

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 772

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 1/7/82
DATE FOR REVIEW 1/18/82
DATE DUE 1/27/82

Adopted w/a hearing ✓
Adopted w/o hearing
Temporary rule

Approved ~~2-2-82~~ Disapproved 1-27-82 Returned to Agency ~~2-2-82~~

Resubmitted 1-28-82 Due 2-7-82
Approved 2-2-82 Disapproved Returned to Agency 2-2-82

Date filed w/Secretary of State 2-2-82 Revisor approved / disapproved

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✓ Rule as Adopted

Rule as Proposed + amendments - OAH Ex I (attached to HE Report) (see SR + material labeled "proposed") / adopted dated 9/21/81

✓ Order Adopting 1.6.82 Date
Amended Order Adopting 1.6.82 Amended Order Adopting 1.15.82

✓ Notice of Intent to Solicit Outside Opinion SR 8/31/81

✓ Order for rulemaking
11.5.81 date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency

✓ Affidavit of Mailing Notice or rulemaking
9.23.81 At least 30 days prior to hearing/~~adoption~~

✓ Mailing list Certificate

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

✓ Hearing Examiner's Report

✓ Chief Hearing ~~Examiner~~'s Report(s) by Designee
✓ 12.21.82 Approving H.E.'s Report in part
✓ 1.6.82 DLS Approving agency action
✓ 1.15.82 " "

✓ Agency's Findings of Fact incorporated in Orders Adopting

N/A LCRAR Report or agency Affidavit

N/A Certificate of Board's Resolution Adopting Rules

Order Approving Incorporation by Reference

✓ 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

✓ Affidavit of Mailing Notice of Submission to Attorney General

✓ Notice of Submission to the Attorney General
not in form recommended by AG. rule, but substantially complies

ADMIN. 1000A (REV. 8/76)

STATE OF MINNESOTA

DEPARTMENT _____

Office Memorandum

TO : AG

DATE: 1-6-82

FROM : DR Harves

PHONE: _____

SUBJECT: This packet contains the items refuired specifically by your rules, except for the Cert. of Compliance which T.M. Miles has. The Order adopting includes adoption of the Hearing Examiner's Findings etc., so there is no separate document. The balance of the record is in another packet attached

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : DUANE HARVES
Chief Hearing Examiner
Office of Administrative Hearings

DATE: 2/2/82

FROM : TED A. MARTINEZ
Special Assistant
Attorney General

PHONE: 296-0315

SUBJECT: In the Matter of the Adoption of Rules Relating to the Procedural Requirements of Workers' Compensation Hearings

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:drw

Encs.

cc: Ms. Kathy Burek
Mr. Duane Harves

ADMIN 1000

STATE OF MINNESOTA

DEPARTMENT OFFICE OF ADMINISTRATIVE HEARINGS · Office Memorandum

TO : J. MICHAEL MILES
Assistant Attorney General

DATE: 1/15/82

FROM : DUANE R. HARVES
Chief Hearing Examiner

PHONE: 341-7640

SUBJECT: RULES OF THE OFFICE RELATING TO WORKERS' COMPENSATION

Enclosed is an Amended Order Adopting Rules and Order of the Chief Hearing Examiner's Designee relating to the substantial change issue.

The first changes relate to changes in form required by the Revisor. The second changes are necessitated by the recently enacted Special Session III law.

Finally, in reviewing the Revisor's January 11, 1982, draft, we found other changes made by the Revisor which we are not adopting. By copy of this memo, we are requesting the Revisor to review the changes we are adopting in the amended order and to change the others with which we disagree.

The changes we are requesting the Revisor to make on the January 11, 1982, draft, other than those in the amended order, are:

1. Page 6, line 3, delete "one" and insert "the".

2. Page 23, line 27, delete "statement" and insert "statements".

3. Page 25, line 23, delete "one" and insert "the".

DRH:sh
Encs.
cc: Paul Marinac, Revisor's Office

Office of Administrative Hearings

Adopted Permanent Rules Relating to Workers' Compensation

Rules as Adopted

9 MCAR S 2.301 Scope and purpose. The procedures contained in 9 MCAR SS 2.301-2.326 shall govern all hearings required to be conducted pursuant to the provisions of the Minnesota workers' compensation laws, Minn. Stat. ch. ~~82~~ 176 and the Minnesota Administrative Procedure Act, Minn. Stat. SS 15.0411-15.052, 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 in the cases.

B. Authority of compensation judges. In any case which has been regularly assigned to him or 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 or 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. For the purposes of 9 MCAR SS 2.301-2.326, the following terms have meanings given them.

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

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

3. "Commissioner" means the Commissioner of the

Department of Labor and Industry.

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

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

6. "Office" means the Office of Administrative Hearings.

~~6.~~ 7. "Petition" means 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.~~ 8. "Petitioner" means the injured employee, an heir or dependent of a deceased employee or a party filing on their behalf or an employer or insurer.

~~8.~~ 9. "Settlement judge" means a workers' compensation judge from the Department of Labor and Industry.

9 MCAR S 2.303 Joinder of parties.

A. Request. Upon a motion of any party or upon his or her own motion, a ~~settlement or calendar~~ 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 by the party requesting joinder with copies of the order of joinder and all pleadings in the case.

B. Service. Any party requesting joinder of additional parties shall serve a copy of the request on all existing parties, and the party to be joined, and file the original with proof of service with the ~~settlement or calendar~~ compensation judge no later than ten days prior to the pretrial or settlement conference, or within 15 days after receipt of a pretrial order, unless the 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 request is served on the party to be joined, it shall be accompanied by copies of all

pleadings and the notice of the date, time and place set for a settlement conference or ~~prehearing~~ pretrial conference.

C. Affidavit. When a party requests joinder less than ten days prior to the pretrial or settlement conference date or more than 15 days after receipt of a pretrial order, the request shall include an affidavit of the requesting party stating the facts necessary to show cause why the lesser time should be allowed.

D. Delay. In cases where the ~~settlement or calendar~~ compensation judge has denied the joinder because of the requesting party's failure to meet the ~~ten-day~~ time ~~requirement~~ requirements, the case shall not be stricken, continued or otherwise delayed for the purposes of joinder, unless the attorney for the ~~employee or dependent~~ petitioner consents to it.

E. Contents of motion. All motions for joinder shall contain at least the following:

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

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

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

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

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.

F. Objection. A party contesting joinder under 9 MCAR S 2.303 may do so by objection filed with the ~~settlement or calendar~~ compensation judge within ten 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 Commencement of proceedings; petitions; responsibilities of attorneys; notice to third parties.

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

commenced by the service of a petition as provided by Minn. Stat. S 176.305. ~~Any petition filed on behalf of an employee or his or her dependents shall certify that 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. Consolidation of claims. 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.

~~C. Contents of petitions. A petition shall contain the following information which shall be in the sequence listed in 1.-21.~~

~~1. Title. The title of the case shall include the petitioner's name, the employer's name and address, the insurer's name and address, the division's record number and the employee's social security number;~~

~~2. The petitioner's address;~~

~~3. The date of the alleged personal injury or onset of occupational disease;~~

~~4. The place of employment on the date of the alleged injury or disease;~~

~~5. The employee's weekly wage at the time of the alleged injury or disease;~~

~~6. A statement that the injury or disease arose out of and in the course of the employment;~~

~~7. A statement which specifies the nature and extent of the alleged injury or disease, including the percentage of disability, if known, attaching a copy of all medical reports;~~

~~8. The date on which the employer was first given notice of the alleged injury or disease and the manner in which the notice was given;~~

~~9. The name and address of the employer's insurer on the date of the alleged injury or disease or if the employer was self-insured, a statement to that effect;~~

~~10.~~ A detailed listing of the dates of the alleged disability, stating whether each date was for temporary total, temporary partial, permanent total, or permanent partial disability;

~~11.~~ A detailed list of the medical benefits alleged to be owing, giving the names, addresses, dates of treatment or purchase of drugs, or other compensable items;

~~12.~~ The names and addresses of any third parties who have paid disability, medical or other benefits to the employee as a result of the alleged injury or disease, listing the dates and amounts of the payments, and the relevant claim number or policy number;

~~13.~~ A statement that attorney's fees are or are not requested;

~~14.~~ A statement that the employer and insurer were notified, as required by Minn. Stat. § ~~176.271~~, subd. 2, that a proceeding would be instituted and stating the relief sought, giving the date of the notice and attaching a copy of the notice;

~~15.~~ A signature and attestation by the employee;

~~16.~~ The name, address and telephone number of the employee's attorney unless the employee is representing himself or herself;

~~17.~~ A statement that a settlement or prehearing conference is or is not requested and, if so, the requested location for the conference;

~~18.~~ A statement indicating the number of lay and medical witnesses expected to be called as witnesses and the anticipated length of their testimony;

~~19.~~ A statement specifying the principal issues to be resolved at hearing;

~~20.~~ A statement that the employee is or is not presently receiving workers' compensation benefits and, if the employee is, the amounts and the name and address of the paying party; and

~~21.~~ The requested location for the regular hearing.

~~B.~~ C. Heading of petition. Unless otherwise provided by

law, all requests for action by ~~the commissioner, a settlement, calendar or~~ a compensation judge after the filing of a petition shall contain the ~~title~~ caption, the employee's social security number, and appropriate identification number of the case and shall indicate the type of action requested.

~~E.~~ D. Responsibilities of attorneys; notice to third parties. All attorneys representing employees, employers, or any other parties to a workers' compensation proceeding shall inquire of their clients ~~at the time the proceeding is commenced, and again~~ within five days of receipt of a notice of ~~prehearing~~ a pretrial order or pretrial conference, as to whether any third party, other than the workers' compensation insurer, has paid wage loss benefits or treatment expense to the employee or in the employee's behalf.

If inquiry discloses that any third party, such as an insurer or a welfare department, has made any such payments, the attorney discovering that fact shall then have the duty to place the third party on written notice, ~~within five days,~~ of its right to petition for intervention and reimbursement. The written notice shall have attached to it a copy of 9 MCAR S 2.310 and also a copy of all pleadings in the case and a copy of all notices and all orders of the ~~workers' compensation~~ division ~~of the department of labor and industry~~ and of the office ~~of administrative hearings~~ served in the case to date, and shall specifically advise that:

1. The ~~employee~~ petitioner has commenced a proceeding to recover workers' compensation benefits, and that under Minn. Stat. S 176.361 and 9 MCAR S 2.310 the third party has the right to petition for intervention and reimbursement of payments made for treatment and wage loss;

2. The name and address of all parties to the proceeding and the names and addresses of their attorneys;

3. The name of the third party's insured, the nature of the payments made, and any identifying claim and policy number;

4. Any failure of the third party to comply with any provisions of 9 MCAR S 2.310 shall result in a denial of the

claim for reimbursement unless the compensation judge determines that the error or omission is merely technical.

Failure of ~~an employee's~~ a petitioner's attorney to comply in a timely manner with this rule shall be taken into consideration as an additional significant factor in determining the attorney's fee under Minn. Stat. S 176.081.

Failure of an attorney representing an employer and insurer to comply in a timely manner with this rule shall be taken into consideration for purposes of determining whether a penalty shall be assessed against the employer and insurer under Minn. Stat. S 176.225 for unreasonable or vexatious delay.

~~Where inquiry by the attorney for the injured employee at the time a proceeding is commenced discloses information that a third party has made payments, the employee's claim petition shall not be accepted for filing and the proceeding shall not be considered commenced unless the claim petition is accompanied by a proof of service of written notice upon the third party, unless the time for commencing an action under the statute of limitations in Minn. Stat. S 176.151 has run. The written notice shall be in the form prescribed by 1.-4.~~

9 MCAR S 2.305 Settlement ~~judge review and settlement~~ conferences.

~~A. Referral. Upon the filing of a petition, the commissioner, within ten days, shall refer the matter to a settlement judge who shall review the filing to determine whether a settlement conference is appropriate.~~

~~B. Disposition. If a settlement conference has been requested or is deemed appropriate by the settlement judge, he or she shall notify all parties of the date, time and place where the settlement conference will be conducted. The settlement conference shall be completed within 60 days of the date of referral of the petition by the commissioner. If a settlement conference has not been requested or is deemed to be inappropriate, the settlement judge shall certify the matter to the chief hearing examiner.~~

~~C. Retention of jurisdiction. If the settlement conference~~

~~cannot be concluded within 60 days, the settlement judge shall certify the matter to the chief hearing examiner, provided, however, that with the consent of the petitioner or his or her representative, the settlement judge may retain jurisdiction for an additional 60 days for purposes of receiving a full settlement of all issues.~~

~~D.~~ A. Settlement alternatives not precluded. Nothing contained in ~~this rule~~ these rules 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~~ they prohibit the chief hearing examiner or ~~calendar~~ compensation judge from setting a settlement conference on his or her own motion once the matter has been received from the commissioner.

~~E.~~ B. Attendance. 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.

~~F.~~ C. Matters agreed upon. If, following a settlement conference, a 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 or she approves of those matters agreed upon, issue an order confirming and approving those matters agreed upon. The order shall be binding on any compensation judge who may subsequently be assigned to hear the case. Issues once agreed upon and approved may be reopened by the compensation judge only upon motion of any party on the basis of newly discovered evidence which was not reasonably discoverable at the earlier time.

9 MCAR S 2.306 Notice of intention to discontinue compensation payments.

~~A. Contents. A notice of intention to discontinue compensation filed pursuant to Minn. Stat. S 176.241, shall contain the following information.~~

~~1. The name and home address of the person whose~~

compensation would be discontinued;

2. The file number previously assigned by the division and the office of administrative hearings;

3. The name and address of the attorney, if any, who represented the employee during previous proceedings;

4. A description of the prior order, if any, under which compensation was being paid and the name of the person issuing the order;

5. The date the compensation is proposed to be discontinued;

6. A complete list of facts supporting the discontinuance which shall be prepared with sufficient specificity to allow the employee to prepare an objection without the necessity of requesting additional information;

7. If the proposed discontinuance is based on medical evidence, copies of all medical reports bearing on the employee's physical condition at the time of the proposed discontinuance;

8. A statement which shall read as follows:

NOTICE

You have the right to object to this proposed discontinuance. If you intend to object, you must prepare a written objection and file it with the Commissioner of the Minnesota Department of Labor and Industry, Fifth Floor, Space Center Building, 444 Lafayette Road, St. Paul, Minnesota 55101. You may contact (employer) or (insurer) regarding the discontinuance and the procedures related to the filing of an objection. If you file an exemption, it may be mailed or personally delivered to the Department of Labor and Industry at the address listed above. An objection must contain your full name, address and telephone number, the name of the employer and insurer, the date of this notice and the file number listed on this notice.

9. The name and address of the employer and insurer;

10. The name, address and telephone number of the attorney representing the employer or insurer; and

11. The name, address and telephone number of the person filing the notice.

B. Objections.

1. Any objection to the proposed discontinuance shall be in writing, shall be filed with the commissioner, and shall

~~contain the following information:~~

~~a. The name, address and telephone number of the employee;~~

~~b. The name, address and telephone number of the person filing the objection, if it is not the employee;~~

~~c. The name of the employer and insurer;~~

~~d. The date of the notice of discontinuance; and~~

~~e. The file numbers which were listed on the notice of discontinuance.~~

~~2.~~ A. Hearing. When an objection to a notice of intention to discontinue compensation payments has been filed or where it appears to the commissioner that the right to compensation may not have terminated, and the matter ~~shall be~~ has been referred to the chief hearing examiner ~~who~~, it shall be set ~~the matter~~ for hearing on a priority basis not less than 30 nor more than 75 days from the date of the receipt of the matter from the commissioner.

~~3.~~ B. Objection as claim petition. Any objection filed more than 120 days after service of a notice to discontinue shall be treated as a claim petition for purposes of scheduling a hearing and shall not be heard on a priority basis.

C. Petitions for discontinuance. When an employer or insurer petitions the commissioner for an order allowing discontinuance of benefits but has chosen not to discontinue payments until after a final determination and the matter has been referred to the chief hearing examiner, the petitioner shall be entitled to a hearing on the same priority basis as set forth in ~~B.2. Petitions filed under this provision shall contain the same information as required for a notice of discontinuance~~ A.

~~9 MCAR § 2.307 Answers.~~

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

~~B. Proof of service. The answer shall be accompanied by~~

~~proof of service upon the opposing parties.~~

~~C. Contents. 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 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 notice of intention to initiate proceedings. Any request for an extension 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.~~

9 MCAR S ~~2.308~~ 2.307 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.

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 or on a party may be served by or on 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 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.

9 MCAR S ~~2.309~~ 2.308 Hearings.

A. Definition of hearing. For the purposes of 9 MCAR SS 2.301-2.326, a hearing may be called a settlement conference, a ~~prehearing~~ pretrial 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~~ proceeding conducted by a ~~settlement~~ compensation judge. It is 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 the matter. ~~The conference may be conducted by telephone and in the cases where 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~~ pretrial conference may be required whether or not a settlement conference has been held and may be conducted by telephone. The purposes of a ~~prehearing~~ pretrial conference are to ascertain if there are genuine disputes requiring resolution by a calendar or compensation judge, to provide assistance to the parties in resolving disputes, to narrow the issues, and to expedite preparation and trial if a regular hearing is necessary. A ~~prehearing~~ pretrial conference is conducted by a calendar or compensation judge. It shall be conducted by telephone if the location set for the ~~prehearing~~ pretrial 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~~ 2.307 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~~ pretrial conference shall be sufficient notice. Each attorney receiving notice of the hearing date at a settlement or ~~prehearing~~ pretrial conference shall be responsible for notifying each party the attorney represents of the hearing date. When a written notice is required, it shall be given at least ~~five~~ 30 days prior to the date of hearing, except:

1. When notice is waived by all parties;

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

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

~~C.~~ 9 MCAR S 2.309 Continuances.

~~1.~~ A. Continuances not favored. 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 the 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.~~ B. Request. 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, which date has been approved by the compensation~~, calendar or settlement~~ or calendar judge before whom the matter is pending, and when the continuance request is made no less than ten working days prior to the hearing date, the continuance shall be granted.

~~3.~~ C. Motion. If all parties have not agreed to a continuance, requests for continuances shall be made to the compensation, or calendar ~~or settlement~~ judge before whom the matter is pending. When made more than ten 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. If less than ten working days remain prior to the 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.~~ D. Good cause. Good cause shall not include:

~~a.~~ 1. When 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.~~ 2. When 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.~~ 3. 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.~~ 4. 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. Motion. 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 matter has been 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~~ a 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. A motion to intervene shall be served and filed within 30 days after a person has received notice that a claim petition has been filed as provided in 9 MCAR S 2.304 D. In any other situation, 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, 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;

8. At the option of the intervenor, a proposed stipulation which states 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 petitioner is successful in proving the compensability of the claim, it is agreed that the sum be reimbursed to the intervenor.

B. Stipulation. When the person serving the motion for intervention has included a proposed stipulation, all parties shall either execute and return the signed stipulation to the intervenor or serve upon the intervenor and all other parties specific and detailed objections to any payments made by the intervenor which are not conceded to be correct and related to the injury or condition the ~~employee~~ petitioner has asserted is compensable. If a party has not returned the signed stipulation or filed objections within ~~20~~ 30 days of service of the motion, the intervenor's right to reimbursement for the amount sought shall be deemed to ~~have been~~ be established ~~without the necessity of the intervenor participating further in the proceedings~~ provided that the petitioner's claim is determined to be compensable.

C. Attendance by intervenor. Unless a stipulation has been signed and filed or the intervenor's right to reimbursement has otherwise been established, the intervenor shall attend all settlement or ~~prehearing~~ pretrial conferences and shall attend the regular hearing if ordered to do so by the compensation judge.

D. Order. If an objection to intervention remains following settlement ~~and prehearing~~ or pretrial 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. Presentation of evidence by intervenor. Unless a stipulation has been signed and filed or the intervenor's right to reimbursement has otherwise been established, at the regular hearing on the claim petition where intervention has been granted, the intervenor shall present evidence in support of his or her claim ~~after the 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. Effects of noncompliance with rule. 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 merely technical.

G. Failure of attorney to respond. Failure by the ~~employee's~~ petitioner's attorney to submit a timely response which also complies otherwise with this rule shall be a significant additional factor to be taken into consideration under Minn. Stat. S 176.081 in determining the amount of the attorney's fees. Failure by an attorney representing an employer or insurer to submit a timely response which also complies otherwise with the requirements of this rule shall be taken into consideration for purposes of determining whether a penalty shall be assessed against the employer or insurer under Minn. Stat. S 176.225 for unreasonable or vexatious delay.

9 MCAR S 2.311 Consolidation.

A. Authorization. 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 affect the rights of the parties in the other case; and

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

Notwithstanding the requirements of this rule, the parties may stipulate and agree to such consolidation.

B. Receipt of evidence. Under consolidation, all documentary evidence previously received in an individual case shall be reintroduced in the 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, the

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~~ pretrial conference if one has been requested.

D. Objection to consolidation.

1. Motion for severance. Any party may object to consolidation by filing with the 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~~ the motion.

2. Determination. If the ~~appropriate~~ judge finds that consolidation would prejudice the rights of the party moving for severance, the judge shall order such severance or other relief as he or 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. ~~Procedures.~~ A compensation judge shall withdraw from participation in a case at any time if the judge deems himself or herself disqualified, prejudiced or biased for any reason. Proceedings to disqualify a compensation judge shall be initiated by the service on all parties and 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 days after the moving party has received notice of the assignment of the judge to the hearing or has knowledge of the grounds for disqualification, whichever occurs last. 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.

B. Affidavit for reassignment. The petitioner and parties responding to a petition shall be entitled to reassignment of a regular hearing to another compensation judge in accordance with the provisions of this section. Proceedings for a reassignment shall be instituted by the filing of an affidavit under penalty of perjury in substantially the following form:

State of Minnesota

ss

County of .....

....., being duly sworn, deposes and says: That (s)he is (a party) (attorney for a party) to the above entitled case, that affiant believes that (s)he cannot have a (fair) (expeditious) (inexpensive) (unencumbered) (impartial) trial before the workers' compensation judge (before whom the case is pending) (to whom the case is assigned).

.....

Subscribed and sworn to before me

this.....day of....., 19...

.....

~~Notary Public~~

~~My commission expires~~

~~If the compensation judge assigned to hear the case is known, the affidavit shall be filed not more than five working days after receipt of the notice of regular hearing and be directed to the attention of the chief hearing examiner. A copy of the affidavit shall be served on all other parties or their attorneys at the same time the affidavit is filed. In no event shall any such affidavit be entertained after the swearing of the first witness at a regular hearing.~~

~~Upon the filing of an affidavit for reassignment in accordance with the provisions of this section, without any further act or proof, the chief hearing examiner shall assign the case or proceeding to another compensation judge. Upon reassignment a new notice of regular hearing shall be served. Under no circumstances shall more than one such reassignment be made in any one case or proceeding pursuant to the affidavit of any one party, provided, however, that one additional reassignment may be made upon petition of a party on the other side. The petition by the other party shall be filed in the manner and time hereinbefore provided.~~

Unless required because of the unavailability of a compensation judge to hear the case, no continuance shall be granted by reason of ~~an affidavit filed~~ a disqualification under this section. If a continuance is necessary, another regular hearing will be scheduled as early as possible.

Consolidated cases are to be considered as one case within the meaning of this section. This section is not applicable to settlement or pretrial conferences.

9 MCAR S 2.313 ~~Prehearing~~ Pretrial procedures.

A. Requirement. All cases shall be subject to a settlement conference or a ~~prehearing~~ pretrial conference ~~whenever possible,~~ at which all parties shall attend or be represented, unless a ~~settlement judge or~~ calendar or compensation judge orders otherwise. A compensation judge shall order that a pretrial or settlement conference be conducted if any party

requests that one be conducted. If parties are represented by attorneys, the attorneys 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~~ pretrial conference must have authority to settle their respective claims.

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

C. Conference procedures. At the settlement or ~~prehearing~~ pretrial 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~~ pretrial conference shall be filed as soon as available prior to the regular hearing;

5. Each party shall state what exhibits, including 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 ten 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, it shall pay the expense for the showing and may tax this expense in the same manner as other disbursements;

6. If the ~~employee~~ petitioner plans to introduce hospital records into evidence, the ~~employee~~ petitioner or his attorney

shall bring to the settlement or ~~prehearing~~ pretrial conference written authorizations for opposing counsel to examine those records if the authorizations have not previously been provided;

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

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

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

10. The 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. If payment has been made, the name and address of the party making payment shall be furnished to the ~~settlement or~~ calendar or compensation judge, 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 ten days prior to the

settlement or ~~prehearing~~ pretrial conference, copies of the relevant wage records of the ~~employee~~ petitioner;

12. The attorney for the ~~employee or dependents~~ petitioner shall furnish to the ~~settlement or~~ calendar or compensation judge a copy of his retainer agreement with the ~~employee or dependents~~ petitioner 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. ~~Prehearing~~ Pretrial statement. At the time a case is first set for a settlement or ~~prehearing~~ pretrial conference or prior to setting the date for a regular hearing, if the information is not already on file, the ~~settlement judge or~~ calendar or compensation judge may order the parties to complete, serve on each other and file a ~~prehearing~~ pretrial statement which shall contain any of the items in C. which the ~~settlement or calendar~~ judge deems appropriate. In making a determination on the requirement of the preparation of ~~prehearing~~ pretrial 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, extent and type of disability claimed. When a pretrial statement has been ordered, the petitioner shall serve and file a statement within 20 days of the date of the order. The responding parties shall serve and file their statement within 30 days of the date of the order. Thereafter, a petitioner may serve and file an amended pretrial statement based solely on information presented in the responding parties' statements and not on new issues, which amended statement shall be filed within 40 days of the date of the order.

E. Evidence not disclosed at conference. Evidence, or other matters listed in C. which have not been disclosed at the ~~prehearing~~ settlement or pretrial conference or in a pretrial statement shall not be allowed to be presented at the regular hearing unless it can be shown to the compensation judge that the evidence or other matters offered were discovered subsequent

to the ~~prehearing~~ filing of a pretrial statement or pretrial conference, whichever occurs last, were not discoverable through the exercise of due diligence prior to that time, and that the other parties have been advised of the evidence or other matters prior to the trial and have had an opportunity for review.

F. Temporary orders. Any insurer or self-insurer voluntarily agreeing to pay benefits pursuant to Minn. Stat. S ~~176.91~~ 176.191, subd. 1, while the case is pending before the office, shall file a formal petition for temporary order.

1. The petition shall contain the following:

a. Name of the employer and its insurer (or self-insured) consenting to payment of compensation benefits and medical expenses;

b. The dispute involved, including the name and address of other employer and its workers' compensation insurer, if known, that may be liable for workers' compensation benefits and the date of the alleged injury while working for the employer;

c. The beginning date of the employee's present disability, and the compensation rate that the insurer or self-insurer will voluntarily pay;

2. The original petition for temporary order, with proof of service on all necessary parties, shall be filed with ~~the division, the office, or the court of appeals, depending upon where the matter is pending~~;

3. The petition for temporary order shall be accompanied by a prepared formal order that should be substantially in the following form:

The undersigned having examined the foregoing petition for temporary order and the compensation files and records herein, and it appearing that a temporary order for payment of compensation benefits should be issued pending a final determination, as provided by Minn. Stat. S 176.191, subd. 1;

NOW, THEREFORE, IT IS HEREBY ORDERED, that (name of insurer or self-insured) having consented to payment of compensation benefits pursuant to Minn. Stat. S 176.191 shall pay to (name),

~~employee~~ petitioner, compensation at the weekly rate of $(amount), during the period of ~~employee's~~ petitioner's disability, beginning (date), and shall also pay reasonable medical expenses related to ~~employee's~~ petitioner's said disability.

IT IS FURTHER ORDERED, that following a final determination of liability and if it has been determined that some other employer or insurer is liable for all or part of the compensation paid pursuant to this temporary order, then the division, the compensation judge, or Court of Appeals shall order the parties held liable to reimburse (name of paying party) for all or part of the compensation paid pursuant to this temporary order, for which the other parties are held liable, including interest at the rate of five percent per annum.

Dated at....., Minnesota

this.....day of.....

~~(WORKERS' COMPENSATION DIVISION)~~

(COMPENSATION JUDGE)

~~(COURT OF APPEALS)~~

.....

By.....

The original and sufficient copies of the order to make service upon all necessary parties, and any attorneys representing them, shall be filed.

G. Payment of benefits by special compensation fund. ~~An~~ ~~employee~~ A petitioner seeking payment of benefits by the special compensation fund pursuant to Minn. Stat. S 176.191, subd. 2, when the case is pending before the office, shall file a formal petition for temporary order.

1. The petition shall contain the following:

a. A statement that written demand for payment pursuant to Minn. Stat. S 176.191, subd. 1, has been made against all employers and insurers party to the claim and that the payment demanded has been refused;

b. The names and addresses of all employers and

insurers or self-insurers who are parties to the claim;

c. A statement as to the dispute involved and the dates of all alleged injuries while working for each employer;

d. The beginning date of the ~~employee's~~ petitioner's present disability, the compensation rate applicable for each injury date, the proposed compensation rate to be paid by the special compensation fund, and an itemization of all medical expenses requested to be paid pursuant to the temporary order;

e. Copies of all medical reports supporting the claimed period of disability and the causal relationship of that disability to the petitioner's employment.

2. The original of the petition for temporary order, with proof of service on all necessary parties, shall be filed with ~~the division,~~ the office~~, or the court of appeals, depending upon where the matter is pending~~;

3. The petition for temporary order shall be accompanied by a prepared formal order that should be substantially in the following form:

The undersigned having examined the foregoing petition for temporary order and the compensation files and records herein, and it appearing that a temporary order for payment of compensation benefits should be issued pending a final determination, as provided by Minn. Stat. S 176.191, subd. 2;

NOW, THEREFORE, IT IS HEREBY ORDERED that the State Treasurer, as custodian of the special compensation fund, shall, pursuant to Minn. Stat. S 176.191, subd. 2, pay to (name), ~~employee~~ petitioner, compensation at the weekly rate of $(amount), during the period of ~~employee's~~ petitioner's disability, beginning (date), and shall also pay reasonable medical expenses related to the ~~employee's~~ petitioner's said disability.

IT IS FURTHER ORDERED, that following a final determination of liability and if it has been determined that one or more employers or insurers are liable for all or part of the compensation paid pursuant to this temporary order, then the division, the compensation judge or Court of Appeals shall order

the parties held liable to reimburse the State Treasurer, as custodian of the special compensation fund, for all or part of the compensation paid pursuant to this temporary order, for which the other parties are held liable, including interest at the rate of 12 percent per annum.

Dated at....., Minnesota

this.....day of.....

~~(WORKERS' COMPENSATION DIVISION)~~

(COMPENSATION JUDGE)

~~(COURT OF APPEALS)~~

.....

By.....

The original and sufficient copies of the order to make service upon all necessary parties, and any attorneys representing them, shall be filed.

H. Necessary parties. For the purpose of this rule, the following shall be deemed necessary parties:

1. The ~~employee or dependents~~ petitioner;

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

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 the petition is made pursuant to Minn. Stat. S 176.191, subd. 2.

I. Answer. Within ten days after being served with a copy of the petition for temporary order and order hereunder, employers or their insurers, other than paying party, or the state treasurer, as custodian of the special compensation fund, may file a verified answer to the petition in accordance with the provisions of Minn. Stat. S 176.321.

J. Circumstances of nonapproval of temporary orders. Temporary orders, as a general rule, shall not be approved if made contingent upon the waiver by the ~~employee~~ petitioner of his rights to claim an additional award pursuant to Minn. Stat.

S 176.225, or to have fees for his attorney assessed against the employer and insurer in addition to compensation pursuant to Minn. Stat. S 176.191 or 176.081, subd. 8.

K. Effect of filing. The filing of a petition for temporary order shall not cause the matter to be placed on the trial calendar, unless accompanied by a petition for contribution or reimbursement.

9 MCAR S 2.314 Discovery.

A. Demand. Each party shall, within 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 the 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 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 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 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. 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. 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 motion shall state, with specificity, the facts or other reasons supporting the need for the deposition. The ~~settlement,~~ compensation or calendar judge shall order the deposition to proceed if the judge 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, that unusual or extraordinary circumstances exist which compel extensive discovery, or 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~~ witness shall be allowed. Unless, for good cause shown, the party taking the deposition has obtained the permission of the calendar judge, or compensation judge if the case has been assigned for hearing, to take the deposition subsequent to the hearing, it shall be taken sufficiently in advance of the hearing so that the deposition is filed prior to or at the commencement of 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.

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 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, is not for purposes of delay, and that the issues or amounts in controversy are significant enough to warrant extensive discovery.

D. Penalties. Upon the failure of a party to reasonably comply with 9 MCAR SS 2.301-2.326 relating to discovery or with an order of 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 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 that party from introducing designated matters in evidence.

E. Proprietary information. When a party is asked to reveal material which that party considers to be proprietary information or trade secrets, he or 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 Petitions for contribution or reimbursement.

A. Contents. Petitions for contribution or reimbursement in cases pending before the office 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 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 parties named in it.~~

B. Filing. ~~In all cases where a claim petition or other form of action is pending,~~ A petition for contribution or reimbursement under this rule shall be filed no later than ten days prior to a ~~settlement or prehearing~~ pretrial conference or within 20 days of receipt of a pretrial order if a pretrial conference is not automatically set, and copies of all pleadings, including any notice of ~~settlement or prehearing~~ pretrial conference shall be served upon the additional employers or insurers by the party bringing the petition. ~~In cases where no action is pending, the filing of the petition for contribution or reimbursement with the division shall initiate proceedings.~~

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

D. Notice to ~~employee~~ petitioner. The ~~employee~~ petitioner shall be notified of all of the proceedings and should be represented by an attorney of his or her choice. A copy of all motions or answers shall be duly served upon the ~~employee~~ petitioner, the ~~employee's~~ petitioner's attorney, or both 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 with it, the calendar judge or compensation judge, if the case has been assigned for regular hearing, may quash or modify the subpoena if the judge finds that it is unreasonable or oppressive.

9 MCAR S 2.317 The hearing.

A. Notice. A place, date and time certain will be assigned to each case. Notice of the regular hearing will be given as soon as the assigned date is known, but shall be given at least ~~five~~ 30 days in advance of the hearing. The notice will include the place of hearing and the amount of time allowed for the hearing and the name of the compensation judge assigned, if known. 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. Availability of medical witnesses. 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 B.

C. Medical reports. 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 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 the disability;

8. The medical treatment indicated;

9. If permanent partial disability is an issue, an opinion as to whether or not permanent disability has resulted from the injury and whether or not the condition has stabilized. If 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.

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. 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 or 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 the judge's final order.

