1. That separate cases present substantially the same issues of fact and law;

2. That a holding in one case would ~~effect~~ affect the rights of the parties in ~~another~~ the other case; and

3. That the consolidation would not substantially prejudice any party.

Notwithstanding the requirements of this rule, the parties

may stipulate and agree to such consolidation.

B. Under consolidation, all documentary evidence previously received in an individual case shall be reintroduced in the ~~consolidation~~ consolidated proceedings under a master file if the compensation judge assigned to try the case designates one file as a master file. When so adduced, such evidence shall be deemed part of the record of each of the several consolidated cases. Evidence received subsequent to the order of consolidation shall be similarly received with like force and effect.

C. Notice of order. Following the granting of an order for consolidation, the calendar or compensation judge shall forthwith serve on all parties and the commissioner a copy of the order for consolidation. The order shall contain, among other things:

1. A description of the cases for consolidation;

2. The reasons for consolidation;

3. Notification of a consolidated prehearing conference if one has been requested.

D. Objection to consolidation.

1. Motion for severance. Any party may object to consolidation by filing with the ~~calendar~~ appropriate judge, and serving upon all parties at least seven days prior to the regular hearing in the case, a motion for severance from consolidation, setting forth the petitioner's name and address, the title of his case prior to consolidation, and the reasons for his petition.

2. Determination. If the ~~calendar~~ appropriate judge finds that consolidation would prejudice the party moving for severance, he/she shall order such severance or other relief as he/she deems necessary.

E. Service of pleadings and decisions. Separate pleadings shall be filed and separate findings, orders, decisions and awards will be made and filed in each case consolidated for hearing.

9 MCAR S 2.312 Disqualification. A compensation judge shall withdraw from participation in a case at any time if he/she deems himself/herself disqualified, prejudiced or biased for any reason. Proceedings to disqualify a compensation judge shall be initiated by the filing of a motion for disqualification supported by affidavit or declaration under penalty of perjury stating in detail facts establishing grounds for disqualification of the compensation judge to whom a case or proceeding has been assigned. If the compensation judge assigned to hear the matter and the grounds for disqualification are known, the motion for disqualification shall be filed with the chief hearing examiner not more than ten (10) days after the moving party has received notice of the assignment of the judge to the hearing. In no event shall any such motion be entertained after the swearing of the first witness. The motion shall be determined by the chief hearing examiner or his designee. The fact that a compensation judge has previously determined a similar case contrary to the interests of the moving party in the pending case shall not be grounds for disqualification.

9 MCAR S 2.313 Prehearing procedures.

A. All cases shall be subject to a settlement conference or a prehearing conference whenever possible, at which all parties shall attend or be represented, unless a settlement judge or calendar judge orders otherwise. If parties are represented by attorneys, the attorneys ~~who will actually appear at the hearing shall attend the settlement or prehearing conference, bringing~~ shall bring with them their appointment calendars. If a party is not represented by an attorney, the party shall appear personally and shall be prepared to arrange agreeable dates for the regular hearing. Parties or their attorneys attending a settlement or prehearing conference must have authority to settle their respective claims.

B. Prior to any settlement or prehearing conference, the parties shall discuss the possibility of settlement if they deem

that a reasonable basis for settlement exists. Parties or attorneys appearing at ~~a~~ a settlement or prehearing conference shall be prepared to participate in ~~a~~ a settlement ~~conference~~ discussions.

C. At the settlement or prehearing conference:

1. All parties shall be prepared to state the issues;

2. All parties shall state the names, and addresses if known, of all witnesses they intend to call;

3. All parties shall give notice of any amendments to pleadings that may still be necessary;

4. All parties shall file copies of all medical reports not already on file. Reports of medical examinations completed after any settlement conference or prehearing conference shall be filed as soon as available prior to the regular hearing;

5. Each party shall state what exhibits, including, but not limited to, photographs, motion picture films, video tapes and documentary evidence, are intended to be used at the hearing, and copies of these exhibits shall be made available to opposing counsel no later than 10 days prior to the date of the regular hearing~~,~~; provided, however, that if any party requests showing of motion picture films or video tapes prior to the regular hearing, ~~they~~ it shall pay the expense for such showing and may tax this expense in the same manner as other ~~costs and~~ disbursements;

6. If the employee plans to introduce hospital records into evidence, the employee or his attorney shall bring to the settlement or prehearing conference written authorizations for opposing counsel to examine those records if such authorizations have not previously been provided;

7. If the employee is claiming medical or other treatment expenses, the employee or the attorney shall state those expenses at the time of the settlement or prehearing conference, and shall furnish opposing counsel with copies of itemized bills for such expenses at least 10 days prior to the settlement or prehearing conference;

8. If the employee is claiming temporary total

disability, the employee or attorney shall state at the settlement or prehearing conference the dates of time lost from work;

9. If the employee is claiming temporary partial disability, the employee or attorney shall state the dates of such claim, the approximate amount of such claim, and the names and addresses of the employers for whom the employee worked during the period of such claim; authorizations to permit opposing counsel to confirm wages earned in those employments shall have been furnished at least 10 days prior to the scheduled settlement or prehearing conference; and, an itemized breakdown of the claim for temporary partial disability shall be submitted to the ~~settlement or calendar~~ compensation judge and opposing counsel at least 10 days prior to the time of the ~~settlement or prehearing conference~~ regular hearing;

10. The ~~applicant or attorney for the applicant~~ parties or their attorneys shall state whether payment for disability benefits, on medical or treatment expenses, or on funeral expenses has been made by any party other than the workers' compensation carrier ~~for disability benefits, on medical or treatment expenses, or on funeral expenses~~. If payment has been made, the name and address of the party making payment shall be furnished to the settlement or calendar judge ~~at the settlement or prehearing conference~~, together with any identifying policy or claim numbers;

11. If a dispute exists on the wage rate at the time of the injury, the attorney for the employer and insurer shall furnish to opposing counsel at least 10 days prior to the settlement or prehearing conference, copies of the relevant wage records of the employee;

12. The ~~applicant or~~ attorney for the ~~applicant~~ employee or dependents shall furnish to the settlement or calendar judge, ~~at the settlement or prehearing conference,~~ a copy of his retainer agreement with the employee or dependents and shall state the amount of retainer fee paid. He shall be prepared at the time of hearing or settlement to show the reasonableness of

any attorney's fees or costs, in accordance with Minn. Stat. S 176.081.

D. At the time a case is first set for a settlement or prehearing conference, if the information is not already on file, the settlement judge or calendar judge may order the parties to complete, serve on each other and file a prehearing statement which shall contain any of the items in C. above, which the settlement or calendar judge deems appropriate. In making a determination on the requirement of the preparation of prehearing statements, the settlement or calendar judge shall take into consideration the number of parties involved in the case, the nature and extent of the medical issues, and the nature ~~and~~, extent ~~of the~~ and type of disability claimed.

9 MCAR S 2.314 Discovery.

A. Demand. Each party shall, within ~~10~~ 30 days of a demand by another party, disclose or furnish the following:

1. The names and addresses of all witnesses that a party intends to call at the regular hearing. All witnesses unknown at the time of said disclosure shall be disclosed as soon as they become known if a prior demand has been made.

2. Any relevant written or recorded statements made ~~by the party or~~ by witnesses on behalf of a party. The demanding party shall be permitted to inspect and reproduce any such statements which reproduction shall be at the expense of the party requesting reproduction. Any party unreasonably failing upon demand to make the disclosure required by this rule, upon proper motion made to the compensation judge~~, shall~~ at the time of trial, may be foreclosed from presenting any evidence at the hearing through witnesses not disclosed or through witnesses whose statements are not disclosed.

3. Medical privilege shall be deemed waived as to the injuries or conditions alleged in the petition by the filing of the petition alleging injury or ~~illness~~ occupational disease. Medical authorizations shall be furnished, upon demand, to adverse parties. Likewise, any and all medical reports shall be

provided, upon demand, to all adverse parties. ~~Written interrogatories may be utilized for the purposes of discovering medical information. When interrogatories are utilized, the Rules of Civil Procedure for the District Courts in the State of Minnesota shall apply~~ Upon demand, the petitioner shall disclose the names and addresses of all persons who have treated the petitioner in the past for injuries or conditions identical or similar to those alleged in the petition, the dates of the treatment, and shall provide medical authorization for each.

B. ~~Requests for admissions. A party may serve upon any other party a written request for the admission of relevant facts or opinions, or of the application of law to relevant facts or opinions, including the genuineness of any document. The request must be served at least 15 days prior to the regular hearing and it shall be answered in writing by the party to whom the request is directed within 10 days of receipt of the request. The written answer shall either admit or deny the truth of the matters contained in the request or shall make a specific objection thereto. Failure to make a written answer shall result in the subject matter of the request being deemed admitted.~~

C. Depositions. Pursuant to the provisions of Minn. Stat. S 176.411, subd. 2, depositions may be taken in the manner which the law provides for depositions in civil actions in the district courts for the state, except where a compensation judge orders otherwise. When a party has objected to the taking of a deposition, the party requesting the deposition shall bring a motion before the settlement, compensation or calendar judge, before whom the case is pending at the time of the motion, who shall determine whether the deposition should go forward. The settlement, compensation or calendar judge shall order the deposition to proceed if he/she finds that the request for the taking of the deposition has been shown to be needed for the proper presentation of a party's case, is not for purposes of delay, and that the issues or amounts in controversy are significant enough to warrant extensive discovery.

Depositions for the purpose of preserving testimony or for presenting medical testimony due to the unavailability of the doctor shall be allowed. ~~Such deposition testimony shall be taken prior to the regular hearing~~ Unless, for good cause shown, the party taking such deposition has obtained the permission of the calendar judge, or compensation judge if the case has been assigned for hearing, to take such deposition subsequent to the hearing, it shall be taken sufficiently in advance of the hearing so that the deposition is filed prior to the regular hearing or, at the latest, on the day of the regular hearing.

The original copy of any deposition taken for purposes of presenting testimony in the case shall be filed with the settlement judge if the case is still pending before the settlement judge or with the Office of Administrative Hearings if the matter has been referred to the chief hearing examiner for assignment. The original copy of any deposition taken solely for purposes of discovery shall be sealed and filed as in the case of evidentiary depositions but shall not be reviewed or utilized in any fashion by the compensation judge unless the deposition shall be formally entered as evidence in the case.

~~D.~~ C. Motions for additional discovery. Upon the motion of any party, the settlement, compensation or calendar judge having jurisdiction at the time of the motion may order discovery of any other relevant material or information, recognizing all privileges recognized at law. The ~~calendar~~ judge may order any means of discovery available pursuant to the Rules of Civil Procedure for the District Courts of the State of Minnesota provided that the request for such discovery can be shown to be needed for the proper presentation of a party's case, ~~are~~ is not for purposes of delay, and that the issues or amounts in controversy are significant enough to warrant extensive discovery.

~~E.~~ D. Penalties. Upon the failure of a party to reasonably comply with these rules relating to discovery or with an order of ~~the~~ a settlement, compensation or calendar judge made pursuant to this rule, upon a motion properly made at the time

of the hearing, the compensation judge assigned to the regular hearing ~~shall~~ may make a further order as follows:

1. An order that the subject matter of the order for discovery or any other relevant facts shall be taken as established for the purposes of the case in accordance with the claim of the party requesting the order~~.~~; or

2. An order refusing to allow the party failing to comply to support or oppose designated claims or defenses, or prohibiting him/her from introducing designated matters in evidence.

~~F.~~ E. Proprietary information. When a party is asked to reveal material which he/she considers to be proprietary information or trade secrets, he/she shall bring the matter to the attention of the appropriate judge, who shall make such protective orders as are reasonable and necessary or as otherwise provided by law.

9 MCAR S 2.315 ~~Motions~~ Petitions for contribution or reimbursement.

A. ~~Motions~~ Petitions for contribution or reimbursement shall set forth in detail the allegations showing the basis of the claim for contribution or reimbursement against the additional employer or insurer named therein, or of the claim for reimbursement against the State Treasurer, Custodian of the Special Compensation Fund. The petition shall be supported by medical evidence, and shall be signed and verified. The original ~~motion~~ petition shall be filed with the settlement judge if the matter is pending before the division or with the chief hearing examiner if the matter has been referred for assignment, together with proof of service upon the employee or his attorney and all additional ~~employers or insurers~~ parties named therein.

B. In all cases where a claim petition or other form of action is pending, ~~said motion~~ a petition for contribution or reimbursement shall be filed no later than ~~30~~ 10 days prior to a settlement or prehearing conference, and copies of all

pleadings, including any notice of settlement or prehearing conference shall be served upon the additional employers or insurers by the party bringing said ~~motion~~ petition. In cases where no action is pending, the filing of the ~~motion~~ petition for contribution or reimbursement with the division shall initiate proceedings.

C. Within ~~10~~ 20 days after being served with a copy of ~~the motion~~ a petition for ~~reimbursement or~~ contribution or reimbursement, employers or their insurers, other than the ~~paying~~ petitioning party, may file a verified answer to the ~~motion~~ petition in accordance with the provisions of Minn. Stat. S 176.321 and, if not already set for settlement or prehearing conference, the matter shall be set for a settlement or prehearing conference in accordance with these rules.

D. The employee shall be ~~deemed a necessary party to~~ notified of all of the proceedings and should be represented by an attorney of his/her choice. A copy of all motions or answers shall be duly served upon the employee and/or his/her attorney in accordance with Minn. Stat. S 176.321.

9 MCAR S 2.316 Subpoenas. Subpoenas may be obtained without charge from the Workers' Compensation Division or the Office of Administrative Hearings. The name and address and telephone number of the party or attorney requesting service of the subpoena shall be included on the subpoena before service is made. When service is made, service and witness fees shall be tendered in accordance with Minn. Stat. S 357.22.

Upon motion promptly made, and in any event at or before the time specified in the subpoena for compliance therewith, the calendar judge or compensation judge, if the case has been assigned for regular hearing, may quash or modify the subpoena if he/she finds that it is unreasonable or oppressive.