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;

d. Offers of proof, objections and rulings thereon;

e. The compensation judge's order;

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

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

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

3. The transcript.

a. The chief hearing examiner shall direct that the verbatim record of a hearing shall be transcribed if requested by any person. If a transcription is made, except as provided in c., the chief hearing examiner shall require the requesting person and other persons who request copies of the transcript to pay a reasonable charge for them if transcribed by the office. If transcribed by someone other than the office, the person requesting the transcription or a copy shall be liable to the person preparing the transcript for the charge.

b. Charges for transcripts prepared by the office shall be set by the chief hearing examiner, with the approval of the Department of Finance, and all moneys received for transcripts prepared by the office shall be payable to the State Treasurer, Office of Administrative Hearings Account.

c. Pursuant to the provisions of Minn. Stat. S 176.421, subd. 4, clause (3), a party may petition the chief hearing examiner for an order directing that a transcript be prepared, for purposes of appeal to the Court of Appeals, at no cost to the appellant. A petition filed under this provision shall include the following:

(1) ~~Title~~ Caption of the case;

(2) Case identification numbers;

(3) Name, address and telephone number of the attorney representing the appellant;

(4) A sworn affidavit from the appellant which shall include:

(a) Appellant's monthly personal income from all sources including income from trusts, bonds, and savings certificates;

(b) A list, at market value, of all stocks, bonds, savings certificates or other certificates of indebtedness held by the appellant and the appellant's spouse if residing in the same household;

(c) If residing in the same household, the monthly personal income from all sources for appellant's spouse;

(d) A statement of the monthly expenses for the appellant's household;

(e) If the appellant owns any rental property, a statement showing the appellant's equity in the property and the monthly income and expense for the property;

(f) If the appellant owns outright or is purchasing the property in which he or she resides, a statement showing the market value of the property, the appellant's equity in the property, and the present monthly payments, if any.

H. Continuances during the hearing. If it appears in the interests of justice that further testimony should be received, the compensation judge, ~~in his or her discretion~~ with the consent of all parties, may continue the hearing to a future date and 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 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. After the time the first witness is sworn, unless all parties agree, all of the proceedings shall be on the record, including any and all motions, objections, offers of proof, rulings of the judge, arguments of the parties other than final arguments, or other comments of the parties, their representative, or the judge. A compensation judge shall not order a court reporter to refrain from recording anything said during the course of a hearing absent the consent of all parties present nor shall a compensation judge turn off an audio magnetic recording device being used to record the proceedings, other than for reasonable breaks, absent the consent of all parties present.

2. Unless the compensation judge determines that the 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 shall proceed first. All other parties 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 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 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 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 interference or disruption or threat thereof, the compensation judge shall read this rule to those

persons causing the interference or disruption and thereafter proceed as the judge deems appropriate.

9 MCAR S 2.318 The compensation judge's 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 the judge's 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 and opportunity 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 or her decision and, upon completion, ~~shall immediately file it with the commissioner who shall serve it on all parties as required by Minn. Stat. S 176.281~~ it shall be served on all parties.

2. The compensation judge's decision shall contain the following in the sequence as listed:

a. The date 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;

e. Findings of fact, conclusions and a determination on each issue raised. In cases involving a multiplicity of issues, the compensation judge may organize the decision by major subissues if the judge determines that organizing the decision in that manner will aid the reader in understanding the contents of it.

C. Readability. 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.

D. Proposed decision filed by party. 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. It shall also include a brief memorandum setting forth the issues and explaining the decision on each issue.

9 MCAR S 2.319 Rehearing. When a compensation judge has issued his or her findings, conclusions and decision, the judge's jurisdiction over the case shall end, except for taxation of disbursements or awarding of attorney's fees, unless the matter is ~~rereferred~~ referred to the compensation judge by the Court of Appeals and the chief hearing examiner for supplemental findings, taking of additional testimony, rehearing, or other action; provided that compensation judges may correct clerical or mathematical errors in decisions at any time prior to appeal.

9 MCAR S 2.320 Settlements.

A. Stipulations. Stipulations for settlement are allowed pursuant to Minn. Stat. SS 176.081, subd. 7a and 176.521 and shall conform to ~~that section~~ those sections and to the requirements of this rule.

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

C. Approval. ~~Stipulations for settlement shall be filed with and approved by the commissioner or the commissioner's designee if the case has not been referred to the chief hearing examiner.~~

Stipulations for settlement reached and agreed upon subsequent to the referral of the case to the chief hearing

examiner shall be filed with and, except in cases where all parties are represented by attorneys or for those filed pursuant to Minn. Stat. S 176.081, subd. 7a, subject to approval by the compensation judge assigned to hear the case or ~~the~~ a calendar judge if the matter has not yet been assigned.

Where a settlement has been agreed upon pursuant to Minn. Stat. S 176.081, subd. 7a, when the offer and acceptance is filed, it shall include findings of fact, conclusions and an award on all issues, including attorney's fees and costs. It shall be filed with the chief hearing examiner who shall immediately send the settlement and the file to the commissioner for entry of the agreed upon award. Where approval is not required pursuant to Minn. Stat. S 176.521, the award required by 9 MCAR S 2.320 G. shall be immediately signed by the compensation judge, served on all parties, and filed with the commissioner.

D. Contents. 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~~ petitioner;

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 the 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~~ petitioner is claiming or waiving his or 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. 7 or 8, 176.135 or 176.191.

E. Attorney's fees detailed. Stipulations for settlement of cases in which the ~~employee or dependents~~ petitioner have engaged the services of an attorney shall 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, 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.

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

G. Award. The parties involved in the settlement shall submit an award on stipulation prepared for signature by the applicable judge and sufficient copies thereof for all parties to be served if the settlement is approved.

H. Copy to client. The attorney representing the ~~employee or dependents~~ petitioner shall furnish a copy of the stipulation for settlement to his or her client at the time the client signs the stipulation.

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

J. Payment. 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~~ filed with the commissioner.

9 MCAR S 2.321 Attorney fees.

A. ~~Authorization~~ Notice of representation. Whenever an employer or insurer receives notice that an attorney is representing ~~an employee or dependent~~ a petitioner, 25 percent 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 the compensation is being withheld shall immediately be mailed to the ~~employee or dependents~~ petitioner, the attorney and the division at its Saint Paul office.

B. Filing of certain documents as application. 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. Application for determination and approval of any claim for legal services or disbursements may be filed by the employer or insurer, the ~~employee or dependents~~ petitioner or the attorney. Unless ordered otherwise by a compensation judge, an application for attorney fees shall be by written petition. 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 for the ~~employee or dependents~~ petitioner, 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.

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

~~C.~~ D. Filing. 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~~ a calendar judge if no assignment has been made.

E. Settlements. In cases where an offer of settlement has been made, in writing, pursuant to the provisions of Minn. Stat. S 176.081, subd. 7a, and the offer has not been accepted, upon receipt of the compensation judge's decision, the following procedure shall be followed:

1. The party seeking to impose the sanctions imposed by Minn. Stat. S 176.081, subd. 7a, shall file proof of the offer with the chief hearing examiner within ten calendar days of the date of the compensation judge's decision. The filing shall include an order prepared for signature by the chief hearing examiner which would amend the compensation judge's decision.

2. When filing the material requested above, copies shall be served on all other parties at the same time.

3. Any party objecting to the entry of the order shall, within five calendar days of receipt of the proposed order, serve and file an objection, which may be in the form of a letter, stating in detail the reasons why the order should not be signed. A response to the objection, if any, must be filed within five calendar days of the objection.

4. If no objection is received, the chief hearing examiner shall sign, serve and file the order within ten calendar days of its filing. If objection has been received, it shall be determined by the chief hearing examiner within ten calendar days after the filing of the objection. Parties shall not have the right to a hearing on the objection. The chief hearing examiner's determination shall be in writing and is appealable to the Workers' Compensation Court of Appeals.

9 MCAR S 2.322 Taxation of costs and disbursements.

A. Informal request. Prior to submitting a formal request for payment or reimbursement of costs and disbursements, an informal request should be made by the taxing party. If

agreement cannot be reached on all items, the taxing party may then proceed as delineated herein, including in the formal request an indication of those costs agreed upon.

~~A.~~ B. Service of formal request. 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.~~ C. Service of objection. 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.~~ D. Hearing. If requested, a time for hearing before the compensation judge who heard the case shall be fixed. A notice thereof shall be given to the parties by the compensation judge.

9 MCAR S 2.323 Second injury law.

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

~~B. Hearing. 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 the 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 the 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.~~ Referral. If a dispute arises following the notice of intention to claim reimbursement under Minn. Stat. S 176.131, subd. 6, and the commissioner ~~shall refer~~ refers the matter to the chief hearing examiner ~~who it shall assign the matter~~ be assigned 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 Permanent partial disability panel.

A. Notification to administrator. Upon receipt of a file from the commissioner, if the chief hearing examiner, or a calendar or compensation judge if the case has been assigned to them, determines from a review of the file that permanent partial disability is a significant issue to be determined in the case, the chief hearing examiner shall immediately notify the administrator of the workers' compensation court of appeals if the ~~employee~~ petitioner resides in a county selected by the court of appeals pursuant to the provisions of Minn. Stat. S 176.152, subd. 7.

B. Questions to panel. When the administrator of the workers' compensation court of appeals notifies the chief hearing examiner of the names and addresses of the members of the permanent partial disability panel, the compensation judge, or the chief hearing examiner in cases in which a compensation judge has not yet been assigned, shall submit written questions to the panel. A copy of the questions shall be served on all parties at the same time.

C. Hearing. When the chief hearing examiner or compensation judge receives the report of the panel, the case shall be set

for a regular hearing as soon as practicable.

D. Disputes relating to payment of panel members. Disputes relating to the payment of the fees of panel members arising pursuant to the provisions of Minn. Stat. S 176.152, subd. 6, shall be brought to the attention of the compensation judge assigned to hear the case no later than 20 days prior to the date of the hearing. The parties disputing the fee shall notify the compensation judge, in writing, of the intent to dispute the fee, stating therein the specific facts relied upon in disputing the fee. A copy of this notification shall be served on all other parties and the members of the panel at the same time as it is filed with the compensation judge. At the hearing, the dispute shall be determined as other issues in the case.

9 MCAR S 2.326 Exhibits: removal and return.

A. Requests for removal. All requests for permission to remove any exhibit or document from the official file must be made to the compensation judge to whom the file has been assigned or to the supervisor of the docket section of the office.

B. Return without consent or notice. Upon the expiration of the time in which to appeal, all exhibits or other documentary evidence may be returned to their source of origin without the consent of the parties or notice thereto~~, upon order of the compensation judge~~. A copy of the letter of transmittal of the exhibits or documents shall remain in the file as part of the record of the case.

C. Request for return. Upon expiration of the time in which to appeal, exhibits or other documentary evidence shall be returned to their source upon the request of the party producing the exhibit or evidence at the hearing or the party which introduced the evidence into the record. A request for return of exhibits or documents shall be made in writing to the compensation judge, shall contain the title and appropriate identification number of the case in which they were entered into evidence, and shall identify the exhibits or documents requested. A telephone number of the person making the request

shall be included with the request.

OFFICE OF THE REVISOR OF STATUTES

Certificate of Approval of Adopted Rules

Agency: Office of Administrative Hearings

Rule Numbers: 9 MCAR SS 2.301-2.326

Rule Title: Adopted Rules Relating to Workers' Compensation

Type of Rules: Permanent X

Temporary _____

Documents Incorporated by Reference:

The attached Rules are approved as to form.

Steven C. Cross
Revisor of Statutes

APPROVED AS TO LEGALITY
Feb. 2 1982
WARREN SPANNAUS, ATTORNEY GENERAL
BY: Ted A. Martinez
SPECIAL ASSISTANT ATTORNEY GENERAL

Name: Paul M. Marinac
Paul M. Marinac

Title: Assistant Revisor

Phone: 296-0948

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
FEB -2 1982
Joan Anderson Growe
Secretary of State
9:10 AM

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : DUANE HARVES
Chief Hearing Examiner
Office of Administrative Hearings

DATE: 1/27/82

FROM : TED A. MARTINEZ
Special Assistant
Attorney General

PHONE: 296-0315

SUBJECT: RULES OF OFFICE OF ADMINISTRATIVE HEARINGS RELATING TO WORKER'S COMPENSATION

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

1. Section 2.308A.1 states that a settlement conference is a proceeding conducted by a settlement judge. In Section 2.302C.9 a settlement judge is defined as a workers' compensation judge from the Department of Labor and Industry. In Finding No. 10 the Hearing Examiner found that regulation of proceedings and personnel under the jurisdiction of the Department of Labor and Industry is outside the statutory authority of the Office of Administrative Hearings. The Office adopted that Finding.

In accordance with that Finding and in order to avoid confusion arising from the use of the term "settlement conference" throughout these rules, Section 2.308A.1 must be revised to clarify that "settlement conference" as used in these rules means a proceeding before a calendar or compensation judge under the jurisdiction of the Office of Administrative Hearings.

2. Section 2.310A contains a reference to Section 2.304 which could lead to confusion as to the event from which time begins to run for the filing of a motion to intervene. Specific reference to the relevant subsection of Section 2.304 is necessary to clarify that the time period runs from receipt of the notice to third parties of a pre-trial order or a pre-trial conference, rather than from the filing of the initiating petition.

3. Sections 2.313G, H, and J relate to procedures to be followed by a claimant seeking temporary benefits pursuant to Minn. Stat. § 176.191, Subd. 2, and identify a claimant only as "employee" or as "employee or dependents." The statute in question does not appear to limit payment of temporary benefits to only "employees" or "employees or dependents." Therefore, Sections G, H, and J must be revised to provide that all petitioners are included under the provisions of these sections.

4. Sections 2.315D and 2.321A, B, and C appear to improperly exclude certain classes of claimants by referencing only "employee" or "employee or dependents." The sections should be revised so that the provisions of the sections apply to all petitioners.

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. Also, please include a memorandum specifying that the rules are being resubmitted so that we may obtain our initial file in this matter.

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:drw

cc: Ms. Kathy Burek
Ms. Ann Bateson

301
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AG. Copy

Office of Administrative Hearings

Adopted Permanent Rules Relating to Workers' Compensation

Rules as Adopted

9 MCAR S 2.301 Scope and purpose. The procedures contained in 9 MCAR SS 2.301-2.326 shall govern all hearings required to be conducted pursuant to the provisions of the Minnesota workers' compensation laws, Minn. Stat. ch. ~~82~~ 176 and the Minnesota Administrative Procedure Act, Minn. Stat. SS 15.0411-15.052, 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 in the cases.

B. Authority of compensation judges. In any case which has been regularly assigned to him or 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 or 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. For the purposes of 9 MCAR SS 2.301-2.326, the following terms have meanings given them.

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

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

3. "Commissioner" means the Commissioner of the

Department of Labor and Industry.

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

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

6. "Office" means the Office of Administrative Hearings.

~~6.~~ 7. "Petition" means 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.~~ 8. "Petitioner" means the injured employee, an heir or dependent of a deceased employee or a party filing on their behalf or an employer or insurer.

~~8.~~ 9. "Settlement judge" means a workers' compensation judge from the Department of Labor and Industry.

9 MCAR S 2.303 Joinder of parties.

A. Request. Upon a motion of any party or upon his or her own motion, a ~~settlement or calendar~~ 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 by the party requesting joinder with copies of the order of joinder and all pleadings in the case.

B. Service. Any party requesting joinder of additional parties shall serve a copy of the request on all existing parties, and the party to be joined, and file the original with proof of service with the ~~settlement or calendar~~ compensation judge no later than ten days prior to the pretrial or settlement conference, or within 15 days after receipt of a pretrial order, unless the 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 request is served on the party to be joined, it shall be accompanied by copies of all

pleadings and the notice of the date, time and place set for a settlement conference or ~~prehearing~~ pretrial conference.

C. Affidavit. When a party requests joinder less than ten days prior to the pretrial or settlement conference date or more than 15 days after receipt of a pretrial order, the request shall include an affidavit of the requesting party stating the facts necessary to show cause why the lesser time should be allowed.

D. Delay. In cases where the ~~settlement or calendar~~ compensation judge has denied the joinder because of the requesting party's failure to meet the ~~ten-day~~ time ~~requirement~~ requirements, the case shall not be stricken, continued or otherwise delayed for the purposes of joinder, unless the attorney for the employee or dependent consents to it.

E. Contents of motion. All motions for joinder shall contain at least the following:

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

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

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

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

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.

F. Objection. A party contesting joinder under 9 MCAR S 2.303 may do so by objection filed with the ~~settlement or calendar~~ compensation judge within ten 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 Commencement of proceedings; petitions; responsibilities of attorneys; notice to third parties.

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

commenced by the service of a petition as provided by Minn. Stat. S 176.305. ~~Any petition filed on behalf of an employee or his or her dependents shall certify that 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. Consolidation of claims. 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.

~~C. Contents of petitions. A petition shall contain the following information which shall be in the sequence listed in 1.-21.~~

~~1. Title. The title of the case shall include the petitioner's name, the employer's name and address, the insurer's name and address, the division's record number and the employee's social security number;~~

~~2. The petitioner's address;~~

~~3. The date of the alleged personal injury or onset of occupational disease;~~

~~4. The place of employment on the date of the alleged injury or disease;~~

~~5. The employee's weekly wage at the time of the alleged injury or disease;~~

~~6. A statement that the injury or disease arose out of and in the course of the employment;~~

~~7. A statement which specifies the nature and extent of the alleged injury or disease, including the percentage of disability, if known, attaching a copy of all medical reports;~~

~~8. The date on which the employer was first given notice of the alleged injury or disease and the manner in which the notice was given;~~

~~9. The name and address of the employer's insurer on the date of the alleged injury or disease or if the employer was self-insured, a statement to that effect;~~

~~10.~~ A detailed listing of the dates of the alleged disability, stating whether each date was for temporary total, temporary partial, permanent total, or permanent partial disability;

~~11.~~ A detailed list of the medical benefits alleged to be owing, giving the names, addresses, dates of treatment or purchase of drugs, or other compensable items;

~~12.~~ The names and addresses of any third parties who have paid disability, medical or other benefits to the employee as a result of the alleged injury or disease, listing the dates and amounts of the payments, and the relevant claim number or policy number;

~~13.~~ A statement that attorney's fees are or are not requested;

~~14.~~ A statement that the employer and insurer were notified, as required by Minn. Stat. § ~~176.271~~, subd. 2, that a proceeding would be instituted and stating the relief sought, giving the date of the notice and attaching a copy of the notice;

~~15.~~ A signature and attestation by the employee;

~~16.~~ The name, address and telephone number of the employee's attorney unless the employee is representing himself or herself;

~~17.~~ A statement that a settlement or prehearing conference is or is not requested and, if so, the requested location for the conference;

~~18.~~ A statement indicating the number of lay and medical witnesses expected to be called as witnesses and the anticipated length of their testimony;

~~19.~~ A statement specifying the principal issues to be resolved at hearing;

~~20.~~ A statement that the employee is or is not presently receiving workers' compensation benefits and, if the employee is, the amounts and the name and address of the paying party; and

~~21.~~ The requested location for the regular hearing.

~~B.~~ C. Heading of petition. Unless otherwise provided by

law, all requests for action by ~~the commissioner, a settlement, calendar or~~ a compensation judge after the filing of a petition shall contain the ~~title~~ caption, the employee's social security number, and appropriate identification number of the case and shall indicate the type of action requested.

~~E.~~ D. Responsibilities of attorneys; notice to third parties. All attorneys representing employees, employers, or any other parties to a workers' compensation proceeding shall inquire of their clients ~~at the time the proceeding is commenced, and again~~ within five days of receipt of a notice of ~~prehearing~~ a pretrial order or pretrial conference, as to whether any third party, other than the workers' compensation insurer, has paid wage loss benefits or treatment expense to the employee or in the employee's behalf.

If inquiry discloses that any third party, such as an insurer or a welfare department, has made any such payments, the attorney discovering that fact shall then have the duty to place the third party on written notice, ~~within five days,~~ of its right to petition for intervention and reimbursement. The written notice shall have attached to it a copy of 9 MCAR S 2.310 and also a copy of all pleadings in the case and a copy of all notices and all orders of the ~~workers' compensation~~ division ~~of the department of labor and industry~~ and of the office ~~of administrative hearings~~ served in the case to date, and shall specifically advise that:

1. The employee has commenced a proceeding to recover workers' compensation benefits, and that under Minn. Stat. S 176.361 and 9 MCAR S 2.310 the third party has the right to petition for intervention and reimbursement of payments made for treatment and wage loss;

2. The name and address of all parties to the proceeding and the names and addresses of their attorneys;

3. The name of the third party's insured, the nature of the payments made, and any identifying claim and policy number;

4. Any failure of the third party to comply with any provisions of 9 MCAR S 2.310 shall result in a denial of the

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claim for reimbursement unless the compensation judge determines that the error or omission is merely technical.

Failure of an employee's attorney to comply in a timely manner with this rule shall be taken into consideration as an additional significant factor in determining the attorney's fee under Minn. Stat. S 176.081.

Failure of an attorney representing an employer and insurer to comply in a timely manner with this rule shall be taken into consideration for purposes of determining whether a penalty shall be assessed against the employer and insurer under Minn. Stat. S 176.225 for unreasonable or vexatious delay.

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See Order of CHE Designee 9/12.21.8

~~Where inquiry by the attorney for the injured employee at the time a proceeding is commenced discloses information that a third party has made payments, the employee's claim petition shall not be accepted for filing and the proceeding shall not be considered commenced unless the claim petition is accompanied by a proof of service of written notice upon the third party, unless the time for commencing an action under the statute of limitations in Minn. Stat. S 176.151 has run. The written notice shall be in the form prescribed by 1.-4.~~

9 MCAR S 2.305 Settlement ~~judge review and settlement~~ conferences.

~~A. Referral. Upon the filing of a petition, the commissioner, within ten days, shall refer the matter to a settlement judge who shall review the filing to determine whether a settlement conference is appropriate.~~

~~B. Disposition. If a settlement conference has been requested or is deemed appropriate by the settlement judge, he or she shall notify all parties of the date, time and place where the settlement conference will be conducted. The settlement conference shall be completed within 60 days of the date of referral of the petition by the commissioner. If a settlement conference has not been requested or is deemed to be inappropriate, the settlement judge shall certify the matter to the chief hearing examiner.~~

~~C. Retention of jurisdiction. If the settlement conference~~

~~cannot be concluded within 60 days, the settlement judge shall certify the matter to the chief hearing examiner, provided, however, that with the consent of the petitioner or his or her representative, the settlement judge may retain jurisdiction for an additional 60 days for purposes of receiving a full settlement of all issues.~~

~~D.~~ A. Settlement alternatives not precluded. Nothing contained in ~~this rule~~ these rules 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~~ they prohibit the chief hearing examiner or ~~calendar~~ compensation judge from setting a settlement conference on his or her own motion once the matter has been received from the commissioner.

~~E.~~ B. Attendance. 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.

~~F.~~ C. Matters agreed upon. If, following a settlement conference, a 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 or she approves of those matters agreed upon, issue an order confirming and approving those matters agreed upon. The order shall be binding on any compensation judge who may subsequently be assigned to hear the case. Issues once agreed upon and approved may be reopened by the compensation judge only upon motion of any party on the basis of newly discovered evidence which was not reasonably discoverable at the earlier time.

9 MCAR S 2.306 Notice of intention to discontinue compensation payments.

~~A. Contents. A notice of intention to discontinue compensation filed pursuant to Minn. Stat. S 176.241, shall contain the following information.~~

~~1. The name and home address of the person whose~~

compensation would be discontinued;

2. The file number previously assigned by the division and the office of administrative hearings;

3. The name and address of the attorney, if any, who represented the employee during previous proceedings;

4. A description of the prior order, if any, under which compensation was being paid and the name of the person issuing the order;

5. The date the compensation is proposed to be discontinued;

6. A complete list of facts supporting the discontinuance which shall be prepared with sufficient specificity to allow the employee to prepare an objection without the necessity of requesting additional information;

7. If the proposed discontinuance is based on medical evidence, copies of all medical reports bearing on the employee's physical condition at the time of the proposed discontinuance;

8. A statement which shall read as follows:

NOTICE

You have the right to object to this proposed discontinuance. If you intend to object, you must prepare a written objection and file it with the Commissioner of the Minnesota Department of Labor and Industry, Fifth Floor, Space Center Building, 444 Lafayette Road, St. Paul, Minnesota 55101. You may contact (employer) or (insurer) regarding the discontinuance and the procedures related to the filing of an objection. If you file an exemption, it may be mailed or personally delivered to the Department of Labor and Industry at the address listed above. An objection must contain your full name, address and telephone number, the name of the employer and insurer, the date of this notice and the file number listed on this notice.

9. The name and address of the employer and insurer;

10. The name, address and telephone number of the attorney representing the employer or insurer; and

11. The name, address and telephone number of the person filing the notice.

B. Objections.

1. Any objection to the proposed discontinuance shall be in writing, shall be filed with the commissioner, and shall

~~contain the following information:~~

~~a. The name, address and telephone number of the employee;~~

~~b. The name, address and telephone number of the person filing the objection, if it is not the employee;~~

~~c. The name of the employer and insurer;~~

~~d. The date of the notice of discontinuance; and~~

~~e. The file numbers which were listed on the notice of discontinuance.~~

~~2.~~ A. Hearing. When an objection to a notice of intention to discontinue compensation payments has been filed or where it appears to the commissioner that the right to compensation may not have terminated, and the matter ~~shall be~~ has been referred to the chief hearing examiner ~~who~~, it shall be set ~~the matter~~ for hearing on a priority basis not less than 30 nor more than 75 days from the date of the receipt of the matter from the commissioner.

~~3.~~ B. Objection as claim petition. Any objection filed more than 120 days after service of a notice to discontinue shall be treated as a claim petition for purposes of scheduling a hearing and shall not be heard on a priority basis. HE 16

C. Petitions for discontinuance. When an employer or insurer petitions the commissioner for an order allowing discontinuance of benefits but has chosen not to discontinue payments until after a final determination and the matter has been referred to the chief hearing examiner, the petitioner shall be entitled to a hearing on the same priority basis as set forth in ~~B. 2. Petitions filed under this provision shall contain the same information as required for a notice of discontinuance~~ A.

~~9 MCAR § 2.307 Answers.~~

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

~~B. Proof of service. The answer shall be accompanied by~~

~~proof of service upon the opposing parties.~~

~~C. Contents. 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 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 notice of intention to initiate proceedings. Any request for an extension 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.~~

9 MCAR S ~~2.308~~ 2.307 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.

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 or ~~on~~ a party may be served by or on 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 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.

9 MCAR S ~~2.309~~ 2.308 Hearings.

A. Definition of hearing. For the purposes of 9 MCAR SS 2.301-2.326, a hearing may be called a settlement conference, a ~~prehearing~~ pretrial 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~~ proceeding conducted by a settlement judge. It is 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 the matter. ~~The conference may be conducted by telephone and in the cases where 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~~ pretrial conference may be required whether or not a settlement conference has been held and may be conducted by telephone. The purposes of a ~~prehearing~~ pretrial conference are to ascertain if there are genuine disputes requiring resolution by a calendar or compensation judge, to provide assistance to the parties in resolving disputes, to narrow the issues, and to expedite preparation and trial if a regular hearing is necessary. A ~~prehearing~~ pretrial conference is conducted by a calendar or compensation judge. It shall be conducted by telephone if the location set for the ~~prehearing~~ pretrial 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~~ 2.307 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~~ pretrial conference shall be sufficient notice. Each attorney receiving notice of the hearing date at a settlement or ~~prehearing~~ pretrial conference shall be responsible for notifying each party the attorney represents of the hearing date. When a written notice is required, it shall be given at least ~~five~~ 30 days prior to the date of hearing, except:

1. When notice is waived by all parties;

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

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

~~C.~~ 9 MCAR S 2.309 Continuances.

~~1.~~ A. Continuances not favored. 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 the 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.~~ B. Request. 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, which date has been approved by the compensation~~, calendar or settlement~~ or calendar judge before whom the matter is pending, and when the continuance request is made no less than ten working days prior to the hearing date, the continuance shall be granted.

~~3.~~ C. Motion. If all parties have not agreed to a continuance, requests for continuances shall be made to the compensation~~,~~ or calendar ~~or settlement~~ judge before whom the matter is pending. When made more than ten 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. If less than ten working days remain prior to the 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.~~ D. Good cause. Good cause shall not include:

~~a.~~ 1. When 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.~~ 2. When 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.~~ 3. 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.~~ 4. 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. Motion. 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 matter has been 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~~ a 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. A motion to intervene shall be served and filed within 30 days after a person has received notice that a claim petition has been filed as provided in 9 MCAR S 2.304. In any other situation, 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, 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;

8. At the option of the intervenor, a proposed stipulation which states 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 petitioner is successful in proving the compensability of the claim, it is agreed that the sum be reimbursed to the intervenor.

B. Stipulation. When the person serving the motion for intervention has included a proposed stipulation, all parties shall either execute and return the signed stipulation to the intervenor or serve upon the intervenor and all other parties specific and detailed objections to any payments made by the intervenor which are not conceded to be correct and related to the injury or condition the employee has asserted is compensable. If a party has not returned the signed stipulation or filed objections within ~~20~~ 30 days of service of the motion, the intervenor's right to reimbursement for the amount sought shall be deemed to ~~have been~~ be established ~~without the necessity of the intervener participating further in the proceedings~~ provided that the employee's claim is determined to be compensable.

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C. Attendance by intervenor. Unless a stipulation has been signed and filed or the intervenor's right to reimbursement has otherwise been established, the intervenor shall attend all settlement or ~~prehearing~~ pretrial conferences and shall attend the regular hearing if ordered to do so by the compensation judge.

D. Order. If an objection to intervention remains following settlement ~~and prehearing~~ or pretrial 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. Presentation of evidence by intervenor. Unless a stipulation has been signed and filed or the intervenor's right to reimbursement has otherwise been established, at the regular hearing on the claim petition where intervention has been granted, the intervenor shall present evidence in support of his or her claim ~~after the 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~~

see HE 20 Order Adopt 1/6 CHE 1/6

~~may prejudice the rights of the original parties.~~

F. Effects of noncompliance with rule. 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 merely technical.

G. Failure of attorney to respond. Failure by the employee's attorney to submit a timely response which also complies otherwise with this rule shall be a significant additional factor to be taken into consideration under Minn. Stat. S 176.081 in determining the amount of the attorney's fees. Failure by an attorney representing an employer or insurer to submit a timely response which also complies otherwise with the requirements of this rule shall be taken into consideration for purposes of determining whether a penalty shall be assessed against the employer or insurer under Minn. Stat. S 176.225 for unreasonable or vexatious delay.

9 MCAR S 2.311 Consolidation.

A. Authorization. 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 affect the rights of the parties in the other case; and

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

Notwithstanding the requirements of this rule, the parties may stipulate and agree to such consolidation.

B. Receipt of evidence. Under consolidation, all documentary evidence previously received in an individual case shall be reintroduced in the 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, the

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~~ pretrial conference if one has been requested.

D. Objection to consolidation.

1. Motion for severance. Any party may object to consolidation by filing with the 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~~ the motion.

2. Determination. If the ~~appropriate~~ judge finds that consolidation would prejudice the rights of the party moving for severance, the judge shall order such severance or other relief as he or 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. Procedures.~~ A compensation judge shall withdraw from participation in a case at any time if the judge deems himself or herself disqualified, prejudiced or biased for any reason. Proceedings to disqualify a compensation judge shall be initiated by the service on all parties and 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 days after the moving party has received notice of the assignment of the judge to the hearing or has knowledge of the grounds for disqualification, whichever occurs last. 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.

B. Affidavit for reassignment. The petitioner and parties responding to a petition shall be entitled to reassignment of a regular hearing to another compensation judge in accordance with the provisions of this section. Proceedings for a reassignment shall be instituted by the filing of an affidavit under penalty of perjury in substantially the following form:

State of Minnesota

ss

County of .....

....., being duly sworn, deposes and says: That (s)he is (a party) (attorney for a party) to the above entitled case; that affiant believes that (s)he cannot have a (fair) (expeditious) (inexpensive) (unencumbered) (impartial) trial before the workers' compensation judge (before whom the case is pending) (to whom the case is assigned).

.....

Subscribed and sworn to before me

this.....day of....., 19...

.....

~~Notary Public~~

~~My commission expires:~~

~~If the compensation judge assigned to hear the case is known, the affidavit shall be filed not more than five working days after receipt of the notice of regular hearing and be directed to the attention of the chief hearing examiner. A copy of the affidavit shall be served on all other parties or their attorneys at the same time the affidavit is filed. In no event shall any such affidavit be entertained after the swearing of the first witness at a regular hearing.~~

~~Upon the filing of an affidavit for reassignment in accordance with the provisions of this section, without any further act or proof, the chief hearing examiner shall assign the case or proceeding to another compensation judge. Upon reassignment a new notice of regular hearing shall be served. Under no circumstances shall more than one such reassignment be made in any one case or proceeding pursuant to the affidavit of any one party, provided, however, that one additional reassignment may be made upon petition of a party on the other side. The petition by the other party shall be filed in the manner and time hereinbefore provided.~~

Unless required because of the unavailability of a compensation judge to hear the case, no continuance shall be granted by reason of ~~an affidavit filed~~ a disqualification under this section. If a continuance is necessary, another regular hearing will be scheduled as early as possible.

Consolidated cases are to be considered as one case within the meaning of this section. This section is not applicable to settlement or pretrial conferences.

9 MCAR S 2.313 ~~Prehearing~~ Pretrial procedures.

A. Requirement. All cases shall be subject to a settlement conference or a ~~prehearing~~ pretrial conference ~~whenever possible,~~ at which all parties shall attend or be represented, unless a ~~settlement judge or~~ calendar or compensation judge orders otherwise. A compensation judge shall order that a pretrial or settlement conference be conducted if any party

requests that one be conducted. If parties are represented by attorneys, the attorneys 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~~ pretrial conference must have authority to settle their respective claims.

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

C. Conference procedures. At the settlement or ~~prehearing~~ pretrial 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~~ pretrial conference shall be filed as soon as available prior to the regular hearing;

5. Each party shall state what exhibits, including 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 ten 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, it shall pay the expense for the showing and may tax this expense in the same manner as other disbursements;

6. If the employee plans to introduce hospital records into evidence, the employee or his attorney shall bring to the

settlement or ~~prehearing~~ pretrial conference written authorizations for opposing counsel to examine those records if the 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~~ pretrial conference, and shall furnish opposing counsel with copies of itemized bills for such expenses at least ten days prior to the settlement or ~~prehearing~~ pretrial conference;

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

10. The 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. If payment has been made, the name and address of the party making payment shall be furnished to the ~~settlement or~~ calendar or compensation judge, 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 ten days prior to the settlement or ~~prehearing~~ pretrial conference, copies of the

relevant wage records of the employee;

12. The attorney for the employee or dependents shall furnish to the ~~settlement or~~ calendar or compensation judge 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. ~~Prehearing~~ Pretrial statement. At the time a case is first set for a settlement or ~~prehearing~~ pretrial conference or prior to setting the date for a regular hearing, if the information is not already on file, the ~~settlement judge or~~ calendar or compensation judge may order the parties to complete, serve on each other and file a ~~prehearing~~ pretrial statement which shall contain any of the items in C. which the ~~settlement or calendar~~ judge deems appropriate. In making a determination on the requirement of the preparation of ~~prehearing~~ pretrial 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, extent and type of disability claimed. When a pretrial statement has been ordered, the petitioner shall serve and file a statement within 20 days of the date of the order. The responding parties shall serve and file their statement within 30 days of the date of the order. Thereafter, a petitioner may serve and file an amended pretrial statement based solely on information presented in the responding parties' statements and not on new issues, which amended statement shall be filed within 40 days of the date of the order.

E. Evidence not disclosed at conference. Evidence, or other matters listed in C. which have not been disclosed at the ~~prehearing~~ settlement or pretrial conference or in a pretrial statement shall not be allowed to be presented at the regular hearing unless it can be shown to the compensation judge that the evidence or other matters offered were discovered subsequent to the ~~prehearing~~ filing of a pretrial statement or pretrial

conference, whichever occurs last, were not discoverable through the exercise of due diligence prior to that time, and that the other parties have been advised of the evidence or other matters prior to the trial and have had an opportunity for review.

F. Temporary orders. Any insurer or self-insurer voluntarily agreeing to pay benefits pursuant to Minn. Stat. S ~~176.91~~ 176.191, subd. 1, while the case is pending before the office, shall file a formal petition for temporary order.

1. The petition shall contain the following:

a. Name of the employer and its insurer (or self-insured) consenting to payment of compensation benefits and medical expenses;

b. The dispute involved, including the name and address of other employer and its workers' compensation insurer, if known, that may be liable for workers' compensation benefits and the date of the alleged injury while working for the employer;

c. The beginning date of the employee's present disability, and the compensation rate that the insurer or self-insurer will voluntarily pay;

2. The original petition for temporary order, with proof of service on all necessary parties, shall be filed with ~~the division~~ the office~~, or the court of appeals, depending upon where the matter is pending~~;

3. The petition for temporary order shall be accompanied by a prepared formal order that should be substantially in the following form:

> The undersigned having examined the foregoing petition for temporary order and the compensation files and records herein, and it appearing that a temporary order for payment of compensation benefits should be issued pending a final determination, as provided by Minn. Stat. S 176.191, subd. 1;
>
> NOW, THEREFORE, IT IS HEREBY ORDERED, that (name of insurer or self-insured) having consented to payment of compensation benefits pursuant to Minn. Stat. S 176.191 shall pay to (name), employee, compensation at the weekly rate of $(amount), during the period of employee's disability, beginning (date), and shall also pay reasonable medical expenses related to employee's said disability.
>
> IT IS FURTHER ORDERED, that following a final determination of liability and if it has been

determined that some other employer or insurer is liable for all or part of the compensation paid pursuant to this temporary order, then the division, the compensation judge, or Court of Appeals shall order the parties held liable to reimburse (name of paying party) for all or part of the compensation paid pursuant to this temporary order, for which the other parties are held liable, including interest at the rate of five percent per annum.

Dated at....., Minnesota

this.....day of.....

~~(WORKERS' COMPENSATION DIVISION)~~

(COMPENSATION JUDGE)

~~(COURT OF APPEALS)~~

.....

By.....

The original and sufficient copies of the order to make service upon all necessary parties, and any attorneys representing them, shall be filed.

G. Payment of benefits by special compensation fund. An employee seeking payment of benefits by the special compensation fund pursuant to Minn. Stat. S 176.191, subd. 2, when the case is pending before the office, shall file a formal petition for temporary order.

1. The petition shall contain the following:

a. A statement that written demand for payment pursuant to Minn. Stat. S 176.191, subd. 1, has been made against all employers and insurers party to the claim and that the payment demanded has been refused;

b. The names and addresses of all employers and insurers or self-insurers who are parties to the claim;

c. A statement as to the dispute involved and the dates of all alleged injuries while working for each employer;

d. The beginning date of the employee's present disability, the compensation rate applicable for each injury date, the proposed compensation rate to be paid by the special compensation fund, and an itemization of all medical expenses requested to be paid pursuant to the temporary order;

e. Copies of all medical reports supporting the

claimed period of disability and the causal relationship of that disability to the employee's employment.

2. The original of the petition for temporary order, with proof of service on all necessary parties, shall be filed with ~~the division,~~ the office, ~~or the court of appeals, depending upon where the matter is pending;~~

3. The petition for temporary order shall be accompanied by a prepared formal order that should be substantially in the following form:

> The undersigned having examined the foregoing petition for temporary order and the compensation files and records herein, and it appearing that a temporary order for payment of compensation benefits should be issued pending a final determination, as provided by Minn. Stat. S 176.191, subd. 2;
>
> NOW, THEREFORE, IT IS HEREBY ORDERED that the State Treasurer, as custodian of the special compensation fund, shall, pursuant to Minn. Stat. S 176.191, subd. 2, pay to (name), employee, compensation at the weekly rate of $(amount), during the period of employee's disability, beginning (date), and shall also pay reasonable medical expenses related to the employee's said disability.
>
> IT IS FURTHER ORDERED, that following a final determination of liability and if it has been determined that one or more employers or insurers are liable for all or part of the compensation paid pursuant to this temporary order, then the division, the compensation judge or Court of Appeals shall order the parties held liable to reimburse the State Treasurer, as custodian of the special compensation fund, for all or part of the compensation paid pursuant to this temporary order, for which the other parties are held liable, including interest at the rate of 12 percent per annum.

Dated at....., Minnesota

this.....day of.....

~~(WORKERS' COMPENSATION DIVISION)~~

(COMPENSATION JUDGE)

~~(COURT OF APPEALS)~~

.....

By.....

The original and sufficient copies of the order to make service upon all necessary parties, and any attorneys representing them, shall be filed.

H. Necessary parties. For the purpose of this rule, the following shall be deemed necessary parties:

1. The employee or dependents;

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

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 the petition is made pursuant to Minn. Stat. S 176.191, subd. 2.

I. Answer. Within ten days after being served with a copy of the petition for temporary order and order hereunder, employers or their insurers, other than paying party, or the state treasurer, as custodian of the special compensation fund, may file a verified answer to the petition in accordance with the provisions of Minn. Stat. S 176.321.

J. Circumstances of nonapproval of temporary orders. Temporary orders, as a general rule, shall not be approved if made contingent upon the waiver by the employee of his rights to claim an additional award pursuant to Minn. Stat. S 176.225, or to have fees for his attorney assessed against the employer and insurer in addition to compensation pursuant to Minn. Stat. S 176.191 or 176.081, subd. 8.

K. Effect of filing. The filing of a petition for temporary order shall not cause the matter to be placed on the trial calendar, unless accompanied by a petition for contribution or reimbursement.

9 MCAR S 2.314 Discovery.

A. Demand. Each party shall, within 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 the 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 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 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 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. 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. 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 motion shall state, with specificity, the facts or other reasons supporting the need for the disposition. The ~~settlement,~~ compensation or calendar judge shall order the deposition to proceed if the judge 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, that unusual or extraordinary circumstances exist which compel extensive discovery, or 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~~ witness shall be allowed. Unless, for good cause shown, the party taking the deposition has obtained the permission of the calendar judge, or compensation judge if the case has been assigned for hearing, to take the deposition subsequent to the hearing, it shall be taken sufficiently in advance of the hearing so that the deposition is filed prior to or at the commencement of 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.

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 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, is not for purposes of delay, and that the issues or amounts in controversy are significant enough to warrant extensive discovery.

D. Penalties. Upon the failure of a party to reasonably comply with 9 MCAR SS 2.301-2.326 relating to discovery or with an order of 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 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 that party from introducing designated matters in evidence.

E. Proprietary information. When a party is asked to reveal material which that party considers to be proprietary information or trade secrets, he or 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 Petitions for contribution or reimbursement.

A. Contents. Petitions for contribution or reimbursement in cases pending before the office 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 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 parties named in it.~~

B. Filing. ~~In all cases where a claim petition or other form of action is pending,~~ A petition for contribution or reimbursement under this rule shall be filed no later than ten days prior to a ~~settlement or prehearing~~ pretrial conference or within 20 days of receipt of a pretrial order if a pretrial conference is not automatically set, and copies of all pleadings, including any notice of ~~settlement or prehearing~~

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pretrial conference shall be served upon the additional employers or insurers by the party bringing the petition. ~~In cases where no action is pending, the filing of the petition for contribution or reimbursement with the division shall initiate proceedings.~~

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

D. Notice to employee. The employee shall be notified of all of the proceedings and should be represented by an attorney of his or her choice. A copy of all motions or answers shall be duly served upon the employee, the employee's attorney, or both 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 with it, the calendar judge or compensation judge, if the case has been assigned for regular hearing, may quash or modify the subpoena if the judge finds that it is unreasonable or oppressive.

9 MCAR S 2.317 The hearing.

A. Notice. A place, date and time certain will be assigned to each case. Notice of the regular hearing will be given as soon as the assigned date is known, but shall be given at least ~~five~~ 30 days in advance of the hearing. The notice will include

the place of hearing and the amount of time allowed for the hearing and the name of the compensation judge assigned, if known. 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. Availability of medical witnesses. 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 B.

C. Medical reports. 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 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 the disability;

8. The medical treatment indicated;

9. If permanent partial disability is an issue, an opinion as to whether or not permanent disability has resulted from the injury and whether or not the condition has stabilized. If 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.

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. 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 or 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 the judge's final order.

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;

d. Offers of proof, objections and rulings thereon;

e. The compensation judge's order;

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

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

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

3. The transcript.

a. The chief hearing examiner shall direct that the verbatim record of a hearing shall be transcribed if requested by any person. If a transcription is made, except as provided

in c., the chief hearing examiner shall require the requesting person and other persons who request copies of the transcript to pay a reasonable charge for them if transcribed by the office. If transcribed by someone other than the office, the person requesting the transcription or a copy shall be liable to the person preparing the transcript for the charge.

b. Charges for transcripts prepared by the office shall be set by the chief hearing examiner, with the approval of the Department of Finance, and all moneys received for transcripts prepared by the office shall be payable to the State Treasurer, Office of Administrative Hearings Account.

c. Pursuant to the provisions of Minn. Stat. S 176.421, subd. 4, clause (3), a party may petition the chief hearing examiner for an order directing that a transcript be prepared, for purposes of appeal to the Court of Appeals, at no cost to the appellant. A petition filed under this provision shall include the following:

(1) ~~Title~~ Caption of the case;

(2) Case identification numbers;

(3) Name, address and telephone number of the attorney representing the appellant;

(4) A sworn affidavit from the appellant which shall include:

(a) Appellant's monthly personal income from all sources including income from trusts, bonds, and savings certificates;

(b) A list, at market value, of all stocks, bonds, savings certificates or other certificates of indebtedness held by the appellant and the appellant's spouse if residing in the same household;

(c) If residing in the same household, the monthly personal income from all sources for appellant's spouse;

(d) A statement of the monthly expenses for the appellant's household;

(e) If the appellant owns any rental property, a statement showing the appellant's equity in the property and the

monthly income and expense for the property;

(f) If the appellant owns outright or is purchasing the property in which he or she resides, a statement showing the market value of the property, the appellant's equity in the property, and the present monthly payments, if any.

H. Continuances during the hearing. If it appears in the interests of justice that further testimony should be received, the compensation judge, ~~in his or her discretion~~ with the consent of all parties, may continue the hearing to a future date and 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 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. After the time the first witness is sworn, unless all parties agree, all of the proceedings shall be on the record, including any and all motions, objections, offers of proof, rulings of the judge, arguments of the parties other than final arguments, or other comments of the parties, their representative, or the judge. A compensation judge shall not order a court reporter to refrain from recording anything said during the course of a hearing absent the consent of all parties present nor shall a compensation judge turn off an audio magnetic recording device being used to record the proceedings, other than for reasonable breaks, absent the consent of all parties present.

2. Unless the compensation judge determines that the 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 shall proceed first. All other parties 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 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 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 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 interference or disruption or threat thereof, the compensation judge shall read this rule to those persons causing the interference or disruption and thereafter proceed as the judge deems appropriate.

9 MCAR S 2.318 The compensation judge's 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 the judge's 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 and opportunity 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 or her decision and, upon completion, ~~shall immediately file it with the commissioner who shall serve it on all parties as required by Minn. Stat. S 176.281~~ it shall

be served on all parties.

2. The compensation judge's decision shall contain the following in the sequence as listed:

a. The date 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;

e. Findings of fact, conclusions and a determination on each issue raised. In cases involving a multiplicity of issues, the compensation judge may organize the decision by major subissues if the judge determines that organizing the decision in that manner will aid the reader in understanding the contents of it.

C. Readability. 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.

D. Proposed decision filed by party. 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. It shall also include a brief memorandum setting forth the issues and explaining the decision on each issue.

9 MCAR S 2.319 Rehearing. When a compensation judge has issued his or her findings, conclusions and decision, the judge's jurisdiction over the case shall end, except for taxation of disbursements or awarding of attorney's fees, unless the matter is ~~rereferred~~ referred to the compensation judge by the Court of Appeals and the chief hearing examiner for supplemental

findings, taking of additional testimony, rehearing, or other action; provided that compensation judges may correct clerical or mathematical errors in decisions at any time prior to appeal.

9 MCAR S 2.320 Settlements.

A. Stipulations. Stipulations for settlement are allowed pursuant to Minn. Stat. SS 176.081, subd. 7a and 176.521 and shall conform to ~~that section~~ these sections and to the requirements of this rule.

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

C. Approval. ~~Stipulations for settlement shall be filed with and approved by the commissioner or the commissioner's designee if the case has not been referred to the chief hearing examiner.~~

Stipulations for settlement reached and agreed upon subsequent to the referral of the case to the chief hearing examiner shall be filed with and, except in cases where all parties are represented by attorneys or for those filed pursuant to Minn. Stat. S 176.081, subd. 7a, subject to approval by the compensation judge assigned to hear the case or ~~the~~ a calendar judge if the matter has not yet been assigned.

Where a settlement has been agreed upon pursuant to Minn. Stat. S 176.081, subd. 7a, when the offer and acceptance is filed, it shall include findings of fact, conclusions and an award on all issues, including attorney's fees and costs. It shall be filed with the chief hearing examiner who shall immediately send the settlement and the file to the commissioner for entry of the agreed upon award. Where approval is not required pursuant to Minn. Stat. S 176.521, the award required by 9 MCAR S 2.320 G. shall be immediately signed by the compensation judge, served on all parties, and filed with the commissioner.

D. Contents. 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 the 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 or 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. 7 or 8, 176.135 or 176.191.

E. Attorney's fees detailed. Stipulations for settlement of cases in which the employee or dependents have engaged the services of an attorney shall 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, 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.

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

G. Award. The parties involved in the settlement shall submit an award on stipulation prepared for signature by the applicable judge and sufficient copies thereof for all parties to be served if the settlement is approved.

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

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

J. Payment. 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~~ filed with the commissioner.

9 MCAR S 2.321 Attorney fees.

A. ~~Authorization~~ Notice of representation. Whenever an employer or insurer receives notice that an attorney is representing an employee or dependent, 25 percent 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 the compensation is being withheld shall immediately be mailed to the employee or dependents, the attorney and the division at its Saint Paul office.

B. Filing of certain documents as application. 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. Application for determination and approval of any claim for legal services or disbursements may be filed by

the employer or insurer, the employee or dependents or the attorney. Unless ordered otherwise by a compensation judge, an application for attorney fees shall be by written petition. 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 for the 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.

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

~~C.~~ D. Filing. 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~~ a calendar judge if no assignment has been made.

E. Settlements. In cases where an offer of settlement has been made, in writing, pursuant to the provisions of Minn. Stat. S 176.081, subd. 7a, and the offer has not been accepted, upon receipt of the compensation judge's decision, the following procedure shall be followed:

1. The party seeking to impose the sanctions imposed by Minn. Stat. S 176.081, subd. 7a, shall file proof of the offer with the chief hearing examiner within ten calendar days of the date of the compensation judge's decision. The filing shall include an order prepared for signature by the chief hearing examiner which would amend the compensation judge's decision.

2. When filing the material requested above, copies shall be served on all other parties at the same time.

3. Any party objecting to the entry of the order shall, within five calendar days of receipt of the proposed order, serve and file an objection, which may be in the form of a letter, stating in detail the reasons why the order should not be signed. A response to the objection, if any, must be filed within five calendar days of the objection.

4. If no objection is received, the chief hearing examiner shall sign, serve and file the order within ten calendar days of its filing. If objection has been received, it shall be determined by the chief hearing examiner within ten calendar days after the filing of the objection. Parties shall not have the right to a hearing on the objection. The chief hearing examiner's determination shall be in writing and is appealable to the Workers' Compensation Court of Appeals.

9 MCAR S 2.322 Taxation of costs and disbursements.

A. Informal request. Prior to submitting a formal request for payment or reimbursement of costs and disbursements, an informal request should be made by the taxing party. If agreement cannot be reached on all items, the taxing party may then proceed as delineated herein, including in the formal request an indication of those costs agreed upon.

~~A.~~ B. Service of formal request. 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.~~ C. Service of objection. 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.~~ D. Hearing. If requested, a time for hearing before the compensation judge who heard the case shall be fixed. A notice thereof shall be given to the parties by the compensation judge.

9 MCAR S 2.323 Second injury law.

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

~~B. Hearing. 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 the petition shall be served by the applicant upon the state treasurer, custodian of the special~~

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~~compensation fund, and upon the attorney general. Upon receipt of the 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.~~

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~~C. Referral.~~ If a dispute arises following the notice of intention to claim reimbursement under Minn. Stat. S 176.131, subd. 6, and the commissioner ~~shall refer~~ refers the matter to the chief hearing examiner ~~who~~ it shall ~~assign the matter~~ be assigned 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 Permanent partial disability panel.

A. Notification to administrator. Upon receipt of a file from the commissioner, if the chief hearing examiner, or a calendar or compensation judge if the case has been assigned to them, determines from a review of the file that permanent partial disability is a significant issue to be determined in the case, the chief hearing examiner shall immediately notify the administrator of the workers' compensation court of appeals

if the employee resides in a county selected by the court of appeals pursuant to the provisions of Minn. Stat. S 176.152, subd. 7.

B. Questions to panel. When the administrator of the workers' compensation court of appeals notifies the chief hearing examiner of the names and addresses of the members of the permanent partial disability panel, the compensation judge, or the chief hearing examiner in cases in which a compensation judge has not yet been assigned, shall submit written questions to the panel. A copy of the questions shall be served on all parties at the same time.

C. Hearing. When the chief hearing examiner or compensation judge receives the report of the panel, the case shall be set for a regular hearing as soon as practicable.

D. Disputes relating to payment of panel members. Disputes relating to the payment of the fees of panel members arising pursuant to the provisions of Minn. Stat. S 176.152, subd. 6, shall be brought to the attention of the compensation judge assigned to hear the case no later than 20 days prior to the date of the hearing. The parties disputing the fee shall notify the compensation judge, in writing, of the intent to dispute the fee, stating therein the specific facts relied upon in disputing the fee. A copy of this notification shall be served on all other parties and the members of the panel at the same time as it is filed with the compensation judge. At the hearing, the dispute shall be determined as other issues in the case.

9 MCAR S 2.326 Exhibits: removal and return.

A. Requests for removal. All requests for permission to remove any exhibit or document from the official file must be made to the compensation judge to whom the file has been assigned or to the supervisor of the docket section of the office.

B. Return without consent or notice. Upon the expiration of the time in which to appeal, all exhibits or other documentary evidence may be returned to their source of origin without the consent of the parties or notice thereto~~, upon order of the~~

~~compensation judge~~. A copy of the letter of transmittal of the exhibits or documents shall remain in the file as part of the record of the case.

C. Request for return. Upon expiration of the time in which to appeal, exhibits or other documentary evidence shall be returned to their source upon the request of the party producing the exhibit or evidence at the hearing or the party which introduced the evidence into the record. A request for return of exhibits or documents shall be made in writing to the compensation judge, shall contain the title and appropriate identification number of the case in which they were entered into evidence, and shall identify the exhibits or documents requested. A telephone number of the person making the request shall be included with the request.

OFFICE OF THE REVISOR OF STATUTES

Certificate of Approval of Adopted Rules

Agency: Office of Administrative Hearings

Rule Numbers: 9 MCAR SS 2.301-2.326

Rule Title: Adopted Rules Relating to Workers' Compensation

Type of Rules: Permanent X

Temporary _____

Documents Incorporated by Reference: None

The attached Rules are approved as to form.

Steven C. Cross
Revisor of Statutes

Name: Paul M. Marinac

Title: Assistant Revisor

Phone: 296-0948

Rules as Proposed (All new material)

9 MCAR S 2.301 Scope and purpose. The procedures contained in 9 MCAR SS 2.301-2.326 shall govern all hearings required to be conducted pursuant to the provisions of the Minnesota workers' compensation laws, Minn. Stat. ch. 176 ~~82~~ and the Minnesota Administrative Procedure Act, Minn. Stat. SS 15.0411-15.052, 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 in the cases.

B. Authority of compensation judges. In any case which has been regularly assigned to him or 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 or 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. For the purposes of 9 MCAR SS 2.301-2.326, the following terms have meanings given them.

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

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

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

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

5. "Division" means the Workers' Compensation Division of

APPROVED BY THE REVISOR OF STATUTES OFFICE BY:

the Department of Labor and Industry.

insert definition of "Office"

~~6.~~ 7. "Petition" means 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.~~ 8. "Petitioner" means the injured employee, an heir or dependent of a deceased employee or a party filing on their behalf or an employer or insurer.

~~8.~~ 9. "Settlement judge" means a workers' compensation judge from the Department of Labor and Industry.

9 MCAR S 2.303 Joinder of parties.

A. Request. Upon a motion of any party or upon his or her own motion, a ~~settlement or calendar~~ 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 by the party requesting joinder with copies of the order of joinder and all pleadings in the case.

B. Service. Any party requesting joinder of additional parties shall serve a copy of the request on all existing parties, and the party to be joined, and file the original with proof of service with the ~~settlement or calendar~~ compensation judge no later than ten days prior to the pretrial or settlement conference, or within 15 days after receipt of a pretrial order unless the 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 request is served on the party to be joined, it shall be accompanied by copies of all pleadings and the notice of the date, time and place set for a settlement conference or prehearing conference.

C. Affidavit. When a party requests joinder less than ten days prior to the pretrial or settlement conference date, the request shall include an affidavit of the requesting party stating the facts necessary to show cause why the lesser time should be allowed.

D. Delay. In cases where the ~~settlement or calendar~~ compensation judge has denied the joinder because of the requesting party's failure to meet the ~~ten-day~~ 5 time requirement, the case shall not be stricken, continued or otherwise delayed for the purposes of joinder, unless the attorney for the employee or dependent consents to it.

E. Contents of motion. All motions for joinder shall contain at least the following:

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

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

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

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

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.

F. Objection. A party contesting joinder under 9 MCAR S 2.303 may do so by objection filed with the ~~settlement or calendar~~ compensation judge within ten 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 Commencement of proceedings; petitions; responsibilities of attorneys; notice to third parties.

A. Commencement of proceedings. Original proceedings for the adjudication of compensation rights and liabilities are commenced by the service of a petition as provided by Minn. Stat. S 176.305. ~~Any petition filed on behalf of an employee or his or her dependents shall certify that 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. Consolidation of claims. 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.

~~C. Contents of petitions.~~ B. Petitions. A petition shall ~~contain the following information which shall be in the sequence listed in~~ be in writing and shall be on the form prescribed by the commissioner.

~~1. Title. The title of the case shall include the petitioner's name, the employer's name and address, the insurer's name and address, the division's record number and the employee's social security number;~~

~~2. The petitioner's address;~~

~~3. The date of the alleged personal injury or onset of occupational disease;~~

~~4. The place of employment on the date of the alleged injury or disease;~~

~~5. The employee's weekly wage at the time of the alleged injury or disease;~~

~~6. A statement that the injury or disease arose out of and in the course of the employment;~~

~~7. A statement which specifies the nature and extent of the alleged injury or disease, including the percentage of disability, if known, attaching a copy of all medical reports;~~

~~8. The date on which the employer was first given notice of the alleged injury or disease and the manner in which the notice was given;~~

~~9. The name and address of the employer's insurer on the date of the alleged injury or disease or if the employer was self-insured, a statement to that effect;~~

~~10. A detailed listing of the dates of the alleged disability, stating whether each date was for temporary total, temporary partial, permanent total, or permanent partial disability;~~

~~11. A detailed list of the medical benefits alleged to be owing, giving the names, addresses, dates of treatment or purchase of drugs, or other compensable items;~~

~~12. The names and addresses of any third parties who have~~

~~paid disability, medical or other benefits to the employee as a result of the alleged injury or disease, listing the dates and amounts of the payments, and the relevant claim number or policy number;~~

~~13. A statement that attorney's fees are or are not requested;~~

~~14. A statement that the employer and insurer were notified, as required by Minn. Stat. S 176.271, subd. 2, that a proceeding would be instituted and stating the relief sought, giving the date of the notice and attaching a copy of the notice;~~

~~15. A signature and attestation by the employee;~~

~~16. The name, address and telephone number of the employee's attorney unless the employee is representing himself or herself;~~

~~17. A statement that a settlement or prehearing~~ conference is or is not requested and, if so, the requested location for the conference;

~~18. A statement indicating the number of lay and medical~~ witnesses expected to be called as witnesses and the anticipated length of their testimony;

~~19. A statement specifying the principal issues to be~~ resolved at hearing;

~~20. A statement that the employee is or is not presently~~ receiving workers' compensation benefits and, if the employee is, the amounts and the name and address of the paying party; and

~~21. The requested location for the regular hearing.~~

~~D.~~C Heading of petition. Unless otherwise provided by law, all requests for action by ~~the commissioner, a settlement, calendar or~~ a compensation judge after the filing of a petition caption the employee's social security number shall contain ~~the title~~ and appropriate identification number of the case and shall indicate the type of action requested.

E. Responsibilities of attorneys; notice to third parties. All attorneys representing employees, employers, or any other parties to a workers' compensation proceeding shall inquire of their clients ~~at the time the proceeding is commenced, and again~~

within five days of receipt of a pre~~hearing~~trial order or a notice of ~~prehearing~~ Pretrial conference, as to whether any third party, other than the workers' compensation insurer, has paid wage loss benefits or treatment expense to the employee or in the employee's behalf.

If inquiry discloses that any third party, such as an insurer or a welfare department, has made any such payments, the attorney discovering that fact shall then have the duty to place the third party on written notice~~, within five days,~~ of its right to petition for intervention and reimbursement. The written notice shall have attached to it a copy of 9 MCAR S 2.310 and also a copy of all pleadings in the case and a copy of all notices and all orders of the ~~workers' compensation~~ division ~~of the department of labor and industry~~ and of the office ~~of administrative hearings~~ served in the case to date, and shall specifically advise that:

1. The employee has commenced a proceeding to recover workers' compensation benefits, and that under Minn. Stat. S 176.361 and 9 MCAR S 2.310 the third party has the right to petition for intervention and reimbursement of payments made for treatment and wage loss;

2. The name and address of all parties to the proceeding and the names and addresses of their attorneys;

3. The name of the third party's insured, the nature of the payments made, and any identifying claim and policy number;

4. Any failure of the third party to comply with any provisions of 9 MCAR S 2.310 shall result in a denial of the claim for reimbursement unless the compensation judge determines that the error or omission is merely technical.

~~Failure of an employee's attorney to comply in a timely manner with this rule shall be taken into consideration as an additional significant factor in determining the attorney's fee under Minn. Stat. S 176.081.~~

~~Failure of an attorney representing an employer and insurer to comply in a timely manner with this rule shall be taken into consideration for purposes of determining whether a penalty shall be assessed against the employer and insurer under Minn.~~

Leave In

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~~Stat. S 176.225 for unreasonable or vexatious delay~~

~~Where inquiry by the attorney for the injured employee at the time a proceeding is commenced discloses information that a third party has made payments, the employee's claim petition shall not be accepted for filing and the proceeding shall not be considered commenced unless the claim petition is accompanied by a proof of service of written notice upon the third party, unless the time for commencing an action under the statute of limitations in Minn. Stat. S 176.151 has run. The written notice shall be in the form prescribed by I. 4.~~

9 MCAR S 2.305 Settlement ~~judge review and settlement~~ conferences.

~~A. Referral.~~ Pursuant to the provisions of Minn. Stat. S 176.305, Subd. 1 ~~Upon the filing of a petition, the commissioner, within ten days, shall refer the matter to a settlement judge who shall review the filing to determine whether a settlement conference is appropriate.~~

~~B. Disposition. If a settlement conference has been requested or is deemed appropriate by the settlement judge, he or she shall notify all parties of the date, time and place where the settlement conference will be conducted. The settlement conference shall be completed within 60 days of the date of referral of the petition by the commissioner. If a settlement conference has not been requested or is deemed to be inappropriate, the settlement judge shall certify the matter to the chief hearing examiner.~~

~~C. Retention of jurisdiction.~~ Pursuant To Minn. Stat. S 176.305, Subd. 1 ~~If the settlement conference cannot be concluded within 60 days, the settlement judge shall certify the matter to the chief hearing examiner; provided, however, that with the consent of the petitioner or his or her representative, the settlement judge may retain jurisdiction for an additional 60 days for purposes of receiving a full settlement of all issues.~~

~~B~~ A Settlement alternatives not precluded. Nothing contained in ~~this~~ These rules 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~~ they prohibit the chief

a compensation
hearing examiner or ~~calendar~~ judge from setting a settlement conference on his or her own motion once the matter has been received from the commissioner.

~~E~~B Attendance. 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.

~~F~~C Matters agreed upon. If, following a settlement conference, a 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 or she approves of those matters agreed upon, issue an order confirming and approving those matters agreed upon. The order shall be binding on any compensation judge who may subsequently be assigned to hear the case. Issues once agreed upon and approved may be reopened by the compensation judge only upon motion of any party on the basis of newly discovered evidence which was not reasonably discoverable at the earlier time.

9 MCAR S 2.306 Notice of intention to discontinue compensation payments.

~~A. Contents. A notice of intention to discontinue compensation shall be filed with the commissioner pursuant to Minn. Stat. S 176.241, shall contain the following information:~~

~~1. The name and home address of the person whose compensation would be discontinued;~~

~~2. The file number previously assigned by the division and the office of administrative hearings;~~

~~3. The name and address of the attorney, if any, who represented the employee during previous proceedings;~~

~~4. A description of the prior order, if any, under which compensation was being paid and the name of the person issuing the order;~~

~~5. The date the compensation is proposed to be discontinued;~~

~~6. A complete list of facts supporting the discontinuance which shall be prepared with sufficient specificity to allow the employee to prepare an objection without the necessity of requesting additional information;~~

~~7. If the proposed discontinuance is based on medical evidence, copies of all medical reports bearing on the employee's physical condition at the time of the proposed discontinuance;~~

~~8. A statement which shall read as follows:~~

~~NOTICE~~

~~You have the right to object to this proposed discontinuance. If you intend to object, you must prepare a written objection and file it with the Commissioner of the Minnesota Department of Labor and Industry, Fifth Floor, Space Center Building, 444 Lafayette Road, St. Paul, Minnesota 55101. You may contact (employer) or (insurer) regarding the discontinuance and the procedures related to the filing of an objection. If you file an exemption, it may be mailed or personally delivered to the Department of Labor and Industry at the address listed above. An objection must contain your full name, address and telephone number, the name of the employer and insurer, the date of this notice and the file number listed on this notice.~~

~~9. The name and address of the employer and insurer;~~

~~10. The name, address and telephone number of the attorney representing the employer or insurer; and~~

~~11. The name, address and telephone number of the person filing the notice.~~

~~b. Objections.~~

~~1. Any objection to the proposed discontinuance shall be in writing, and shall be filed with the commissioner, and shall contain the following information:~~

~~a. The name, address and telephone number of the employee;~~

~~b. The name, address and telephone number of the person filing the objection, if it is not the employee;~~

~~c. The name of the employer and insurer;~~

~~d. The date of the notice of discontinuance; and~~

~~e. The file numbers which were listed on the notice of discontinuance.~~

~~2.~~ When an objection to a notice of intention to discontinue compensation has been filed or where it appears

to the commissioner that the right to compensation may not have terminated, and the matter has been referred to the chief hearing examiner, who it shall be set for hearing on a priority basis not less than 30 nor more than 75 days from the date of the receipt of the matter from the commissioner.

B Any objection filed more than 120 days after service of a notice to discontinue shall be treated as a claim petition for purposes of scheduling a hearing and shall not be heard on a priority basis.

C. Petitions for discontinuance. When an employer or insurer petitions the commissioner for an order allowing discontinuance of benefits but has chosen not to discontinue payments until after a final determination and the matter has been referred to the chief hearing examiner, the petitioner shall be entitled to a hearing on the same priority basis as set forth in B. ~~2. Petitions filed under this provision shall contain the same information as required for a notice of discontinuance~~.

~~9 MCAR § 2.307 Answers.~~

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

~~B. Proof of service. The answer shall be accompanied by proof of service upon the opposing parties.~~

~~C. Contents. 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 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 notice of intention to initiate proceedings. Any request for an extension 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.~~

9 MCAR S ~~2.308~~ 2.307 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.

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 or on a party may be served by or on 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 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.

9 MCAR S ~~2.309~~ 2.308 Hearings.

A. Definition of hearing. For the purposes of 9 MCAR SS 2.301-2.326, a hearing may be called a settlement conference, a ~~prehearing~~ pretrial 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~~ proceeding conducted by a settlement judge. It is 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 the matter. ~~The conference may be conducted by telephone and in the cases where 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~~ pretrial conference may be required whether or not a settlement conference has been held and may be conducted by telephone. The purposes of a ~~prehearing~~ pretrial conference are to ascertain if there are genuine disputes requiring resolution by a calendar or compensation judge, to provide assistance to the parties in resolving disputes, to narrow the issues, and to expedite preparation and trial if a regular hearing is necessary. A ~~prehearing~~ pretrial conference is conducted by a calendar or compensation judge. It shall be conducted by telephone if the location set for the ~~prehearing~~ pretrial 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~~ 2.307 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~~ pretrial conference shall be sufficient notice. Each attorney receiving notice of the hearing date at a settlement or ~~prehearing~~ pretrial conference shall be responsible for notifying each party the attorney represents of the hearing date. When a written notice is required, it shall be given at least ~~five~~ 30 days prior to the date of hearing, except:

1. When notice is waived by all parties;

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

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

~~C.~~ 9 MCAR S 2.309 Continuances.

~~1.~~ A 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 the 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.~~ B 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, which date has been approved by the compensation ~~, calendar or settlement~~ or calendar judge before whom the matter is pending, and when the continuance request is made no less than ten working days prior to the hearing date, the continuance shall be granted.

~~3.~~ C If all parties have not agreed to a continuance, requests for continuances shall be made to the compensation or ~~calendar or settlement~~ judge before whom the matter is pending. When made more than ten 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. If less than ten working days remain prior to the 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.~~ D Good cause shall not include:

~~a.~~ 1 When 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.~~ 2. When 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.~~ 3. 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.~~ 4. 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. Motion. 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 matter has been 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~~ a 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. A motion to intervene shall be served and filed within 30 days after a person has received notice that a claim petition has been filed as provided in 9MCAR§ 2.301. In any other situation, ~~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, 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;

8. At the option of the intervenor, a proposed stipulation which states 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 petitioner is successful in proving the compensability of the claim, it is agreed that the sum be reimbursed to the intervenor.

B. Stipulation. When the person serving the motion for intervention has included a proposed stipulation, all parties shall either execute and return the signed stipulation to the intervenor or serve upon the intervenor and all other parties specific and detailed objections to any payments made by the intervenor which are not conceded to be correct and related to the injury or condition the employee has asserted is compensable. If a party has not returned the signed stipulation or filed objections within ~~20~~ 30 days of service of the motion, the intervenor's right to reimbursement for the amount sought shall be deemed to ~~have been~~ established ~~without the necessity of the intervenor participating further in the proceedings~~ provided that the employee's claim is determined to be compensable.

C. Attendance by intervenor. Unless a stipulation has been signed and filed or the intervenor's right to reimbursement has otherwise been established, the intervenor shall attend all settlement or ~~prehearing~~ conferences and shall attend the regular hearing if ordered to do so by the compensation judge.