9 MCAR S 2.317 The hearing.

A. A place, date and time certain will be assigned to each case. Notice of the hearing will be given as soon as the assigned date is known, but shall be given at least ~~10~~ 5 days in

advance of the hearing. The notice will include the place of hearing and the amount of time allowed for the hearing. Cases will be set for one location only, which shall be that most convenient for the petitioner, and adequate time will be allowed so that the case may be completely heard in one setting. In the event that an additional hearing date is required, it shall be set by agreement of all parties and the compensation judge. If the parties cannot agree, the compensation judge shall set the hearing as provided herein.

B. As soon as the parties are apprised of the date scheduled for hearing, they shall immediately notify all medical witnesses in writing and arrange for their presence or for the taking of their deposition pursuant to 9 MCAR S 2.314 ~~C~~ B.

C. The production of medical evidence in the form of written reports, by stipulation of the parties, is encouraged. These reports should include:

1. The date of the examination;

2. The history of the injury;

3. The patient's complaints;

4. The source of all facts set forth in the history and ~~complaint~~ complaints;

5. Findings on examination;

6. Opinion as to the extent of disability and work limitations, if any;

7. The cause of the disability and, if applicable, whether the work injury was a substantial contributing factor toward such disability;

8. The medical treatment indicated;

9. Opinion as to whether or not permanent disability has resulted from the injury and whether or not ~~it is stationary~~ the condition has stabilized. If ~~stationary~~ stabilized, a description of the disability with a complete evaluation; and

10. The reason or reasons for the opinion or opinions.

D. Rights of parties. All parties shall have the right to present evidence, to cross-examine witnesses, and to present rebuttal testimony ~~and argument with respect to the issues~~.

E. Witnesses. Any party may be a witness or may present witnesses on his behalf at the hearing. All oral testimony at the hearing shall be under oath or affirmation. At the request of a party or upon his own motion for good cause, the compensation judge may exclude witnesses from the hearing room so that they cannot hear the testimony of other witnesses.

F. Rules of evidence.

1. Pursuant to Minn. Stat. S 176.411, subd. 1, the compensation judge is bound neither by the common law or statutory rules of evidence nor by technical or formal rules of pleading or procedure.

2. Evidence must be offered to be considered. All evidence to be considered in the case, including all records and documents in the possession of any party, or a true and correct photocopy thereof, shall be offered and made a part of the record in the case. No other factual information or evidence shall be considered in the determination of the case. Any independent investigation by the compensation judge pursuant to the provisions of Minn. Stat. S 176.391, subd. 1, shall be part of the record provided all parties are aware of the investigation and have had an opportunity to participate in it.

3. Documentary evidence. Documentary evidence in the form of copies of excerpts may be received or incorporated by reference upon agreement of the parties or if ordered by the compensation judge.

4. Notice of facts. The compensation judge may take notice of judicially cognizable facts but shall do so on the record and with the opportunity for any party to contest the facts so noticed.

5. Examination of adverse party. A party may call an adverse party or his managing agent or employees or an officer, director, managing agent or an employee of the state or any political subdivision thereof or of a public or private corporation or of a partnership or association or body politic which is an adverse party, and interrogate them by leading questions and contradict and impeach them on material matters in

all respects as if they had been called by the adverse party. The adverse party may be examined by his counsel upon the subject matter of his/her examination in chief under the rules applicable to direct examination, and may be cross-examined, contradicted, and impeached by any other party adversely affected by the testimony.

G. The record.

1. The compensation judge shall maintain the official record, other than the stenographic notes of a hearing reporter if one was used, in each case until the issuance of his/her final order~~, at which time the record shall be maintained by the Office of Administrative Hearings until the time for appeal of the compensation judge's order has elapsed at which time the record shall be referred to the department~~.

2. The record in a compensation case shall contain:

a. All pleadings, motions and orders, including the judgment roll and the entire record from any previous hearing which is relevant to the issues under consideration;

b. Evidence received or considered unless, through agreement of the parties or by order of the compensation judge, custody of an exhibit is given to one of the parties;

c. Those parts of the official file on the matter at the division which the compensation judge incorporates;

~~e.~~ d. Offers of proof, objections and rulings thereon;

~~d.~~ e. The compensation judge's ~~findings of fact, conclusions and~~ order;

~~e.~~ f. All memoranda or data submitted by any party in connection with the case; ~~and~~

~~f.~~ g. A transcript of the hearing, if one was prepared~~.~~ ; and

~~g.~~ h. The audio-magnetic recording tapes, if that device was used to record the hearing.

3. The transcript. The verbatim record shall be transcribed if requested by a party. If a transcription is made, the chief hearing examiner shall require the requesting person and other persons who request copies of the transcript to

pay a reasonable charge therefor if transcribed by the office. ~~The charge shall be set by the chief hearing examiner and all monies received for transcripts prepared by the Office of Administrative Hearings shall be payable to the State Treasurer and shall be deposited in the State Office of Administrative Hearings' account in the State Treasury.~~

H. Continuances during the hearing. If it appears in the interests of justice that further testimony should be received, the compensation judge, in his/her discretion, may continue the hearing to a future date and such oral notice on the record shall be sufficient if given at the time of the original hearing. Otherwise, the notice of the date for the continued hearing date shall be in writing and served on all parties.

I. Hearing procedure.

1. Compensation judge conduct. The compensation judge shall not communicate, directly or indirectly, in connection with any issue of fact or law with any party concerning any pending case, except upon notice and opportunity for all parties to participate.

2. Unless the compensation judge determines that the ~~public interest will be equally served otherwise~~ substantial rights of the parties will be ascertained better in some other manner, the hearing shall be conducted substantially in the following manner:

a. After opening the hearing, the compensation judge shall, unless all parties are represented by counsel, state the procedural rules for the hearing.

b. Any stipulations, settlement agreements or consent orders entered into by any of the parties prior to the hearing shall be entered into the record.

c. If the compensation judge requests opening statements, the party with the burden of proof ~~may make an opening statement~~ shall proceed first. All other parties ~~may~~ shall make such statements in a sequence determined by the compensation judge.

d. After any opening statements, the party with the

burden of proof shall begin the presentation of evidence. That party shall be followed by the other parties in a sequence determined by the compensation judge.

e. Cross-examination of witnesses shall be conducted in a sequence determined by the compensation judge.

f. When all parties and witnesses have been heard, if the compensation judge believes that legal issues remain unresolved, opportunity ~~shall~~ may be afforded to present final argument, in a sequence determined by the compensation judge. Final argument may, in the discretion of the compensation judge, be in the form of written memoranda or oral argument, or both. Oral final argument shall not be recorded, unless requested by a party or upon the order of the compensation judge. Written memoranda shall, when allowed, be submitted simultaneously or sequentially and within such time periods as the compensation judge shall prescribe. Final arguments shall be limited to legal issues only.

g. After final argument, if any, the hearing shall be closed or continued if ordered by the compensation judge. If continued, it shall be either continued to a certain time and day, which shall be announced at the time of the hearing and made a part of the record, or continued to a date to be determined later, which must be upon not less than ~~five~~ 15 days written notice to the parties.

h. The record of the case shall be closed upon receipt of the final written memorandum, transcript, if any, or late-filed exhibits which the parties and the compensation judge have agreed should be received into the record, whichever occurs ~~latest~~ last.

J. Disruption of hearing.

1. Cameras. No television, newsreel, motion picture, still or other camera, and no mechanical recording devices, other than those provided by the Office of Administrative Hearings, shall be operated in the hearing room during the course of the hearing unless permission is obtained from the compensation judge and then subject to such conditions as the

compensation judge may impose to avoid disruption of the hearing.

2. Other conduct. Pursuant to and in accordance with the provisions of Minn. Stat. S 624.72, no person shall interfere with the free, proper and lawful access to or egress from the hearing room. No person shall interfere with the conduct of, disrupt or threaten interference with or disruption of the hearing. In the event of such interference or disruption or threat thereof, the compensation judge shall read this rule to those persons causing such interference or disruption and thereafter proceed as he/she deems appropriate.

9 MCAR S 2.318 The compensation judge decision.

A. Basis for the decision.

1. The record. No factual information or evidence which is not a part of the record shall be considered by the compensation judge in the determination of the case.

2. Administrative notice. The compensation judge may take administrative notice of general, technical or scientific facts within his/her specialized knowledge in conformance with the requirements of Minn. Stat. S 15.0419, subd. 4 provided that notice of the taking of such administrative notice is given ~~an~~ and opportunity ~~and~~ has been provided to all parties to rebut the facts sought to be noticed.

B. Compensation judge decisions.

1. Following the close of the record, the compensation judge shall prepare his/her decision and, upon completion, ~~a copy of said decision shall be served upon all parties by personal service, by first class mail, or by depositing it with the Central Mailing Section, Publications Division, Department of Administration~~ shall immediately file it with the commissioner who shall serve it on all parties as required by Minn. Stat. S 176.281.

2. The compensation judge's decision shall contain the following:

a. The date, ~~time~~ and location of the hearing and the compensation judge's name.

b. Appearances by parties, if pro se, or their attorneys, giving the full name and mailing address (including zip code) of each.

c. The date on which the record of the hearing closed.

d. A notice of the right of parties to appeal, and how the appeal can be perfected, ~~and a notice that a request for rehearing or reconsideration may be made and how such request can be accomplished.~~

e. ~~A statement of the issues. This shall be a brief statement of the reason or reasons the hearing was necessary. This statement may be broken into sub-issues.~~

~~f.~~ The decision shall contain findings of fact, conclusions and a ~~decision~~ determination on each issue raised. In cases involving a multiplicity of issues, the compensation judge may organize the ~~findings of fact, conclusions and~~ decision by major sub-issues if he/she determines that organizing the decision in that manner will aid the reader in understanding the contents thereof.

C. ~~Findings of fact.~~

~~1. Undisputed facts shall be included in the decision but may be disposed of a summary finding.~~

~~2. There shall be specific findings on all major, disputed facts.~~

~~3. Findings shall be express rather than inferential.~~

~~4. Findings shall be clear, concise and based solely on the evidence in the record before the compensation judge.~~

~~5. All facts necessary to reach a conclusion of law shall be included and shall be specific.~~

~~6. Findings shall not be a summarization of the position of parties but shall be a statement of the compensation judge's decision on what the facts are.~~

~~D. Conclusions.~~

~~1. Conclusions shall be based upon the specific findings of fact and the applicable law and shall not set forth new facts.~~

~~2. Conclusions shall be clear, concise and specific.~~

~~3. Conclusions shall not rest upon a point which was not~~

~~raised at the hearing or in briefs or argument. If the compensation judge determines that some unexplored issue may be dispositive, he/she shall request supplementary briefs or memorandum.~~

~~4. Conclusions shall be stated with respect to all legal issues involved, whether disputed or not.~~

~~E. Order. The order shall be clear, concise and specific, and shall include a decision on all issues raised by the hearing.~~

~~F. Memorandums. In each case, the compensation judge shall file a memorandum as part of his order which shall state the rationale and support of the findings, conclusions and decisions on each issue in dispute. Memorandums shall include, where appropriate, the compensation judge's determination on credibility of witnesses.~~

~~G.~~ Compensation judge decisions shall be clear and concise and shall be written in a prose style which can be read and understood by persons of average intelligence. English rather than Latin terms shall be used unless it is necessary to utilize the Latin terminology.

~~H.~~ D. Any party may file a proposed decision with the compensation judge before the record is closed. Any proposed decision submitted shall conform to the provisions of these rules, shall be served on all other parties and shall be in a form which would allow the compensation judge to sign and issue the decision if it is acceptable.

9 MCAR S 2.319 Rehearing ~~and/or reconsideration~~.

~~A.~~ When a compensation judge has issued his/her findings, conclusions and decision, his/her jurisdiction over the case shall end ~~after the time in which to appeal to the Workers' Compensation Court of Appeals has expired~~, except for taxation of disbursements or awarding of attorney's fees, unless the matter is re-referred to the compensation judge by the Court of Appeals ~~or~~ and the chief hearing examiner for supplemental findings, taking of additional testimony, rehearing, or ~~the correction of a clerical error~~ other action; provided that

compensation judges may correct clerical errors in decisions at any time prior to appeal.

~~B. Motions for rehearing or reconsideration shall be filed with the compensation judge who heard the case if the time for appeal to the Court of Appeals has not expired, otherwise it shall be filed with the calendar judge. A motion for rehearing or reconsideration shall be denied if it contains no more than allegations of the statutory grounds for reconsideration, unsupported by specific references to the record and principles of law involved. The motion shall be served on all other parties who have been joined in the proceedings at the same time the motion is filed with the judge. Failure to provide proof of such service shall constitute valid grounds for dismissing the motion.~~

~~C. Newly discovered evidence and fraud allegations. Where reconsideration is sought upon the ground of newly discovered evidence which could not with reasonable diligence have theretofore been produced or on the ground that the decision had been procured by fraud, the motion must contain an offer of proof, specific and detailed, providing:~~

~~1. The names of witnesses to be produced;~~

~~2. A summary of the testimony to be elicited from such witnesses;~~

~~3. A description of such documentary evidence as is to be offered;~~

~~4. The effect it is contended such evidence will have on the record and on the prior decision;~~

~~5. As to newly discovered evidence, a full and accurate statement of the reasons why such testimony or exhibits could not reasonably have been discovered or produced before the filing of the decision.~~

~~A motion for reconsideration shall be denied if it fails to meet the requirements of this rule or if it is based upon cumulative evidence.~~

~~D. Where rehearing or reconsideration has been granted, and the case referred to a compensation judge for hearing, the~~

~~compensation judge shall, upon the conclusion thereof, prepare a decision in the same fashion as required for decisions following original hearings.~~

9 MCAR S 2.320 Settlements.

A. Stipulations for settlement are allowed pursuant to Minn. Stat. S 176.521 and shall conform to that section and to the requirements of this rule.