D. Order. If an objection to intervention remains following settlement ~~and/or prehearing~~ pretrial 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. Presentation of evidence by intervenor. Unless a stipulation has been signed and filed or the intervenor's right to reimbursement has otherwise been established, at the regular hearing on the claim petition where intervention has been granted, if ordered by the compensation judge, the intervenor shall present evidence in support of his or her claim after the 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. Effects of noncompliance with rule. 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 merely technical.

G. Failure of attorney to respond. Failure by the employee's attorney to submit a timely response which also complies otherwise with this rule shall be a significant additional factor to be taken into consideration under Minn. Stat. S 176.081 in determining the amount of the attorney's fees. Failure by an attorney representing an employer or insurer to submit a timely response which also complies otherwise with the requirements of this rule shall be taken into consideration for purposes of determining whether a penalty shall be assessed against the employer or insurer under Minn. Stat. S 176.225 for unreasonable or vexatious delay.

9 MCAR S 2.311 Consolidation.

A. Authorization. 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 affect the rights of the parties in the other case; and

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

Notwithstanding the requirements of this rule, the parties may stipulate and agree to such consolidation.

B. Receipt of evidence. Under consolidation, all documentary evidence previously received in an individual case shall be reintroduced in the 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, the 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~~ pretrial conference if one has been requested.

D. Objection to consolidation.

1. Motion for severance. Any party may object to consolidation by filing with the 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~~ the motion petition.

2. Determination. If the ~~appropriate~~ judge finds that consolidation would prejudice the rights of the party moving for severance,

the judge shall order such severance or other relief as he or 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. Procedures.~~ A compensation judge shall withdraw from participation in a case at any time if the judge deems himself or herself disqualified, prejudiced or biased for any reason. Proceedings to disqualify a compensation judge shall be initiated by the service on all parties and 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~~ The motion for disqualification shall be filed with the chief hearing examiner not more than ten days after the moving party has received notice of the assignment of the judge or has knowledge of the grounds for disqualification, whichever occurs last 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.

~~B. Affidavit for reassignment. The petitioner and parties responding to a petition shall be entitled to reassignment of a regular hearing to another compensation judge in accordance with the provisions of this section. Proceedings for a reassignment shall be instituted by the filing of an affidavit under penalty of perjury in substantially the following form:~~

~~State of Minnesota.~~

~~-68-~~

~~County of .....~~

~~....., being duly sworn, deposes and says: That (s)he is (a party) (attorney for a party) to the above entitled case; that affiant believes that (s)he cannot have a (fair) (expeditious) (inexpensive) (unencumbered) (impartial) trial before the workers' compensation judge (before whom the case is pending) (to whom the case is assigned).~~

~~.....~~

~~Subscribed and sworn to before me this .....day of ....., 19--.~~

~~.....~~

~~Notary Public~~

~~My commission expires.....~~

~~If the compensation judge assigned to hear the case is known, the affidavit shall be filed not more than five working days after receipt of the notice of regular hearing and be directed to the attention of the chief hearing examiner. A copy of the affidavit shall be served on all other parties or their attorneys at the same time the affidavit is filed. In no event shall any such affidavit be entertained after the swearing of the first witness at a regular hearing.~~

~~Upon the filing of an affidavit for reassignment in accordance with the provisions of this section, without any further act or proof, the chief hearing examiner shall assign the case or proceeding to another compensation judge. Upon reassignment a new notice of regular hearing shall be served. Under no circumstances shall more than one such reassignment be made in any one case or proceeding pursuant to the affidavit of any one party, provided, however, that one additional reassignment may be made upon petition of a party on the other side. The petition by the other party shall be filed in the manner and time hereinbefore provided.~~

Unless required because of the unavailability of a compensation judge to hear the case, no continuance shall be granted by reason of ~~an affidavit filed~~ a disqualification under this section. If

a continuance is necessary, another regular hearing will be scheduled as early as possible.

Consolidated cases are to be considered as one case within the meaning of this section. This section is not applicable to settlement or pretrial conferences.

9 MCAR S 2.313 ~~Prehearing~~ pretrial procedures.

A. Requirement. All cases ~~shall~~ may be subject to a settlement conference or a ~~prehearing~~ pretrial conference ~~whenever possible,~~ at which all parties shall attend or be represented, unless a ~~settlement judge or calendar~~ judge or compensation orders otherwise. If parties are represented by attorneys, the attorneys 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~~ pretrial conference must have authority to settle their respective claims.

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

C. Conference procedures. At the settlement or ~~prehearing~~ pretrial 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~~ pretrial conference shall be filed as soon as available prior to the regular hearing;

5. Each party shall state what exhibits, including photographs, motion picture films, video tapes and documentary evidence, are intended to be used at the hearing, and copies of

Judge shall order that a pretrial or settlement conference be conducted if any party requests that one be conducted.

A compensation

these exhibits shall be made available to opposing counsel no later than ten 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, it shall pay the expense for the showing and may tax this expense in the same manner as other disbursements;

6. If the employee plans to introduce hospital records into evidence, the employee or his attorney shall bring to the settlement or ~~prehearing~~ pretrial conference written authorizations for opposing counsel to examine those records if the 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~~ pretrial conference, and shall furnish opposing counsel with copies of itemized bills for such expenses at least ten days prior to the settlement or ~~prehearing~~ pretrial conference;

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

10. The 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. If payment has

been made, the name and address of the party making payment shall be furnished to the ~~settlement or calendar~~ compensation judge, 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 ten days prior to the settlement or ~~prehearing~~ pretrial conference, copies of the relevant wage records of the employee;

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

E. Evidence not disclosed at conference. Evidence, or other matters listed in C. which have not been disclosed at the settlement or ~~prehearing~~ pretrial conference or in a pretrial statement shall not be allowed to be presented at the regular hearing unless it can be shown to the compensation judge that the evidence or other matters offered were discovered subsequent to the ~~prehearing~~ pretrial conference or filing of a pretrial statement, whichever occurs last, were not discoverable through the exercise of due diligence prior to that time, and that the other parties have been advised of the evidence or other matters prior to the trial and have had an opportunity for review.

F. Temporary orders. Any insurer or self-insurer voluntarily agreeing to pay benefits pursuant to Minn. Stat. S 176.191, subd. 1, while the case is pending before the office, shall file a formal petition for temporary order.

1. The petition shall contain the following:

a. Name of the employer and its insurer (or self-insured) consenting to payment of compensation benefits and medical expenses;

b. The dispute involved, including the name and address of other employer and its workers' compensation insurer, if known, that may be liable for workers' compensation benefits and the date of the alleged injury while working for the employer;

c. The beginning date of the employee's present disability, and the compensation rate that the insurer or self-insurer will voluntarily pay;

2. The original petition for temporary order, with proof of service on all necessary parties, shall be filed with ~~the division,~~ the office~~, or the court of appeals, depending upon where the matter is pending~~;

3. The petition for temporary order shall be accompanied by a prepared formal order that should be substantially in the following form:

> The undersigned having examined the foregoing petition for temporary order and the compensation files and records herein, and it appearing that a temporary order for payment of compensation benefits should be issued pending a final determination, as provided by Minn. Stat. S 176.191, subd. 1;
>
> NOW, THEREFORE, IT IS HEREBY ORDERED, that (name of insurer or self-insured) having consented to payment of compensation benefits pursuant to Minn. Stat. S 176.191 shall pay to (name), employee, compensation at the weekly rate of $(amount), during the period of employee's disability, beginning (date), and shall also pay reasonable medical expenses related to employee's said disability.
>
> IT IS FURTHER ORDERED, that following a final determination of liability and if it has been determined that some other employer or insurer is liable for all or part of the compensation paid pursuant to this temporary order, then the division, the compensation judge, or Court of Appeals shall order the parties held liable to reimburse (name of paying party) for all or part of the compensation paid pursuant to this temporary order, for which the other parties are held liable, including interest at the

rate of five percent per annum.

Dated at....., Minnesota

this.....day of.....

~~(WORKERS' COMPENSATION DIVISION)~~

(COMPENSATION JUDGE)

~~(COURT OF APPEALS)~~

.....

By.....

The original and sufficient copies of the order to make service upon all neccessary parties, and any attorneys representing them, shall be filed.

G. Payment of benefits by special compensation fund. An employee seeking payment of benefits by the special compensation fund pursuant to Minn. Stat. S 176.191, subd. 2, when the case is pending before the office, shall file a formal petition for temporary order.

1. The petition shall contain the following:

a. A statement that written demand for payment pursuant to Minn. Stat. S 176.191, subd. 1, has been made against all employers and insurers party to the claim and that the payment demanded has been refused;

b. The names and addresses of all employers and insurers or self-insurers who are parties to the claim;

c. A statement as to the dispute involved and the dates of all alleged injuries while working for each employer;

d. The beginning date of the employee's present disability, the compensation rate applicable for each injury date, the proposed compensation rate to be paid by the special compensation fund, and an itemization of all medical expenses requested to be paid pursuant to the temporary order;

e. Copies of all medical reports supporting the claimed period of disability and the causal relationship of the disability to the employee's employment.

2. The original of the petition for temporary order, with proof of service on all necessary parties, shall be filed with ~~the division~~, the office~~, or the court of appeals, depending upon where the matter is pending~~;

3. The petition for temporary order shall be accompanied by a prepared formal order that should be substantially in the

following form:

> The undersigned having examined the foregoing petition for temporary order and the compensation files and records herein, and it appearing that a temporary order for payment of compensation benefits should be issued pending a final determination, as provided by Minn. Stat. S 176.191, subd. 2;
>
> NOW, THEREFORE, IT IS HEREBY ORDERED that the State Treasurer, as custodian of the special compensation fund, shall, pursuant to Minn. Stat. S 176.191, subd. 2, pay to (name), employee, compensation at the weekly rate of $(amount), during the period of employee's disability, beginning (date), and shall also pay reasonable medical expenses related to the employee's said disability.
>
> IT IS FURTHER ORDERED, that following a final determination of liability and if it has been determined that one or more employers or insurers are liable for all or part of the compensation paid pursuant to this temporary order, then the division, the compensation judge or Court of Appeals shall order the parties held liable to reimburse the State Treasurer, as custodian of the special compensation fund, for all or part of the compensation paid pursuant to this temporary order, for which the other parties are held liable, including interest at the rate of 12 percent per annum.

Dated at....., Minnesota

this.....day of.....

~~(WORKERS'S COMPENSATION DIVISION)~~

(COMPENSATION JUDGE)

~~(COURT OF APPEALS)~~

.....

By.....

The original and sufficient copies of the order to make service upon all necessary parties, and any attorneys representing them, shall be filed.

H. Necessary parties. For the purpose of this rule, the following shall be deemed necessary parties:

1. The employee or dependents;

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

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 the petition is made pursuant to Minn. Stat. S 176.191, subd. 2.

I. Answer. Within ten days after being served with a copy of the petition for temporary order and order, employers or their insurers, other than paying party, or the state treasurer, as custodian of the special compensation fund, may file a verified answer to the petition in accordance with the provisions of Minn. Stat. S 176.321.

J. Circumstances of nonapproval of temporary orders. Temporary orders, as a general rule, shall not be approved if made contingent upon the waiver by the employee of his rights to claim an additional award pursuant to Minn. Stat. S 176.225, or to have fees for his attorney assessed against the employer and insurer in addition to compensation pursuant to Minn. Stat. S 176.191 or 176.081, subd. 8.

K. Effect of filing. The filing of a petition for temporary order shall not cause the matter to be placed on the trial calendar, unless accompanied by a petition for contribution or reimbursement.

9 MCAR S 2.314 Discovery.

A. Demand. Each party shall, within 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 the 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 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 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 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. 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. 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 motion shall state, with specificity, the facts or other reasons supporting the need for the deposition. The ~~settlement,~~ compensation or calendar judge shall order the deposition to proceed if the judge 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, that unusual or extraordinary circumstances exist which compel extensive discovery, or 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~~ witness shall be allowed. Unless, for good cause shown, the party taking the deposition has obtained the permission of the calendar judge, or compensation judge if the case has been assigned for hearing, to take the deposition subsequent to the hearing, it shall be taken sufficiently in advance of the commencement 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.

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 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, is not for purposes of delay, and that the issues or amounts in controversy are significant enough to warrant extensive discovery.

D. Penalties. Upon the failure of a party to reasonably comply with 9 MCAR SS 2.301-2.326 relating to discovery or with an order of 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 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 that party from introducing designated matters in evidence.

E. Proprietary information. When a party is asked to reveal material which that party considers to be proprietary

information or trade secrets, he or 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 Petitions for contribution or reimbursement.

A. Contents. Petitions for contribution or reimbursement in cases pending before the office 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 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 parties named in it.~~

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

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

D. Notice to employee. The employee shall be notified of all of the proceedings and should be represented by an attorney of his or her choice. A copy of all motions or answers shall be

a pretrial conference is not automatically set

~~duly~~ served upon the employee, the employee's attorney, or both 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 with it, the calendar judge or compensation judge, if the case has been assigned for regular hearing, may quash or modify the subpoena if the judge finds that it is unreasonable or oppressive.

9 MCAR S 2.317 The hearing.

A. Notice. A place, date and time certain will be assigned to each case. Notice of the regular hearing will be given as soon as the assigned date is known, but shall be given at least ~~five~~ 30 days in advance of the hearing. The notice will include the place of hearing and the amount of time allowed for the ~~case~~ the name of the compensation judge assigned if known 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. Availability of medical witnesses. 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 B.

C. Medical reports. 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 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 the disability;

8. The medical treatment indicated;

9. ~~Opinion~~ If permanent partial disability is an issue, an opinion as to whether or not permanent disability has resulted from the injury and whether or not the condition has stabilized. If 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.

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. 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 or 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 the judge's final order.

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;

d. Offers of proof, objections and rulings thereon;

e. The compensation judge's order;

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

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

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

3. The transcript.

a. The chief hearing examiner shall direct that the verbatim record of a hearing shall be transcribed if requested by any person. If a transcription is made, except as provided in c., the chief hearing examiner shall require the requesting person and other persons who request copies of the transcript to pay a reasonable charge for them if transcribed by the office. If transcribed by someone other than the office, the person requesting the transcription or a copy shall be liable to the person preparing the transcript for the charge.

b. Charges for transcripts prepared by the office shall be set by the chief hearing examiner, with the approval of the Department of Finance, and all moneys received for transcripts prepared by the office shall be payable to the State Treasurer, Office of Administrative Hearings Account.

c. Pursuant to the provisions of Minn. Stat. S 176.421, subd. 4, clause (3), a party may petition the chief hearing examiner for an order directing that a transcript be prepared, for purposes of appeal to the Court of Appeals, at no cost to the appellant. A petition filed under this provision shall include the following:

(1) ~~Title~~ Caption of the case;

(2) Case identification numbers;

(3) Name, address and telephone number of the

attorney representing the appellant;

(4) A sworn affidavit from the appellant which shall include:

(a) Appellant's monthly personal income from all sources including income from trusts, bonds, and savings certificates;

(b) A list, at market value, of all stocks, bonds, savings certificates or other certificates of indebtedness held by the appellant and the appellant's spouse if residing in the same household;

(c) If residing in the same household, the monthly personal income from all sources for appellant's spouse;

(d) A statement of the monthly expenses for the appellant's household;

(e) If the appellant owns any rental property, a statement showing the appellant's equity in the property and the monthly income and expense for the property;

(f) If the appellant owns outright or is purchasing the property in which he or she resides, a statement showing the market value of the property, the appellant's equity in the property, and the present monthly payments, if any.

H. Continuances during the hearing. If it appears in the interests of justice that further testimony should be received, the compensation judge, ~~in his or her discretion~~ with the consent of all parties, may continue the hearing to a future date and 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 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 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 shall proceed first. All other parties 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 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 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 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 interference or disruption or threat thereof, the compensation judge shall read this rule to those persons causing the interference or disruption and thereafter proceed as the judge deems appropriate.

9 MCAR S 2.318 The compensation judge's 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 the judge's 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 and opportunity 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 or her decision and, upon completion, it shall be served on all parties ~~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 in the sequence as listed:

a. The date 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;

e. Findings of fact, conclusions and a determination on each issue raised. In cases involving a multiplicity of issues, the compensation judge may organize the decision by major subissues if the judge determines that organizing the decision in that manner will aid the reader in understanding the contents of it.

C. Readability. 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.

D. Proposed decision filed by party. 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. It shall also include a brief memorandum setting forth the issues and explaining the decision on each issue.

9 MCAR S 2.319 Rehearing. When a compensation judge has issued his or her findings, conclusions and decision, the judge's jurisdiction over the case shall end, except for taxation of disbursements or awarding of attorney's fees, unless the matter is ~~rereferred~~ referred to the compensation judge by the court of appeals

and the chief hearing examiner for supplemental findings, taking of additional testimony, rehearing, or other action; provided that compensation judges may correct clerical or mathematical errors in decisions at any time prior to appeal.

9 MCAR S 2.320 Settlements.

A. Stipulations. Stipulations for settlement are allowed pursuant to Minn. Stat. SS 176.081 and subd 7a and 176.521 and shall conform to ~~that~~ those ~~section~~ Sections and to the requirements of this rule.

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

C. Approval. ~~Stipulations for settlement shall be filed with and approved by the commissioner or the commissioner's designee if the case has not been referred to the chief hearing examiner.~~ except for those filed pursuant to Minn. Stat. § 176.081, subd. 7a,

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~~ a calendar judge if the matter has not yet been assigned. except for those filed pursuant to Minn. Stat. § 176.081, subd. 7a,

See Amendment # 1987

D. Contents. 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 the 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 or 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. 7 or 8, 176.135 or 176.191.

E. Attorney's fees detailed. Stipulations for settlement of cases in which the employee or dependents have engaged the services of an attorney shall 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, 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.

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

G. Award. The parties involved in the settlement shall submit an award on stipulation prepared for signature by the applicable judge and sufficient copies thereof for all parties to be served if the settlement is approved.

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

stipulation.

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

J. Payment. 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. ~~Authorization.~~ Notice of representation. Whenever an employer or insurer receives notice that an attorney is representing an employee or dependent, 25 percent 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 the compensation is being withheld shall immediately be mailed to the employee or dependents, the attorney and the division at its Saint Paul office.

B. ~~Application.~~ 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 employee or dependents or the attorney. ~~Application,~~ Unless ordered otherwise by a compensation judge, an application for attorney fees shall be by written petition. 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 for the 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.

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

~~C.~~ Filing. 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~~ a calendar judge if no assignment has been made.

9 MCAR S 2.322 Taxation of costs and disbursements.

~~A. (See New Section - Amendment 86)~~ Amendment 208

~~A~~B. Service of request. 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~~C Service of objection. 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~~D Hearing. If requested, a time for hearing before the compensation judge who heard the case shall be fixed. A notice thereof shall be given to the parties by the compensation judge.

9 MCAR S 2.323 Second injury law.

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

~~B. Hearing. 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 the 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 the 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. Referral.~~ If a dispute arises following the notice of intention to claim reimbursement under Minn. Stat. S 176.131, subd. 6, and the commissioner ~~shall refer~~ refers the matter to the chief hearing examiner ~~who~~ it shall ~~assign the matter~~ be assigned 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 Permanent partial disability panel.

A. Notification to administrator. Upon receipt of a file from the commissioner, if the chief hearing examiner, or a calendar or compensation judge if the case has been assigned to them, determines from a review of the file that permanent partial disability is a significant issue to be determined in the case, the chief hearing examiner shall immediately notify the administrator of the workers' compensation court of appeals if the employee resides in a county selected by the court of appeals pursuant to the provisions of Minn. Stat. S 176.152, subd. 7.

B. Questions to panel. When the administrator of the workers' compensation court of appeals notifies the chief hearing examiner of the names and addresses of the members of the permanent partial disability panel, the compensation judge, or the chief hearing examiner in cases in which a compensation judge has not yet been assigned, shall submit written questions to the panel. A copy of the questions shall be served on all parties at the same time.

C. Hearing. When the chief hearing examiner or compensation

judge receives the report of the panel, the case shall be set for a regular hearing as soon as practicable.

D. Disputes relating to payment of panel members. Disputes relating to the payment of the fees of panel members arising pursuant to the provisions of Minn. Stat. S 176.152, subd. 6, shall be brought to the attention of the compensation judge assigned to hear the case no later than 20 days prior to the date of the hearing. The parties disputing the fee shall notify the compensation judge, in writing, of the intent to dispute the fee, stating therein the specific facts relied upon in disputing the fee. A copy of this notification shall be served on all other parties and the members of the panel at the same time as it is filed with the compensation judge. At the hearing, the dispute shall be determined as other issues in the case.

9 MCAR S 2.326 Exhibits: removal and return.

A. Requests for removal. All requests for permission to remove any exhibit or document from the official file must be made to the compensation judge to whom the file has been assigned or to the supervisor of the docket section of the office.

B. Return without consent or notice. Upon the expiration of the time in which to appeal, all exhibits or other documentary evidence may be returned to their source of origin without the consent of the parties or notice thereto~~, upon order of the compensation judge~~. A copy of the letter of transmittal of the exhibits or documents shall remain in the file as part of the record of the case.

C. Request for return. Upon expiration of the time in which to appeal, exhibits or other documentary evidence shall be returned to their source upon the request of the party producing the exhibit or evidence at the hearing or the party which introduced the evidence into the record. A request for return of exhibits or documents shall be made in writing to the compensation judge, shall contain the title and appropriate identification number of the case in which they were entered into evidence, and shall identify the exhibits or documents requested. A telephone number of the person making the request

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

IN THE MATTER OF THE ADOPTION OF RULES RELATING TO THE PROCEDURAL REQUIREMENTS OF WORKERS' COMPENSATION HEARINGS.

AMENDED ORDER ADOPTING RULES

Following the previous submission of the above-referenced rules to the Attorney General and the Revisor of Statutes on Janury 28, 1982, the Revisor of Statutes discovered additional sections of the rules wherein the words "employee" or "employee or dependents" are used where more properly the term "petitioner" should be used.

The Chief Hearing Examiner, having reviewed the sections pointed out by the Revisor of Statutes and the rules in their entirety, finds that it is necessary and reasonable to insert the term "petitioner" in lieu of the words "employee" or "employee or dependents" in the places in the rules as detailed hereinbelow. By making the changes, ambiguities will be removed and dependents or heirs of an employee will not be foreclosed by this technical error. The changes listed herein are referenced to the Revisor of Statutes' draft dated January 18, 1982, as amended by the Chief Hearing Examiner's Amended Order Adopting Rules dated January 28, 1982.

In addition to the previously-discussed changes, the Chief Hearing Examiner, upon reviewing the rules, found two technical errors which are also amended herein. On page 28, the word "disposition" should be "deposition" and on page 40, the word "these" should be "those".

None of the foregoing changes constitute a substantial change in the rules which would require a new hearing.

Page 3, line 14, strike "employee or dependent" and insert "petitioner".

Page 6, line 26, strike "employee" and insert "petitioner".

Page 7, line 3, strike "an employee's" and insert "a petitioner's".

Page 16, line 10, strike "employee" and insert "petitioner".

Page 16, line 16, strike "employee's" and insert "petitioner's".

Page 17, line 7, strike "employee's" and insert "petitioner's".

Page 21, line 35, strike "employee" and insert "petitioner".

Page 21, line 36, strike "employee" and insert "petitioner".

Page 22, lines 4, 5, 10, 11, 14 and 15, strike "employee" and insert "petitioner".

Page 23, line 1, strike "employee" and insert "petitioner".

Page 23, lines 2 and 4, strike "employee or dependents" and insert "petitioner".

Page 24, line 37, strike "employee" and insert "petitioner".

Page 24, lines 39 and 41, strike "employee's" and insert "petitioner's".

Page 25, line 35, strike "employee's" and insert "petitioner's".

Page 26, lines 2, 20 and 22, strike "employee's" and insert "petitioner's".

Page 26, line 19, strike "employee" and insert "petitioner".

Page 28, line 28, delete "disposition" and insert "deposition".

Page 31, line 14, strike "employee" and "employee" and insert "petitioner" in both places.

Page 31, line 17, strike "employee" and "employee's" and insert "petitioner" and "petitioner's".

Page 40, line 7, delete "these" and insert "those".

Page 41, lines 5 and 26, strike "employee" and insert "petitioner".

Page 41, line 32, strike "employee or dependents" and insert "petitioner".

Page 42, line 11, strike "employee".

Page 42, line 12, strike "or dependents" and insert "petitioner".

Page 42, line 23, strike "an" and insert "a".

Page 46, line 1, strike "employee" and insert "petitioner".

NOW, THEREFORE, IT IS ORDERED that the above-referenced rules be adopted as amended herein.

Dated: February 1, 1982.

DUANE R. HARVES
Chief Hearing Examiner

OAH-82-001-PE

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

IN THE MATTER OF THE ADOPTION OF RULES RELATING TO THE PROCEDURAL REQUIREMENTS OF WORKERS' COMPENSATION HEARINGS.

AMENDED ORDER ADOPTING RULES

The above-entitled rules were submitted to the Attorney General for review on January 8, 1982. On January 27, 1982, the Attorney General advised the Chief Hearing Examiner that changes in the rules would be necessary in order to secure approval as required by Minn. Stat. § 15.0412.

The Chief Hearing Examiner, having reviewed the changes required by the Attorney General, finds the changes to be needed and reasonable and that none of the changes would result in substantially changing the rules which would require a new hearing.

NOW, THEREFORE, IT IS ORDERED that the above-captioned rules be amended as delineated hereinbelow and that when so amended, they be adopted.

The amendments are as follows (all references are to the Revisor of Statutes' draft date January 18, 1982):

Page 12, line 9, delete "settlement" and insert "compensation".

Page 15, line 6, after "2.304", insert "D".

Page 25, line 21, delete "An"; line 22, delete "employee" and insert "A petitioner".

Page 27, line 1, delete "employee or dependents" and insert "petitioner".

Page 27, line 17, delete "employee" and insert "petitioner".

Page 42, line 23, delete "employee or dependent" and insert "petitioner".

Page 42, line 28, delete "employee or dependents" and insert "petitioner".

Page 43, line 1, delete "employee or dependents" and insert "petitioner".

Page 43, line 6, delete "employee".

Page 43, line 7, delete "or dependents" and insert "petitioner".

Dated: January 28th, 1982.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

IN THE MATTER OF THE ADOPTION OF RULES RELATING TO THE PROCEDURAL REQUIREMENTS OF WORKERS' COMPENSATION HEARINGS.

AMENDED ORDER ADOPTING RULES

On January 7, 1982, the rules in the above-referenced matter were filed with the Attorney General for review on legality. The form of the rules as adopted at that time was approved by the Revisor of Statutes on January 11, 1982, and filed with the Attorney General on that date.

During the review by the Revisor, additional changes were made by the Revisor which were not specifically enumerated in the prior orders adopting rules. Having reviewed the changes made by the Revisor, and having found the changes to be needed, reasonable and not constituting substantial changes, IT IS HEREBY ORDERED that the following amendments to the rules as proposed be adopted:

1. Page 2, line 31, strike "prehearing" and insert "pretrial".

2. Page 5, line 33, strike "E" and insert "D".

3. All caption changes.

On January 14, 1982, the Governor failed to sign Special Session III, House File No. 2 which was passed by the Legislature on Monday, January 11, 1982, thus allowing that bill to become law. Sections 10, 21, 22, 23, 24, 25 and 26 amend Minnesota Statutes 1981 Supp., Chapters 15 and 176 in a manner affecting the rules as previously adopted. It is found that certain of the rules must be amended in order to conform to the changes in the law, which amendments are found to be needed, reasonable and not constituting substantial changes in the rules. Therefore, IT IS HEREBY ORDERED that the rules as submitted to the Attorney General and as approved by the Revisor of Statutes be further amended as follows (changes are to the Revisor's 1/11/82 "Rules as Adopted" submission):

1. Page 40, line 17, after "except" insert: "in cases where all parties are represented by attorneys or".

2. Page 40, line 27, add: "Where approval is not required pursuant to Minn. Stat. § 176.521, the award required by 9 MCAR § 2.320 G. shall be immediately signed by the compensation judge, served on all parties, and filed with the commissioner."

3. Page 42, line 14, strike "served" and insert: "filed with the commissioner".

Dated this 15th day of January, 1982.

DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

IN THE MATTER OF THE ADOPTION OF RULES RELATING TO THE PROCEDURAL REQUIREMENTS OF WORKERS' COMPENSATON HEARINGS.

ORDER ADOPTING RULES

The Chief Hearing Examiner, having considered the Report of the Hearing Examiner dated December 16, 1981, and the order of Allan W. Klein, the person designated by the Chief Hearing Examiner to perform the review required by Minn. Stat. § 15.0412, subd. 4d (1980), hereby adopts the Findings of Fact, Conclusions and Recommendations of the Hearing Examiner as the Findings of Fact and Conclusions of the agency.

Having waited the statutorily required five working days, it is hereby ORDERED that the rules as published at 6 State Register 14, pp. 553-573, be adopted with the following changes (all changes are "keyed" to the rules as proposed and approved by the Revisor of Statutes referencing the page and line numbers on the Revisor's draft):

1. Page 1, line 5, strike "82" and insert "176".

2. Page 2, between lines 1 and 2, insert: "6. "Office" means the Office of Administrative Hearings.", and renumber the remaining definitions as appropriate.

3. Page 2, line 13, strike "settlement or calendar" and insert "compensation".

4. Page 2, line 21, strike "settlement or calendar" and insert "compensation".

5. Page 2, between lines 22 and 23, insert: "or within 15 days after receipt of a pretrial order,".

6. Page 2, line 33, after "date" insert "or more than 15 days after receipt of a pretrial order".

7. Page 3, line 1, strike "settlement or calendar" and insert "compensation".

8. Page 3, line 3, strike "ten-day" and add "s" to the word "requirement".

9. Page 3, line 21, strike "settlement or".

10. Page 3, line 22, strike "calendar" and insert "compensation".

11. Page 3, line 30, strike "Any petition filed on behalf of an employee or".

12. Page 3, strike all of the language in lines 31 through 35.

13. Page 4, strike all of the language in lines 4 through 36.

14. Page 5, strike all of the language in lines 1 through 27.

15. Page 5, strike "D" and insert "C".

16. Page 5, line 29, strike "the commissioner, a settlement,"

17. Page 5, line 30, strike "calendar or" and insert "a".

18. Page 5, line 31, strike "title" and insert: "caption, the employee's social security number".

19. Page 5, line 36, strike "at the time the proceeding is commenced, and again".

20. Page 6, line 1, after "of" insert: "a pretrial order or"; strike "prehearing" and insert "pretrial".

21. Page 6, line 8, strike ", within five days,".

22. Page 6, line 12, strike "workers' compensation".

23. Page 6, line 13, strike "of the department of labor and industry" and the last "of".

24. Page 6, line 14, strike "administrative hearings".

25. Page 7, strike all of the language in lines 2 through 10.

26. Page 7, line 11, strike "judge review and settlement".

27. Page 7, strike all of the language in lines 13 through 32.

28. Page 7, line 33, strike "D" and insert "A".

29. Page 7, line 34, strike "this" and insert "these"; strike "rule" and insert "rules".

30. Page 7, line 36, strike "it" and insert "they".

31. Page 8, line 1, strike "calendar" and insert "compensation".

32. Page 8, line 4, strike "E" and insert "B".

33. Page 8, line 5, strike "settlement".

34. Page 8, line 9, strike "F" and insert "C".

35. Page 8, line 12, strike "settlement".

36. Page 8, strike all of the language in lines 23 through 36.

37. Page 9, strike all of the language in lines 1 through 42.

38. Page 9, line 43, strike "2" and insert "A"; after "objection" insert: "to a notice of intention to discontinue compensation payments".

39. Page 10, line 2, strike the comma and insert "and"; strike "shall be" and insert: "has been".

40. Page 10, line 3, strike "who" and insert ", it"; after "shall" insert "be"; strike "the matter".

41. Page 10, line 6, strike "3" and insert "B".

42. Page 10, line 7, after "petition" insert: "for purposes of scheduling a hearing".

43. Page 10, line 12, after "determination" insert: "and the matter has been referred to the chief hearing examiner".

44. Page 10, line 14, strike all of the language following "in B".

45. Page 10, strike all of the language in lines 15 through 36.

46. Page 11, strike all of the language in lines 1 and 2.

47. Page 11, line 3, strike "2.308" and insert "2.307".

48. Page 11, line 4, strike "commissioner, the".

49. Page 11, line 5, strike "settlement,".

50. Page 11, line 11, after "by" insert "or on".

51. Page 11, line 12, after "by" insert "or on".

52. Page 11, line 21, strike "2.309" and insert "2.308".

53. Page 11, line 24, strike "prehearing" and insert "pretrial".

54. Page 11, line 28, strike "hearing" and insert "proceeding".

55. Page 11, line 33, strike "the conference may be".

56. Page 11, strike all of the language in lines 34 and 35.

57. Page 12, strike all of the language in lines 1 through 4.

58. Page 12, line 5, strike "prehearing" and insert "pretrial".

59. Page 12, line 7, strike "prehearing" and insert "pretrial".

60. Page 12, line 12, strike "prehearing" and insert "pretrial".

61. Page 12, line 14, strike "prehearing" and insert "pretrial".

62. Page 12, line 22, strike "2.308" and insert "2.307".

63. Page 12, line 24, strike "settlement,".

64. Page 12, line 25, strike "prehearing" and insert "pretrial".

65. Page 12, line 27, strike "prehearing" and insert "pretrial".

66. Page 12, line 30, strike "five" and insert "30".

67. Page 12, line 35, strike "C" and insert "9 MCAR § 2.309".

68. Page 12, line 36, strike "1" and insert "A".

69. Page 13, line 9, strike "2" and insert "B".

70. Page 13, line 17, strike ", calendar or settlement" and insert "or calendar".

71. Page 13, line 21, strike "3" and insert "C".

72. Page 13, line 22, strike the comma and insert "or".

73. Page 13, line 23, strike "or settlement".

74. Page 13, line 29, strike "settlement,".

75. Page 13, line 31, strike "4" and insert "D".

76. Page 13, line 32, strike "a" and insert "1".

77. Page 14, line 1, strike "b" and insert "2".

78. Page 14, line 6, strike "c" and insert "3".

79. Page 14, line 11, strike "d" and insert "4".

80. Page 14, line 18, strike "settlement judge unless the matter has been".

81. Page 14, strike all of the language in line 19.

82. Page 14, line 20, strike "case the motion shall be submitted to the".

83. Page 14, line 21, strike the second "the" and insert "a".

84. Page 14, line 23, at the end of the line insert: "A motion to intervene shall be served and filed within 30 days after a person has received notice that a claim petition has been filed as provided in 9 MCAR § 2.304. In any other situation,".

85. Page 14, line 24, strike "Timeliness" and insert "timeliness"; strike "settlement".

86. Page 15, line 28, strike "20" and insert "30".

87. Page 15, line 30, strike "have been" and insert "be"; strike "without the necessity of the".

88. Page 15, line 31, strike all of the language and insert: "provided that the employee's claim is determined to be compensable".

89. Page 15, line 35, strike "prehearing" and insert "pretrial".

90. Page 16, line 2, strike "and prehearing" and insert "or pretrial".

91. Page 16, line 10, after "granted," insert: "if ordered by the compensation judge,". Not inserted see CHE 1/6

92. Page 17, line 6, after "prejudice" insert "the rights of".

93. Page 17, line 25, strike "prehearing" and insert "pretrial".

94. Page 17, line 32, strike "petitioner's name and address, the title of".

95. Page 17, line 33, strike "his case prior to consolidation, and the"; and strike "his".

96. Page 17, line 34, strike "petition" and insert "the motion".

97. Page 17, line 35, strike "appropriate".

98. Page 17, line 36, after "prejudice" insert "the rights of".

99. Page 18, line 8, strike "A. Procedures.".

100. Page 18, line 12, after "the" insert "service on all parties and the".

101. Page 18, line 13, strike "or declaration under penalty of perjury".

102. Page 18, line 16, strike "If the compensation judge".

103. Page 18, strike all of the language in line 17.

104. Page 18, line 18, strike "are known, the" and insert "The".

105. Page 18, line 21, after "hearing" insert "or has knowledge of the grounds for disqualification, whichever occurs last"; strike the rest of the language in the line.