B. All stipulations for settlement shall be filed within 30 days of the date the settlement was negotiated.

C. Stipulations for settlement shall be filed with and approved by ~~a settlement judge of the Department of Labor and Industry~~ the commissioner or his/her designee if the case has not been referred to the chief hearing examiner.

D. Stipulations for settlement reached and agreed upon subsequent to the referral of the case to the chief hearing examiner shall be filed with and subject to approval by the compensation judge assigned to hear the case or the calendar judge if the matter has not yet been assigned.

E. Stipulations for settlement shall contain the following information;

1. A brief statement of all of the admitted material facts;

2. A detailed statement of the matters in dispute, setting forth the contentions of the parties, supported by all medical reports or other documents in the possession of each party pertaining to each issue;

3. The weekly wage and compensation rate of the employee;

4. An itemization of the sums, if any, previously paid by the employer and insurer;

5. A statement that all medical or treatment expenses have been paid by the employer and insurer, or an itemization of the expenses which have not been paid by the employer and insurer, indicating which payments, if any, have been made by the employee. The stipulation shall specifically state whether any third party has paid any of the expenses and, if payments

have been made, shall include the name and address of such third party together with any identifying claim or policy number;

6. The number of weeks and rate of compensation and, in cases of permanent partial disability, the percentage loss or loss of use upon which the compromise agreement is based;

7. Where applicable, the amount payable by the employer and insurer to the workers' compensation division for the benefit of the Special Compensation Fund;

8. Where applicable, a statement that the employee has been fully advised of the provisions of Minn. Stat. SS 176.132 and 176.645, and the effect of the settlement upon any future claims for supplementary benefits or adjustment of benefits;

9. Where applicable, a statement that the employee is claiming or waiving his/her right to make application for an award of attorney's fees against the employer or insurer pursuant to Minn. Stat. SS 176.081, subd. ~~1~~ 7 or 8, ~~or Minn. Stat.~~ ~~S~~ 176.135 or 176.191.

F. Stipulations for settlement of cases in which the employee or dependents have engaged ~~in~~ the services of an attorney shall ~~contain~~ be accompanied by a statement of the amount of attorney's fees requested and an itemization of the costs incurred, specifying who will be responsible for payment of each cost. ~~It shall be accompanied by a written petition for attorney's fees and costs providing~~, and shall provide sufficient information to show the reasonableness of the requested fees and costs in accordance with Minn. Stat. S 176.081. If no fees are requested, the stipulation shall so state.

G. Stipulations for settlement shall be accompanied by copies of all medical reports in the possession of the parties which have not previously been filed.

H. The parties involved in the settlement shall submit an ~~Order Approving~~ award on stipulation prepared for signature by the applicable judge ~~which shall be submitted with~~ and sufficient copies thereof for all parties to ~~receive~~ be served if the settlement is approved.

I. The attorney representing the employee or dependents shall furnish a copy of the stipulation for settlement to his/her client at the time the client signs the stipulation.

J. Stipulations for settlement shall be signed by all parties as required by Minn. Stat. S 176.521.

K. The employer and insurer shall make payments pursuant to an award on stipulation within 14 days from the date the award on stipulation is served.

9 MCAR S 2.321 Attorney fees.

A. Whenever an employer or insurer ~~receive~~ receives notice that an attorney is representing an employee or dependent, 25% of the compensation, not including medical expense, shall be withheld pending an order determining the reasonable value of any claim for legal services or disbursements pursuant to Minn. Stat. S 176.081. Written notice that such compensation is being withheld shall immediately be mailed to the employee or dependents, the attorney and the division at its Saint Paul office.

B. In applicable cases, the filing of a claim petition or an objection to discontinuance of compensation shall constitute an application for the award of attorney fees against the employer and insurer pursuant to Minn. Stat. S 176.081, subd. 7.

C. Application for determination and approval of any claim for legal services or disbursements may be filed by the employer or insurer, the ~~employer~~ employee or dependents or the attorney. Application for attorney fees shall be by written petition ~~and shall be on a form prescribed by the Division~~. Any application shall disclose the amount of compensation withheld, the total fees or disbursements previously paid to said attorney or his associates and, if filed by the attorney ~~or~~ for the ~~employer~~ employee or dependents, the amount of any retainer fee paid. Applications filed by attorneys shall contain sufficient information to show the reasonableness of the requested fees in accordance with Minn. Stat. S 176.081, subd. 5 ~~and shall be served by the attorney on all parties~~.

D. A separate application is not necessary if filed as part of a stipulation for settlement as provided in these rules.

E. Applications under this rule shall be filed with the commissioner unless the case has been referred to the chief hearing examiner for assignment, in which case it shall be filed with the compensation judge assigned to hear the case or the calendar judge if no assignment has been made.

9 MCAR S 2.322 Taxation of costs and disbursements.

A. Service of the request for taxation of costs and disbursements shall be made upon the other parties, or their attorneys, by the taxing party.

B. ~~The~~ An opposing party has five working days from the date of service upon him in which to serve and file a formal objection to taxation or allowance, with admission or proof of service upon the other parties.

C. If requested, a time for hearing before the ~~calendar~~ compensation judge who heard the case shall be fixed. A notice thereof shall be given to the parties by the ~~calendar~~ compensation judge.

9 MCAR S 2.323 Second injury law.

A. Application for registration of physically impaired employees shall be ~~on forms~~ in a format prescribed by the division and submitted pursuant to rules of the commissioner.

B. Should the commissioner deem the application unacceptable prior to the subsequent injury, the applicant may, within 60 days following receipt of notice of rejection, petition to the division, in writing, for hearing upon the application. A copy of said petition shall be served by the applicant upon the State Treasurer, custodian of the Special Compensation Fund, and upon the Attorney General. Upon receipt of said petition, the commissioner shall refer the matter to the chief hearing examiner for hearing which hearing shall be conducted by a compensation judge as provided by Minn. Stat. S 176.411, with right of appeal.

C. If a dispute arises following the notice of intention to

claim reimbursement under Minn. Stat. S 176.131, subd. 6, the commissioner shall refer the matter to the chief hearing examiner who shall assign the matter to a compensation judge for hearing which hearing shall be conducted as provided by Minn. Stat. S 176.411, with right of appeal.

9 MCAR S 2.324 Other hearings. Pursuant to the provisions of Minn. Stat. S 15.052, subd. 3, all hearings not discussed herein but required to be conducted by a compensation judge of the Office of Administrative Hearings shall be conducted in substantial compliance with these rules provided, however, that in any dispute wherein an immediate hearing is necessary in order to carry out the purpose and intent of the Minnesota Workers' Compensation Law, the notice of hearing shall be given not less than five working days prior to the hearing date. The chief hearing examiner shall provide expedited assignment of compensation judges to these hearings and shall assign compensation judges to the hearings in a manner which will allow the compensation judge's decision to be issued immediately upon conclusion of the hearing or as soon thereafter as may be reasonable and practical.

9 MCAR S 2.325 Severability. If any provision of these rules is held invalid, such invalidity shall not affect any other provisions of the rules which can be given effect without the invalid provision, and to this end the provisions of these rules are declared severable.

APPROVED AS TO LEGALITY
August 19 19 81
WARREN SPANNAUS, ATTORNEY GENERAL
BY Ted A. Mondale
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
AUG 19 1981
Joan Anderson Growe
Secretary of State
3:15 PM

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

IN THE MATTER OF THE ADOPTION OF TEMPORARY RULES RELATING TO WORKERS' COMPENSATION.

AMENDED ORDER ADOPTING RULES

FINDINGS OF FACT

On August 10, 1981, the Chief Hearing Examiner issued an Order Adopting Rules in the above-entitled matter. On August 11, 1981, pursuant to the provisions of Minn. Stat. § 15.0412, subd. 5, and rule 1 MCAR § 1.204, the rules were filed with the Attorney General and also filed with the Revisor of Statutes.

On August 14, 1981, the Revisor disapproved the rules on the basis of their form. On that same date, the Chief Hearing Examiner agreed to the changes required by the Revisor and the rules were thereafter certified as approved.

On August 18, 1981, following a review of the rules, the Attorney General disapproved the rules in that the subject matter of rule 9 MCAR § 2.306 was outside of the temporary rulemaking authority granted to the Chief Hearing Examiner by Minn. Laws 1981, Ch. 346, § 5. That section grants general rulemaking authority to the Chief Hearing Examiner and granted authority to adopt temporary rules "for the purpose of implementing sections 2 to 6, 103 to 122, 127 to 135 and 141.

Minn. Laws 1981, Ch. 346, §§ 100, 101 and 102 amended Minn. Stat. § 176.241 (1980) which relates to the identical subject matter as is contained in rule 9 MCAR § 2.306, that being hearings relating to the discontinuance of employee benefits based upon a notice from the employer.

At the same time as the rules were disapproved, the Attorney General found that language used in rule 9 MCAR § 2.315C was inconsistent with the balance of the rules. The Attorney General has suggested that the newly added word "moving" be deleted and the word "petitioning" be inserted.

Based upon a review of all of the files, records and proceedings herein, the Chief Hearing Examiner issues the following:

ORDER

That the Order Adopting Rules dated August 10, 1981, is hereby amended in accordance with the Findings herein, deleting proposed temporary rule 9 MCAR § 2.306 but reserving that number for future use, and in rule 9 MCAR § 2.315C, the word "moving" is deleted and the word "petitioning" is inserted in lieu thereof.

Dated this 19th day of August, 1981.

DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

IN THE MATTER OF THE ADOPTION OF TEMPORARY RULES RELATING TO WORKERS' COMPENSATION.

ORDER FOR PUBLICATION OF TEMPORARY RULES

IT IS ORDERED this 5th day of June, 1981, that the proposed temporary rules in the above-entitled matter be published in the State Register.

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

IN THE MATTER OF THE ADOPTION
OF TEMPORARY RULES RELATING TO
WORKERS' COMPENSATION.

ORDER ADOPTING RULES

The above-entitled matter, being the adoption of temporary rules pursuant to the provisions of Minn. Stat. § 15.0412, subd. 5, came before the Chief Hearing Examiner without the benefit of public hearing.

Based upon all of the files, records and comments received, the Chief Hearing Examiner makes the following:

FINDINGS OF FACT

1. During the 1981 Legislative Session, Minn. Stat. Chs. 15 and 176 were amended by Minn. Laws 1981, Ch. 346.

2. Section 141 of Minn. Laws 1981, Ch. 346, transfers compensation judges, hearing reporters and support staff from the Department of Labor and Industry (hereinafter "Department") to the Office of Administrative Hearings (hereinafter "Office") but requires that three settlement judges are to remain at the Department.

3. Minn. Laws 1981, Ch. 346, § 4, amending Minn. Stat. § 15.052, subd. 3, provides: "All hearings required to be conducted under Chapter 176 shall be conducted by a compensation judge assigned by the chief hearing examiner."

4. Minn. Laws 1981, Ch. 346, § 5, amending Minn. Stat. 1980, § 15.052, subd. 4, mandates that the Chief Hearing Examiner "shall adopt rules to govern the procedural conduct of...workers' compensation hearings." That section also authorizes the adoption of temporary rules by the Chief Hearing Examiner "for the purpose of implementing sections 2 to 6, 103 to 122, 127 to 135 and 141."

5. On May 25, 1981, at 5 S.R. 1895, a Notice of Intent to Solicit Outside Opinions on rules relating to workers' compensation was published by the office. No written comments, data or views were submitted pursuant to that notice.

6. On June 29, 1981, at 5 S.R. 2093, the Chief Hearing Examiner caused a Notice of Proposed Temporary Rule Adoption to be published along with the proposed temporary rules. The identical notice and proposed temporary rules were also sent to all persons who had registered their names with the agency for the purpose of receiving the notice.

7. Subsequent to publishing the proposed temporary rules, written comments containing data and views were received by the office, which included the following:

Exhibit A - Compensation Judge Thomas W. Walsh
Exhibit B - Compensation Judge P. Nadine James
Exhibit C - Department of Labor and Industry
Exhibit D - Minnesota Trial Lawyers Association (hereinafter "MTLA") which was submitted by Timothy J. McCoy.
Exhibit E - Minnesota Defense Lawyers Associations (hereinfter "MDLA") which included three documents, the final document being submitted by Lawrence Koll, attorney, on behalf of the MDLA.
Exhibit F - Law firm of Mahoney, Dougherty and Mahoney
Exhibit G - Attorney John L. Levy
Exhibit H - Attorney John T. (Jack) Anderson
Exhibit I - Attorney Samuel I. Sigal
Exhibit J - Compensation Judge Ronald Erickson

8. Based on the written data and views submitted and a review of the enabling legislation, the proposed temporary rules have been modified as will be indicated in these findings. The reasons for each of the changes are as expressed in the comments made in the exhibits, which exhibits are incorporated herein by reference. Other changes have been made as a result of the review of the law and are deemed necessary so that the rules comply with the statutory authority and do not change the law. Finally, other changes which have been made are grammatical.

9. The changes in the rules are as follows:

9 MCAR § 2.302 A. The last sentence has been deleted. This sentence relates to supplemental proceedings or rehearings. Throughout the rules, the section on rehearings has been deleted based on comments received in Exhibits A, B, D and E, specifically.

9 MCAR § 2.302 C. Definitions. As pointed out in Exhibits B, D, E and F, the definitions of "applicant" and "application" have been deleted. They created confusion from the existing system wherein these items are referred to as "petition" and "petitioner". Additionally, the changes to the definitions of the two latter terms were made based on clarifications presented in the comments in Exhibits B and E.