106. Page 18, line 22, strike "entertained after the swearing of the first witness."

107. Page 18, strike all of the language in lines 28 through 36.

108. Page 19, strike all of the language in lines 1 through 33.

109. Page 19, line 36, strike "an affidavit filed" and insert "a disqualification".

110. Page 20, line 6, strike "Prehearing" and insert "Pretrial".

111. Page 20, line 8, strike "prehearing" and insert "pretrial"; strike "whenever possible,".

112. Page 20, line 10, strike "settlement judge or" and after "calendar" insert "or compensation"; after the period insert "A compensation judge shall order that a pretrial or settlement conference be conducted if any party requests that one be conducted."

113. Page 20, line 15, strike "prehearing" and insert "pretrial".

114. Page 20, line 18, strike "prehearing" and insert "pretrial".

115. Page 20, line 21, strike "prehearing conference" and insert "pretrial conferences".

116. Page 20, line 23, strike "prehearing" and insert "pretrial".

117. Page 20, line 32, strike the first "conference"; strike "prehearing" and insert "pretrial".

118. Page 21, line 9, strike "prehearing" and insert "pretrial".

119. Page 21, line 14, strike "prehearing" and insert "pretrial".

120. Page 21, line 17, strike "prehearing" and insert "pretrial".

121. Page 21, line 20, strike "prehearing" and insert "pretrial".

122. Page 21, line 29, strike "prehearing" and insert "pretrial".

123. Page 22, line 2, strike "settlement or" and after "calendar" insert "or compensation".

124. Page 22, line 7, strike "prehearing" and insert "pretrial".

125. Page 22, line 10, strike "settlement or" and after "calendar" insert "or compensation".

126. Page 22, line 16, strike "Prehearing" and insert "Pretrial".

127. Page 22, line 17, strike "prehearing" and insert "pretrial"; after "conference" insert "or prior to setting the date for a regular hearing".

128. Page 22, line 18, strike "settlement or" and after "calendar" insert "or compensation".

129. Page 22, line 20, strike "prehearing" and insert "pretrial".

130. Page 22, line 21, strike "settlement or calendar".

131. Page 22, line 23, strike "prehearing" and insert "pretrial"; strike "settlement or calendar".

CHE 1/16

132. Page 22, line 26, add: "When a pretrial statement has been ordered, the petitioner shall serve and file his statement within 20 days of the date of the order. The responding parties shall serve and file their statement within 30 days of the date of the order. Thereafter, a petitioner may serve and file an amended pretrial statement based solely on information presented in the responding parties' statements and not on new issues, which amended statement shall be filed within 40 days of the date of the order." p.23

133. Page 22, line 29, strike "prehearing" and insert "settlement or pretrial"; after "conference" insert "or in a pretrial statement".

134. Page 22, line 32, strike "prehearing" and insert "filing of a pretrial statement or pretrial"; after "conference," insert "whichever occurs last,".

135. Page 23, line 3, after "176.191, subd. 1," insert "while the case is pending before the office,".

136. Page 23, line 6, strike "or" and insert "(or".

137. Page 23, line 7, strike "self-insured" and insert "self-insured)".

138. Page 23, line 18, strike "the".

139. Page 23, line 19, strike "division," and strike ", or the court of appeals, depending upon".

140. Page 23, line 20, strike "where the matter is pending".

141. Page 24, strike lines 4 and 6.

142. Page 24, line 15, after "subd. 2," insert "when the case is pending before the office,".

143. Page 24, between lines 30 and 31, insert "e. Copies of all medical reports supporting the claimed period of disability and the causal relationship of that disability to the employee's employment."

144. Page 24, line 33, strike "the division," and strike ", or the court of appeals, depending".

145. Page 24, line 34, strike "upon where the matter is pending".

146. Page 25, strike lines 30 and 32.

147. Page 26, line 2, after "and order" insert "hereunder".

148. Page 27, line 16, strike "settlement,".

149. Page 27, line 18, after "forward." insert "The motion shall state, with specificity, the facts or other reasons supporting the need for the deposition."

150. Page 27, line 19, strike "settlement,".

151. Page 27, line 28, strike "medical".

152. Page 27, line 29, strike "doctor" and insert "witness".

153. Page 27, line 34, after "to" insert "or at the commencement of".

154. Page 27, line 35, strike everything after "hearing".

155. Page 28, strike line 2.

156. Page 28, strike "settlement judge or with the" and strike "of administrative hearings".

157. Page 28, line 11, strike "settlement,".

158. Page 28, line 23, strike "settlement,".

159. Page 29, line 6, insert at the end: "in cases pending before the office".

160. Page 29, line 12, strike "the".

161. Page 29, strike lines 13 through 17.

162. Page 29, line 18, strike everything after "B. Filing.".

163. Page 29, line 19, strike "form of action is pending, a" and insert "A".

164. Page 29, line 20, after "reimbursement" insert "under this rule".

165. Page 29, line 21, strike "settlement or prehearing" and insert "pretrial"; after "conference" insert "or within 20 days of receipt of a pretrial order if a pretrial conference is not automatically set."

166. Page 29, line 22, strike "settlement or prehearing" and insert "pretrial".

167. Page 29, line 24, strike "In cases where no".

168. Page 29, strike lines 25 and 26.

169. Page 29, line 28, after "reimbursement" insert "under this rule".

170. Page 29, line 31, strike "settlement or".

171. Page 29, line 32, strike "prehearing" and insert "a pretrial"; strike "shall" and insert "may"; strike "settlement".

172. Page 29, line 33, strike "or prehearing" and insert "pretrial".

173. Page 30, line 4, strike "workers' compensation division or the" and strike "of".

174. Page 30, line 5, strike "administrative hearings".

175. Page 30, line 17, after "the" insert "regular".

176. Page 30, line 18, strike "five" and insert "30".

177. Page 30, line 21, after "hearing" insert "and the name of the compensation judge assigned, if known".

178. Page 31, line 13, strike "opinion" and insert "If permanent partial disability is an issue, an opinion".

179. Page 31, line 36, strike "No other factual information or evidence".

180. Page 32, line 1, strike "shall be considered in the determination of the case".

181. Page 32, at the end of line 5, insert "No other factual information or evidence shall be considered in the determination of the case."

182. Page 33, line 34, strike "Title" and insert "Caption".

183. Page 34, line 24, strike "in his or her discretion" and insert "with the consent of all parties".

184. Page 34, line 34, insert "After the time the first witness is sworn, unless all parties agree, all of the proceedings shall be on the record, including any and all motions, objections, offers of proof, rulings of the judge, arguments of the parties other than final arguments, or other comments of the parties, their representative or the judge. A compensation judge shall not order a court reporter to refrain from recording anything said during the course of a hearing absent the consent of all parties present nor shall a compensation judge turn off an audio-magnetic recording device being used to record the proceedings, other than for reasonable breaks, absent the consent of all parties present."

185. Page 37, after line 2, insert "it shall be served on all parties".

186. Page 37, strike lines 3 and 4.

187. Page 37, line 6, after "following" insert "in the sequence as listed".

188. Page 37, at the end of line 31, insert "It shall also include a

brief memorandum setting forth the issues and explaining the decision on each issue."

189. Page 37, line 36, strike "rereferred" and insert "referred".

190. Page 38, line 3, after "clerical" insert "or mathematical".

191. Page 38, line 7, after "Minn. Stat. §" insert "§ 176.081, subd. 7a and"; strike "that" and insert "these".

192. Page 39, line 8, strike "section" and insert "sections".

193. Page 39, line 11, strike everything after "C. Approval.".

194. Page 39, strike lines 12, 13 and 14.

195. Page 39, line 17, after "and" insert ", except for those filed pursuant to Minn. Stat. § 176.081, subd. 7a,".

196. Page 39, line 18, strike the second "the" and insert "a".

197. Page 38, between lines 19 and 20, insert a new paragraph to read: "Where a settlement has been agreed upon pursuant to Minn. Stat. § 176.081, subd. 7a, when the offer and acceptance is filed, it shall include findings of fact, conclusions and an award on all issues, including attorney's fees and costs. It shall be filed with the chief hearing examiner who shall immediately send the settlement and the file to the commissioner for entry of the agreed upon award."

+ additional language p. 4

198. Page 40, line 8, strike "Authorization" and insert "Notice of representation".

199. Page 40, line 17, strike "Application".

200. Page 40, line 22, add "C." at the beginning of the line.

201. Page 40, line 25, strike "Application" and insert "Unless ordered otherwise by a compensation judge, an application".

202. Page 40, line 34, strike "as provided in these rules".

203. Page 40, line 35, strike "C" and insert "D".

204. Page 40, strike line 36.

205. Page 41, strike line 1.

206. Page 41, line 2, strike "with" and the third "the" and insert "a".

207. Page 41, between lines 3 and 4, insert a new section to read:

E. In cases where an offer or settlement has been made, in writing, pursuant to the provisions of Minn. Stat. § 176.081, subd. 7a, and the offer has not been accepted, upon receipt of the compensation judge's decision, the following procedure shall be followed:

1. The party seeking to impose the sanctions imposed by Minn. Stat. § 176.081, subd. 7a, shall file proof of the offer with the chief hearing examiner within 10 calendar days of the date of the compensation judge's decision. The filing shall include an order prepared for signature by the chief hearing examiner which would amend the compensation judge's decision.

2. When filing the material requested above, copies shall be served on all other parties at the same time.

3. Any party objecting to the entry of the order shall, within five calendar days of receipt of the proposed order, serve and file an objection, which may be in the form of a letter, stating in detail the reasons why the order should not be signed. A response to the objection, if any, must be filed within five calendar days of the objection.

4. If no objection is received, the chief hearing examiner shall sign, serve and file the order within 10 calendar days of its filing. If objection has been received, it shall be determined by the chief hearing examiner within 10 calendar days after the filing of the objection. Parties shall not have the right to a hearing on the objection. The chief hearing examiner's determination shall be in writing and is appealable to the Workers' Compensation Court of Appeals.

208. Page 41, between lines 4 and 5, add a new section to read: "A. Prior to submitting a formal request for payment or reimbursement of costs and disbursements, an informal request should be made by the taxing party. If agreement cannot be reached on all items, the taxing party may then proceed as delineated herein, including in the formal request an indication of those costs agreed upon."

209. Page 41, line 5, strike "A" and insert "B".

210. Page 41, line 8, strike "B" and insert "C".

211. Page 41, line 12, strike "C" and insert "D".

212. Page 41, strike lines 16 through 29.

213. Page 41, line 30, strike "C. Referral.".

214. Page 41, line 32, after "subd. 6," insert "and"; strike "shall refer" and insert "refers".

215. Page 41, line 33, strike "who" and insert "it"; strike "assign the matter" and insert "be assigned".

216. Page 43, line 24, strike ", upon order of the".

217. Page 43, line 25, strike "compensation judge".

218. Page 43, line 30, after "party" insert "producing the exhibit or evidence at the hearing or the party".

All of the foregoing amendments are as recommended for adoption by the Hearing Examiner as approved by the Chief Hearing Examiner's designee, Allan W. Klein. No other changes were made.

Dated: January 6, 1982.

DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

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

ORDER FOR HEARING

IT IS HEREBY ORDERED that a public hearing shall be held on Thursday, November 5, 1981, in Room 83 of the State Office Building, 435 Park Street, St. Paul, Minnesota, commencing at 9:00 a.m. and continuing until all persons have had an opportunity to be heard.

IT IS FURTHER ORDERED that a Notice of Hearing shall be given to all persons who have registered with the office for that purpose and that the same Notice of Hearing shall be published in the State Register.

Dated: September 21, 1981.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

OAH Ex. B.

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

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

NOTICE OF HEARING

Notice is hereby given that a public hearing will be held pursuant to the provisions of Minn. Stat. § 15.0412, subd. 4, in the above-entitled matter commencing at 9:00 a.m. on Thursday, November 5, 1981, at Room 83 of the State Office Building, 435 Park Street, St. Paul, Minnesota. The hearing will continue until all interested persons have an opportunity to be heard. The proposed rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rules, you are urged to participate in the rule hearing process.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to ask questions and make comments. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted to Peter C. Erickson, Hearing Examiner, Office of Administrative Hearings, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, (612/296-8118), either before the hearing or within five (5) working days after the public hearing ends. The hearing examiner may, at the hearing, order that the record be kept open for a longer period not to exceed twenty (20) calendar days. The rule hearing procedure is governed by Minn. Stat. §§ 15.0411-15.0417 and 15.052, and by 9 MCAR §§ 2.101-2.112 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the hearing examiner.

Notice is hereby given that twenty-five (25) days prior to the hearing a Statement of Need and Reasonableness will be available for review at the Office of Administrative Hearings. Copies of this Statement of Need and Reasonableness may also be purchased at a cost of twenty cents per page. The Statement of Need and Reasonableness will include the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rules.

The agency's authority to adopt the proposed rules is contained in Minn. Laws 1981, Chapter 346, § 5 (amending Minn. Stat. 1980, § 15.052, subd. 4).

The purpose of the proposed rules is to establish procedures for the conduct of the hearing process relating to contested workers' compensation hearings. The rules contain sections relating to: general authority and definitions; joinder of parties; pleadings including content of petitions and responsibilities of attorneys in initiating contested matters; settlement judge review and settlement conferences; expedited procedures for hearings where employees have been given notice of the employer's intent to discontinue benefits; answers to the petitions; service of documents; definitions of the various types of hearings; notice of hearings; continuances; intervention; consolidation; disqualification of compensation judges; prehearing procedures; discovery; petitions for contribution or reimbursement; subpoenas; the hearing itself; production of medical evidence; rights of parties; witnesses; rules of evidence; contents of the record; provisions relating to transcripts of

hearings; disruptions of hearings; compensation judge decisions; rehearing; settlements; attorney fees; taxation of costs and disbursements; second injury law; expedited procedures for other hearings; temporary orders; removal and return of exhibits; and the permanent partial disability panel.

The office estimates that the cost to local bodies of implementing this rule for the two years immediately following its adoption will not exceed $100,000 within the meaning of Minn. Stat. § 15.0412, subd. 7. 10

The permanent rules will supercede the agency's temporary rules which were effective on August 19, 1981.

Copies of the proposed rules are now available and at least one free copy may be obtained by writing to: Duane R. Harves, Chief Hearing Examiner, Minnesota Office of Administrative Hearings, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104. Additional copies will be available at the hearing. If you have any questions on the content of the proposed rules, you should contact Duane R. Harves at 612/296-8100. 35

Any person may request notification of the date on which the hearing examiner's report will be available, after which date the office may not take any final action on the rules for a period of five (5) working days. Any person may request notification of the date on which the hearing record has been submitted or resubmitted to the Attorney General by the office. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the hearing examiner, in the case of the hearing examiner's report, or to the agency, in the case of the agency's submission or resubmission to the Attorney General. 8

Minn. Stat. Ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he/she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11, as any individual:

a. Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or 6

b. Who spends more than $250 not including his own traveling expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155 (telephone: 612/296-5615).

Dated: September 21, 1981.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

OAH E. C.

STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

IN THE MATTER OF THE PROPOSED ADOPTION
OF RULES OF THE STATE OFFICE OF
ADMINISTRATIVE HEARINGS RELATING TO
THE PROCEDURAL REQUIREMENTS OF WORKERS'
COMPENSATION HEARINGS.

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minn. Stat. § 15.0412, subd. 4, that their names be placed on file with and maintained by the State Office of Administrative Hearings for the purpose of receiving notice of the proposed adoption of rules by this office is accurate and complete as of 10:00 A.M., this 23rd day of September, 1981.

Sandra A. Haven

SANDRA A. HAVEN

OAH Ex. G

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HEARINGS

STATE REGISTER

STATE OF MINNESOTA



VOLUME 6, NUMBER 9

August 31, 1981

Pages 245-332

The board will set aside a portion of its September 11, 1981 meeting in order to hear public comments on the proposed cable service territory expansion.

Comments may be addressed to the Minnesota Cable Communications Board at 500 Rice Street, Saint Paul, Minnesota 55103, (612) 296-2545.

Office of Administrative Hearings Workers Compensation Section

Notice of Intent to Solicit Outside Opinions on Rules Relating to Conduct of Contested Workers' Compensation Cases

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, notice is hereby given that the Office of Administrative Hearings is seeking information and opinions in preparing to propose the adoption of permanent rules relating to the conduct of contested Workers' Compensation cases. All interested persons shall be afforded an opportunity to submit data or views on the rules in writing or orally. Any written material received shall become a part of the subsequent hearing's record. Data and views are to be submitted to:

Duane R. Harves, Chief Hearing Examiner
Office of Administrative Hearings
1745 University Avenue, Room 300
St. Paul, MN 55104
Telephone: 612/296-8100

All data and views are to be submitted by no later than September 9, 1981, to be considered for the proposed rules. Data and views received subsequent to that date will be received and considered during the normal hearing process but will be too late for consideration for the proposed rules.

Department of Commerce Banking Division

Bulletin No. 2439: Maximum Lawful Rate of Interest for Mortgages and Contracts for Deed for September 1981

Notice is hereby given that pursuant to Minnesota Statutes, § 47.20, subd. 4 (1980), the maximum lawful rate of interest for conventional home mortgages for the month of September, 1981, is seventeen and one-quarter (17.25) percentage points. Further, pursuant to Senate File No. 273, Chapter 373, 1980 Session Laws, as it amended Minnesota Statutes, § 47.20, the maximum lawful rate of interest for contracts for deed for the month of September, 1981, is seventeen and one-quarter (17.25) percentage points.

It is important to note that this maximum lawful interest rate does not apply to all real estate loans and contracts for deed. Under Minnesota's interest rate moratorium, which is identical to the Federal Usury Preemption, in most instances any rate may be charged on real estate mortgages and contracts for deed that constitute first liens.

The maximum rate is based on the Federal National Mortgage Association August 18, 1981, auction results and an average yield for conventional mortgage commitments of 17.191%. Current rates regarding this monthly publication are available by telephoning the Banking Division 24-hour information number (612) 297-2751.

August 19, 1981

Michael J. Pint
Commissioner of Banks

Energy Agency

Current and Projected Residential Energy Costs, By Region and State

In fulfillment of Minnesota Statutes, Chapter 116H, § 129, subd. 1, the director of the Energy Agency hereby certifies the following current and projected average residential energy prices. Sample surveys of energy utilities and distributors were used to estimate regional average prices for 1980-1981 (Table 1). Sampling errors of these surveys are given in Table 1A. Ten year forecasts of residential energy prices are given in Tables 2 and 3.

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Pages 549-612

PROPOSED RULES

Pursuant to Minn. Laws of 1980, § 15.0412, subd. 4h, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules;

and

4. that the rule may be modified if modifications are supported by the data and views submitted.

If, during the 30-day comment period, seven or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of § 15.0412, subds. 4 through 4g, which state that if an agency decides to hold a public hearing, it must publish in the *State Register* a notice of its intent to do so. This notice must appear at least 30 days prior to the date set for the hearing, along with the full text of the proposed rules. (If the agency has followed the provisions of subd. 4h and has already published the proposed rules, a citation to the prior publication may be substituted for republication.)

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Office of Administrative Hearings

Proposed Permanent Rules Relating to Workers' Compensation

Notice of Hearing

Notice is hereby given that a public hearing will be held pursuant to the provisions of Minn. Stat. § 15.0412, subd. 4, in the above-entitled matter commencing at 9:00 a.m. on Thursday, November 5, 1981, at Room 83 of the State Office Building, 435 Park Street, St. Paul, Minnesota. The hearing will continue until all interested persons have an opportunity to be heard. The proposed rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rules, you are urged to participate in the rule hearing process.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to ask questions and make comments. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted to Peter C. Erickson, Hearing Examiner, Office of Administrative Hearings, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, (612/296-8118), either before the hearing or within five (5) working days after the public hearing ends. The hearing examiner may, at the hearing, order that the record be kept open for a longer period not to exceed twenty (20) calendar days. The rule hearing procedure is governed by Minn. Stat. §§ 15.0411-15.0417 and 15.052, and by 9 MCAR §§ 2.101-2.112 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the hearing examiner.

Notice is hereby given that twenty-five (25) days prior to the hearing a statement of need and reasonableness will be available for review at the Office of Administrative Hearings. Copies of this statement of need and reasonableness may also be purchased at a cost of twenty cents per page. The statement of need and reasonableness will include the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rules.

The agency's authority to adopt the proposed rules is contained in Minn. Laws of 1981, chapter 346, § 5 (amending Minn. Stat. 1980, § 15.052, subd. 4).

The purpose of the proposed rules is to establish procedures for the conduct of the hearing process relating to contested workers' compensation hearings. The rules contain sections relating to: general authority and definitions; joinder of parties; pleadings including content of petitions and responsibilities of attorneys in initiating contested matters; settlement judge review and settlement conferences; expedited procedures for hearings where employees have been given notice of the employer's intent to discontinue benefits; answers to the petitions; service of documents; definitions of the various types of hearings; notice of hearings; continuances; intervention; consolidation; disqualification of compensation judges; prehearing procedures; discovery; petitions for contribution or reimbursement; subpoenas; the hearing itself; production of medical evidence; rights of parties; witnesses; rules of evidence; contents of the record; provisions relating to transcripts of hearings; disruptions of

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

hearings; compensation judge decisions; rehearing; settlements; attorney fees; taxation of costs and disbursements; second injury law; expedited procedures for other hearings; temporary orders; removal and return of exhibits; and the permanent partial disability panel.

The office estimates that the cost to local bodies of implementing this rule for the two years immediately following its adoption will not exceed $100,000 within the meaning of Minn. Stat. § 15.0412, subd. 7.

The permanent rules will supercede the agency's temporary rules which were effective on August 19, 1981.

Copies of the proposed rules are now available and at least one free copy may be obtained by writing to: Duane R. Harves, Chief Hearing Examiner, Minnesota Office of Administrative Hearings, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104. Additional copies will be available at the hearing. If you have any questions on the content of the proposed rules, you should contact Duane R. Harves at (612) 296-8100.

Any person may request notification of the date on which the hearing examiner's report will be available, after which date the office may not take any final action on the rules for a period of five (5) working days. Any person may request notification of the date on which the hearing record has been submitted or resubmitted to the Attorney General by the office. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the hearing examiner, in the case of the hearing examiner's report, or to the agency, in the case of the agency's submission or resubmission to the Attorney General.

Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he/she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11, as any individual:

a. Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including *his own* travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

b. Who spends more than $250 not including *his own* traveling expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155 (telephone: 612/296-5615).

September 21, 1981.

Duane R. Harves
Chief Hearing Examiner

Rules as Proposed (all new material)

9 MCAR § 2.301 Scope and purpose. The procedures contained in 9 MCAR §§ 2.301-2.326 shall govern all hearings required to be conducted pursuant to the provisions of the Minnesota workers' compensation laws, Minn. Stat. ch. 82 and the Minnesota Administrative Procedure Act, Minn. Stat. §§ 15.0411-15.052, 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 in the cases.

B. Authority of compensation judges. In any case which has been regularly assigned to him or 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 or 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. For the purposes of 9 MCAR §§ 2.301-2.326, the following terms have meanings given them.

1. "Calendar judge" means a workers' compensation judge from the Office of Administrative Hearings.
2. "Chief hearing examiner" means the Chief Hearing Examiner of the Office of Administrative Hearings.
3. "Commissioner" means the Commissioner of the Department of Labor and Industry.
4. "Compensation judge" means a workers' compensation judge from the Office of Administrative Hearings.

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

6. "Petition" means 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 employer or insurer.

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

9 MCAR § 2.303 Joinder of parties.

A. Request. Upon a motion of any party or upon his or her own motion, a settlement or 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 and all pleadings in the case.

B. Service. Any party requesting joinder of additional parties shall serve a copy of the 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 ten days prior to the pretrial or settlement conference, unless the 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 request is served on the party to be joined, it shall be accompanied by copies of all pleadings and the notice of the date, time and place set for a settlement conference or prehearing conference.

C. Affidavit. When a party requests joinder less than ten days prior to the pretrial or settlement conference date, the request shall include an affidavit of the requesting party stating the facts necessary to show cause why the lesser time should be allowed.

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

E. Contents of motion. All motions for joinder shall contain at least the following:

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

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

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

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

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.

F. Objection. A party contesting joinder under 9 MCAR § 2.303 may do so by objection filed with the settlement or calendar judge within ten days of service, requesting a hearing thereon; otherwise, an ex parte order may be issued granting or denying this joinder.

9 MCAR § 2.304 Commencement of proceedings; petitions; responsibilities of attorneys; notice to third parties.

A. Commencement of proceedings. Original proceedings for the adjudication of compensation rights and liabilities are commenced by the service of a petition as provided by Minn. Stat. § 176.305. Any petition filed on behalf of an employee or his or her dependents shall certify that 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. Consolidation of claims. 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.

C. Contents of petitions. A petition shall contain the following information which shall be in the sequence listed in 1.-21.

1. Title. The title of the case shall include the petitioner's name, the employer's name and address, the insurer's name and address, the division's record number and the employee's social security number;

2. The petitioner's address;

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3. The date of the alleged personal injury or onset of occupational disease;

4. The place of employment on the date of the alleged injury or disease;

5. The employee's weekly wage at the time of the alleged injury or disease;

6. A statement that the injury or disease arose out of and in the course of the employment;

7. A statement which specifies the nature and extent of the alleged injury or disease, including the percentage of disability, if known, attaching a copy of all medical reports;

8. The date on which the employer was first given notice of the alleged injury or disease and the manner in which the notice was given;

9. The name and address of the employer's insurer on the date of the alleged injury or disease or if the employer was self-insured, a statement to that effect;

10. A detailed listing of the dates of the alleged disability, stating whether each date was for temporary total, temporary partial, permanent total, or permanent partial disability;

11. A detailed list of the medical benefits alleged to be owing, giving the names, addresses, dates of treatment or purchase of drugs, or other compensable items;

12. The names and addresses of any third parties who have paid disability, medical or other benefits to the employee as a result of the alleged injury or disease, listing the dates and amounts of the payments, and the relevant claim number or policy number;

13. A statement that attorney's fees are or are not requested;

14. A statement that the employer and insurer were notified, as required by Minn. Stat. § 176.271, subd. 2, that a proceeding would be instituted and stating the relief sought, giving the date of the notice and attaching a copy of the notice;

15. A signature and attestation by the employee;

16. The name, address and telephone number of the employee's attorney unless the employee is representing himself or herself;

17. A statement that a settlement or prehearing conference is or is not requested and, if so, the requested location for the conference;

18. A statement indicating the number of lay and medical witnesses expected to be called as witnesses and the anticipated length of their testimony;

19. A statement specifying the principal issues to be resolved at hearing;

20. A statement that the employee is or is not presently receiving workers' compensation benefits and, if the employee is, the amounts and the name and address of the paying party; and

21. The requested location for the regular hearing.

D. Heading of petition. 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.

E. Responsibilities of attorneys; notice to third parties. All attorneys representing employees, employers, or any other parties to a workers' compensation proceeding shall inquire of their clients at the time the proceeding is commenced, and again within five days of receipt of a notice of prehearing conference, as to whether any third party, other than the workers' compensation insurer, has paid wage loss benefits or treatment expense to the employee or in the employee's behalf.

If inquiry discloses that any third party, such as an insurer or a welfare department, has made any such payments, the attorney discovering that fact shall then have the duty to place the third party on written notice, within five days, of its right to petition for intervention and reimbursement. The written notice shall have attached to it a copy of 9 MCAR § 2.310 and also a copy of all pleadings in the case and a copy of all notices and all orders of the workers' compensation division of the department of labor and industry and of the office of administrative hearings served in the case to date, and shall specifically advise that:

1. The employee has commenced a proceeding to recover workers' compensation benefits, and that under Minn. Stat. § 176.361 and 9 MCAR § 2.310 the third party has the right to petition for intervention and reimbursement of payments made for treatment and wage loss;

2. The name and address of all parties to the proceeding and the names and addresses of their attorneys;

3. The name of the third party's insured, the nature of the payments made, and any identifying claim and policy number;

4. Any failure of the third party to comply with any provisions of 9 MCAR § 2.310 shall result in a denial of the claim for reimbursement unless the compensation judge determines that the error or omission is merely technical.

Failure of an employee's attorney to comply in a timely manner with this rule shall be taken into consideration as an additional significant factor in determining the attorney's fee under Minn. Stat. § 176.081.

Failure of an attorney representing an employer and insurer to comply in a timely manner with this rule shall be taken into consideration for purposes of determining whether a penalty shall be assessed against the employer and insurer under Minn. Stat. § 176.225 for unreasonable or vexatious delay.

Where inquiry by the attorney for the injured employee at the time a proceeding is commenced discloses information that a third party has made payments, the employee's claim petition shall not be accepted for filing and the proceeding shall not be considered commenced unless the claim petition is accompanied by a proof of service of written notice upon the third party, unless the time for commencing an action under the statute of limitations in Minn. Stat. § 176.151 has run. The written notice shall be in the form prescribed by 1.-4.

9 MCAR § 2.305 Settlement judge review and settlement conferences.

A. Referral. Upon the filing of a petition, the commissioner, within ten days, shall refer the matter to a settlement judge who shall review the filing to determine whether a settlement conference is appropriate.

B. Disposition. If a settlement conference has been requested or is deemed appropriate by the settlement judge, he or she shall notify all parties of the date, time and place where the settlement conference will be conducted. The settlement conference shall be completed within 60 days of the date of referral of the petition by the commissioner. If a settlement conference has not been requested or is deemed to be inappropriate, the settlement judge shall certify the matter to the chief hearing examiner.

C. Retention of jurisdiction: If the settlement conference cannot be concluded within 60 days, the settlement judge shall certify the matter to the chief hearing examiner; provided, however, that with the consent of the petitioner or his or her representative, the settlement judge may retain jurisdiction for an additional 60 days for purposes of receiving a full settlement of all issues.

D. Settlement alternatives not precluded. 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 his or her own motion once the matter has been received from the commissioner.

E. Attendance. 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.

F. Matters agreed upon. If, following a settlement conference, a 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 or she approves of those matters agreed upon, issue an order confirming and approving those matters agreed upon. The order shall be binding on any compensation judge who may subsequently be assigned to hear the case. Issues once agreed upon and approved may be reopened by the compensation judge only upon motion of any party on the basis of newly discovered evidence which was not reasonably discoverable at the earlier time.

9 MCAR § 2.306 Notice of intention to discontinue compensation payments.

A. Contents. A notice of intention to discontinue compensation filed pursuant to Minn. Stat. § 176.241, shall contain the following information:

1. The name and home address of the person whose compensation would be discontinued;

2. The file number previously assigned by the division and the office of administrative hearings;

3. The name and address of the attorney, if any, who represented the employee during previous proceedings;

4. A description of the prior order, if any, under which compensation was being paid and the name of the person issuing the order;

5. The date the compensation is proposed to be discontinued;

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6. A complete list of facts supporting the discontinuance which shall be prepared with sufficient specificity to allow the employee to prepare an objection without the necessity of requesting additional information;

7. If the proposed discontinuance is based on medical evidence, copies of all medical reports bearing on the employee's physical condition at the time of the proposed discontinuance;

8. A statement which shall read as follows:

NOTICE

You have the right to object to this proposed discontinuance. If you intend to object, you must prepare a written objection and file it with the Commissioner of the Minnesota Department of Labor and Industry, Fifth Floor, Space Center Building, 444 Lafayette Road, St. Paul, Minnesota 55101. You may contact (employer) or (insurer) regarding the discontinuance and the procedures related to the filing of an objection. If you file an exemption, it may be mailed or personally delivered to the Department of Labor and Industry at the address listed above. An objection must contain your full name, address and telephone number, the name of the employer and insurer, the date of this notice and the file number listed on this notice.

9. The name and address of the employer and insurer;

10. The name, address and telephone number of the attorney representing the employer or insurer; and

11. The name, address and telephone number of the person filing the notice.

B. Objections.

1. Any objection to the proposed discontinuance shall be in writing, shall be filed with the commissioner, and shall contain the following information:

a. The name, address and telephone number of the employee;

b. The name, address and telephone number of the person filing the objection, if it is not the employee;

c. The name of the employer and insurer;

d. The date of the notice of discontinuance; and

e. The file numbers which were listed on the notice of discontinuance.

2. When an objection has been filed or where it appears to the commissioner that the right to compensation may not have terminated, the matter shall be referred to the chief hearing examiner who shall set the matter for hearing on a priority basis not less than 30 nor more than 75 days from the date of the receipt of the matter from the commissioner.

3. Any objection filed more than 120 days after service of a notice to discontinue shall be treated as a claim petition and shall not be heard on a priority basis.

C. Petitions for discontinuance. When an employer or insurer petitions the commissioner for an order allowing discontinuance of benefits but has chosen not to discontinue payments until after a final determination, the petitioner shall be entitled to a hearing on the same priority basis as set forth in B.2. Petitions filed under this provision shall contain the same information as required for a notice of discontinuance.

9 MCAR § 2.307 Answers.

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

B. Proof of service. The answer shall be accompanied by proof of service upon the opposing parties.

C. Contents. 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 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 notice of intention to initiate proceedings. Any request for an extension 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.

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.

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 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. § 645.15.

9 MCAR § 2.309 Hearings.

A. Definition of hearing. For the purposes of 9 MCAR §§ 2.301-2.326, a hearing may be 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 conducted by a settlement judge. It is 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 the matter. The conference may be conducted by telephone and in the cases where 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 purposes of a prehearing conference are to ascertain if there are genuine disputes requiring resolution by a calendar or compensation judge, to provide assistance to the parties in resolving disputes, to narrow the issues, and to expedite preparation and trial if a regular hearing is necessary. A prehearing conference is conducted by a calendar or compensation judge. It 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 § 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. Each attorney receiving notice of the hearing date at a settlement or prehearing conference shall be responsible for notifying each party the attorney represents of the hearing date. When a written notice is required, it shall be given at least five days prior to the date of hearing, except:

1. When notice is waived by all parties;

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

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

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 the 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

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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, which date has been approved by the compensation, calendar or settlement judge before whom the matter is pending, and when the continuance request is made no less than ten 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 before whom the matter is pending. When made more than ten 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. If less than ten working days remain prior to the 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. When 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. When 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 § 2.310 Intervention.

A. Motion. 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 matter has been 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, 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;

8. At the option of the intervenor, a proposed stipulation which states 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 petitioner is successful in proving the compensability of the claim, it is agreed that the sum be reimbursed to the intervenor.

B. Stipulation. When the person serving the motion for intervention has included a proposed stipulation, all parties shall either execute and return the signed stipulation to the intervenor or serve upon the intervenor and all other parties specific and detailed objections to any payments made by the intervenor which are not conceded to be correct and related to the injury or condition the employee has asserted is compensable. If a party has not returned the signed stipulation or filed objections within 20 days of service of the motion, the intervenor's right to reimbursement for the amount sought shall be deemed to have been established without the necessity of the intervenor participating further in the proceedings.