9 MCAR § 2.303. This section, as a result of the changes, has been retitled as "Joinder of Parties". The section relating to necessary parties drew comment from numerous persons. (See for example Exhibits A, B, D and E.) It has been determined that it would be impossible to list all necessary parties in compensation matters as they may differ substantially. Items B, C and D were deleted as they again are definitions which must now be deleted after the changes made to § 2.302. (See also comment in Exhibit B.) The remaining sections of this rule relate to joinder. The rule is a rewrite of the previous rule of the Department's Workers' Compensation Division. Most of the changes are cosmetic or grammatical. In newly-numbered A, the summary of evidence has been deleted because such a document is not found through description or inference anywhere else in the rules. In a later portion of the rules, we delete a proposed rule calling all items except claim petitions "motions" and are now using more statutory language. Thus, a motion is now called a request. The time period for presenting petitions for joinder was changed from 45 days to 10 days based upon comments in Exhibit E. The addition or deletion of the phrases "settlement", "calendar" or "compensation" in front of the word judge have been added or deleted for clarification purposes and uniformity throughout the rules. The changes were necessary to keep the rules uniform.

9 MCAR § 2.304 Pleadings. The changes in this rule are the result of comments received in Exhibits B, C, D and E and are also the result of certain grammatical corrections. Additionally, for clarity, we have moved the previously-numbered § 2.306 A into this section as it was inappropriate in § 2.306 after the overall changes were made. Under Commencement of Proceedings, the deletion of the words "and filing" are necessary because of statute of limitation problems. Under the previous system, the statute was tolled by the filing of a petition which subsequently had to be served by the Commissioner of Labor and Industry. The new law provides that the petitions are served by the parties and then filed with the Commissioner. Thus, where previously the filing was the first step in commencing a case, now the service of the petition is the first step. The change was deemed necessary to carry out legislative intent relating to the statute of limitations. Under newly-numbered 304 C, the Department informed the Office that they do not provide forms to the public and that the forms they prescribed had never been adopted as rules. Therefore, rather than requiring a specific form to be used, the rules simply allow the use of the format previously prescribed by the Commissioner.

The most significant change in this rule is the deletion of the section relating to the Declaration of Readiness to Proceed. As can be seen from the exhibits, numerous persons commented on this section. The Declaration of Readiness to Proceed has been deleted as an unnecessary additional step in the already cumbersome process, would create additional cost for the parties involved, and, given the intent of the law to expedite benefit payments to disabled employees, would delay this process.

9 MCAR § 2.305. Other than deleting the requirement that a Declaration of Readiness to Proceed be filed, A and B have been amended to more accurately reflect the statutory requirements. These sections are paraphrases of the statute which are deemed necessary for the public's total understanding the section of the rule. The law allows the Commissioner ten days to refer the matter to a settlement judge. In 305 C, based on comments received in Exhibits C and E, the time for a settlement judge to retain jurisdiction, with the consent of the petitioner, has been expanded from 30 to 60 days. Basically, the Department's comment (Exhibit C) argues that the law does not require the settlement conference to be conducted within 60 days. The chief hearing examiner cannot read that construction into the law. However, the comment is well taken that a settlement conference, to be meaningful, must be conducted at such time as all medical

information is available. In many cases, an adverse medical examination has not been completed by the time the petition has been served. Under the existing time frame, a petitioner must give a 15-day notice to the respondent employer or insurer that he is going to file a claim petition. Once the petition is served, it may be filed immediately. The Commissioner has ten days to refer the matter to the settlement judge. Thus, there is a total of 85 days during which the employer or insurer may complete an adverse examination prior to the conclusion of the 60 statutory days. It is specifically found that the legislative intent in prescribing a limitation on the number of days during which a settlement conference could be conducted was for the protection of the petitioner to ensure that the matter would be referred for hearing without undue delay. These rules cannot extend that statutory time limit unless the party for whom the protection was granted agrees.

Item D was deleted as it simply duplicates what is contained in items B and C of the rule.

9 MCAR § 2.306. This section, previously entitled "Motions to Compensation Judge" has been changed. As previously indicated, paragraph A has been moved to a prior section of the rules. Changes made in this rule, other than grammatical and those deemed necessary due to the statute, were based on comments received in Exhibits D, E and F. The section is now referring solely to the Notice of Intention to Discontinue Compensation Payments, which is a statutory term. Exhibit E recommended allowing a period of 90 days on filing of objections because of problems scheduling medical examinations. Based on all other comments, it is obvious that the 120 days is necessary for the scheduling of, completion, and issuance of a report on a medical examination.

9 MCAR § 2.307. The changes in this rule are based on comments made in Exhibits B, C, D, E and F. The time for an adverse examination is changed to conform to the comments under 9 MCAR § 2.305. Additionally, as is also done in other areas of the rules, the phrase "affidavit of service" has been changed to "proof of service" for uniformity. Item D has been deleted as it has been found that the chief hearing examiner does not have authority to require the commissioner to delegate his responsibility for granting extensions to a settlement judge. If the commissioner desires to do so, that is his responsibility and not the chief hearing examiner's.

9 MCAR § 2.308. Changes in this rule are based upon comments received in Exhibits E and F. Item D was deleted as contrary to Minn. Stat. § 176.281. Item E, the prefatory language, was deleted as duplicative of the last sentence in item B.

9 MCAR § 2.309. The first addition to this rule is a clarifying amendment. This amendment was to make it clear that these rules cannot change the statutory requirement that hearings required to be conducted pursuant to Minn. Stat. Ch. 176 are to be conducted by a compensation judge from the Office of Administrative Hearings. The settlement conference is called a hearing solely for the purposes of these rules and for ease of reference. Numerous comments were received on this rule. The changes in the rule are based on comments received in Exhibits A, B, D, E and F. The first major changes relate to the location of the prehearing conferences. The changes are necessary in order to save parties time and money in traveling to prehearings which may then be conducted by telephone. Other changes in the rule are grammatical in nature.

9 MCAR § 2.310. The changes made in section A, in the first sentence, reflect changes necessitated to ensure that the rule complies with statutory language by use of the word "matter" rather than "case" and "referred" rather than "submitted". The addition of the other language in the first sentence is necessary to clarify the fact that if a case has been assigned for trial to a compensation judge, motions are to be made to that judge rather than the calendar judge. This was a mere oversight at the time of adopting the rules and is not a substantive change. It simply reflects what is present practice. Other changes in this rule are based on comments received in Exhibits A, B, C and E; grammatical; and changes in titles of persons to reflect modifications previously discussed. One addition has been made which was not commented on by any party. Under item A 7, we are adding that a proof of service is to be enclosed with the intervention. It is not considered to be a significant or substantial change but was an oversight. Submitting the proof of service with the motion is required in all other instances in the rules and is consistent with present practice.

9 MCAR § 2.311. Little comment was received on this rule. The changes made are simply clarification or grammatical changes plus adding the word

"compensation" where appropriate to reflect, as was the case in previous findings, the fact that the motion should be made to the judge before whom the case is pending at the time of the motion. If the case has already been assigned to a compensation judge for hearing, the file will be pending before that judge and he/she will have jurisdiction. Again, this is present practice.

9 MCAR § 2.312. The new first sentence was added based on comments made in Exhibits A and B and provides that a judge may disqualify himself/herself without the necessity of a Petition for Disqualification. The last sentence was added based on comment received in Exhibit J. The sentence merely reflects present case law. The other change, as recommended by Exhibit J, is clarifying in the rule that the Chief Hearing Examiner may delegate responsibilities.

9 MCAR § 2.313. Comments pertaining to the changes in this rule were received and are as found in Exhibits C, D, E, F and J. It is not necessary that parties attend prehearings if they are represented. It is only important that the party be represented at the hearing either in person or by his representative. It is also not necessary that the attorneys who will actually be trying the case appear at the prehearing although it is desirable. In many cases, law firms will send one attorney to cover a number of prehearings to be conducted on the same day rather than send several different attorneys. Thus, the rule as proposed would create an undue burden on the attorneys. The rule, as amended, reflects present practice. It is important that persons attending the prehearings have authority to settle the respective claims if we are to obtain meaningful settlements and expedite the calendar. The additional language in A is present practice and comes from the existing rules. In C 5, the term "video tapes" has been added. This was a mere oversight. Video tapes are becoming more and more in use in hearings especially since the advent of home video tape machines. At present, video tapes are allowed in hearings and, again, this merely puts present practice into these rules. Amendments made in C 10 and C 12 are for purposes of grammar and striking redundancies.

9 MCAR § 2.314. This section of the rules drew the most comment. All persons submitting data and views commented on discovery. The comments received clearly show that attorneys representing petitioners oppose discovery while attorneys representing employers or insurers favor very liberal discovery rules. The basic thrust of the changes in the rules as proposed have been to limit, to a certain extent, the discovery rules as proposed. The paragraph relating to requests for admissions has been withdrawn. The unlimited use of interrogatories has been restricted to a provision allowing demands for information relating to injuries or medical treatment. Those items now enumerated in section A 3 are the items which are routinely exchanged between parties on an informal basis. With respect to depositions, the amendments have been made to clarify that requests for depositions are made to the judge before whom the case is pending. Evidentiary depositions must be taken sufficiently in advance of the hearing in order that the deposition may be filed prior to the regular hearing or, at the latest, on the date of the regular hearing. This will reduce delay in the proceedings caused by depositions taken subsequent to the scheduled hearing date.

9 MCAR § 2.315. This section has been amended to reflect the overall change in the rules whereby motions are now called petitions or requests. Comments made which are reflected in the changes are in Exhibits B and E. In 315 B, the change from 30 to 10 days was made to keep the rule consistent, in terms of filing deadlines, with the rule on joinder of parties.

9 MCAR § 2.316. No changes have been made in this rule.

9 MCAR § 2.317. In section A, the ten-day notice has been changed to five days. As is pointed out in Exhibit J, the statute calls for notice of at least five days. The same change has been made in 9 MCAR § 2.309. The additional language at the end of section A is as per comment found on page 11 of Exhibit B. In section B 9, numerous people commented on the use of the term "stationary". This term has been changed to utilize the word "stabilized". C 7 has been changed to reflect the comment from Exhibit J. Item D has been changed as per the comments submitted in Exhibits A and B. Item F 2 has been amended to include a statement as per a comment on page 12 of Exhibit B to conform the rule to authority given to the compensation judges by the statute. In item G 1, the last sentence has been stricken as it related to the compensation judge maintaining the record while the appeal time ran. This would have taken care of situations where a petition for rehearing was filed. As we have withdrawn the authority for rehearings absent referral by the Court of Appeals, this section is inappropriate. Item G 2 b is amended to reflect current practice of allowing the parties to maintain custody of items such as X-rays, motion picture film or video

tapes if all of the parties agree. This change was based on comment found in Exhibit B and, as indicated, to conform to present practice. Item G 3 has been amended pursuant to the comment in Exhibit J to reflect that the intent of the rule was that the Chief Hearing Examiner only sets the fees charged for transcripts prepared by the Office. It was never intended to set the fee which court reporters from the private sector, who contract with the State of Minnesota for court reporter services, could charge for transcripts. The last sentence in the rule has been deleted. The reason for the deletion is that a lawsuit is presently pending in Ramsey County District Court wherein the court reporters from the Workers' Comensation Section are seeking an injunction against the Office. In the past, court reporters have received, in addition to their salary, transcript fees. This item is presently being negotiated between the State and AFSCME and therefore must be withdrawn at the present time. Minn. Stat. § 15.052 provides esentially the same as the deleted sentence. The balance of the amendments made to this rule are the results of comments received in Exhibits A, B, D, E and F.

9 MCAR § 2.318. The major change in this rule is the deletion of the sections relating to the content of the findings of fact, conclusions and order and memorandum of the compensation judges. This deletion is based on comments received in Exhibits A and B. The rules were originally proposed to implement what is presently a policy statement of the hearing examiners section into the workers' compensation system. Besides the comments received, insufficient time has been available to review the present system. Further, the present system has been found to be totally different than the Hearing Examiners Section, at least under present operation, and, thus, it would be inappropriate, at this time, to make such changes.

The amendment made to item B 1. is based on a review of the law. The law requires the commissioner to serve the parties after having the order delivered to the commissioner from the compensation judge. As proposed, the rule would have had the Office serving the order. (See M. S. § 176.281.) Item B 2. d. deletes the provision relating to rehearings or reconsideration. Item B 2. e. is deleted based on comments in Exhibit E. Additionally, this is another subject from the hearing examiners section policy statement which does not appear to be implementable, at the present time, in the workers' compensation section.

9 MCAR § 2.319. As previously alluded to, this section originally called for procedures for the filing of requests for rehearing or reconsideration with the compensation judge who had heard the case. A review of the law indicates that only the Court of Appeals can order a rehearing. Comments in this regard can be found in Exhibits A, B, D, E and F.

9 MCAR § 2.320. In item C, pursuant to comments in Exhibit C, the chief hearing examiner is without authority to require the commissioner to delegate his statutory responsibility for approval of settlement to a settlement judge. Thus, the rule has been changed to indicated the statutory requirement plus the commissioner's inherent authority to delegate the authority as he determines appropriate. Item D is amended pursuant to comment received and as found in Exhibit J to clarify the fact that settlements must be approved by a compensation judge. This is a statutory requirement. It is also amended to clarify the fact that if a case has been assigned to a compensation judge, that the compensation judge will approve the settlement so that the calendar judge will not be inundated with these settlements which are in excess of 1,000 per year. In item E 9, most exhibits will show that the legal citation was in error. See specifically Exhibits A, B and E. Item F is amended pursuant to comment received in Exhibit D which would then allow a request for attorneys fees to accompany the Stipulation for Settlement and thus foreclose the necessity of filing a separate petition, in a separate action, for attorneys fees. Item H is amended to correct the terminology from "Order Approving Stipulation" to "Award on Stipulation" to conform to present practice. The other amendments are clarifying and grammatical.

9 MCAR § 2.321. In items A through C, the changes are structural, grammatical, remove redundancies and remove the requirement that applications be on forms prescribed by the division. (See comments B, D and E.) Item D is a new section based on comments found in Exhibit D which basically removes the requirement of a separate application for attorney fees if the application is part of the stipulation. Item E is a new section based on comments found in Exhibit C. The amendment is a clarification to point out that applications are to be filed with the appropriate agency depending on where the case is pending at the time the application is filed.

9 MCAR § 3.222. Item C is amended as per comments in Exhibit B. The thought in this amendment is that the judge who heard the case is the appropriate judge to determine taxation of costs and disbursements. The addition of "costs" to this section is based on comments received in Exhibit A.

9 MCAR § 2.323. Item A of this provision carries forward the changes made in previous rules which are due to the fact that the division has never adopted forms as rule nor do they furnish forms. Thus, this rule carries forward the format prescribed by the division in their rules rather than a specific form which has not been adopted as rules.

9 MCAR § 2.324. No changes.

9 MCAR § 2.325. No changes.

Based upon the foregoing Findings of Fact, the Chief Hearing Examiner makes the following:

CONCLUSIONS

1. That the Office of Administrative Hearings gave proper notice of the adoption of temporary rules in this matter.

2. That the Office of Administrative Hearings has fulfilled the procedural requirements of Minn. Stat. § 15.0412 and all other procedural requirements of law or rule.

3. That the Office of Administrative Hearings has documented its statutory authority to adopt the proposed rules, and has fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat. §§ 15.0412, subd. 4e, and 15.052, subd. 3(4)(i) and (ii) (1980).

4. That the additions or amendments to the rules as proposed, being either required by law, grammatical or for clarification, or being made based on data and views submitted by interested persons, are proper and comply with the requirements of Minn. Stat. § 15.0412.

Based upon the foregoing Findings of Fact and Conclusions, the Chief Hearing Examiner makes the following:

ORDER

IT IS HEREBY ORDERED that the temporary rules relating to procedures for the conduct of workers' compensation hearings are adopted this 10th day of August, 1981, pursuant to authority vested in me by Minnesota Statutes, § 15.052.

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS



DUANE R. HARVES
Chief Hearing Examiner

RECEIVED
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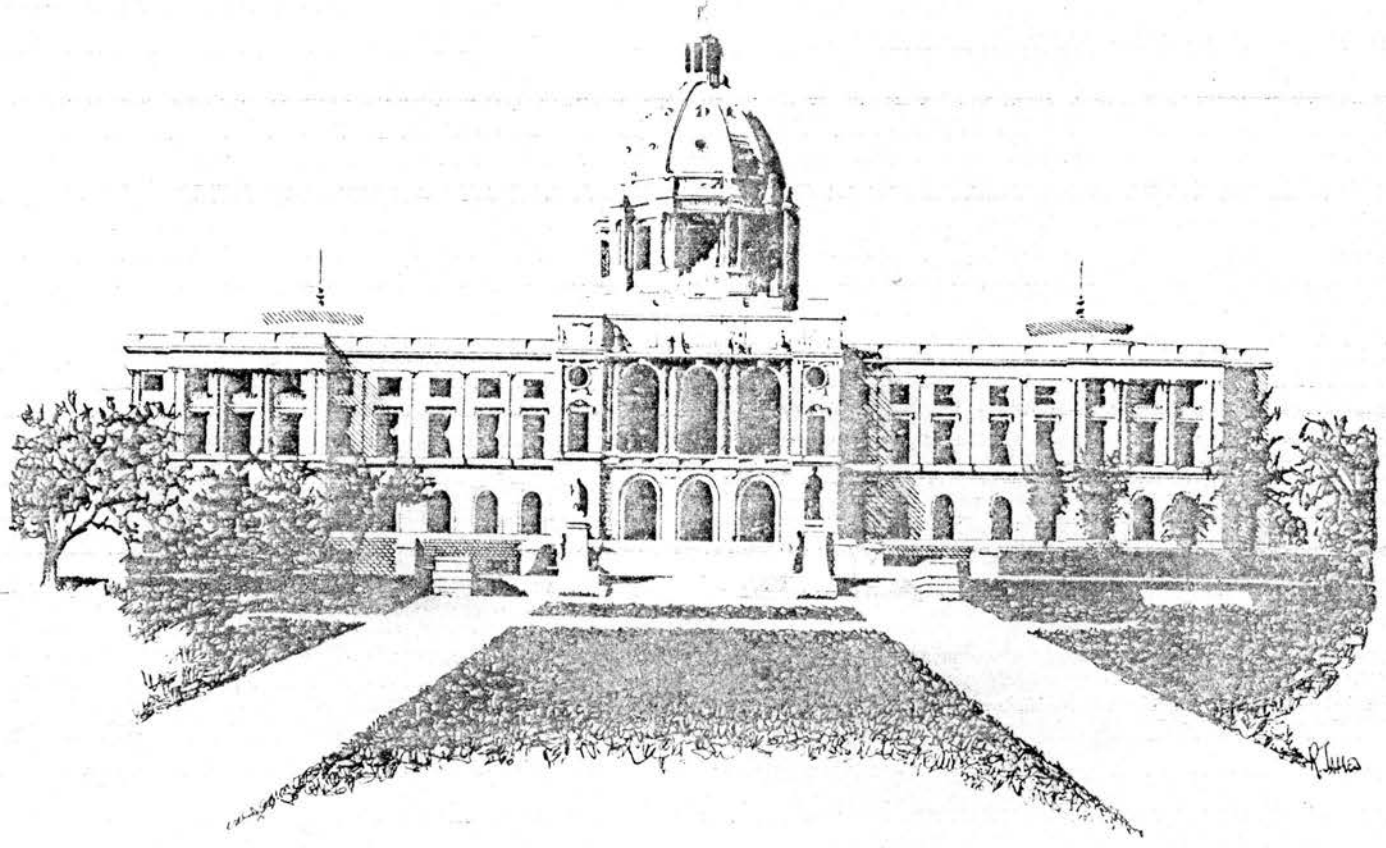
ADMINISTRATIVE
HEARINGS

STATE REGISTER

STATE OF MINNESOTA



VOLUME 5, NUMBER 52

June 29, 1981

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d. Electrical ~~Contractor's licenses shall be renewed on September 1st of each year. Original & renewal fee~~ Contractor ~~– $10.00~~ – $75.00

C. Any electrical contractor who seeks reissuance of his or her license after it has been revoked or suspended pursuant to rule Elec 26 shall submit a reissuance fee of $100.00 before the license is reinstated.

Office of Administrative Hearings Workers' Compensation Division

Proposed Temporary Rules Governing Workers' Compensation

Notice is hereby given that the Office of Administrative Hearings, Workers' Compensation Division, proposed the following temporary rules for the purpose of implementing the provisions of Laws of 1981, ch. 346, governing hearings involving Workers' Compensation. All interested persons may submit data and views on the proposed temporary rules for a period of 20 days. All submissions must be in writing and must be addressed to:

Duane R. Harves
Chief Hearing Examiner
Office of Administrative Hearings
1745 University Avenue
St. Paul, Minnesota 55104

The rules as proposed may be modified if the modifications are supported by the data and views submitted. Any written material submitted will become part of the record and will be submitted to the Attorney General.

Temporary Rules as Proposed

9 MCAR § 2.301 Scope and purpose.

The procedures contained herein shall govern all hearings required to be conducted pursuant to the provisions of the Minnesota Workers' Compensation Laws, Minn. Stat. §§ 176.001 to 176.82, and the Minnesota Administrative Procedure Act, Minn. Stat. §§ 15.0411 to 15.052, as those provisions might apply.

9 MCAR § 2.302 General authority and definitions.

A. Assignment or transfer of cases. The chief hearing examiner has full responsibility for the assignment of cases for trial to the compensation judges. The chief hearing examiner may transfer to another compensation judge the proceedings on any case in the event of the death, extended absence, or disqualification of the compensation judge to whom it has been assigned, and may otherwise reassign such cases if necessary to expedite the proceedings if no oral testimony has been received therein. To the extent practicable, supplemental proceedings (rehearings) shall be assigned to the compensation judge who heard the original proceedings except where the rehearing has been granted by the Workers' Compensation Court of Appeals contrary to the compensation judge's initial order, in which instance the rehearing may be assigned to another compensation judge.

B. Authority of compensation judges. In any case which has been regularly assigned to him/her for trial, a compensation judge shall have full power, jurisdiction and authority to hear and determine all issues of fact and law presented to him/her and to issue such interlocutory and final orders, findings, decisions and awards as may be necessary to the full adjudication of the case.

C. Definitions.

1. "Applicant" means the party initiating an application by the serving and filing of a petition.
2. "Calendar judge" means a workers' compensation judge from the Office of Administrative Hearings.
3. "Chief hearing examiner" means the chief hearing examiner of the Office of Administrative Hearings.
4. "Commissioner" means the commissioner of the Department of Labor and Industry.
5. "Compensation judge" means a workers' compensation judge from the Office of Administrative Hearings.

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6. "Division" means the Workers' Compensation Division of the Department of Labor and Industry.

7. "Petition" means an application filed by or on behalf of an injured or deceased employee which initiates a contested workers' compensation case requiring assignment for hearing.

8. "Settlement judges" means a workers' compensation judge from the Department of Labor and Industry.

9 MCAR § 2.303 Parties.

A. Necessary parties. In all cases except cases arising from the death of an employee, any person, other than the injured employee, initiating a proceeding must join the injured person as a party, including in the petition the injured party's address, if known, and if not known, a statement of that fact.

For purposes of these rules, the following shall be deemed necessary parties:

1. The employee or dependents;

2. All insurers or self-insured named in the petition;

3. Any employer who is uninsured or whose insurer for the date of the alleged injury in that employment is unknown;

4. The State Treasurer, as custodian of the Special Compensation Fund, if petition is made pursuant to Minn. Stat. § 176.191, subd. 2.

B. Parties applicant. Any person in whom any right to relief is alleged to exist may appear, or be joined, as a party applicant, in any case or controversy before a settlement or compensation judge.

C. Parties defendant. Any person or insurer against whom the right to relief is alleged to esixt shall be named or joined as a defendant.

D. Parties in death cases. In death cases, all persons who might be considered dependents should either join or be joined as parties applicant or defendant so that the entire liability of the employer or the insurer may be determined in one proceeding.

E. Joinder of parties.

1. Upon a motion of any party or upon his/her own motion, a settlement or compensation judge may order the joinder of additional parties necessary for the full adjudication of the case. A party not present or represented at the time of joinder shall forthwith be served with copies of the order of joinder, the summary of evidence, if any, and the pleadings in the case.

2. Any party requesting joinder of additional parties shall make a motion for such joinder, serve a copy of the motion on all existing parties, and the party to be joined, and file the original with proof of service with the calendar judge no later than 45 days prior to the hearing date, unless the calendar judge allows a shorter time when the moving party has shown that the party is a necessary party, that the moving party was unable, through due diligence, to previously ascertain the name of or necessity of joining the party, and that the joinder is necessary to a full and final determination of the rights or liabilities of all persons. When this motion is served on the party to be joined, it shall be accompanied by copies of all pleadings and a notice of the date, time and place set for a settlement conference, prehearing conference or hearing.

3. When a party requests joinder less than 45 days prior to the hearing date, the motion shall include an affidavit of the moving party stating the facts necessary to show cause why the lesser time should be allowed.

4. In cases where the calendar judge has denied the joinder because of the moving party's failure to meet the 45-day time requirement, the case shall not be stricken, continued or otherwise delayed for the purposes of joinder, unless the applicant or applicant's attorney consents thereto.

5. All motions for joinder shall contain at least the following:

a. The party to be joined and its insurer, if any;

b. The date and nature of the claimed personal injury or impairment;

c. The detailed circumstances, in affidavit form, showing that the party to be joined is a necessary party;

d. The supporting medical opinions relied upon, if applicable; or

e. If the party to be joined is the Special Compensation Fund, the detailed circumstances, in affidavit form, showing the specific basis claimed for joinder, including the date of registration of prior impairment or injury where applicable.

6. A party contesting joinder under these rules may do so by objection filed with the calendar judge within 10 days of service, requesting a hearing thereon; otherwise, an ex parte order may be issued granting or denying this joinder.

9 MCAR § 2.304 Pleadings.

A. Commencement of proceedings. Original proceedings for the adjudication of compensation rights and liabilities are

commenced by the service and filing of a petition as provided by Minn. Stat. § 176.305 and which shall be on forms provided by the commissioner. The petition shall certify that the prior notice of intention to initiate proceedings has been sent to the adverse party, pursuant to Minn. Stat. § 176.271, subd. 2, and the date of that notice. Supporting medical reports shall be attached to the petition.

B. Separate petitions for each injury. A separate petition shall be filed for each separate injury for which benefits are claimed even though the employer be the same in each case. Separate pleadings shall be filed in each case.

C. Consolidation of claims. All claims of all persons arising out of the same injury to the same employee shall be filed in the same proceeding.

D. Forms of petition. Petitions shall conform to the forms prescribed by the commissioner and provided by the division.

E. Declaration of Readiness to Proceed.

1. At the time the petition is filed with the commissioner, a Declaration of Readiness to Proceed shall be included. The declaration shall have been previously served either personally or by first class mail on all other parties.

2. Objections. Any objection to the proceedings requested by a Declaration of Readiness to Proceed shall be served and filed with the commissioner within ten (10) days after service of the declaration.

3. The Declaration of Readiness to Proceed shall be on a form provided by the Division and shall contain the following information:

a. The names of all parties applicant or defendant;

b. The geographic location requested for the hearing;

c. Whether a settlement conference is requested and the reasons therefor;

d. What issues remain to be determined;

e. Whether the applicant is presently receiving compensation payments;

f. The number of witnesses expected to be presented, divided between lay and medical witnesses;

g. An estimate of the number of hours necessary to complete the hearing;

h. A statement that all medical reports in the applicant's possession have been provided to the defendant(s);

i. A proof of service of the declaration; and

j. The typed or hand printed name of the person filing the declaration, together with the address and telephone number where the person filing can be reached between the hours of 8:00 a.m. and 4:30 p.m.

9 MCAR § 2.305 Settlement judge review and settlement conferences.

A. Upon the filing of a petition and a Declaration of Readiness to Proceed, the commissioner shall refer the case to a settlement judge who shall review the filing to determine whether a settlement conference is appropriate, which determination shall be made within twenty (20) days of the date of filing.