C. Attendance by intervenor. Unless a stipulation has been signed and filed or the intervenor's right to reimbursement has otherwise been established, the intervenor shall attend all settlement or prehearing conferences and shall attend the regular hearing if ordered to do so by the compensation judge.

D. Order. 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. Presentation of evidence by intervenor. Unless a stipulation has been signed and filed or the intervenor's right to reimbursement has otherwise been established, at the regular hearing on the claim petition where intervention has been granted, the intervenor shall present evidence in support of his or her claim after the 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. Effects of noncompliance with rule. 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 merely technical.

G. Failure of attorney to respond. Failure by the employee's attorney to submit a timely response which also complies otherwise with this rule shall be a significant additional factor to be taken into consideration under Minn. Stat. § 176.081 in determining the amount of the attorney's fees. Failure by an attorney representing an employer or insurer to submit a timely response which also complies otherwise with the requirements of this rule shall be taken into consideration for purposes of determining whether a penalty shall be assessed against the employer or insurer under Minn. Stat. § 176.225 for unreasonable or vexatious delay.

9 MCAR § 2.311 Consolidation.

A. Authorization. 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 affect the rights of the parties in 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. Receipt of evidence. Under consolidation, all documentary evidence previously received in an individual case shall be reintroduced in the 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, the 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 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 appropriate judge finds that consolidation would prejudice the party moving for severance, the judge shall order such severance or other relief as he or 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.

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9 MCAR § 2.312 Disqualification.

A. Procedures. A compensation judge shall withdraw from participation in a case at any time if the judge deems himself or 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 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.

B. Affidavit for reassignment. The petitioner and parties responding a petition shall be entitled to reassignment of a regular hearing to another compensation judge in accordance with the provisions of this section. Proceedings for a reassignment shall be instituted by the filing of an affidavit under penalty of perjury in substantially the following form:

State of Minnesota
County of _____

_____, being duly sworn, deposes and says: That (s)he is (a party) (attorney for a party) to the above entitled case; that affiant believes that (s)he cannot have a (fair) (expeditious) (inexpensive) (unencumbered) (impartial) trial before the workers' compensation judge (before whom the case is pending) (to whom the case is assigned).

_____

Subscribed and sworn to before me
this _____ day of _____, 19_____

_____

Notary Public
My commission expires _____

If the compensation judge assigned to hear the case is known, the affidavit shall be filed not more than five working days after receipt of the notice of regular hearing and be directed to the attention of the chief hearing examiner. A copy of the affidavit shall be served on all other parties or their attorneys at the same time the affidavit is filed. In no event shall any such affidavit be entertained after the swearing of the first witness at a regular hearing.

Upon the filing of an affidavit for reassignment in accordance with the provisions of this section, without any further act or proof, the chief hearing examiner shall assign the case or proceeding to another compensation judge. Upon reassignment a new notice of regular hearing shall be served. Under no circumstances shall more than one such reassignment be made in any one case or proceeding pursuant to the affidavit of any one party; provided, however, that one additional reassignment may be made upon petition of a party on the other side. The petition by the other party shall be filed in the manner and time hereinbefore provided.

Unless required because of the unavailability of a compensation judge to hear the case, no continuance shall be granted by reason of an affidavit filed under this section. If a continuance is necessary, another regular hearing will be scheduled as early as possible.

Consolidated cases are to be considered as one case within the meaning of this section. This section is not applicable to settlement or pretrial conferences.

9 MCAR § 2.313 Prehearing procedures.

A. Requirement. 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 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. Settlement discussions. 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 settlement or prehearing conference shall be prepared to participate in settlement discussions.

C. Conference procedures. 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 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 ten 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, it shall pay the expense for the showing and may tax this expense in the same manner as other 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 the 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 ten 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 the claim, the approximate amount of the claim, and the names and addresses of the employers for whom the employee worked during the period of the claim; authorizations to permit opposing counsel to confirm wages earned in those employments shall have been furnished at least ten 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 compensation judge and opposing counsel at least ten days prior to the time of the regular hearing;

10. The 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. If payment has been made, the name and address of the party making payment shall be furnished to the settlement or calendar judge, 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 ten days prior to the settlement or prehearing conference, copies of the relevant wage records of the employee;

12. The attorney for the employee or dependents shall furnish to the settlement or calendar judge 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. Prehearing statement. 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. 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, extent and type of disability claimed.

E. Evidence not disclosed at conference. Evidence, or other matters listed in C. which have not been disclosed at the prehearing conference shall not be allowed to be presented at the regular hearing unless it can be shown to the compensation judge that the evidence or other matters offered were discovered subsequent to the prehearing conference, were not discoverable through the exercise of due diligence prior to that time, and that the other parties have been advised of the evidence or other matters prior to the trial and have had an opportunity for review.

F. Temporary orders. Any insurer or self-insurer voluntarily agreeing to pay benefits pursuant to Minn. Stat. § 176.91, subd. 1, shall file a formal petition for temporary order.

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1. The petition shall contain the following:

a. Name of the employer and its insurer or self-insured consenting to payment of compensation benefits and medical expenses;

b. The dispute involved, including the name and address of other employer and its workers' compensation insurer, if known, that may be liable for workers' compensation benefits and the date of the alleged injury while working for the employer;

c. The beginning date of the employee's present disability, and the compensation rate that the insurer or self-insurer will voluntarily pay;

2. The original petition for temporary order, with proof of service on all necessary parties, shall be filed with the division, the office, or the court of appeals, depending upon where the matter is pending;

3. The petition for temporary order shall be accompanied by a prepared formal order that should be substantially in the following form:

The undersigned having examined the foregoing petition for temporary order and the compensation files and records herein, and it appearing that a temporary order for payment of compensation benefits should be issued pending a final determination, as provided by Minn. Stat. § 176.191, subd. 1;

NOW, THEREFORE, IT IS HEREBY ORDERED, that (name of insurer or self-insured) having consented to payment of compensation benefits pursuant to Minn. Stat. § 176.191 shall pay to (name), employee, compensation at the weekly rate of $(amount), during the period of employee's disability, beginning (date), and shall also pay reasonable medical expenses related to employee's said disability.

IT IS FURTHER ORDERED, that following a final determination of liability and if it has been determined that some other employer or insurer is liable for all or part of the compensation paid pursuant to this temporary order, then the division, the compensation judge, or Court of Appeals shall order the parties held liable to reimburse (name of paying party) for all or part of the compensation paid pursuant to this temporary order, for which the other parties are held liable, including interest at the rate of five percent per annum.

Dated at ....., Minnesota
this .....day of .....

(WORKERS' COMPENSATION DIVISION)
(COMPENSATION JUDGE)
(COURT OF APPEALS)

.....
By .....

The original and sufficient copies of the order to make service upon all neccessary parties, and any attorneys representing them, shall be filed.

G. Payment of benefits by special compensation fund. An employee seeking payment of benefits by the special compensation fund pursuant to Minn. Stat. § 176.191, subd. 2, shall file a formal petition for temporary order.

1. The petition shall contain the following:

a. A statement that written demand for payment pursuant to Minn. Stat. § 176.191, subd. 1, has been made against all employers and insurers party to the claim and that the payment demanded has been refused:

b. The names and addresses of all employers and insurers or self-insurers who are parties to the claim;

c. A statement as to the dispute involved and the dates of all alleged injuries while working for each employer;

d. The beginning date of the employee's present disability, the compensation rate applicable for each injury date, the proposed compensation rate to be paid by the special compensation fund, and an itemization of all medical expenses requested to be paid pursuant to the temporary order;

2. The original of the petition for temporary order, with proof of service on all necessary parties, shall be filed with the division, the office, or the court of appeals, depending upon where the matter is pending;

3. The petition for temporary order shall be accompanied by a prepared formal order that should be substantially in the following form:

The undersigned having examined the foregoing petition for temporary order and the compensation files and records herein, and it appearing that a temporary order for payment of compensation benefits should be issued pending a final determination, as provided by Minn. Stat. § 176.191, subd. 2;

NOW, THEREFORE, IT IS HEREBY ORDERED that the State Treasurer, as custodian of the special compensation fund, shall, pursuant to Minn. Stat. § 176.191, subd. 2, pay to (name), employee, compensation at the weekly rate of $(amount), during the period of employee's disability, beginning (date), and shall also pay reasonable medical expenses related to the employee's said disability.

IT IS FURTHER ORDERED, that following a final determination of liability and if it has been determined that one or more employers or insurers are liable for all or part of the compensation paid pursuant to this temporary order, then the division, the compensation judge or Court of Appeals shall order the parties held liable to reimburse the State Treasurer, as custodian of the special compensation fund, for all or part of the compensation paid pursuant to this temporary order, for which the other parties are held liable, including interest at the rate of 12 percent per annum.

Dated at ....., Minnesota
this .....day of .....

(WORKERS'S COMPENSATION DIVISION)
(COMPENSATION JUDGE)
(COURT OF APPEALS)

.....
By .....

The original and sufficient copies of the order to make service upon all necessary parties, and any attorneys representing them, shall be filed.

H. Necessary parties. For the purpose of this rule, the following shall be deemed necessary parties:

1. The employee or dependents;

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

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 the petition is made pursuant to Minn. Stat. § 176.191, subd. 2.

I. Answer. Within ten days after being served with a copy of the petition for temporary order and order, employers or their insurers, other than paying party, or the state treasurer, as custodian of the special compensation fund, may file a verified answer to the petition in accordance with the provisions of Minn. Stat. § 176.321.

J. Circumstances of nonapproval of temporary orders. Temporary orders, as a general rule, shall not be approved if made contingent upon the waiver by the employee of his rights to claim an additional award pursuant to Minn. Stat. § 176.225, or to have fees for his attorney assessed against the employer and insurer in addition to compensation pursuant to Minn. Stat. § 176.191 or 176.081, subd. 8.

K. Effect of filing. The filing of a petition for temporary order shall not cause the matter to be placed on the trial calendar, unless accompanied by a petition for contribution or reimbursement.

9 MCAR § 2.314 Discovery.

A. Demand. Each party shall, within 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 the 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 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 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 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. Upon demand, the petitioner shall

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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. 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 compensatibn 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 the judge 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, that unusual or extraordinary circumstances exist which compel extensive discovery, or 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. Unless, for good cause shown, the party taking the deposition has obtained the permission of the calendar judge, or compensation judge if the case has been assigned for hearing, to take the 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.

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 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, is not for purposes of delay, and that the issues or amounts in controversy are significant enough to warrant extensive discovery.

D. Penalties. Upon the failure of a party to reasonably comply with 9 MCAR §§ 2.301-2.326 relating to discovery or with an order of 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 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 that party from introducing designated matters in evidence.

E. Proprietary information. When a party is asked to reveal material which that party considers to be proprietary information or trade secrets, he or 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 Petitions for contribution or reimbursement.

A. Contents. 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 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 parties named in it.

B. Filing. In all cases where a claim petition or other form of action is pending, a petition for contribution or reimbursement shall be filed no later than ten 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 the petition. In cases where no action is pending, the filing of the petition for contribution or reimbursement with the division shall initiate proceedings.

C. Answer. Within 20 days after being served with a copy of a petition for contribution or reimbursement, employers or their insurers, other than the petitioning party, may file a verified answer to the petition 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. Notice to employee. The employee shall be notified of all of the proceedings and should be represented by an attorney of his or her choice. A copy of all motions or answers shall be duly served upon the employee, the employee's attorney, or both 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 with it, the calendar judge or compensation judge, if the case has been assigned for regular hearing, may quash or modify the subpoena if the judge finds that it is unreasonable or oppressive.

9 MCAR § 2.317 **The hearing.**

A. Notice. 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 five 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. Availability of medical witnesses. 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 § 2.314 B.

C. Medical reports. 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 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 the disability;
8. The medical treatment indicated;
9. Opinion as to whether or not permanent disability has resulted from the injury and whether or not the condition has stabilized. If 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.

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. § 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

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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. § 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 or 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 the judge's final order.

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;

d. Offers of proof, objections and rulings thereon;

e. The compensation judge's order;

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

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

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

3. The transcript.

a. The chief hearing examiner shall direct that the verbatim record of a hearing shall be transcribed if requested by any person. If a transcription is made, except as provided in c., the chief hearing examiner shall require the requesting person and other persons who request copies of the transcript to pay a reasonable charge for them if transcribed by the office. If transcribed by someone other than the office, the person requesting the transcription or a copy shall be liable to the person preparing the transcript for the charge.

b. Charges for transcripts prepared by the office shall be set by the chief hearing examiner, with the approval of the Department of Finance, and all moneys received for transcripts prepared by the office shall be payable to the State Treasurer, Office of Administrative Hearings Account.

c. Pursuant to the provisions of Minn. Stat. § 176.421, subd. 4, clause (3), a party may petition the chief hearing examiner for an order directing that a transcript be prepared, for purposes of appeal to the Court of Appeals, at no cost to the appellant. A petition filed under this provision shall include the following:

(1) Title of the case;

(2) Case identification numbers;

(3) Name, address and telephone number of the attorney representing the appellant;

(4) A sworn affidavit from the appellant which shall include:

(a) Appellant's monthly personal income from all sources including income from trusts, bonds, and savings certificates;

(b) A list, at market value, of all stocks, bonds, savings certificates or other certificates of indebtedness held by the appellant and the appellant's spouse if residing in the same household;

(c) If residing in the same household, the monthly personal income from all sources for appellant's spouse;

(d) A statement of the monthly expenses for the appellant's household;

(e) If the appellant owns any rental property, a statement showing the appellant's equity in the property and the monthly income and expense for the property;

(f) If the appellant owns outright or is purchasing the property in which he or she resides, a statement showing the market value of the property, the appellant's equity in the property, and the present monthly payments, if any.

H. Continuances during the hearing. If it appears in the interests of justice that further testimony should be received, the compensation judge, in his or her discretion, may continue the hearing to a future date and 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 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 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 shall proceed first. All other parties 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 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 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 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.

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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 interference or disruption or threat thereof, the compensation judge shall read this rule to those persons causing the interference or disruption and thereafter proceed as the judge deems appropriate.

9 MCAR § 2.318 The compensation judge's 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 the judge's 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 and opportunity 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 or her decision and, upon completion, shall immediately file it with the commissioner who shall serve it on all parties as required by Minn. Stat. § 176.281.

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

a. The date 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;

e. Findings of fact, conclusions and a determination on each issue raised. In cases involving a multiplicity of issues, the compensation judge may organize the decision by major subissues if the judge determines that organizing the decision in that manner will aid the reader in understanding the contents of it.

C. Readability. 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.

D. Proposed decision filed by party. 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. When a compensation judge has issued his or her findings, conclusions and decision, the judge's jurisdiction over the case shall end, except for taxation of disbursements or awarding of attorney's fees, unless the matter is rereferred to the compensation judge by the court of appeals and the chief hearing examiner for supplemental findings, taking of additional testimony, rehearing, or other action; provided that compensation judges may correct clerical errors in decisions at any time prior to appeal.

9 MCAR § 2.320 Settlements.

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

C. Approval. Stipulations for settlement shall be filed with and approved by the commissioner or the commissioner's designee if the case has not been referred to the chief hearing examiner.

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.

D. Contents. 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 the 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 or her right to make application for an award of attorney's fees against the employer or insurer pursuant to Minn. Stat. §§ 176.081, subd. 7 or 8, 176.135 or 176.191.

E. Attorney's fees detailed. Stipulations for settlement of cases in which the employee or dependents have engaged the services of an attorney shall 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, and shall provide 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.

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

G. Award. The parties involved in the settlement shall submit an award on stipualtion prepared for signature by the applicable judge and sufficient copies thereof for all parties to be served if the settlement is approved.

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

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

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

9 MCAR § 2.321 Attorney fees.

A. Authorization. Whenever an employer or insurer receives notice that an attorney is representing an employee or dependent, 25 percent 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 the compensation is being withheld shall immediately be mailed to the employee or dependents, the attorney and the division at its Saint Paul office.

B. Application. 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.

Application for determination and approval of any claim for legal services or disbursements may be filed by the employer or insurer, the employee or dependents or the attorney. Application for attorney fees shall be by written petition. 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 for the 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. § 176.081, subd. 5.

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

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C. Filing. 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 § 2.322 Taxation of costs and disbursements.

A. Service of request. 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. Service of objection. 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. Hearing. If requested, a time for hearing before the compensation judge who heard the case shall be fixed. A notice thereof shall be given to the parties by the compensation judge.

9 MCAR § 2.323 Second injury law.

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

B. Hearing. 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 the 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 the 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. Referral. 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 Permanent partial disability panel.

A. Notification to administrator. Upon receipt of a file from the commissioner, if the chief hearing examiner, or a calendar or compensation judge if the case has been assigned to them, determines from a review of the file that permanent partial disability is a significant issue to be determined in the case, the chief hearing examiner shall immediately notify the administrator of the workers' compensation court of appeals if the employee resides in a county selected by the court of appeals pursuant to the provisions of Minn. Stat. § 176.152, subd. 7.

B. Questions to panel. When the administrator of the workers' compensation court of appeals notifies the chief hearing examiner of the names and addresses of the members of the permanent partial disability panel, the compensation judge, or the chief hearing examiner in cases in which a compensation judge has not yet been assigned, shall submit written questions to the panel. A copy of the questions shall be served on all parties at the same time.

Hearing. When the chief hearing examiner or compensation judge receives the report of the panel, the case shall be set for a regular hearing as soon as practicable.

D. Disputes relating to payment of panel members. Disputes relating to the payment of the fees of panel members arising pursuant to the provisions of Minn. Stat. § 176.152, subd. 6, shall be brought to the attention of the compensation judge assigned to hear the case no later than 20 days prior to the date of the hearing. The parties disputing the fee shall notify the compensation judge, in writing, of the intent to dispute the fee, stating therein the specific facts relied upon in disputing the fee. A copy of this notification shall be served on all other parties and the members of the panel at the same time as it is filed with the compensation judge. At the hearing, the dispute shall be determined as other issues in the case.

9 MCAR § 2.326 Exhibits: removal and return.

A. Requests for removal. All requests for permission to remove any exhibit or document from the official file must be made to the compensation judge to whom the file has been assigned or to the supervisor of the docket section of the office.

B. Return without consent or notice. Upon the expiration of the time in which to appeal, all exhibits or other documentary evidence may be returned to their source of origin without the consent of the parties or notice thereto, upon order of the

compensation judge. A copy of the letter of transmittal of the exhibits or documents shall remain in the file as part of the record of the case.

C. Request for return. Upon expiration of the time in which to appeal, exhibits or other documentary evidence shall be returned to their source upon the request of the party which introduced the evidence into the record. A request for return of exhibits or documents shall be made in writing to the compensation judge, shall contain the title and appropriate identification number of the case in which they were entered into evidence, and shall identify the exhibits or documents requested. A telephone number of the person making the request shall be included with the request.

Department of Agriculture
Agronomy Services Division

Proposed Rules Governing Storage and Handling of Liquid and Dry Commercial Fertilizer

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Minnesota Department of Agriculture proposes to adopt the above-entitled rules without a public hearing. The Commissioner of Agriculture has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, § 15.0412, subdivision 4h (1980).

Persons interested in these rules shall have 30 days to submit comment on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes section 15.0412, subdivisions 4-4f (1980).

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to: Gerald Heil, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107, (612) 296-1486. If a public hearing is requested, identification of the particular objection, the suggested modifications to the proposed language, and the reasons or data relied on to support the suggested modification is desired.

Authority for the adoption of these rules is contained in the Minnesota Fertilizer, Soil Amendment and Plant Amendment Law, Minn. Stat. §§ 17.711 to 17.729, as amended by Laws of 1981, ch. 214. Additionally, a statement of need and reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available upon request from: Gerald Heil, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107, (612) 296-1486.

Upon adoption of the final rules without a public hearing, the proposed rules, this notice, the statement of need and reasonableness, all written comments received, and the final rules as adopted will be delivered to the Attorney General for a review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Gerald Heil, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107, (612) 296-1486.

The purpose of the Minnesota Fertilizer, Soil Amendment and Plant Amendment Law is to regulate the sale and handling of fertilizers and soil conditioners within the State of Minnesota. Presently, no rules exist which govern the storage and handling of liquid and dry commercial fertilizers. Proper storage and handling of liquid and dry commercial fertilizers benefits public health and safety by helping to reduce the number and severity of fertilizer spills which could adversely affect ground and surface water quality.

Please be advised that Minnesota Statutes, Chapter 10A, requires each lobbyist to register with the Ethical Practices Board within five days after he/she becomes a lobbyist. Lobbying includes attempting to influence rulemaking by communicating or using others to communicate with public officials. A lobbyist is generally any individual who spends more than $250 per year for

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

OAH-82-001-PE

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Adoption of Permanent Rules Relating to Workers' Compensation.

REPORT OF THE HEARING EXAMINER

The above-entitled matter came on for hearing before Hearing Examiner Peter C. Erickson of the State Office of Administrative Hearings at 9:00 a.m. on Thursday, November 5, 1981, in Room 83 of the State Office Building, St. Paul, Minnesota.

J. Michael Miles, Assistant Attorney General, 530 State Office Building, 435 Park, St. Paul, Minnesota 55155, appeared as counsel on behalf of the State Office of Administrative Hearings. Duane R. Harves, Chief Hearing Examiner, appeared and testified in support of the proposed rules on behalf of the Agency. The hearing continued until all interested groups or persons had had an opportunity to be heard concerning the adoption of the proposed rules.

The Chief Hearing Examiner must wait at least five working days before taking any final action on the rules; during that period, this Report must be made available to all interested persons upon request.

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 4d (1980), this Report has been submitted to a person designated by the Chief Hearing Examiner for approval. If the Designee approves the findings of this Report, he will advise the Chief Hearing Examiner of actions which will correct the defects and the Chief Hearing Examiner may not adopt the rule until the Designee determines that the defects have been corrected. However, in those instances where the Designee identifies defects which relate to the issues of need or reasonableness, the Chief Hearing Examiner may either adopt the Hearing Examiner's recommendations to cure the defects or, in the alternative, if the Chief Hearing Examiner does not elect to adopt the recommendations, he may submit the proposed rule to the Legislative Commission to Review Administrative Rules for the Commission's advice and comment. Provisions relating to this submission to the Commission may be found in Minn. Stat. § 15.0412, subd. 4d (1980).

If the Chief Hearing Examiner elects to adopt the recommendations of the Hearing Examiner and makes no other changes and the Designee determines that the defects have been corrected, then the Chief Hearing Examiner shall submit the rule to the Attorney General for review of form and legality. If the Chief Hearing Examiner makes changes in the rule other than those recommended by the Hearing Examiner, then he shall submit the rule, with the complete record, to the Designee for a review of the changes before adopting it and submitting it to the Attorney General. Procedures relating to this subsequent review by the Designee are set forth in Minn. Stat. § 15.0412, subd. 4e (1980).

When the Chief Hearing Examiner submits the rule to the Attorney General, he shall give notice on the day of submission to all persons who requested that they be informed of the submission to the Attorney General.

Based upon all the testimony, exhibits and written comments, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. On September 21, 1981, the State Office of Administrative Hearings (hereinafter "Agency") filed the following documents:

(a) A copy of the proposed rules.
(b) The Order for Hearing.
(c) The Notice of Hearing proposed to be issued.
(d) A Statement of the number of persons expected to attend the hearing and estimated length of the Agency's presentation.

2. On October 5, 1981, a Notice of Hearing and a copy of the proposed rules were published at 6 State Register 14, pp. 553-573.

3. On September 23, 1981, the Agency mailed the Notice of Hearing to all persons and associations who had registered their names with the Agency for the purpose of receiving such notice.

4. On October 9, 1981, the Agency filed the following documents:

(a) The Notice of Hearing as mailed.
(b) The Agency's certification that its mailing list was accurate and complete.
(c) The Affidavit of Mailing the Notice to all persons on the Agency's list.
(d) The Statement of Need and Reasonableness.
(e) The names of Agency personnel who will represent the Agency at the hearing together with the names of any other witnesses solicited by the Agency to appear on its behalf.
(f) A copy of the State Register containing the proposed rules.
(g) An Affidavit of Additional Notice.
(h) All materials received following Notices of Intent to Solicit Outside Opinion published at 5 State Register 47, p. 1895 (May 25, 1981), and 6 State Register 9, p. 322 (August 31, 1981).
(i) The Petition requesting a rule hearing.

The documents were available for inspection at the Office of Administrative Hearings from the date of filing to the date of the hearing.

5. The record remained open through November 16, 1981 for the receipt of written comments and statements.

6. Statutory authority to adopt rules governing the procedural conduct of workers' compensation hearings is contained in Laws of Minnesota, 1981, Ch. 346, § 5, amending Minn. Stat. § 15.052, subd. 4 (1980).

7. At hearing, the Agency submitted nine pages of amendments to the proposed rules which included reasons for all amendments which were not merely clerical in nature. Subsequent to the hearing, additional amendments, both clerical and substantive, were submitted by the Agency. The proposed rules discussed herein will be dealt with in an "as amended" version. Consequently, both packages of rule amendments are attached as appendices to this Report.[1] The amendments are keyed into the version of the proposed rules approved by the Minnesota Revisor of Statutes which was available at the hearing and has continued to be available at the Office of Administrative Hearings.

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[1] Many of the concerns expressed regarding the proposed rules have been dealt with in the form of rule amendments and will not be discussed in this Report if the record contains adequate support for their adoption. Therefore, it may be helpful for the reader to carefully examine how the Rules have been amended subsequent to publication before reading further.

8. A thirty-two page Statement of Need and Reasonableness was submitted by the Agency to support the need for and reasonableness of the proposed rules. This Report will not duplicate that Statement nor will it discuss, at length, portions of the proposed Rules which are non-controversial and have been shown to be both needed and reasonable. Rather, this Report will focus upon portions of the proposed Rules, as amended, about which issues of need, reasonableness or statutory authority have been raised.

9. The first issue which must be discussed is the objection raised by the Minnesota Department of Labor and Industry to this entire proceeding because a Hearing Examiner employed by the "proposing agency" conducted the hearing and will make initial determinations of need, reasonableness and statutory authority. This objection was couched in terms of constitutional due process and basic considerations of independence and objectivity. The Minnesota Administrative Procedures Act provides, however, that in all rule-making proceedings governed by the Act, a Hearing Examiner from the State Office of Administrative Hearings shall be the presiding officer and write a Report containing, inter alia, the above-mentioned determinations.[2]

On previous occsions, rule hearings initiated by the State Office of Hearing Examiners have been presided over by Hearing Examiners employed by the Agency with no resulting legal challenge or statutory change.[3]

The Office of Administrative Hearings, and each Hearing Examiner, take great pride in functioning in a truly independent manner at each hearing, whether rule-making or contested case, conducted by that Office. In this unique situation, the statute does not provide an alternative to a Hearing Examiner from the Office of Administrative Hearings. This Hearing Examiner has conducted, inter alia, approximately 100 rule-making hearings since the inception of the Office of Hearing Examiners in January 1976. If this Examiner had any qualms about his ability to function in a truly independent and objective manner in this proceeding, such a responsibility would not have been undertaken.

10. The second major issue which must initially be discussed was also raised by the Department of Labor and Industry and concerns jurisdiction, i.e., statutory authority, to promulgate portions of the proposed rules. As the attached amendments indicate, much language has been deleted from the proposed rules because of this "jurisdictional" dispute. The Department of Labor and Industry still contends, however, that all language which remains in the rules that govern settlement conferences, or pre-certification procedures, is exclusively within the authority of the Department of Labor and Industry and cannot be governed by the Office of Administrative Hearings. The Department candidly admits that it is in the process of promulgating rules which are essentially identical to portions of the rules now proposed by the Office of Administrative Hearings. Statutory authority for the Department to promulgate "rules . . . with refernce to procedure" is contained in Minn. Stat. § 176.669, subd. 2 (1980).

[2] The Hearing Examiner may be either on the full-time staff of the Office of Administrative Hearings or be a private attorney employed on a contract basis with the office. However, in either instance, the Examiner is paid by the Office of Administrative Hearings. Only one contract Hearing Examiner has experience conducting rule-making hearings.

[3] The name, Office of Hearing Examiners, was changed to the Office of Administrative Hearings during the 1980 legislative session. Laws of Minnesota 1980, Ch. 615, § 26, amending Minn. Stat. § 15.052, subd. 1 (1978).

Laws of Minnesota 1981, Ch. 346, § 5, amended Minn. Stat. § 15.052, subd. 4, to read as follows:

> Subd. 4. The chief hearing examiner shall adopt rules to govern the procedural conduct of all hearings, relating to both rule adoption, amendment, suspension or repeal hearings, contested case hearings, and workers' compensation hearings. . . .

However, the Legislature retained the jurisdiction of the Department of Labor and Industry to receive and process claim petitions filed pursuant to Minn. Stat. Ch. 176 and to attempt to resolve those disputes through a settlement conference presided over by a settlement judge employed by the Department. Laws of Minnesota 1981, Ch. 346, § 106, amending Minn. Stat. § 176.035, reads as follows:

> Subd. 1. The petitioner shall serve a copy of the petition on each adverse party personally or by first class mail. The original petition shall then be filed with the commissioner together with an appropriate affidavit of service. When any petition has been filed with the workers' compensation division, the commissioner shall, within ten days, refer the matter presented by the petition to a settlement judge. The settlement judge shall schedule a settlement conference, if appropriate, within 60 days. If a settlement conference is not appropriate, or if such a conference or conferences do not result in progress toward a settlement, the settlement judge shall certify the matter for a hearing before a compensation judge and shall refer the matter to the chief hearing examiner to be heard by a compensation judge.
>
> Subd. 2. The commissioner shall deliver the original petition and answer, after certification for a hearing before a compensation judge by a settlement judge, to the office of administrative hearings for assignment to a compensation judge.

It is clear from the above-cited statutory language that the Legislature did not intend to vest authority in the Office of Administrative Hearings to regulate the conduct of workers' compensation proceedings until after the case had been certified to the Chief Hearing Examiner for hearing before a workers' compensation judge. Indeed, the legislature even differentiated between the proceedings in the Department of Labor and Industry, a conference as compared to hearings held by the Office of Administrative Hearings. The Hearing Examiner thus finds that there is no statutory authority for the Office of Administrative Hearings to promulgate rules governing the conduct of workers' compensation cases prior to certification to the Chief Hearing Examiner by the settlement judge. This failure to show statutory authority is a violation of a substantive requirement of law.

The statute does require that a settlement conference be scheduled within 60 days, however, it does not mandate that a settlement conference or conferences be concluded during that time period. Testimony at the hearing demonstrated the unworkability of requiring that all settlement discussions be concluded in 60 days. It is only when a settlement conference is not appropriate, or it does not result in progress toward settlement, that the case must be certified to the Chief Hearing Examiner and the procedural regulation of the matter by the Office of Administrative Hearings is authorized.

Consequently, appropriate amendments must be made, in order to correct the defect discussed above, to delete language contained in the proposed rules which governs the conduct of workers' compensation cases prior to certification to the Chief Hearing Examiner. Although this may result in rule duplicity and possibly conflicting pre-certification and post-certification requirements, the

Legislature clearly intended this division of functions between the Department of Labor and Industry and the Office of Administrative Hearings.

11. Proposed 9 MCAR § 2.301 (hereinafter, Rules will be referred to by only the last three digits; this Rule would be Rule 301) sets forth the scope and purpose of the proposed Rules and is found to be both needed and reasonable.

12. Proposed Rule 302 delineates the authority of the Chief Hearing Examiner to assign or re-assign workers' compensation cases, the power of the compensation judge to fully decide each case assigned to him or her, and defines terms which are used through the proposed rules.

John Brian, on behalf of the Minnesota Trial Lawyers' Association (hereinafter "MTLA"), suggested that subpart A. of Rule 302 dealing with assignment of cases be amended to provide that cases which must be retried are required to be assigned to the same judge who initially heard the case. He stated that such an amendment would comport with the need for judicial economy. The Agency did not take a position on this proposed amendment.

The Hearing Examiner finds that the Agency has demonstrated the need for and reasonableness of proposed Rule 302. Adoption of the amendment suggested by Mr. Brian would also be workable should the Agency agree with his position. no change p. 1.

13. Proposed Rule 303 provides a vehicle to all parties to a workers' compensation case to request the compensation judge to join any other potential party to the proceeding in order to achieve a full and final determination of the rights of all parties. Pursuant to the discussion in Finding 10, references to joinder by a settlement judge should be stricken from this Rule. As amended, the Hearing Examiner finds that the Agency has demonstrated the need for and reasonableness of proposed Rule 303. stricken p2

14. Proposed Rule 304 speaks generally to the commencement of a workers' compensation proceeding and the responsibility of the attorneys representing parties to notify all interested third parties.

All portions of this Rule which deal with pre-certification procedures should be stricken. Additionally, the MTLA argued that there was no statutory authority for the two provisions in subpart E.4. which deal with a deduction in attorneys' fees and penalties for employer and insurer delay. The Office of Administrative Hearings only has statutory authority to adopt rules regarding the procedural conduct of hearings. The two provisions do much more than dictate a procedure for timely filing. Rather, they mandate a substantive provision of the case determination. The Hearing Examiner finds that statutory authority for those provisions is lacking, which is a violation of a substantive provision of law.

To correct the defect, the two provisions in subpart E.4. discussed above must be deleted. The Hearing Examiner finds that proposed Rule 304 has been shown to both needed and reasonable. not deleted p. 7. order but see COE, 12/21

15. Proposed Rule 305 speaks directly to the settlement conference procedure, an area which is solely within the jurisdiction of the Department of Labor and Industry. However, subparts D., E., and F., because they apply to settlement conferences before a compensation judge after the case has been certified to the Chief Hearing Examiner, are within the authority of the Office of Administrative Hearings. If rewritten to delete the pre-certification procedures, the Hearing Examiner finds that the need for and reasonableness of proposed Rule 305 has been demonstrated by the Agency. OK p. 7, 8

16. Proposed Rule 306 sets forth the procedures to be followed to initiate the discontinuance of compensation payments. Much of this proposed Rule has already been deleted because it speaks to pre-certification requirements. The Rule should be further amended, however, to leave only the hearing priority provisions which apply after the case has been certified to the Chief Hearing Examiner.

Larry Peterson, from the firm of Fitch and Johnson, noted that there is no requirement in this Rule or any other rule, that petitions for contribution for reimbursement be set for settlement conference or pretrial as are other petitions pursuant to Minn. Stat. § 176.305, as amended by 1981 Laws. This matter will have to be dealt with, however, by the Department of Labor and Industry if it is part of a pre-certification procedure or the Office of Administrative Hearings in Rule 315 if the case has been certified to the Chief Hearing Examiner.

In response to a concern raised by John D. Mariani regarding a shifting burden of proof implied in Rule 306 B.3., the Agency has proposed to amend that provision to read:

> Any objection filed more than 120 days after service of a notice to discontinue shall be treated as a claim petition for purposes of scheduling a hearing and shall not be heard on a priority basis.

amended p. 10

As amended to correct the defects noted above, the Hearing Examiner finds that the need for and reasonableness of Rule 306 has been demonstrated.

17. Proposed Rule 307 merely paraphrases the statutory requirements regarding the service and filing of an answer to the Petition. Because this Rule deals with a pre-certification procedure, it is unnecessary and should be deleted.

deleted p. 10, 11

18. Proposed Rule 308 establishes the uniform procedure for the service of all documents during the course of a workers' compensation case. The Hearing Examiner finds that the Agency has demonstrated the need for and reasonableness of proposed Rule 308.