B. If a settlement conference has been requested or is deemed appropriate by the settlement judge, he/she shall notify all parties of the date, time and place where the settlement conference will be conducted. The settlement conferences shall be completed within sixty (60) days of the date of the filing of the Petition and the Declaration of Readiness to Proceed. If a settlement conference has not been requested or is deemed to be inappropriate, the settlement judge shall return the file to the commissioner who shall refer the file to the chief hearing examiner within 10 calendar days of receipt of the file from the settlement judge.

C. If the settlement conference cannot be concluded within sixty (60) days, the settlement judge shall return the file to the commissioner who shall refer the file to the chief hearing examiner. Provided, however, that with the written consent of the applicant or his/her representative, the settlement judge may retain jurisdiction for an additional thirty (30) days for purposes of receiving a full settlement of all issues.

D. If the settlement judge determines that a settlement conference will not resolve the issues in the case or that, because the number of cases filed or scheduled for settlement conferences are such that a settlement conference cannot be concluded within

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the required time, the settlement judge shall return the file to the commissioner who shall refer the file to the chief hearing examiner within 10 calendar days of receipt of the file from the settlement judge.

E. Nothing contained in this rule shall preclude any party from requesting that a settlement conference be scheduled at any time prior to a hearing by a compensation judge, nor shall it prohibit the chief hearing examiner or calendar judge from setting a settlement conference on their own motion once the file has been received from the commissioner.

F. At any settlement conference conducted before a settlement, calendar or compensation judge, all parties shall attend and shall, if they are a representative of a party, be authorized to reach a full settlement on all or any issues in the case.

G. If, following a settlement conference, a full and final settlement has not been reached but the parties have reached agreement on any facts, legal or medical issues, or levels of benefits, the settlement, calendar or compensation judge presiding over the settlement conference shall, if he/she approves of those matters settled, issue an order confirming and approving those matters settled, which order shall be binding on any compensation judge who may subsequently be assigned to hear the case. Issues once settled and approved may be reopened by the compensation judge upon motion of any party on the basis of newly discovered evidence or a material change in circumstances.

9 MCAR § 2.306 Motions to compensation judge.

A. Generally. All requests for action by the commissioner, a settlement, calendar of compensation judge other than petitions or answers shall be called motions. The caption of each motion shall contain the title and number of the case and shall indicate the type of relief sought.

B. Motion to reopen. Motions requesting that a matter be reopened shall set forth specifically and in detail the facts relied upon to establish good cause for reopening.

C. Motion to discontinue compensation.

1. A motion to discontinue compensation for temporary total disability filed pursuant to Minn. Stat. § 176.241 shall conform to the form provided by the division and shall contain the information required by law or rule of the commissioner.

2. Objections; hearing; interim order.

a. Written objections shall be filed with and contain the information required by law or rule of the commissioner.

b. Upon such timely objection and where it appears to the commissioner that the right to compensation may not have terminated, the motion to discontinue shall be referred to the chief hearing examiner who shall set the matter for hearing on a priority basis not less than ten (10) nor more than thirty (30) days from the date of the receipt of the motion and objection from the commissioner.

c. If complete disposition of the motion to discontinue cannot be made at such hearing, the compensation judge assigned thereto, based on the record before him/her including the allegations of the motion, the objection thereto, and the evidence (if any) at said hearing, shall forthwith issue an interim order directing whether compensation shall or shall not continue during the pendency of proceedings on the motion to discontinue. Said interim order shall not be considered a final order, and will not preclude a complete adjudication of the issues raised by the motion upon the full hearing of the case, after notice in the regular course and full opportunity to prepare.

d. Following the issuance of an interim order upon the motion to discontinue, the case shall be set by the chief hearing examiner in the customary manner upon the filing of an appropriate Declaration of Readiness by the employer or insurer.

9 MCAR § 2.307 Answers.

A. An answer to each petition shall be served and filed within twenty (20) days after service of the application unless a waiver has been obtained pursuant to Minn. Stat. § 176.321, subd. 3.

B. The answer used by parties shall conform to the form prescribed by the commissioner. A general denial is not an answer within this rule. The answer shall be accompanied by an affidavit of service upon the opposing parties. Evidence upon matters and affirmative defenses not pleaded by answer will be allowed only upon such terms and conditions as the compensation judge shall impose.

C. The answer shall contain the following:

1. Specific responses to allegations regarding the date and nature of the injury, the employment status, notice, wage, relationship of the injury to employment, insurance, benefits paid, matters in dispute, affirmative defenses and additional matters as deemed necessary by the answering party;

2. Any medical report upon which the answer is based, if available;

3. If a medical examination by the employer or insurer's doctor has not already been completed, the date, time and place for the exam which shall be scheduled to take place within 75 days from the date of service of the petition. Any request for an extension in time for scheduling the examination shall be subject to the approval of the calendar judge.

D. Requests for an extension of time within which to answer shall be made to a settlement judge who shall act on such requests on behalf of the commissioner.

9 MCAR § 2.308 Service.

A. Service by state. The commissioner, the chief hearing examiner, and settlement, calendar or compensation judges shall serve all notices, findings, orders, decisions or awards upon the parties or their attorneys or agents of record by first class mail at their addresses of record or by personal service. Service may also be satisfied by placing the materials to be served with the Central Mailing Section of the Department of Administration.

B. Service by parties. A party may accomplish service of any document either by first class mail or by personal service. Service of any document required to be served by a party may be served by the party's attorney or authorized agent. Upon filing of the document served, it shall be accompanied by an affidavit of service which shall be in the form accepted by the district courts.

C. Service by mail. Service of all documents and pleadings may be made by first class United States mail upon all parties to a proceeding whether residents of the same city, town or otherwise. Computation of time in such instances shall be in accordance with the provisions of Minn. Stat. § 645.15.

D. Service on attorney or agent. Service, except as may otherwise be provided by any law or other rules, shall be made only on attorneys or agents of record, unless the party is unrepresented, in which event service shall be made on such party.

E. Proof of service by parties. Proof of service by parties may be made by:

1. An affidavit of service in the form acceptable to the district courts; or

2. A written statement enclosed upon the document served and signed by the party making the statement; or

3. A letter of transmittal.

In each case, there shall be set forth the names and addresses of persons served, the fact as to whether such service was made personally or by mail, the date of service, the place of personal service or the address to which mailing was made.

9 MCAR § 2.309 Hearings.

A. Definition of hearing. A hearing may be either a settlement conference, a prehearing conference, or a regular hearing.

1. A settlement conference is a hearing set by a settlement judge. It is set for the primary purpose of providing assistance to the parties in resolving disputes and securing a settlement of all issues, and for the secondary purpose of assisting the parties in narrowing the issues and of expediting preparation and trial of a regular hearing if necessary. The conference may be conducted by telephone.

2. A prehearing conference may be required whether or not a settlement conference has been held. The purpose of a prehearing conference is to ascertain if there are genuine disputes requiring resolution by a calendar or compensation judge, of providing assistance to the parties in resolving disputes, of narrowing the issues, and of expediting preparation and trial if a regular hearing is necessary. A prehearing conference is conducted by a calendar or compensation judge. It may be conducted by telephone.

3. A regular hearing is a hearing set for the purpose of receiving evidence and is conducted by a compensation judge.

B. Notice of hearing. Notice of the time and place for hearing shall be provided to all parties to a case as required by § 2.308 A. except that oral or written notification of the date, time and place for a regular hearing which is given to the parties by a settlement, calendar or compensation judge at the time of a settlement or prehearing conference shall be sufficient notice. Such notice shall be given at least ten (10) days prior to the date of hearing, except:

1. Where notice is waived;

2. Where a different time is expressly agreed to by all parties; or

3. Where the notice is governed by contrary law or rule.

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D. Continuances.

1. Requests for continuances are inconsistent with the requirement that workers' compensation proceedings be expeditious and are, therefore, not favored and will be granted only upon a clear showing of good cause. The parties are expected to submit for decision all matters in controversy at a single hearing and to produce at such hearing all necessary evidence, including witnesses, documents, medical reports, payroll statements and all other matters considered essential in the proof of a party's claim or defense.

2. When a continuance is to be requested prior to the hearing date, the party requesting the continuance shall have first contacted all other parties to determine whether mutual agreement to the continuance can be reached, and, if the continuance be granted, the availability of all parties for hearing at future specific dates. When all parties are in agreement with the request for continuance and have agreed to a date for a future hearing, if the continuance request is made no less than ten (10) working days prior to the hearing date, the continuance shall be granted.

3. Requests for continuances shall be made to the compensation judge designated as the calendar judge. If all parties have not agreed to the continuance, the request shall be in writing in the form of a motion for continuance, served on all parties, and shall set a date, time and place for a hearing on the motion before the calendar judge when more than ten (10) working days prior to the regular hearing date. If less than ten (10) working days remain prior to the regular hearing date, notice of the motion may be made orally.

4. Good cause shall not include:

a. Where an insurer retains counsel on its own payroll, unavailability of the counsel assigned to the case because of engagement in another court or otherwise;

b. Where a law firm consists of more than one member, unavailability of the counsel assigned to the case because of engagement in another court or otherwise;

c. Unavailability of an individual law practitioner because of engagement in another court, if he has failed to notify the judge in charge of the trial court calendar of that court that he has been assigned to a date and time certain in a workers' compensation case;

d. Unavailability of a medical or other witness if the witness' deposition could have been taken between the time of receipt of the notice of the hearing date and the date of the hearing.

9 MCAR § 2.310 Intervention.

A. Any person desiring to intervene in a workers' compensation case as a party shall submit a timely motion to intervene to the settlement judge unless the case has been submitted to the chief hearing examiner for assignment, in which case the motion shall be submitted to the calendar judge. The motion shall be served on all parties either personally or by first class mail. Timeliness will be determined by the settlement, calendar or compensation judge in each case based on circumstances at the time of filing. The motion shall show how the moving party's legal rights, duties or privileges may be determined or affected by the case, shall set forth the grounds and purposes for which intervention is sought and shall indicate the moving party's statutory right to intervene if one should exist. The motion shall be accompanied by the following information, if applicable.

1. Itemization of disability payments showing the period during which the payments were or are being made, the weekly or monthly rate of the payments and the amount of reimbursement claimed;

2. A summary of the medical or treatment payments, broken down by medical or treatment creditor, showing the total bill submitted, the period of treatment covered by that bill, the amount of payment on that bill, and to whom the payment was made;

3. Copies of all medical or treatment bills on which some payment was made;

4. Copies of the worksheets or other information setting forth how the payments on medical or treatment bills were calculated;

5. A copy of the relevant policy or contract provisions upon which the claim for reimbursement is based.

B. Objection. Any party may object to the motion for intervention by serving and filing an objection with the appropriate judge within seven days of service of the motion, which objection shall state the party's reasons for objection.

C. The party requesting intervention or his/her attorney or representative shall attend all settlement or prehearing conferences and the regular hearing unless a written stipulation, signed by all parties, is filed with the appropriate judge stating that all of the payments for which reimbursement is claimed are related to the injury or condition in dispute in the case, and that, if the applicant is successful in proving the compensability of the claim, it is agreed that the sum shall be reimbursed to the intervenor. If no objection is filed, the intervention shall be deemed granted.

D. If an objection to intervention remains following settlement and prehearing conferences, the calendar judge shall enter an order ruling on the intervention which order shall be binding on the compensation judge to whom the case is assigned for a regular hearing.

E. At the regular hearing on the claim petition where intervention has been granted, the intervenor shall present his/her evidence in support of his/her claim after the applicant has rested, unless otherwise ordered by the compensation judge, in order that the issue of intervention may be promptly determined with no undue delay that may prejudice the rights of the original parties.

F. Failure to comply with any provision of this rule shall result in a denial of the claim for reimbursement.

9 MCAR § 2.311 Consolidation.

A. Consolidation of two or more related cases may be ordered for the purpose of receiving evidence. Consolidation may be ordered upon motion by any party to the calendar judge or upon the calendar judge's own motion if the calendar judge determines that separate cases present substantially the same issues of fact and law; that a holding in one case would effect the rights of the parties in another case; and that the consolidation would not substantially prejudice any party. Notwithstanding the requirements of this rule, the parties may stipulate and agree to such consolidation.

B. Under consolidation, all documentary evidence previously received in an individual case shall be reintroduced in the consolidation proceedings under a master file if the compensation judge assigned to try the case designates one file as a master file. When so adduced, such evidence shall be deemed part of the record of each of the several consolidated cases. Evidence received subsequent to the order of consolidation shall be similarly received with like force and effect.

C. Notice of order. Following an order for consolidation, the calendar judge shall forthwith serve on all parties a copy of the order for consolidation. The order shall contain, among other things:

1. A description of the cases for consolidation;
2. The reasons for consolidation;
3. Notification of a consolidated prehearing conference if one has been requested.

D. Objection to consolidation.

1. Motion for severance. Any party may object to consolidation by filing with the calendar judge, and serving upon all parties at least seven days prior to the regular hearing in the case, a motion for severance from consolidation, setting forth the petitioner's name and address, the title of his case prior to consolidation, and the reasons for his petition.

2. Determination. If the calendar judge finds that consolidation would prejudice the party moving for severance, he shall order such severance or other relief as he/she deems necessary.

E. Service of pleadings and decisions. Separate pleadings shall be filed and separate findings, orders, decisions and awards will be made and filed in each case consolidated for hearing.

9 MCAR § 2.312 Disqualification. Proceedings to disqualify a compensation judge shall be initiated by the filing of a motion for disqualification supported by affidavit or declaration under penalty of perjury stating in detail facts establishing grounds for disqualification of the compensation judge to whom a case or proceeding has been assigned. If the compensation judge assigned to hear the matter and the grounds for disqualification are known, the motion for disqualification shall be filed with the chief hearing examiner not more than ten (10) days after the moving party has received notice of the hearing. In no event shall any such motion be entertained after the swearing of the first witness. The motion shall be determined by the chief hearing examiner.

9 MCAR § 2.313 Prehearing procedures.

A. All cases shall be subject to a settlement conference or a prehearing conference whenever possible, at which all parties shall attend, unless a settlement judge or calendar judge orders otherwise. If parties are represented by attorneys, the attorneys who will actually appear at the hearing shall attend the settlement or prehearing conference, bringing with them their appointment calendars. If a party is not represented by an attorney, the party shall appear personally and shall be prepared to arrange agreeable dates for the regular hearing.

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B. Prior to any settlement or prehearing conference, the parties shall discuss the possibility of settlement if they deem that a reasonable basis for settlement exists. Parties or attorneys appearing at a settlement or prehearing conference shall be prepared to participate in a settlement conference.

C. At the settlement or prehearing conference:

1. All parties shall be prepared to state the issues;

2. All parties shall state the names, and addresses if known, of all witnesses they intend to call;

3. All parties shall give notice of any amendments to pleadings that may still be necessary;

4. All parties shall file copies of all medical reports not already on file. Reports of medical examinations completed after any settlement conference or prehearing conference shall be filed as soon as available prior to the regular hearing;

5. Each party shall state what exhibits, including, but not limited to photographs, motion picture films and documentary evidence intended to be used at the hearing, and copies of these exhibits shall be made available to opposing counsel no later than 10 days prior to the date of the regular hearing, provided, however, that if any party requests showing of motion picture films prior to the regular hearing, they shall pay the expense for such showing and may tax this expense in the same manner as other costs and disbursements;

6. If the employee plans to introduce hospital records into evidence, the employee or his attorney shall bring to the settlement or prehearing conference written authorizations for opposing counsel to examine those records if such authorizations have not previously been provided;

7. If the employee is claiming medical or other treatment expenses, the employee or the attorney shall state those expenses at the time of the settlement or prehearing conference, and shall furnish opposing counsel with copies of itemized bills for such expenses at least 10 days prior to the settlement or prehearing conference;

8. If the employee is claiming temporary total disability, the employee or attorney shall state at the settlement or prehearing conference the dates of time lost from work;

9. If the employee is claiming temporary partial disability, the employee or attorney shall state the dates of such claim, the approximate amount of such claim, and the names and addresses of the employers for whom the employee worked during the period of such claim; authorizations to permit opposing counsel to confirm wages earned in those employments shall have been furnished at least 10 days prior to the scheduled settlement or prehearing conference; and, an itemized breakdown of the claim for temporary partial disability shall be submitted to the settlement or calendar judge and opposing counsel at least 10 days prior to the time of the settlement or prehearing conference;

10. The applicant or attorney for the applicant shall state whether payment has been made by any party other than the workers' compensation carrier for disability benefits, on medical or treatment expenses, or on funeral expenses. If payment has been made, the name and address of the party making payment shall be furnished to the settlement or calendar judge at the settlement or prehearing conference, together with any identifying policy or claim numbers;

11. If a dispute exists on the wage rate at the time of the injury, the attorney for the employer and insurer shall furnish to opposing counsel at least 10 days prior to the settlement or prehearing conference, copies of the relevant wage records of the employee;

12. The applicant or attorney for the applicant shall furnish to the settlement or calendar judge, at the settlement or prehearing conference, a copy of his retainer agreement with the employee or dependents and shall state the amount of retainer fee paid. He shall be prepared at the time of hearing or settlement to show the reasonableness of any attorney's fees or costs, in accordance with Minn. Stat. § 176.081.

D. At the time a case is first set for a settlement or prehearing conference, the settlement judge or calendar judge may order the parties to complete, serve on each other and file a prehearing statement which shall contain any of the items in C. above which the settlement or calendar judge deems appropriate. In making a determination on the requirement of the preparation of prehearing statements, the settlement or calendar judge shall take into consideration the number of parties involved in the case, the nature and extent of the medical issues, and the nature and extent of the type of disability claimed.

9 MCAR § 2.314 Discovery.

A. Demand. Each party shall, within 10 days of a demand by another party, disclose or furnish the following:

1. The names and addresses of all witnesses that a party intends to call at the regular hearing. All witnesses unknown at the time of said disclosure shall be disclosed as soon as they become known if a prior demand has been made.

2. Any relevant written or recorded statements made by the party or by witnesses on behalf of a party. The demanding party shall be permitted to inspect and reproduce any such statements which reproduction shall be at the expense of the party

requesting reproduction. Any party unreasonably failing upon demand to make the disclosure required by this rule, upon proper motion made to the compensation judge, shall be foreclosed from presenting any evidence at the hearing through witnesses not disclosed or through witnesses whose statements are not disclosed.

3. Medical privilege shall be deemed waived by the filing of the petition alleging injury or illness. Medical authorizations shall be furnished, upon demand, to adverse parties. Likewise, any and all medical reports shall be provided, upon demand, to all adverse parties. Written interrogatories may be utilized for the purposes of discovering medical information. When interrogatories are utilized, the Rules of Civil Procedure for the District Courts in the State of Minnesota shall apply.

B. Requests for admissions. A party may serve upon any other party a written request for the admission of relevant facts or opinions, or of the application of law to relevant facts or opinions, including the genuineness of any document. The request must be served at least 15 days prior to the regular hearing and it shall be answered in writing by the party to whom the request is directed within 10 days of receipt of the request. The written answer shall either admit or deny the truth of the matters contained in the request or shall make a specific objection thereto. Failure to make a written answer shall result in the subject matter of the request being deemed admitted.

C. Depositions. Pursuant to the provisions of Minn. Stat. § 176.411, subd. 2, depositions may be taken in the manner which the law provides for depositions in civil actions in the district courts for the state except where a compensation judge orders otherwise. When a party has objected to the taking of a deposition, the party requesting the deposition shall bring a motion before the calendar judge who shall determine whether the deposition should go forward. The calendar judge shall order the deposition to proceed if he/she finds that the request for the taking of the deposition has been shown to be needed for the proper presentation of a party's case, is not for purposes of delay, and that the issues or amounts in controversy are significant enough to warrant extensive discovery.

Depositions for the purpose of preserving testimony or for presenting medical testimony due to the unavailability of the doctor shall be allowed. Such deposition testimony shall be taken prior to the regular hearing unless, for good cause shown, the party taking such deposition has obtained the permission of the calendar judge to take such deposition subsequent to the hearing.

The original copy of any deposition taken for purposes of presenting testimony in the case shall be filed with the settlement judge if the case is still pending before the settlement judge or with the Office of Administrative Hearings if the matter has been referred to the chief hearing examiner for assignment. The original copy of any deposition taken solely for purposes of discovery shall be sealed and filed as in the case of evidentiary depositions but shall not be reviewed or utilized in any fashion by the compensation judge unless the deposition shall be formally entered as evidence in the case.

D. Motions for additional discovery. Upon the motion of any party, the calendar judge may order discovery of any other relevant material or information, recognizing all privileges recognized at law. The calendar judge may order any means of discovery available pursuant to the Rules of Civil Procedure for the District Courts of the State of Minnesota provided that the request for such discovery can be shown to be needed for the proper presentation of a party's case, are not for purposes of delay, and that the issues or amounts in controversy are significant enough to warrant extensive discovery.

E. Penalties. Upon the failure of a party to reasonably comply with these rules relating to discovery or with an order of the calendar judge made pursuant to this rule, upon a motion properly made at the time of the hearing, the compensation judge assigned to the regular hearing shall make a further order as follows:

1. An order that the subject matter of the order for discovery or any other relevant facts shall be taken as established for the purposes of the case in accordance with the claim of the party requesting the order.

2. An order refusing to allow the party failing to comply to support or oppose designated claims or defenses, or prohibiting him/her from introducing designated matters in evidence.

F. Proprietary information. When a party is asked to reveal material which he/she considers to be proprietary information or trade secrets, he/she shall bring the matter to the attention of the appropriate judge, who shall make such protective orders as are reasonable and necessary or as otherwise provided by law.

9 MCAR § 2.315 Motions for contribution or reimbursement.

A. Motions for contribution or reimbursement shall set forth in detail the allegations showing the basis of the claim for

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contribution or reimbursement against the additional employer or insurer named therein, shall be supported by medical evidence, and shall be signed and verified. The original motion shall be filed with the settlement judge if the matter is pending before the division or with the chief hearing examiner if the matter has been referred for assignment, together with proof of service upon the employee or his attorney and all additional employers or insurers named therein.

B. In all cases where a claim petition or other form of action is pending, said motion shall be filed no later than 30 days prior to a settlement or prehearing conference, and copies of all pleadings, including any notice of settlement or prehearing conference shall be served upon the additional employers or insurers by the party bringing said motion. In cases where no action is pending, the filing of the motion for contribution or reimbursement with the division shall initiate proceedings.

C. Within 10 days after being served with a copy of the motion for reimbursement or contribution, employers or their insurers, other than the paying party, may file a verified answer to the motion in accordance with the provisions of Minn. Stat. § 176.321 and, if not already set for settlement or prehearing conference, the matter shall be set for a settlement or prehearing conference in accordance with these rules.

D. The employee shall be deemed a necessary party to all of the proceedings and should be represented by an attorney of his/her choice. A copy of all motions or answers shall be duly served upon the employee and/or his/her attorney in accordance with Minn. Stat. § 176.321.

9 MCAR § 2.316 Subpoenas. Subpoenas may be obtained without charge from the Workers' Compensation Division or the Office of Administrative Hearings. The name and address and telephone number of the party or attorney requesting service of the subpoena shall be included on the subpoena before service is made. When service is made, service and witness fees shall be tendered in accordance with Minn. Stat. § 357.22.

Upon motion promptly made, and in any event at or before the time specified in the subpoena for compliance therewith, the calendar judge or compensation judge, if the case has been assigned for regular hearing, may quash or modify the subpoena if he/she finds it is unreasonable or oppressive.

9 MCAR § 2.317 The hearing.

A. A date and time certain will be assigned to each case. Notice of the hearing will be given as soon as the assigned date is known, but shall be given at least 10 days in advance of the hearing. The notice will include the place of hearing and the amount of time allowed for the hearing. Cases will be set for one location only, which shall be that most convenient for the petitioner, and adequate time will be allowed so that the case may be completely heard in one setting.

B. As soon as the parties are apprised of the date scheduled for hearing, they shall immediately notify all medical witnesses in writing and arrange for their presence or for the taking of their deposition pursuant to § 314 C.

C. The production of medical evidence in the form of written reports, by stipulation of the parties, is encouraged. These reports should include:

1. The date of the examination;
2. The history of the injury;
3. The patient's complaints;
4. The source of all facts set forth in the history and complaint;
5. Findings on examination;
6. Opinion as to the extent of disability and work limitations, if any;
7. Cause of the disability;
8. Medical treatment indicated;
9. Opinion as to whether or not permanent disability has resulted from the injury and whether or not it is stationary. If stationary, a description of the disability with a complete evaluation; and
10. The reason or reasons for the opinion or opinions.

D. Rights of parties. All parties shall have the right to present evidence, to cross-examine witnesses, and to present rebuttal testimony and argument with respect to the issues.

E. Witnesses. Any party may be a witness or may present witnesses on his behalf at the hearing. All oral testimony at the hearing shall be under oath or affimation. At the request of a party or upon his own motion, the compensation judge may exclude witnesses from the hearing room so that they cannot hear the testimony of other witnesses.

F. Rules of evidence.

1. Pursuant to Minn. Stat. § 176.411, subd. 1, the compensation judge is bound neither by the common law or statutory rules of evidence nor by technical or formal rules of pleading or procedure.

2. Evidence must be offered to be considered. All evidence to be considered in the case, including all records and documents in the possession of any party, or a true and correct photocopy thereof, shall be offered and made a part of the record in the case. No other factual information or evidence shall be considered in the determination of the case.

3. Documentary evidence. Documentary evidence in the form of copies of excerpts may be received or incorporated by reference upon agreement of the parties or if ordered by the compensation judge.

4. Notice of facts. The compensation judge may take notice of judicially cognizable facts but shall do so on the record and with the opportunity for any party to contest the facts so noticed.

5. Examination of adverse party. A party may call an adverse party or his managing agent or employees or an officer, director, managing agent or an employee of the state or any political subdivision thereof or of a public or private corporation or of a partnership or association or body politic which is an adverse party, and interrogate them by leading questions and contradict and impeach them on material matters in all respects as if they had been called by the adverse party. The adverse party may be examined by his counsel upon the subject matter of his/her examination in chief under the rules applicable to direct examination, and may be cross-examined, contradicted, and impeached by any other party adversely affected by the testimony.

G. The record.

1. The compensation judge shall maintain the official record, other than the stenographic notes of a hearing reporter if one was used, in each case until the issuance of his final order, at which time the record shall be maintained by the Office of Administrative Hearings until the time for appeal of the compensation judge's order has elapsed at which time the record shall be referred to the department.

2. The record in a compensation case shall contain:

a. All pleadings, motions and orders;

b. Evidence received or considered;

c. Offers of proof, objections and rulings thereon;

d. The compensation judge's findings of fact, conclusions and order;

e. All memoranda or data submitted by any party in connection with the case; and

f. A transcript of the hearing, if one was prepared.

g. The audio-magnetic recording tapes, if that device was used to record the hearing.

3. The transcript. The verbatim record shall be transcribed if requested by a party. If a transcription is made, the chief hearing examiner shall require the requesting person and other persons who request copies of the transcript to pay a reasonable charge therefor. The charge shall be set by the chief hearing examiner and all monies received for transcripts prepared by the Office of Administrative Hearings shall be payable to the State Treasurer and shall be deposited in the State Office of Administrative Hearings' account in the State Treasury.

H. Continuances during the hearing. If it appears in the interests of justice that further testimony should be received, the compensation judge, in his/her discretion, may continue the hearing to a future date and such oral notice on the record shall be sufficient.

I. Hearing procedure.

1. Compensation judge conduct. The compensation judge shall not communicate, directly or indirectly, in connection with any issue of fact or law with any party concerning any pending case, except upon notice and opportunity for all parties to participate.