19. Proposed Rule 309 defines the three types of hearings which may occur in a workers' compensation case; provides for the notice of the time and place for hearings; and mandates the procedure and conditions for requesting a continuance. In order to be consistent with the amendment to Rule 317, subpart B. of Rule 309, should be amended to require a 30-day, rather than five-day, written notice requirement. This inconsistency results in rules which are conflicting, and thus illegal. This defect can be corrected by the amendment just mentioned.

So amended p. 13

Both Mr. Peterson and Mr. Brian suggested that the rule be amended to require that hearings must be scheduled within a certain time period after the pretrial has been completed. James Pomush and John Mariani commented that the oral notice provision is in conflict with Minn. Stat. § 176.341, subd. 3 (1980), which requires written notice. However, subdivision 1, § 176.341, has been amended to allow the Chief Hearing Examiner to set a time and place for hearing. Subdivision 3, which was not amended or repealed, applies only to the workers' compensation division.

If amended to correct the inconsistency between Rules 317 and 309, as noted above, the Hearing Examiner finds that the Agency has demonstrated the need for and reasonableness of proposed Rule 309.

20. Proposed Rule 310 provides a means for all parties who have an interest in a workers' compensation proceeding to intervene so that a full and final determination can be made. The Rule provides that if a Stipulation is entered into or objections to the amounts claimed have not been filed, the intervenor's right to reimbursement will be established provided that the claim is determined to be compensable. All references in this Rule to intervention in settlement conferences conducted by settlement judges should be deleted, however.

Concerns were raised at the hearing regarding the timeliness of motions to intervene. The Agency subsequently amended the Rule to provide for a 20-day period for timely intervention. However, the majority of the testimony supports the reasonableness of 30 days for intervention, rather than 20 days. The Hearing Examiner finds that the 20-day amendment has not been shown to be reasonable by an affirmative presentation of facts in the record. However, the record will support the reasonableness of a 30-day intervention period.

The Department of Public Welfare and Blue Cross-Blue Shield argue that the language adopted from Peters v. ISD No. 281, 297 N.W.2d 289 (1980), contained in subpart B. should be retained rather than deleted as is proposed by Agency amendment No. 32. The Examiner agrees with the Agency, however, that the deleted language is redundant and not necessary. The need for and reasonableness of subpart B., as amended, has been demonstrated. Additionally, the Department of Public Welfare points out that subpart C. and E. may be in conflict if the compensation judge does not order the Intervenor to attend the regular hearing. This potential conflict makes the Rule ambiguous, and thus, illegal, as the intervenor would have to guess as to the requirement. To correct this defect, subpart E. should be amended so that presentation of evidence at the hearing is contingent upon an order of the compensation judge.

The Department of Public Welfare also argues that attendance at pretrials should not be mandatory for Intervenors unless so ordered by the compensation judge. However, testimony from petitioners' attorneys and a workers' compensation judge support the need for the attendance of intervenors unless a stipulation has been filed. The Examiner finds that the reasonableness of this provision has been demonstrated.

Subpart G. of Rule 310 speaks to the reduction of attorneys' fees and penalties for employer and insurer delay. For the reasons already set forth in Finding 14, these provisions should be stricken.

As amended to correct the defects noted in this Finding, the Hearing Examiner finds that the need for and reasonableness of proposed Rule 310 has been demonstrated by the Agency.

21. Proposed Rule 311 sets forth the procedures for the consolidation of two or more related cases. The MTLA argues that consolidation of claims should never be allowed unless all parties consent. The Rule does provide, however, that a party may object to consolidation if it feels that its rights are prejudiced. The Hearing Examiner finds that the need for and reasonableness of proposed Rule 311 has been demonstrated by the Agency.

22. Proposed Rule 312 provides a procedure for the disqualification of a compensation judge from a particular case. Much of this rule has been deleted because the Agency determined, prior to hearing, that it was unworkable. As amended, the Hearing Examiner finds that the need for and reasonableness of proposed Rule 312 has been demonstrated.

23. Proposed Rule 313 specifies pretrial procedures, including both settlement and pretrial conferences. (The Agency neglected to change the word "prehearing" to "pretrial" on page 20, line 8 in its amendments.) All language in this Rule that pertains to settlement conferences conducted by settlement judges should be deleted, however, because of the statutory authority issue discussed previously.

still a problem p. 20, 21

Several persons testified and/or submitted written comments on both sides of the issue of disclosure of motion picture films prior to the regular hearing. The Agency stated that failure to disclose could result in a delay at the hearing, or trial by "surprise". Michael Aafedt and Jacob Forsman suggested that disclosure of films not be required if they are to be used only for impeachment. Mr. Forsman also suggested the use of a discovery deposition at which time the film would be disclosed if needed for impeachment.

no change p. 21

The Hearing Examiner finds that proposed Rule 313, as amended by the Agency and amended to correct the statutory authority defect noted above, has been shown to be both needed and reasonable. The Examiner also finds that amendment of the film disclosure provision, as suggested by Mr. Aafedt and Mr. Forsman, would also be workable should the Agency agree with their positions.

24. Proposed Rule 314 provides a procedural framework for discovery. Certain kinds of information must be provided upon demand and other requests may need an Order from the calendar or compensation judge. (Again, references to settlement judge duties should be stricken from this Rule.) The Agency argues that the balance between mandatory and discretionary, judge ordered discovery will expedite the settlement process and still not be overly burdensome.

Samuel Sigal and John Brian both argue that the discovery rules are too liberal; that the extensive use of depositions, interrogatories and requests for admissions will be overly burdensome, delay quick resolution of claims, and be too expensive for petitioner-employees. Mr. Forsman, a compensation attorney for the Department of Labor and Industry, made similar comments. Mr. Aafedt and Mr. Peterson, however, commented that liberal discovery is necessary to expedite workers' compensation matters. A strong objection was raised by Mr. Peterson to the provision which makes discovery depositions contingent upon an Order from the compensation judge.

The Hearing Examiner finds that the need for and reasonableness of proposed Rule 314, as amended to correct the defect noted above, has been demonstrated by the Agency. The scope of discovery in workers' compensation matters is basically a policy decision which the Chief Hearing Examiner has the authority to make. The proposed rule limits extensive discovery by requiring that an Order from the judge be obtained. Parties will be forced to show the need for depositions and other non-mandatory additional discovery. As such, it is within the discretion of the compensation judge, on a case-by-case basis, to permit more or less extensive discovery.

25. Proposed Rule 315 provides a vehicle for a party to a workers' compensation proceeding to petition for contribution or reimbursement from a non-party to the action. (Again, references to these procedures before a settlement judge should be deleted.) The Rule requires that the Petition be filed in sufficient time so that all parties with a financial interest can participate at all stages of the proceeding.

Larry Peterson contends that subparts A. and B. of the proposed Rule could be read to prohibit petitions for contribution or reimbursement unless there is already a "matter" pending before the Division or the Chief Hearing Examiner. Such a result would, the Examiner agrees, be unreasonable as petitions for contribution and reimbursement are appropriately filed without any other matter pending. To correct this defect, the last sentence of subpart A. should be incorporated into subpart B., with all references as to pre-certification procedures deleted.

See new language p. 30, 31 + deletions

As amended to correct the defects noted above, the Hearing Examiner finds that the Agency has demonstrated the need for and reasonableness of proposed Rule 315.[4]

26. Proposed Rule 316 provides a procedure for parties to obtain subpoenaes from the Office of Administrative Hearings. (Workers' Compensation Division should be deleted.) The Hearing Examiner finds that the need for and reasonableness of proposed Rule 316, as amended to correct the defect noted, has been demonstrated by the Agency.

deleted p. 31

27. Proposed Rule 317 sets forth the procedural framework of the regular hearing, including notice requirements, rules of evidence, the official record, and conduct of the trial. To further clarify this Rule, the Examiner suggests that the word "regular" be inserted before "hearing" on page 30, line 17.

inserted p. 31

Several persons spoke in opposition to the use of audio-magnetic recording devices in some instances rather than a court reporter. Suggestions were made to prohibit the use of tape-recorders in the Rule or to carefully prescribe the circumstances when taping could be used, giving any party to the proceedings the right to require the use of a court reporter. Minn. Stat. § 15.052, subd. 5, as amended by 1981 Laws, Ch. 346, § 6, provides, however, that the Chief Hearing Examiner, after consultation with the compensation judge, shall decide whether to use a court reporter or a tape recorder. The Agency, in proposing Rule 317, has acted in compliance with that statutory mandate. Any rule amendment at this time, which would prohibit the use of tape recorders or set conditions for their use, may be either in conflict with the statute or a substantial change.

The Hearing Examiner finds that the need for and reasonableness of proposed Rule 317 has been demonstrated by the Agency.

28. Proposed Rule 318 describes with specificity the structural content of the compensation judge's decision and provides for the filing of proposed decisions by parties to the proceeding. The Rule requires that the decision be based only upon the record and allows the judge to take administrative notice of certain facts.

Debra Wilson and James Denn each suggested that a provision be included in the Rule which requires the compensation judge to make a finding, or conclusion, as to the appropriate burden of proof and whether it has been met.

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[4] The Examiner directs the Agency's attention to the comments of Mr. Peterson discussed in Finding 16.

Several persons commented in support of a requirment that workers' compensation decisions be issued within 60 days of the close of the record. The 60-day requirement would necessitate additional evidence to substantiate its reasonableness, however. At this stage, the amendment would be a substantial change.

The Hearing Examiner finds that the need for and reasonableness of proposed Rule 318 has been demonstrated by the Agency. The Examiner also finds that the suggestion made by Ms. Wilson and Mr. Denn is feasible should the Agency decide to include it in the Rule.

29. Proposed Rule 319 sets forth the procedure for the referral of a concluded workers' compensation case back to the compensation judge. The Hearing Examiner finds that the need for and reasonableness of proposed Rule 319 has been demonstrated by the Agency.

30. Proposed Rule 320 sets forth requirements for the filing and final approval of stipulations for settlement. Portions of this rule which deal with settlements reached before certification of the case to the Chief Hearing Examiner should be deleted. This rule provides for the approval of all § 176.521 settlements by a calendar or compensation judge. Amendments to the rule provide for automatic entry of the award for all settlements achieved pursuant to Minn. Stat. § 176.081, subd. 7a (1981 Laws, Ch. 346, § 72).

Compensation Judge Nadine James stated that no settlement should be approved unless a determination is made that it is in compliance with Chapter 176. She argues that the automatic entry of awards based upon a stipulated settlement could result in awards which are contrary to the statutory provisions. The Department of Labor and Industry contends that because Minn. Stat. § 176.521 was not amended or repealed, all settlements, regardless of the statutory basis, must be reviewed and approved.

Section 176.081, subd. 7a, creates a new settlement procedure aimed at requiring attorneys to negotiate in good faith. The statutory language clearly states that "judgment shall be entered" subsequent to filing an offer and notice of acceptance. This language would be meaningless if the settlement were then referred to a compensation judge for approval or non-approval. The amendment proposed is not a substantial change as it merely recites, and is consistent with, the statutory requirement.

The Hearing Examiner finds that the need for and reasonableness of proposed Rule 320, as amended to correct the statutory authority defect noted above, has been demonstrated by the Agency.

31. Proposed Rule 321 provides the procedure for awarding attorneys' fees in workers' compensation cases. The rule has been amended to comply with the provisions of Minn. Stat. § 176.081, subd. 7a, regarding offers which are not accepted but are later used to amend the amount of attorneys' fees.

As amended, the Hearing Examiner finds that the need for and reasonableness of proposed Rule 321 has been demonstrated by the Agency.

32. Proposed Rule 322 specifies the procedure for the taxation of costs and disbursements. Several persons commented that the rule should be amended to include certain kinds of costs as authorized disbursements (e.g., attorney and doctor travel costs). However, enumeration of what cost items are or are not taxable would probably be outside the scope of statutory authority as it would pertain to the substance of the case determination. The Hearing Examiner finds that the Agency has demonstrated the need for and reasonableness of proposed Rule 322.

33. Proposed Rule 323 is taken, almost verbatim, from the existing rules of the Workers' Compensation Division of the Department of Labor and Industry. The rule provides the procedure for filing an application under the second injury law and referral of the matter to the Chief Hearing Examiner for hearing, if necessary. However, the pre-certification portions of this rule should be deleted. As amended to correct this defect, the Hearing Examiner finds that the need for and the reasonableness of proposed Rule 323 has been demonstrated by the Agency.

deleted p. 44, 45

34. Proposed Rule 324 provides for an expedited procedure to hear other kinds of hearings which must be held before a workers' compensation judge. The Hearing Examiner finds that the need for and reasonableness of proposed Rule 324 has been demonstrated by the Agency.

35. Proposed Rule 325 sets forth the procedures to employ the use of a permanent partial disability panel pursuant to Minn. Stat. § 176.152, subd. 7 (1981 Laws, Ch. 346, § 89). The Hearing Examiner finds that the need for and reasonableness of proposed Rule 325 has been demonstrated by the Agency.

36. Proposed Rule 326 provides procedures for the removal and return of exhibits from the official file of a workers' compensation case. The Hearing Examiner finds that the need for and reasonableness of proposed Rule 326 has been demonstrated by the Agency.

37. Concerns were raised by several persons regarding the scheduling of workers' compensation hearings so that one individual, law firm, insurer or state workers' compensation attorney is not scheduled for more hearings per day than can be tried by that individual or entity. The Agency has not proposed a methodology to guard against the problem of "over-booking" other than the rule provisions which speak to good cause for a continuance. The Examiner can only repeat these comments in the hope that this problem, if there actually is one, will be anticipated and resolved in a way which will not delay the resolution of petitioners' claims.

38. This Report has not addressed every comment or concern which was expressed prior to, during or after the hearing on this matter. The Agency is encouraged to carefully study the record in this matter before taking any final action.

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

CONCLUSIONS

1. That the Agency gave proper notice of the hearing in this matter.

2. That the Agency has fulfilled the procedural requirements of Minn. Stat. § 15.0412, subd. 4-4f (1980) and all other procedural requirements of law or rule.

3. That the Agency has not demonstrated its statutory authority to adopt portions of the proposed rules as is discussed in Findings 10, 14 and 20. The Agency 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), except as noted in Findings 19 and 20.

4. That the Agency has documented the need for and reasonableness of its proposed rules with an affirmative presentation of facts in the record within the meaning of Minn. Stat. § 15.0412, subd. 4c (1980), except as noted at Findings 17, 20 and 25.

5. That the amendments and additions to the proposed rules which were suggested by the Agency after publication of the proposed rules in the State Register do not result in rules which are substantially different from the proposed rules as published in the State Register within the meaning of Minn. Stat. § 15.0412, subd. 4d (1980) and 9 MCAR §§ 2.110 A. and 2.111 (1980 Ed.).

6. That the Hearing Examiner has suggested action to correct the defects noted throughout this Report.

7. That due to Conclusions Nos. 3 and 4, this Report has been submitted to a designee of the Chief Hearing Examiner for his approval pursuant to Minn. Stat. § 15.0412, subd. 4d (1980).

8. That any Findings which might properly be termed Conclusions and any Conclusions which might properly be termed Findings are hereby adopted as such.

9. That a finding or conclusion of need and reasonableness in regard to any particular rule subsection does not preclude and should not discourage the Agency from further modification of the proposed rules based upon an examination of the public comments, provided that no substantial change is made from the proposed rules as originally published, and provided that the rule finally adopted is based upon facts appearing in this rule hearing record.

Based upon the foregoing Conclusions, the Hearing Examiner makes the following:

RECOMMENDATION

It is hereby recommended that the proposed rules be adopted consistent with the foregoing Findings and Conclusions.

Dated this 16 day of December, 1981.

Peter C. Erickson

PETER C. ERICKSON
Hearing Examiner

OAH Ex. I.

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

IN THE MATTER OF THE ADOPTION
OF RULES RELATING TO THE
PROCEDURAL REQUIREMENTS OF
WORKERS' COMPENSATION HEARINGS.

AMENDMENTS TO
PROPOSED RULES

The following amendments to the above-referenced rules are hereby proposed by the office in order to have the rules in the form desired by the office. The amendments listed herein are followed by a brief description of the amendment and, if necessary, the reasons for the amendment.

1. Page 1, line 5, delete "82" and insert "176"

This corrects a statutory reference error. Chapter 82 is the Real Estate License Law. Hearings under that chapter are contested cases under the APA.

2. Page 2, between lines 1 and 2, insert: "6. "Office" means the Office of Administrative Hearings."; line 2, delete "6" and insert "7"; line 6, delete "7" and insert "8"; line 9, delete "8" and insert "9".

This definition is needed as the term "office" is used throughout the rules.

3. Page 2, lines 13 and 21, delete "calendar" and insert "compensation".

A calendar judge is a compensation judge. Using the term "calendar" when referring to the judge in this rule would seemingly foreclose anyone other than a judge serving as a calendar judge from ruling on the issues presented.

4. Page 2, between lines 22 and 23, insert: "or within 15 days after receipt of a pretrial order,".

5. Page 2, line 33, after the word "date" and before the comma, insert: "or more than 15 days after receipt of a pretrial order".

Amendments 3 and 4 are necessary to set a time limit for the filing of a joinder request in those cases where a pretrial conference is not automatically set, as has now been implemented at the office. The term "pretrial order" is different from a "Notice of Pretrial Conference" so confusion will not exist. The 15-day limit is reasonable and necessary because parties are presently being ordered to file a pretrial statement within 30 days after receiving the pretrial order. Thereafter, the cases are set for a specific trial date. Thus, it is necessary that the party to be joined be aware that the case is soon to be set for trial and leaves all parties 15 days to object or to request a pretrial conference.

6. Page 3, line 1, delete "calendar" and insert "compensation".

This is made for the same reasons expressed in the amendments at number 3 above.

7. Page 3, line 3, delete "ten-day" and add "s" to the word "requirement".

These amendments are necessary in that the ten-day limit is not the only limit.

8. Page 3, line 22, delete "calendar" and insert "compensation".

See amendment number 3 above.

9. Page 3, delete line 36; page 4, delete lines 1, 2 and 3.

This section on consolidation is not necessary as there is a separate rule on consolidation (see 9 MCAR § 2.311).

10. Page 4, line 4, delete "C. Contents of Petitions." and insert "B. Petitions."; delete the words "contain the"; delete line 5; on line 6, delete "1.-21" and insert "be in writing and shall be on the form prescribed by the commissioner"; delete lines 7 through 36.

11. Page 5, delete lines 1 through 27; line 29, delete "the commissioner, a settlement,"; line 30, delete "calendar or" and insert "a"; line 36, delete "at the time the proceeding is commenced, and again".

Amendments 10 and 11 reflect the determination by the Chief Hearing Examiner that to continue to assert jurisdiction, in these rules, over the contents of original petitions, could lead to a delay in the adoption of these rules. It is anticipated that the Department of Labor and Industry will contest this jurisdiction, instead asserting its own jurisdiction. Temporary rules, presently in effect, will expire on February 19, 1982. It is recognized that the split of authority over contested workers' compensation cases has caused a certain amount of uncertainty. However, rather than "forcing" the issue at the administrative level which would more than likely result in a delay in the adoption of these rules beyond the date of expiration of the temporary rules, it is better to withdraw those rules which we anticipate will be contested by Labor and Industry. The matter is best resolved by the legislature. Therefore, these amendments, as well as others to follow, recognize this jurisdictional question.

12. Page 5, line 31, delete "title" and insert: "caption, the employee's social security number".

This amendment is needed because "caption" has been used rather than "title" in all cases in the past. The change will avoid confusion. All files, from the time the employee's injury is first reported, carry the employee's social security number.

13. Page 6, line 1, after "of" insert "a pretrial order or" and delete "prehearing" and insert "pretrial".

These amendments reflect the current practice as described after amendments 4 and 5 and to reflect that the language of the rules is being amendment for uniformity by use of the word "pretrial" rather than "prehearing" wherever the latter term appears.

14. Page 6, line 8, delete ", within five days,".

As we have deleted the requirements relating to the petition, this time frame is no longer appropriate. Rather, the rule would now simply impose the burden of giving the third party notice without imposing a time limit.

15. Page 6, line 12, delete "workers' compensation"; line 13, delete "of the department of labor and industry" and the last "of"; line 14, delete "administrative hearings".

The delete terms are not necessary as the definitions section of the rule cover the remaining terms.

16. Page 7, delete lines 2 through 10.

As the deleted paragraph relates to procedures prior to filing, in keeping with the comments under amendments 10 and 11, it is withdrawn.

17. Page 7, line 13, after "Referral." insert "Pursuant to the provisions of Minn. Stat. § 176.305, subd. 1,"; delete "Upon" and insert "upon"; line 18, delete "requested or is"; line 20, delete line 21; line 22, delete "date of referral of the petition by the commissioner."; line 23, delete "has not been requested or"; line 26, after "jurisdiction." insert "Pursuant to Minn. Stat. § 176.305, subd. 1,"; delete "If" and insert "if".

These amendments carry forth the decision discussed after amendments 10 and 11. As the rule remains, it paraphrases statutory language which is crucial to the reader's understanding of the rules as a whole and of the entire process. Pursuant to the statutory language, once the 60-day limit has expired, jurisdiction over the case shifts to the Chief Hearing

Examiner. Therefore, the Chief Hearing Examiner has the authority to adopt a rule relating to the case and its disposition following the shift in jurisdiction. These amendments do not result in a substantial change in the substance of the proposed rule.

18. Page 8, line 1, delete "calendar" and insert "compensation".

See discussion under amendment number 3 above.

19. Page 8, line 5, delete "settlement,"; line 24, after "compensation" insert "shall be"; after "filed" insert "with the commissioner"; delete ", shall" and insert "."; delete lines 25 through 36; page 9, delete lines 1 through 30; on line 33, after "writing" delete the comma and insert "and"; delete ", and shall" and insert a period; delete lines 34 through 42.

The amendments above are made for the same reasons as discussed following amendments 10 and 11. The remaining language paraphrases statutory language which is necessary to give the reader all of the requirements, in these rules, necessary to an understanding of the process. The following page describes the procedures which will be followed in such cases.

20. Page 10, line 14, delete everything after "in B.2."; delete line 15.

This amendment is necessary because the rule relating to the contents of the petition has been withdrawn.

21. Page 10, line 17, delete "A.".

This is necessary since the rest of the sections of the rule are being withdrawn.

22. Page 10, line 18, delete "application" and insert "petition".

This is necessary to maintain uniformity in the rules. The term "application" is a carryover from the proposed temporary rules and was not changed when those rules were used as the base for these rules.

23. Page 10, line 19, delete "a waiver" and insert "an extension".

This is required to conform the language of the rule to the language of the statute.

24. Page 10, delete lines 21 through 36; page 11, delete lines 1 and 2; page 11, on line 4, delete "commissioner, the", and on line 5, delete "settlement,".

These amendments are made for the same reasons as expressed following amendments 10 and 11.

25. Page 11, on line 11, after "by" insert "or on", and on line 12, after "by" insert "or on".

These amendments are necessary to clarify the fact that service may be made on attorneys for parties and not on the parties themselves if the parties are represented by attorneys. This question arose during the past serveral weeks in phone calls received from attorneys in their application of the temporary rules.

26. Page 11, line 24, delete "prehearing" and insert "pretrial"; page 12, on lines 5, 7, 12, 14, 25 and 27, delete "prehearing" and insert "pretrial".

See amendment number 13 for a discussion of the reasons for these amendments.

27. Page 11, line 28, delete "hearing" and insert "proceeding".

This amendment is grammatical.

28. Page 11, line 33, delete "the conference may be"; delete lines 34 and 35; page 12, delete lines 1, 2, 3 and 4.

This amendment is necessary for the same reasons as expressed following amendments 10 and 11.

29. Page 13, line 17, delete ", calendar or settlement" and insert "or calendar"; on line 22, after "compensation" delete the comma and insert "or"; on line 23, delete "or settlement"; and on line 29, delete "settlement".

These amendments are for the same reasons as set forth following amendments 10 and 11.

30. Page 14, line 21, delete "the" and insert "a".

This amendment is grammatical as it reflects the fact that there will not be a specific judge referred to as the "calendar" judge but that any of the compensation judges may serve as a calendar judge.

31. Page 15, line 35, delete "prehearing" and insert "pretrial"; page 16, line 2, delete "and prehearing" and insert "or pretrial".

See amendment number 13.

32. Page 15, line 30, delete "have been" and insert "be", delete "without the necessity of the"; line 31, delete "intervenor participating further in the proceedings" and insert "provided that the employee's claim is determined to be compensable".

This change is, first, grammatical and, second, necessary to reflect specifically what is obvious, which is that an intervenor can only recoup its payments to the employee if the employee's injury is compensable by another. The deleted language is redundant.

33. Page 17, on both line 6 and 36, after the word "prejudice" insert "the rights of".

This is necessary for grammatical reasons. A party is not prejudiced by actions of another, the party's rights are prejudiced.

34. Page 17, line 25, delete "prehearing" and insert "pretrial".

See amendment number 13.

35. Page 17, line 32, delete "petitioner's name and address, the title of"; line 33, delete "his case prior to consolidation, and the" and "his"; line 34, delete "petition" and insert "the motion".

This change is grammatical and removes redundant language.

36. Page 17, line 35, delete "appropriate".

This removes a redundant term.

37. Page 18, line 8, delete "A. Procedures".

This is necessary as paragraph B is deleted later and no title is necessary.

38. Page 18, line 12, after "the" insert "service on all parties and the".

This is a clarification. Attorneys have brought to our attention that they could not tell from the rule whether such petitions had to be served on other parties.

39. Page 18, line 13, delete "or declaration under penalty of perjury"; line 16, delete "If the compensation judge"; delete all of line 17; line 18, delete "are known, the" and insert "The"; line 21, after "hearing" insert "or has knowledge of the grounds for disqualification, whichever occurs last".

These amendments remove redundant language and clarify the sentence relating to the time of the filing of the petition for disqualification and adds a provision extending the time for the filing of the motion in the event the grounds for disqualification do not become known until a later time.

40. Page 18, on line 21, delete "In no event all any such motion be" and on line 22 delete "entertained after the swearing of the first witness".

The language as proposed would foreclose the filing of a motion for disqualification after the first witness is sworn, which would prohibit disqualifiction no matter what a judge may say during the course of a trial which might evidence bias, prejudice or prejudgement. The change is necessary to insure that all parties receive a fair hearing at every stage of the proceeding. It is areasonable extension of the provisions of 9 MCAR § 2.302 A which specifically provides for the reassignement in the case of disqualification. Further, Minn. Stat. § 176.311 specifically allows the Chief Hearing Examiner to reassign a petition at any time before an award or order has been made.

41. Page 18, delete ines 28 through 36; page 19, delete lines 1 through 33.

The above amendments delete the provision allowing an automatic reassignment of a compensation judge upon the filing of a petition requesting the reassignment. While the Chief Hearing Examiner believes that a rule of this nature is appropriate, administratively the proposed rule works only in the metropolitan area but could not be administered in out-state Minnesota. It would be illegal and improper to adopt a rule which did not have uniform applicability. The rule as proposed is presently in effect in the State of California. James Mastoris, Presiding Compensation Judge for the Ventura, California, district, who is the administrator for that district which has ten compensation judges, has informed the Chief Hearing Examiner that he must spend an average of one hour per day reassigning cases as a result of this rule. How much time we would have to spend reassigning cases with 19 judges is unknown but one could speculate that initially at least double that time would be required. Given present budget constraints, plus the unequal application, the rule simply cannot work at the present time.

42. Page 19, line 36, delete "an affidavit filed" and insert "a disqualification".

This is necessary to carry out the previously-withdrawn automatic reassignment provision.

43. Page 20, line 6, delete "Prehearing" and insert "Pretrial".

See amendment number 13.

44. Page 20, line 7, delete "shall" and insert "may".

This amendment clarifies the rule in that, even as proposed, it did not mandate a pretrial. Rather, it was actually a "notice" type of rule intended to show that pretrials could be ordered in all cases.

45. Page 20, line 8, delete "whenever possible,".

This is necessitated as a result of the removal of the mandatory word "shall". The phrase restricted the pretrials and granted discretion which is now not necessary by using the word "may".

46. Page 20, line 10, delete the first "judge"; delete "calendar" and insert "compensation".

47. Page 20, on lines 15, 18, 21, 23 and 32, delete "prehearing" and insert "pretrial"; line 21, after conference add "s"; and on line 32, delete "conference".

48. Page 21, on lines 9, 14, 17, 20 and 29, delete "prehearing" and insert "pretrial".

49. Page 22, on lines 7, 16, 17, 20 and 29, delete "prehearing" and insert "pretrial".

50. Page 22, on lines 2, 10, 18, 21 and 23, delete "calendar" and insert "compensation".

For amendments 46 and 50, see amendment number 3. For amendments 47, 48 and 49, see amendment number 13. The others are grammatical.

51. Page 22, line 17, after "conference", insert "or prior to setting the date for a regular hearing".

See amendments number 4 and 5. This recognizes the fact that pretrials might not be set in all cases.

52. Page 22, line 28, after "the" insert "settlement or"; line 29, after "conference" insert "or in a pretrial statement".

The foregoing amendments are further clarifications and specifically delineate the three instances where disclosures are to be made, including the pretrial statement when a pretrial or settlement conference is not conducted.

53. Page 23, line 6, insert "(" before "or"; line 7, insert ")" after "self-insured.

This is grammatical in nature and corrects a typographical oversight when copying this rule from existing rules.

54. Page 23, line 3, after "subd. 1", insert "while the case is pending before the office"; line 18, delete "the"; line 19, delete "division," and ", or the court of appeals, depending upon"; line 20, delete "where the matter is pending".

55. Page 24, delete lines 4 and 6; line 15, after "subd. 2", insert "when the case is pending before the office,"; line 33, delete "the division" and ", or the court of appeals, depending"; line 34, delete "upon where the matter is pending".

56. Page 24, line 1, delete "five" and insert "twelve"; delete line 8.

This reflects a 1981 change in the law. Interest allowed is now 12% and deletes an unnecessary line in the signature line.

57. Page 24, between lines 30 and 31 add: "e. Copies of all medical reports supporting the claimed period of disability and the causal relationship of that disability to the employee's employment."

This is necessary to correct the obvious oversight of the non-inclusion of supporting medical data.

58. Page 25, delete lines 30, 32 and 34.

59. Page 26, line 2, after "order" and before the comma, insert "hereunder".

These amendments carry forth the changes necessitated by the decision discussed at amendments 10 and 11.

60. Page 27, line 34, after "to" add "or at the commencement of"; line 35, after "hearing" delete the rest of the line.

This is a clarifying amendment which merely rearranges the sentence without changing its meaning.

61. Page 29, on lines 21, 22, 32 and 33, delete "prehearing" and insert "pretrial".

See amendment number 13.

62. Page 29, line 21, after "conference" and before the comma, insert "or within 20 days of receipt of a pretrial order if a pretrial conference is not automatically set".

This clarifies the rule in the event that a pretrial is not set.

63. Page 29, line 32, delete "shall" and insert "may".

This is a "warning" rule which simply notifies parties that their case may be set for a pretrial or settlement conference, neither one of which is mandatorily required by the law or these rules.

64. Page 30, line 1, delete "duly".

This is grammatical.

65. Page 30, line 21, after "hearing" and before the period, insert "and the name of the compensation judge assigned, if known".

This mandates that the office include the name of the compensation judge assigned so that parties will have adequate notice and so that all parties will then have the name to send all future correspondence or motions.

66. Page 31, line 13, delete "Opinion" and insert "If permanent partial disability is an issue, an opinion".

This clarifies the rule as it should only require a permanent partial disability opinion if it is an issue in the case.

67. Page 31, line 36, delete "No other factual information or evidence"; page 32, line 1, delete "shall be considered in the determination of the case."; between lines 5 and 6, insert "No other factual information or evidence shall be considered in the determination of the case."

This sentence restructuring is for clarification purposes.

68. Page 33, line 34, delete "Title" and insert "Caption".

This changes this rule to a term in present usuage which is necessary to avoid confusion.

69. Page 34, line 24, delete "in his or her discretion" and insert "with the consent of all parties.

This is necessary to remove the discretionary language and to provide a safeguard to all parties to insure that their rights to a prompt hearing will not be jeopardized.

70. Page 37, delete all of line 3, all of line 4 except the period and insert "it shall be served on all parties".

The proposed language complies with present law. The Commissioner of Administration, at the request of the Chief Hearing Examiner and the Commissioner of Labor and Industry, has prepared a reorgnization order transferring the responsibility for serving the orders from the Commissioner to the Chief Hearing Examiner.

71. Page 37, line 6, after "following" and before the colon, insert" in the sequence as listed".

This amendment is needed to clarify the intent of the rule as it presently exists in the temporary rules. That intent was to bring uniformity to the orders to that parties and other interested persons donot have to search for the listed items. At present, none of the judges is including the notice of appeal rights and only three are including their name, to cite but two examples.

72. Page 37, line 31, add: "It shall also include a brief memorandum setting forth the issues and explaining the decision on each issue."

The Court of Appeals has stated that decisions must be explained in order that they can see the judge's reasoning behind the decision. If parties are submitting proposed decisions, it is both necessary and reasonable that their reasoning be included so that if the judge adopts the proposal in its entirety, it can be signed without further work by the judge. This will be an aid in solving some of the delay problems.

73. Page 37, line 36, delete "rereferred" and insert "referred".

This is a grammatical change.

74. Page 38, line 3, after "clerical" insert "or mathematical".

This further clarifies the original intent of the rule that all errors can be corrected when found to exist.

75. Page 38, on line 7, delete "§" and insert "§§ 176.081, subd. 7a" and delete "that" and insert "those"; on line 8, delete "section" and insert "sections".

76. Page 38, line 12, after "and" insert ", except for those filed pursuant to Minn. Stat. § 176.081, subd. 7a,".

77. Page 38, line 17, after "and" insert ", except for those filed pursuant to Minn. Stat. § 176.081, subd. 7a,"; line 18, delete the second "the" and insert "a".

78. Page 38, between lines 19 and 20, insert the following new paragraph: "Where a settlement has been agreed upon pursuant to Minn. Stat. § 176.081, subd. 7a, when the offer and acceptance is filed, it shall include findings of fact, conclusions and an award on all issues, including attoreys' fees and costs. If agreed upon prior to referral to the chief hearing examiner, it shall be filed with the commissioner. If agreed upon subsequent to referral to the chief hearing examiner, it shall be filed with the chief hearing examiner who shall immediately send the settlement and the file to the commissioner for entry of the agreed upon award."

Amendments 75, 76, 77 and 78 recognize the language added to Minn. Stat. § 176.081 by the 1981 Legislature. The additional language, to be found at § 72 of the 1981 legislation, speaks to a specific situation wherein an offer of settlement is made and accepted prior to hearing. As a special law, passed subsequent to the language relating to approvals of settlements, attorneys' fees and costs found elsewhere in the statutes, it supersedes the other requirements. The amendments to these rules merely recognize that law and specify where and how the offer and acceptance are to be filed. As the amendments to the rule only recognize statutory requirements, they are needed to claify otherwise uncertain situations involving settled caess. The amendments are reasonable in that a closed file must contain a detailed recitation of the facts underlying the payments to be made. They are also reasonable in that by clarifying the existing uncertainty and listing specific steps and procedures to be followed, they will assist in a faster delivery of benefits to the injured employee. The new lanaguage does not result in a "substantial change" in the rule because the fundamental or basic thrust of the rule as proposed related to the settlement of disputed claims. The same analysis applies to the issue relating to a new subject matter not raised in the notice of hearing.