2. Unless the compensation judge determines that the public interest will be equally served otherwise, the hearing shall be conducted substantially in the following manner:

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a. After opening the hearing, the compensation judge shall, unless all parties are represented by counsel, state the procedural rules for the hearing.

b. Any stipulations, settlement agreements or consent orders entered into by any of the parties prior to the hearing shall be entered into the record.

c. The party with the burden of proof may make an opening statement. All other parties may make such statements in a sequence determined by the compensation judge.

d. After any opening statements, the party with the burden of proof shall begin the presentation of evidence. That party shall be followed by the other parties in a sequence determined by the compensation judge.

e. Cross-examination of witnesses shall be conducted in a sequence determined by the compensation judge.

f. When all parties and witnesses have been heard, opportunity shall be afforded to present final argument, in a sequence determined by the compensation judge. Final argument may, in the discretion of the compensation judge, be in the form of written memoranda or oral argument, or both. Oral final argument shall not be recorded, unless requested by a party or upon the order of the compensation judge. Written memoranda shall, when allowed, be submitted simultaneously or sequentially and within such time periods as the compensation judge shall prescribe.

g. After final argument, the hearing shall be closed or continued if ordered by the compensation judge. If continued, it shall be either continued to a certain time and day, which shall be announced at the time of the hearing and made a part of the record, or continued to a date to be determined later, which must be upon not less than five days written notice to the parties.

h. The record of the case shall be closed upon receipt of the final written memorandum, transcript, if any, or late-filed exhibits which the parties and the compensation judge have agreed should be received into the record, whichever occurs latest.

J. Disruption of hearing.

1. Cameras. No television, newsreel, motion picture, still or other camera, and no mechanical recording devices, other than those provided by the Office of Administrative Hearings, shall be operated in the hearing room during the course of the hearing unless permission is obtained from the compensation judge and then subject to such conditions as the compensation judge may impose to avoid disruption of the hearing.

2. Other conduct. Pursuant to and in accordance with the provisions of Minn. Stat. § 624.72, no person shall interfere with the free, proper and lawful access to or egress from the hearing room. No person shall interfere with the conduct of, disrupt or threaten interference with or disruption of the hearing. In the event of such interference or disruption or threat thereof, the compensation judge shall read this rule to those persons causing such interference or disruption and thereafter proceed as he/she deems appropriate.

9 MCAR § 2.318 The compensation judge decision.

A. Basis for the decision.

1. The record. No factual information or evidence which is not a part of the record shall be considered by the compensation judge in the determination of the case.

2. Administrative notice. The compensation judge may take administrative notice of general, technical or scientific facts within his/her specialized knowledge in conformance with the requirements of Minn. Stat. § 15.0419, subd. 4 provided that notice of the taking of such administrative notice is given an opportunity and has been provided to all parties to rebut the facts sought to be noticed.

B. Compensation judge decisions.

1. Following the close of the record, the compensation judge shall prepare his decision and, upon completion, a copy of said decision shall be served upon all parties by personal service, by first class mail, or by depositing it with the Central Mailing Section, Publications Division, Department of Administration.

2. The compensation judge's decision shall contain the following:

a. The date, time and location of the hearing and compensation judge's name.

b. Appearances by parties, if pro se, or their attorneys, giving the full name and mailing address (including zip code) of each.

c. The date on which the record of the hearing closed.

d. A notice of the right of parties to appeal, how the appeal can be perfected, and a notice that a request for rehearing or reconsideration may be made and how such request can be accomplished.

e. A statement of the issues. This shall be a brief statement or the reason or reasons the hearing was necessary. This statement may be broken into sub-issues.

f. The decision shall contain findings of fact, conclusions and a decision on each issue rasied. In cases involving a multiplicity of issues, the compensation judge may organize the findings of fact, conclusions and decision by major sub-issues if he/she determines that organizing the decision in that manner will aid the reader in understanding the contents thereof.

C. Findings of fact.

1. Undisputed facts shall be included in the decision but may be disposed of a summary finding.

2. There shall be specific findings on all major, disputed facts.

3. Findings shall be express rather than inferential.

4. Findings shall be clear, concise and based solely on the evidence in the record before the compensation judge.

5. All facts necessary to reach a conclusion of law shall be included and shall be specific.

6. Findings shall not be a summarization of the position of parties but shall be a statement of the compensation judge's decision on what the facts are.

D. Conclusions.

1. Conclusions shall be based upon the specific findings of fact and the applicable law and shall not set forth new facts.

2. Conclusions shall be clear, concise and specific.

3. Conclusions shall not rest upon a point which was not raised at the hearing or in briefs or argument. If the compensation judge determines that some unexplored issue may be dispositive, he/she shall request supplementary briefs or memorandum.

4. Conclusions shall be stated with respect to all legal issues involved, whether disputed or not.

E. Order. The order shall be clear, concise and specific, and shall include a decision on all issues raised by the hearing.

F. Memorandums. In each case, the compensation judge shall file a memorandum as part of his order which shall state the rationale and support of the findings, conclusions and decisions on each issue in dispute. Memorandums shall include, where appropriate, the compensation judge's determination on credibility of witnesses.

G. Compensation judge decisions shall be clear and concise and shall be written in a prose style which can be read and understood by persons of average intelligence. English rather than Latin terms shall be used unless it is necessary to utilize the Latin terminology.

H. Any party may file a proposed decision with the compensation judge before the record is closed. Any proposed decision submitted shall conform to the provisions of these rules, shall be served on all other parties and shall be in a form which would allow the compensation judge to sign and issue the decision if it is acceptable.

9 MCAR § 2.319 Rehearing and/or reconsideration.

A. When a compensation judge has issued his/her findings, conclusions and decision, his/her jurisdiction over the case shall end after the time in which to appeal to the Workers' Compensation Court of Appeals has expired, except for taxation of disbursements, unless the matter is re-referred to the compensation judge by the Court of Appeals or the chief hearing examiner for supplemental findings, taking of additional testimony, rehearing, or the correction of a clerical error other action.

B. Motions for rehearing or reconsideration shall be filed with the compensation judge who heard the case if the time for appeal to the Court of Appeals has not expired, otherwise it shall be filed with the calendar judge. A motion for rehearing or reconsideration shall be denied if it contains no more than allegations of the statutory grounds for reconsideration, unsupported by specific references to the record and principles of law involved. The motion shall be served on all other parties who have been joined in the proceedings at the same time the motion is filed with the judge. Failure to provide proof of such service shall constitute valid grounds for dismissing the motion.

C. Newly discovered evidence and fraud allegations. Where reconsideration is sought upon the ground of newly discovered

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evidence which could not with reasonable diligence have theretofore been produced or on the ground that the decision had been procured by fraud, the motion must contain an offer of proof, specific and detailed, providing:

1. The names of witnesses to be produced;

2. A summary of the testimony to be elicited from such witnesses;

3. A description of such documentary evidence as is to be offered;

4. The effect it is contended such evidence will have on the record and on the prior decision;

5. As to newly discovered evidence, a full and accurate statement of the reasons why such testimony or exhibits could not reasonably have been discovered or produced before the filing of the decision.

A motion for reconsideration shall be denied if it fails to meet the requirements of this rule or if it is based upon cumulative evidence.

D. Where rehearing or reconsideration has been granted, and the case referred to a compensation judge for hearing, the compensation judge shall, upon the conclusion thereof, prepare a decision in the same fashion as required for decisions following original hearings.

9 MCAR § 2.320 Settlements.

A. Stipulations for settlement are allowed pursuant to Minn. Stat. § 176.521 and shall conform to that section and to the requirements of this rule.

B. All stipulations for settlement shall be filed within 30 days of the date the settlement was negotiated.

C. Stipulations for settlement shall be filed with and approved by a settlement judge of the Department of Labor and Industry if the case has not been referred to the chief hearing examiner.

D. Stipulations for settlement reached and agreed upon subsequent to the referral of the case to the chief hearing examiner shall be filed with the calendar judge.

E. Stipulations for settlement shall contain the following information:

1. A brief statement of all of the admitted material facts;

2. A detailed statement of the matters in dispute, setting forth the contentions of the parties, supported by all medical reports or other documents in the possession of each party pertaining to each issue;

3. The weekly wage and compensation rate of the employee;

4. An itemization of the sums, if any, previously paid by the employer and insurer;

5. A statement that all medical or treatment expenses have been paid by the employer and insurer, or an itemization of the expenses which have not been paid by the employer and insurer, indicating which payments, if any, have been made by the employee. The stipulation shall specifically state whether any third party has paid any of the expenses and, if payments have been made, shall include the name and address of such third party together with any identifying claim or policy number;

6. The number of weeks and rate of compensation and, in cases of permanent partial disability, the percentage loss or loss of use upon which the compromise agreement is based;

7. Where applicable, the amount payable by the employer and insurer to the workers' compensation division for the benefit of the Special Compensation Fund;

8. Where applicable, a statement that the employee has been fully advised of the provisions of Minn. Stat. §§ 176.132 and 176.645, and the effect of the settlement upon any future claims for supplementary benefits or adjustment of benefits;

9. Where applicable, a statement that the employee is claiming or waiving his/her right to make application for an award of attorney's fees against the employer or insurer pursuant to Minn. Stat. § 176.081, subd. 1 or 8, or Minn. Stat. § 176.191.

F. Stipulations for settlement of cases in which the employee or dependents have engaged in services of an attorney shall contain a statement of the amount of attorney's fees and an itemization of the costs incurred, specifying who will be responsible for payment of each cost. It shall be accompanied by a written petition for attorney's fees and costs providing sufficient information to show the reasonableness of the requested fees and costs in accordance with Minn. Stat. § 176.081. If no fees are requested, the stipulation shall so state.

G. Stipulations for settlement shall be accompanied by copies of all medical reports in the possession of the parties which have not previously been filed.

H. The parties involved in the settlement shall submit an Order Approving Stipulation prepared for signature by the applicable judge which shall be submitted with sufficient copies for all parties to receive if the settlement is approved.

I. The attorney representing the employee or dependents shall furnish a copy of the stipulation for settlement to his/her client at the time the client signs the stipulation.

J. Stipulations for settlement shall be signed by all parties as required by Minn. Stat. § 176.521.

K. The employer and insurer shall make payments pursuant to an award on stipulation within 14 days from the date the award on stipulation is served.

9 MCAR § 2.321 Attorney fees.

A. Whenever an employer or insurer receive notice that an attorney is representing an employee or dependent, 25% of the compensation, not including medical expense, shall be withheld pending an order determining the reasonable value of any claim for legal services or disbursements pursuant to Minn. Stat. § 176.081. Written notice that such compensation is being withheld shall immediately be mailed to the employee or dependents, the attorney and the division at its Saint Paul office.

B. In applicable cases, the filing of a claim petition or an objection to discontinuance of compensation shall constitute an application for the award of attorney fees against the employer and insurer pursuant to Minn. Stat. § 176.081, subd. 7.

C. Application for determination and approval of any claim for legal services or disbursements may be filed by the employer or insurer, the employer dependents or the attorney. Application for attorney fees shall be by petition and shall be on a form prescribed by the Division. Any application shall disclose the amount of compensation withheld, the total fees or disbursements previously paid to said attorney or his associates and, if filed by the attorney or the employer dependents, the amount of any retainer fee paid. Applications filed by attorneys shall contain sufficient information to show the reasonableness of the requested fees in accordance with Minn. Stat. § 176.081, subd. 5 and shall be served by the attorney on all parties.

9 MCAR § 2.322 Taxation of disbursements.

A. Service of the request for taxation of disbursements shall be made upon the other parties, or their attorneys, by the taxing party.

B. The opposing party has five working days from the date of service upon him in which to serve and file a formal objection to taxation or allowance, with admission or proof of service upon the other parties.

C. If requested, a time for hearing before the calendar judge shall be fixed. A notice thereof shall be given to the parties by the calendar judge.

9 MCAR § 2.323 Second injury law.

A. Application for registration of physically impaired employees shall be on forms prescribed by the division and submitted pursuant to rules of the commissioner.

B. Should the commissioner deem the application unacceptable prior to the subsequent injury, the applicant may, within 60 days following receipt of notice of rejection, petition to the division, in writing, for hearing upon the application. A copy of said petition shall be served by the applicant upon the State Treasurer, custodian of the Special Compensation Fund, and upon the Attorney General. Upon receipt of said petition, the commissioner shall refer the matter to the chief hearing examiner for hearing which hearing shall be conducted by a compensation judge as provided by Minn. Stat. § 176.411, with right of appeal.

C. If a dispute arises following the notice of intention to claim reimbursement under Minn. Stat. § 176.131, subd. 6, the commissioner shall refer the matter to the chief hearing examiner who shall assign the matter to a compensation judge for hearing which hearing shall be conducted as provided by Minn. Stat. § 176.411, with right of appeal.

9 MCAR § 2.324 Other hearings. Pursuant to the provisions of Minn. Stat. § 15.052, subd. 3, all hearings not discussed herein but required to be conducted by a compensation judge of the Office of Administrative Hearings shall be conducted in substantial compliance with these rules provided, however, that in any dispute wherein an immediate hearing is necessary in order to carry out the purpose and intent of the Minnesota Workers' Compensation Law, the notice of hearing shall be given not less than five working days prior to the hearing date. The chief hearing examiner shall provide expedited assignment of compensation judges to these hearings and shall assign compensation judges to the hearings in a manner which will allow the compensation judge's decision to be issued immediately upon conclusion of the hearing or as soon thereafter as may be reasonable and practical.

9 MCAR § 2.325 Severability. If any provision of these rules is held invalid, such invalidity shall not affect any other provisions of the rules which can be given effect without the invalid provision, and to this end the provisions of these rules are declared severable.

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STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

IN THE MATTER OF THE ADOPTION OF TEMPORARY RULES RELATING TO WORKERS' COMPENSATION.

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, Assistant Attorney General J. Michael Miles, do hereby declare that I have examined the rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General, have been followed. Any exceptions are noted below.

Dated this 11 day of August, 1981.

J. MICHAEL MILES
Assistant Attorney General