79. Page 40, line 8, delete "Authorization" and insert "Notice of representation".

80. Page 40, line 17, delete "Application."

81. Page 40, line 22, add "C." at the beginning of the line.

82. Page 40, line 25, delete "Application" and insert "Unless ordered otherwise by the compensation judge,".

83. Page 40, line 34, delete "as provided in these rules".

84. Page 40, line 35, delete "C" and insert "D".

Amendments 79 through 84 clarify this rule, change the lettering, modify the language to conform to statutory language and provide that there may be occasions when written petitions for attorney's fees might not be necessary and to require a written petition would merely add to delay problems.

85. Page 41, line 2, delete the third "the" and insert "a".

This carries forth the clarification that there will not be a specific person designated as the calendar judge but that all compensation judges will be serving as a calendar judge from time to time.

86. Page 41, between lines 4 and 5, add a new section to read: A. Prior to submitting a formal request for payment or reimbursement of costs and disbursements, an informal request should be made by the taxing party. If agreement cannot be reached on all items, the taxing party may then proceed as

delineated herein, including in the formal request an indication of those costs agreed upon.

Lines 5, 8 and 12, delete A, B and C and insert B, C and D respectively.

The above amendments provide an option to the parties whereby they can attempt to resolve the issues prior to submission to the compensation judge. As this is not a mandatory requirement, it is not a substantial change. It is reasonable in that its addition and subsequent use will help in alleviating delay problems.

87. Page 41, line 20, delete "prior to the subsequent injury".

This amendment is needed to conform the rule to current law. The rule as proposed was copied verbatim from the existing rules of the department which had not amended the rules subsequent to the 1979 legislative change. The law now allows a registration after the second injury if it is based on a medical report which was issued prior to the second injuryu.

88. Page 43, lines 24 and 25, delete ", upon order of the compensation judge".

This language is not necessary. If the rule provides for the return, it does not need an "order" of a compensation judge. To require an "order" will create delay in the system as a whole and will cost time which coverts to money.

89. Page 43, line 30, after "party" insert "producing the exhibit or evidence at the hearing or the party".

This amendment will allow hospital or other medical records, including X-rays, to be returned directly to the person or association who "owns" them. This amendment carries forward the initial intent of the proposed rule and will aid in getting exhibits back to the proper persons much faster.

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

DEPARTMENT OFFICE OF ADMINISTRATIVE HEARINGS **Office Memorandum**

TO : PETER C. ERICKSON
Hearing Examiner

RECEIVED
NOV 16 1981
ADMINISTRATIVE HEARINGS

DATE: 11/13/81

FROM : DUANE R. HARVES
Chief Hearing Examiner

PHONE: 6-8100

SUBJECT: WORKERS' COMPENSATION RULES

As stated at the hearing last week, after preparing the amendments to the proposed rules, Judge James found nine more minor changes which are:

1. Page 7, line 20, delete "The" at the end of the line;
2. Page 13, line 29, delete the comma after the deleted word "settlement";
3. Page 22, line 23, delete "prehearing" and insert "pretrial";
4. Page 24, line 33, delete the comma after the deleted word "division";
5. Page 38, line 7, after the newly added language insert "and";
6. Page 40, line 25, we deleted the word "Application" in order to delete the capital "A" and must now reinsert "application" with a lower case "a";
7. On the amendments, page 4, number 30, the deleted "the" should be the second time it appears;
8. On the amendments, page 4, number 40, the word "all" should be "shall";
9. On the amendments, page 5, number 47, the first time the word "conference" appears is where it is to be deleted.

In addition to the foregoing, as a result of the comments made at the public hearing, I am proposing the following amendments:

A. Pretrials

1. Page 20, line 10, after the period insert: "A compensation judge shall order that a pretrial or settlement conference be conducted if any party requests that one be conducted.

2. Page 22, line 26, add: "When a prehearing statement has been ordered, the petitioner shall serve and file his statement within 20 days of the date of the order. The responding parties shall serve and file their statement within 30 days of the date of the order. Thereafter, a petitioner may serve and file an amended pretrial statement based solely on information presented in the responding parties' statement and not on new issues, which amended statement shall be filed within 40 days of the date of the order."

3. Page 22, line 32, after "the" add "filing of a prehearing statement or"; after the comma add "whichever occurs last".

B. Depositions

1. Page 27, line 18, after the period insert "The motion shall state, with specificity, the facts or other reasons supporting the need for the deposition."

2. Page 27, line 28, delete "medical".

3. Page 27, line 29, delete "doctor" and insert "witness".

C. Intervention

1. Page 14, line 23, add: "A motion to intervene shall be served and filed within 20 days after a person has received notice that a claim petition has been filed as provided in 9 MCAR § 2.304. In any other situation,".

2. Page 14, line 24, delete "Timeliness" and insert "timeliness".

3. Page 15, line 28, delete "20" and insert "30".

D. The Hearing (9 MCAR § 2.317)

1. Page 30, line 18, delete "five" and insert "30".

2. Page 34, line 34, after the period insert: "After the time the first witness is sworn, unless all parties agree, all of the proceedings shall be on the record, including any and all motions, objections, offers of proof, rulings of the judge, arguments of parties other than final arguments, or other comments of the parties, their representative or the judge. A compensation judge shall not order a court reporter to refrain from recording anything said during the course of a hearing absent the consent of all parties present nor shall a compensation judge turn off an audio magnetic recording device being used to record the proceedings, other than for reasonable breaks, absent the consent of all parties present.

E. Offers of Settlement - Attorney's Fees (9 MCAR § 2.321)

Page 41, between lines 3 and 4, add a new section as follows:

E. In cases where an offer of settlement has been made, in writing, pursuant to the provisions of Minn. Stat. § 176.081, subd. 7a, and the offer has not been accepted, upon receipt of the compensation judge's decision, the following procedure shall be followed:

1. The party seeking to impose the sanctions imposed by Minn. Stat. § 176.081, subd. 7a, shall file proof of the offer with the chief hearing examiner within 10 calendar days of the date of the compensation judge's decision. The filing shall include an order prepared for signature by the chief hearing examiner which would amend the compensation judge's decision.

2. When filing the material requested above, copies shall be served on all other parties at the same time.

3. Any party objecting to the entry of the order shall, within five calendar days of receipt of the proposed order, serve and file an objection, which may be in the form of a letter, stating in detail the reasons why the order should not be signed. A response to the objection, if any, must be filed within five calendar days of the objection.

4. If no objection is received, the chief hearing examiner shall sign, serve and file the order within 10 calendar days of its filing. If objection has been received, it shall be determined by the chief hearing examiner within 10 calendar days after the filing of the objection. Parties shall not have the right to a hearing on the objection. The chief hearing examiner's determination shall be in writing and is appealable to the Workers' Compensation Court of Appeals.

DRH:sh

OAH-82-001-PE

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

IN THE MATTER OF THE ADOPTION OF RULES RELATING TO THE PROCEDURAL REQUIREMENTS OF WORKERS' COMPENSATION HEARINGS.

ORDER OF THE CHIEF HEARING EXAMINER'S DESIGNEE

On February 1, 1982, the Chief Hearing Examiner filed an Amended Order Adopting Rules with the Chief Hearing Examiner's Designee.

Having reviewed the changes proposed in that Amended Order, it is hereby found that the changes do not constitute substantial changes within the meaning of Minn. Stat. § 15.0412.

Dated: February 1, 1982.

Allan W. Klein

ALLAN W. KLEIN

Chief Hearing Examiner's Designee

OAH-82-001-PE

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

IN THE MATTER OF THE ADOPTION OF RULES RELATING TO THE PROCEDURAL REQUIREMENTS OF WORKERS' COMPENSATION HEARINGS.

ORDER OF THE CHIEF HEARING EXAMINER'S DESIGNEE

On January 28, 1982, the Chief Hearing Examiner filed an amended Order Adopting Rules with the Chief Hearing Examiner's Designee.

Having reviewed the changes proposed in that amended Order, it is hereby found that the changes do not constitute substantial changes within the meaning of Minn. Stat. § 15.0412.

Dated: January 28th, 1982.

Allan W. Klein

ALLAN W. KLEIN
Chief Hearing Examiner's Designee

OAH Ex. D.

STATE OF MINNESOTA)
(ss.
COUNTY OF RAMSEY)

OAH-82-001-PE

AFFIDAVIT OF SERVICE

Sandra A. Haven, being first duly sworn, deposes and says that on the 23rd day of Sept., 1981, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Hearing

unstamped, by placing in the designated tray to be collected by messenger for delivery to the central mailing station as required by Minn. Stat. § 16.54 (1974), a true and correct copy thereof on all persons at the addresses shown on the attached mailing list.

Sandra A. Haven

Subscribed and sworn to before me this
23rd day of September, 1981.

Susan C. Wojcik

SUSAN C. WOJCIK
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Commission Expires April 26, 1986

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STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

IN THE MATTER OF THE ADOPTION OF RULES RELATING TO THE PROCEDURAL REQUIREMENTS OF WORKERS' COMPENSATION HEARINGS.

ORDER OF THE CHIEF HEARING EXAMINER'S DESIGNEE

On January 15, 1982, the Chief Hearing Examiner filed an Amended Order Adopting Rules with the Chief Hearing Examiner's Designee.

Having reviewed the changes proposed in that amended order, it is hereby found that the changes do not constitute substantial changes within the meaning of Minn. Stat. § 15.0412.

Dated this 15th day of January, 1982.

Allan W. Klein

ALLAN W. KLEIN
Chief Hearing Examiner's Designee

OAH-82-001-PE

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Adoption of Permanent Rules Relating to Workers' Compensation.

ORDER OF THE CHIEF HEARING EXAMINER'S DESIGNEE

The above-entitled matter came on for review by the Chief Hearing Examiner's designee pursuant to the provisions of Minn. Stat. § 15.0412, subd. 4d (1980) which provides in part:

> If the [hearing examiner's] report contains a finding that the proposed rule is substantially different from that which was proposed at the public hearing, or that the agency has not met the requirements of section 15.0412, subdivisions 4 through 4f, it shall be submitted to the chief hearing examiner for approval. If the chief hearing examiner approves the finding of the hearing examiner, he shall advise the agency of actions which will correct the defects, and the agency shall not adopt the rule until the chief hearing examiner determines that the defects have been corrected. If the chief hearing examiner determines that the need for and reasonableness of the rule has not been established pursuant to subdivision 4, clause (c), and if the agency does not elect to follow the suggested actions of the hearing examiner to correct that defect, then the agency shall submit the proposed rule to the legislative commission to review administrative rules for the commission's advice and comment. The agency shall not proceed to adopt the rule until it has received and considered the advice of the commission; provided, that the agency is not required to delay adoption longer than 30 days after the commission's receipt of the agency's submission.

The Chief Hearing Examiner has designated the undersigned, a supervisory hearing examienr, to review this matter because the Chief Hearing Examiner is the proponent of these rules.

Based upon a review of the record in this proceeding, the Chief Hearing Examiner's designee hereby approves the Report of the Hearing Examiner (with one exception) and specifically approves it as to any finding of substantial change or of failure to comply with Minn. Stat. § 15.0412, subd. 4-4f (1980) or of failure to establish need for and reasonableness of the proposed rule. The sole exception to the Hearing Examiner's Report arises in connecton with his finding of no statutory authority regarding attorney's fees, as set forth in Findings 14 and 20 of his Report. The designee finds that the Agency does have statutory authority to adopt the proposed rules (see Memorandum).

In order to correct the defects enumerated by the Hearing Examiner, the agency shall either take the action recommended by the Hearing Examiner or reconvene the rule hearing if appropriate. If the agency chooses to reconvene the rule hearing, it shall do so as if it is initiating a new rule hearing, complying with all substantive and procedural requirements imposed on the agency by law or rule.

If the agency chooses to take the action recommended by the Hearing Examiner, it shall, prior to submitting the rules to the Attorney General for review, submit to the Chief Hearing Examiner's designee a copy of the rules as initially published in the State Register, a copy of the rules as proposed for

final adoption in the form required by the State Register for final publication, and a copy of the agency's Findings of Fact and Order Adopting Rules. The Chief Hearing Examiner's designee will then make a determination as to whether the defect in regard to substantial change and the requirements of Minn. Stat. § 15.0412, subd. 4-4f (1980) have been corrected.

Should the agency make changes in the rules other than those recommended by the Hearing Examiner, it shall also, prior to submitting the rule to the Attorney General, submit the complete record to the Chief Hearing Examiner's designee for a review in regard to substantial changes. In particular, the designee is aware that actions of the current special session of the Legislature may require that changes be made to these rules. If the Agency does make changes in response to legislative actions, those changes shall be submitted to the designee for substantial change review.

Dated: December 21, 1981.

Allan W. Klein

ALLAN W. KLEIN
Hearing Examiner

M E M O R A N D U M

The Hearing Examiner found that the Agency did not have statutory authority to adopt two related provisions contained in proposed Rule 304 E.4. and 310 G. The provisions provide penalties for failure to comply with a rule. The Hearing Examiner found that these were substantive, rather than procedural, and thus, the Agency could not adopt them. The designee cannot agree with the Hearing Examiner. The provisions in question are merely appropriate remedies designed to assure compliance with the underlying procedural rule. As the Statement of Need and Reasonableness asserted, these provisions put some "teeth" into the Rule. In the case of Rule 304, there is evidence to suggest that it has not been followed in the past (see Tr. pp. 67-68, Testimony of Judge James). While the designee recognizes the problem inherent in attaching penalties (see Tr. pp. 49-50, Testimony of John Brian), such penalty provisions are not inappropriate as an enforcement tool for an otherwise appropriate rule, particularly in light of the language which the Agency has proposed to accomplish this end.

Therefore, although the designee approves of the Hearing Examiner's Report in all other respects, insofar as Findings 14 and 20, and the related portion of Conclusion 3 state that the Agency does not have statutory authority to adopt the penalty provisions, the designee does not approve the Report.

A.W.K.

OAH-82-001-PE

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Adoption of Rules Relating to the Procedural Requirements of Workers' Compensation Hearings.

ORDER OF THE CHIEF HEARING EXAMINER'S DESIGNEE

WHEREAS, a hearing in the above-entitled matter was held on November 5, 1981 before Peter C. Erickson, a Hearing Examiner with the State Office of Administrative Hearings, in compliance with Minn. Stat. § 15.0412, subd. 4; and

WHEREAS, the Report of Hearing Examiner made pursuant to Minn. Stat. § 15.052, subd. 3, was issued to the Office and;

WHEREAS, the Office has now determined to adopt rules pursuant to Minn. Stat. § 15.0412, subd. 4-4f, and has issued an Order Adopting Rules; and

WHEREAS, the Chief Hearing Examiner has designated the undersigned, a supervisory Hearing Examiner, to review this matter because the Chief Hearing Examiner is the proponent of the rules; and

WHEREAS, the Office has submitted said rules to the Chief Hearing Examiner's designee for review pursuant to Minn. Stat. §§ 15.0412, subd. 4e and 15.052, subd. 4, and 9 MCAR § 2.111; and

WHEREAS, all of the defects noted by the Hearing Examiner have been cured, except for the defect noted in Finding 20 of his Report, which defect could be cured by making the following changes:

1. Deleting the amendment noted in Paragraph 91 of the Order Adopting Rules. ✓
2. Page 16, line 11, strike the words "after the Petitioner has rested". ✓
3. Page 16, line 12, strike the words ",in order that the issue of" and insert a period after the word "judge". ✓
4. Page 16, lines 13 and 14 should be stricken in their entirety; and ? not done

WHEREAS, it would be desirable (but not legally required) that the following additional amendments be made:

1. Page 10, line 14, strike "B" and insert "A". ✓
2. In the amendment noted in Paragraph 132 of the Order Adopting Rules, in the second line thereof, strike "his" and insert "a"; and ✓ p.23

WHEREAS, the Chief Hearing Examiner's designee finds that the final proposed rules are not substantially different from those proposed at the public hearing.

NOW, THEREFORE, upon receipt of this Order, the Office has the responsibility of curing the defect noted above, submitting the complete hearing record and the rules as adopted by the Office to the Attorney General, and to publish in the State Register, all pursuant to Minn. Stat. § 15.0412, subd. 4e and 4f.

So long as the Office cures the defect noted above as suggested, the Rules need not be resubmitted to the Chief Hearing Examiner's designee. However, the designee is aware that actions of the Legislature may require that additional changes be made to these Rules. If the Office does make additional changes, those changes must be submitted to the designee for his review.

Dated this 6th day of January, 1982.

Allan W. Klein

ALLAN W. KLEIN
Hearing Examiner

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

IN THE MATTER OF THE ADOPTION OF RULES RELATING TO THE PROCEDURAL REQUIREMENTS OF WORKERS' COMPENSATION HEARINGS.

STATEMENT OF NEED AND REASONABLENESS

Laws of Minnesota 1975, Ch. 380, § 16, created the Minnesota Office of Administrative Hearings (then called Office of Hearing Examiners) and, in subd. 4, authorized the Chief Hearing Examiner to adopt rules governing the procedural conduct of all hearings, relating to both rule adoption, amendment, suspension or repeal hearings, and contested case hearings. Laws of Minnesota 1981, Ch. 346, § 5, amended Minn. Stat. § 15.052, subd. 4, to read as follows:

> Subd. 4. The chief hearing examiner shall adopt rules to govern the procedural conduct of all hearings, relating to both rule adoption, amendment, suspension or repeal hearings, contested case hearings, and workers' compensation hearings....

The rules proposed herein contain a complete set of procedures for the conduct of hearings to be held under the provisions of Minn. Stat. Ch. 176, the workers' compensation law. Generally, that law provides that if an injured employee has his claim for injury denied by the employer, he may initiate a contested proceeding by the service and filing of a petition which results, if not settled, in a contested hearing which is conducted by a compensation judge from the Office of Administrative Hearings. The rules being proposed by the office govern the procedures to be followed in these contested workers' compensation matters.

Pursuant to Rule 9 MCAR § 2.104, this document will contain the verbatim affirmative presentation of facts necessary to establish the need for and reasonableness of the proposed rules.

Statutory Authority.

The statutory authority for the office to adopt these rules is contained in Laws of Minnesota 1981, Ch. 346, § 5, amending Minn. Stat. § 15.052, subd. 4 (1980), as previously quoted herein. Discussions relating to the authority to adopt specific rules are contained in the rule by rule analysis contained herein, as deemed appropriate.

Minnesota Laws 1981, Chapter 253, § 35, amended Minn. Stat. Ch. 645 by adding the following: "The provisions of chapter 645, unless specifically provided to the contrary by law or rule, govern all rules becoming effective after June 30, 1981."

Minn. Stat. § 645.16 states: "The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature. Every law shall be construed, if possible, to give effect to all its provisions." Minn. Stat. § 645.17 provides certain presumptions to guide in ascertaining legislative intent. One of those presumptions is: "The legislature does not intend a result that is absurd, impossible of execution, or unreasonable." While seemingly irreconcilable provisions exist as between general and special provisions, Minn. Stat. § 645.26 provides, in part: "If the conflict between the two provisions be irreconcilable, the special provision shall prevail and shall be construed as an exception to the general provision, unless the general provision shall be enacted at a later session

and it shall be the manifest intention of the legislature that such provision shall apply."

When reviewing the provisions of Laws of Minnesota 1981, Ch. 346, in conjunction with those portions of Minn. Stat. Ch. 176 (1980) which were not amended, it is clear that the intent of the legislature must be first ascertained and then applied to these proposed rules. The intent, as applied herein, was to transfer the responsibility for the conduct of contested workers' compensation proceedings from the Department of Labor and Industry to the Office of Administrative Hearings. Therefore, any special provisions which would conflict or be irreconcilable with the manifest intention of the 1981 legislation must yield to the general provisions contained in Minn. Laws 1981, § 5. Having more than one agency adopt rules relating to the conduct of contested workers' compensation proceedings would not be reasonable in that it would result in a burden on the public, would double the cost to the taxpayers by having doulbe the expense associated with rulemaking and would otherwise be an absurd result.

Need and Reasonableness. Generally.

The rules are needed to provide the procedural framework within which all parties will be able to fairly and expeditiously present contested workers' compensation matters and through which the participants will be assured of due process of law. The rules contain a complete set of procedures governing the entire hearing process starting with the requirements for the contents of all petitions which intiate the proceedings which are required to be conducted under Chapter 176, through issuance of the compensation judge's final decision.

Rule by Rule Analysis.

Rule 9 MCAR § 2.301 (hereinafter rules will be referred to by only the last three digits of the full citation; this rule would be proposed rule 301) deals with the scope and purpose of the rules. The rule is needed to inform people that hearings under the workers' compensation law, Minn. Stat. Ch. 176, will be governed by a different set of procedures that other contested cases conducted by the office.

Rule 302. Section A of this rule is needed as a result of the provisions of Laws of Minnesota 1981, Ch. 346, § 108, which amended Minn. Stat. 1980, § 176.311, relating to the assignment of cases to compensation judges. This rule, while not repeating verbatim the statutory provisions, does paraphrase the statutory language and is crucial to the public's overall understanding of the rules as a whole in that numerous cases are remanded to the office from the workers' compensation Court of Appeals. This section of the rule will assist persons in reviewing the rule in knowing exactly who has responsibility for the assignment of compensation judges both initially and upon remand. It is reasonable in that it is a paraphrase of statutory language. Section B of the rule is needed in order to assure the public of the finality of the decisions of the compensation judges during the pendancy of a trial and clarifies any misconception over the independence of the compensation judge. Section C of this rule, containing definitions, is needed to supply the definition of terms which are not defined specifically in the law, and are further needed as short terms for the longer terms which would otherwise be required to be used. The term "petition" needs definition in order that the term can be used throughout the rules and so that persons reading the rules

will know that the term relates to the claim filed which initiates the proceeding. Likewise, when the term "petitioner" is used in the rules, the parties will know exactly to whom the rule refers. The terms indicate that they not only apply to the employee, but also to the employer or insurer when filing documents which will initiate a contested proceeding.

Rule 303. Joinder of Parties. This rule is necessary to provide a vehicle for parties to request the compensation judge to order all necessary persons to become parties to the proceeding. It is necessary to have all parties present during a case in order that the final determination by the compensation judge will in fact be a full and final determination of the rights of all parties who have an interest therein. It is further necessary and reasonable that when one party seeks to join another party, that the party to be joined be served with copies of all pleadings. This will allow the party to be joined the opportunity to prepare to participate in the proceedings. It is reasonable that the party initiating the request for joinder be responsible for serving these papers at his own expense rather than at the expense of either the taxpayers or the other parties. It is necessary that the original of the petition be filed with the settlement or calendar judge so that the official record of the case, which is maintained by the judge, will contain the originals. The requirement that the documents be served and filed no later than ten days prior to the pretrial or settlement conference is necessary in order to give the party to be joined sufficient notice of the pretrial or settlement conference and an opportunity to prepare for attending the conference. It is necessary to provide a vehicle for a judge to allow a shorter time for the service of a motion for joinder when the party is a necessary party. There may be occasions when, even with and through the exercise of due diligence, the party seeking the joinder may not have been aware of the existence of the other party in time to make the service as required herein. As indicated previously, it is necessary to allow joinder at any time, within reasonable parameters, so that all parties having an interest will be included in the final determination of the case. The affidavit which is required when service is made less than ten days is necessary in order to provide a record of sworn testimony on the question that the party requesting joinder has exercised due diligence previous to the request. It is necessary to provide that the case will not be continued or otherwise delayed because of one party's failure to comply with the ten-day rule as the purpose and intent of the workers' compensation law is to provide benefits to injured employees in a cost-efficient and expeditious manner. The injured employee is the party who has the right to the expeditious hearing and is the only party who could allow the matter to be stricken, continued or otherwise delayed in the event a party fails to meet the ten-day time requirement. Section E of the rule is necessary to inform all persons intending to file a motion for joinder of the requirements needed to properly file a motion. Obviously, the name of the party to be joined and its insurer are necessary so that all other parties and the compensation judge will know who is to be brought into the case. It is necessary that the motion contain the date and nature of the claim of personal injury or impairment so that the party to be joined will have sufficient notice. It is necessary to establish the reasons why the party must be joined so that the compensation judge may

make a determination without the necessity of an oral hearing on the motion. Again, in order to give the party to be joined sufficient notice and an opportunity to review and to prepare to defend, the supporting medical opinions are to be attached. Lastly, where the party to be joined is the Special Compensation Fund, because the statute relating to that fund is very specific, the specific details are to be presented, in affidavit form, in order that all parties may have an opportunity to review and, if appropriate, object, and to allow the parties defending the Special Compensation Fund the opportunity to properly prepare for the hearing. Further, by requiring an affidavit, the compensation judge has sworn testimony on which to base a decision without the necessity of an oral hearing. The final section of this rule is necessary to provide a vehicle for any party to contest the joinder. It is also necessary so that unless a party objects, the compensation judge may deem the objections waived and issue an order granting or denying the consolidation without an oral hearing. It is reasonable to provide a limited time frame for persons to object in order that the hearing may continue to be conducted in an expeditious manner to protect the rights of the injured employee.

Rule 304. This rule is a comprehensive rule relating to the initiation of the proceedings. In general, it is needed to establish the contents of all documents, to establish the responsibilities of the attorneys representing the parties, and to provide a vehicle where third parties will be notified of the proceedings, where appropriate. As the compensation judge is ultimately responsible for the conduct of the trial at which the rights of the parties are determined and is further responsible for issuing a full and final determination, it is necessary that these rules contain the requirements for the contents of the documents which lead to the trial and decision. As used in the statute, the term "hearing" is a generic term which must be read to apply to all elements of the process, including the initiation by the service and filing of the petition. It is reasonable that these requirements be contained in these rules for the same reasons. Precedent for the legality of including rules relating to the initiation documents can be seen in the previously-adopted rules of the Office of Administrative Hearings relating to the conduct of rulemaking hearings (wherein requirements on the Notice of Hearing are included) and the rules adopted for the conduct of contested cases, the routing of high voltage transmission lines and siting of large electric generating plants, and recently-adopted rules relating to hearings conducted under the Minnesota Revenue Recapture Act. Further precedential support can be seen in the Rules of Civil Procedure for the courts in the state. The courts are authorized to adopt procedural rules. They have done so and have included rules relating to the content of the initiation documents.

Section A of this rule is a paraphrase of statutory requirements, for the most part. It is crucial to the individual's understanding of the rules as a whole to have the statutory requirements contained, in limited fashion, within the rules, together with a citation to the specific statutory provision so that the reader of the rule will be able to check specific statutory language. The last sentence of this section, requiring that medical reports be attached, is necessary in order to provide the parties being served with information on which to base their answer to the petition. It is reasonable

in that a claim should not be filed unless there has been an opinion rendered by a qualified medical person that an injury exists and is a result of an employee's job. It is also reasonable to require a certification that the statutory notice to the employer has been given. In this way, the compensation judge receiving the file will have a sworn statement as part of the record. The requirement of prior notice is statutory and, absent such notice, the petition would be improperly served and filed, which would be jurisdictional.

The second section of this rule is necessary to provide a discretionary vehicle for parties to agree to combine or consolidate the hearing process if a number of injuries to several employees were the result of a single incident. Such a procedure will provide efficiency in the hearing process and will aid in expediting benefits to employees who are able to show that their injuries are compensable under the law. This allows the consolidation by the consent of all parties. The discretion in the rule is with those regulated by the rule rather than the regulator. Such discretion is thus permissible. However, the rule also provides that, upon proper motion, the compensation judge may order a consolidation. Thus, absent consent of all parties, the matter may still be consolidated. By requiring a motion, all parties would have an opportunity to object. At the same time, if only one party objects to the consolidation, and all other parties agree, it would provide a vehicle for the consolidation to achieve the goal of expeditious proceedings.

Section C relates to the contents of claim petitions. The general need for such a rule was discussed in the foregoing paragraph. This rule does not prescribe that a specific form be utilized but, rather, allows the parties filing the petition the opportunity to utilize their own format provided that the petition contains the information in the sequence listed and provided that a form is not prescribed by the Commissioner pursuant to Minn. Stat. § 176.271, subd. 1. It is necessary that the sequence be followed in order to allow parties familiarity with the various sections of petitions which will expedite their review and preparation to defend. It will also allow settlement, prehearing or compensation judges the ability to quickly go to specific points in the petition when preparing for the hearing. At the same time, should one of the legal form printing companies desire to print a form, the rule will provide the specificity necessary to determine how to prepare the form. The rule as written will also allow the Commissioner to prescribe a form for use by parties if he deems appropriate.

It is necessary that the title of the case include sufficient information so as to allow all parties an opportunity to know exactly who is filing the petition, and, likewise, who the specific employer against whom the claim is being made is and their address as well as the name of the insurance carrier, if appropriate. It is also necessary, for proper filing and record-keeping purposes, that the file number previously assigned to the case when the intial claim had been filed with the Workers' Compensation Division of the Department of Labor and Industry be attached. This is referred to as "the division's record number". Under the present system, all files are assigned a record number as well as containing the employee's Social Security number for proper reference. At the time of the preparation of these rules, the Commissioner of Insurance is preparing a program for the computerization of workers'

compensation matters. It will more than likely include a recommendation for a more proper numbering system which may or may not include a Social Security number. It is also necessary that the petitioner's address be included so as to provide proper and adequate identification of the petitioner. It is necessary that the date of the injury or onset of the occupational disease be included so as to provide information on which the respondents may properly prepare an answer and prepare their defense. The place of employment is needed to be stated to establish that the employee was in fact working for the named respondent at the time of the alleged injury or disease. This becomes more necessary when a number of employers or insurer are named as respondents when injuries are continuing in nature. The employee's weekly wage at the time of the injury is necessary in order to establish the rate which will be determined for compensation benefits in the event a determination is made that the injury or disease is compensable. The statement that the injury or disease arose out of and in the course of employment is necessary to establish the jurisdiction and the ultimate compensability of the injury. This provision is carried forward from the previously-existing rules of the division. It is both necessary and reasonable that the petition contain a statement specifying the nature and extent of the injury, including percentages of disability if appropriate, and to attach copies of all medical reports. This allows the respondents the opportunity to prepare to accept portions of the liability or to defend as appropriate. It also then provides a vehicle for the settlement judge to be able to review the filing to determine whether a settlement conference is appropriate. It is reasonable that medical reports be attached in that such medical reports are available, or should be available, to the petitioner prior to the time the claim is filed. Absence of a written medical report would indicate that the claim petition may be prematurely filed. It is necessary and reasonable to state the specific date on which the employer was first given notice of the injury or disease as the statute requires actual notice that an injury or disease has occurred. It further presents evidence in the case which, if agreed to by the respondents, need not be further presented at the time of the hearing which will expedite the hearing process.

The requirement that the employer's insurers name and address be included is needed in order to provide the settlement, calendar or compensation judge with the proper addresses for purposes of serving notices. A detailed listing of the dates of the disability is necessary in order to provide a specific claim against which the employer or insurer might defend. It is also necessary to provide immediate information to the settlement or compensation judge to determine whether a settlement conference would be appropriate. It is reasonable to require this information because it is known to the petitioner at the time of the filing of the claim petition. If it is not known, the claim petition is prematurely filed. It is further reasonable because the petitioner should know the nature and extent of all of the injuries and disabilities prior to the filing of the petition. The same can be said for the list of the medical benefits which includes all medical bills. Again, this information should be known prior to the filing of the claim petition. It will provide the quick vehicle for review by the compensation or settlement judges.

Item 12, relating to the names of third parties who may have paid previously benefits, is necessary in order that there might be proper notice given to these parties as required in subsequent sections of the rule and, likewise, to provide a vehicle for the division and the office to have full knowledge of the amounts paid and the addresses of these persons so that proper notices can be sent. As indicated, a later portion of the rule establishes further requirements as they relate to third party payors. It is reasonable to require a listing of third party payors as the employee will have records of all payments which have been made prior to the initiation of the proceeding by the filing of the claim petition. A statement that attorney's fees are or are not requested is important in order that the petitioner, who will have to sign the petition, will be making a statement requesting said fees. It also gives notice to the respondents that the fees will be requested and to the settlement or compensation judge who may ultimately be responsible for the apportionment of the attorney's fees. Minn. Stat. § 176.271, subd. 2, requires prior notification that a claim would be filed be given to the employer and insurer. Item 14 of the requirements of the petition requires a statement that the notification was accomplished. This is needed to provide a vehicle for the settlement or compensation judge to know that the notice was given, which notice is jurisdictional. At the same time, it serves as a reminder to the petitioner that a claim petition cannot be initiated until this notice has been given. The signature and attestation by the employee is needed to insure that the employee has read all of the items in the petition and swears to their truth and veracity. This will avoid speculation. It can also the be subsequently used by the respondents at the hearing in the event testimony changes from what has been stated in the petition. The name, address and telephone number of the employee's attorney is necessary in order to provide a vehicle for the division and the office to have the proper name and address for purposes of serving all notices. It is also necessary to provide this information to the respondents who will have to serve the employee's attorney with all documents. A statement that a prehearing conference is requested or not requested is needed to permit the settlement judge to quickly determine whether to review the file further or to call for an immediate settlement conference. It will also serve as notice to the respondents that such a conference has been requested. Items 18, 19 and 21 are procedural requirements necessary to allow the division and the office the opportunity to plan in advance for the timing of the hearing. It will assist in setting the matters at locations throughout the state. Likewise, it will give the respondents early advice of the issues deemed necessary to be resolved. Item 20 of the petition is needed to provide a vehicle to the division and the office to determine whether or not the party is presently receiving benefits and, if so, from whom. This will be additional notice to the settlement or compensation judge that another party is necessary to be included in the case, if that party is other than the respondents named in the petition. It is reasonable to be provided in that if benefits are being paid, the employee should know from whom the benefits are being received. The amounts which have been paid are necessary to have a listing, as early as possible, of potential liabilities of the respondents.

It is necessary that all requests for action contain the title and appropriate identification numbers of the cases. With 60,000 or so claims filed and with 6,000 or so contested claim petitions filed, in order to assist the agency and all parties in proper identification, the numbering system is necessary. Further, with the great number of cases filed and the varying types of action requested, it is necessary that the documents contain the type of action requested.

Section E of this rule relates to responsibilities of attorneys and notices to third parties. In order that a full and final determination of all rights of all parties are involved, it is necessary that the attorneys representing parties make full and adequate inquiry of their clients to determine the names and addresses of all parties to the proceedings. Therefore, this rule requires such an inquiry and further requires that notice be given to these third parties. One of the significant factors resulting in delay in processing workers' compensation claims is a requirement that third parties be given notice of the institution of a workers' compensation proceeding and notice of their right to petition for intervention and reimbursement. Frequently the attorneys have not been inquiring of their clients whether third party payments have been made. Sometimes this inquiry is not timely. When inquiry does disclose such payments, frequently there is no notice given to the third party, or the notice given is inadequate. Also, even when inquiry is timely and adequate and timely notice is given, the third party often does not respond in a timely manner, or fails to respond by providing all of the information necessary and required by the previous rules on intervention. Another problem is the frequent total lack of response from parties to the proceeding upon receipt of a petition for intervention which includes a proposed stipulation that all of the payments for which reimbursement is claimed are related to the injury or condition in dispute in the proceeding, and that if the petitioner is successful in proving the compensability of the claim, it would be agreed that the intervenor is entitled to reimbursement of the sums claimed by the intervenor. In some instances, these petitioners never put in an appearance. Likewise, petitions for intervention sometimes are not readable and include expenses paid which are obviously unrelated to the workers' compensation proceeding. These are several factors which have contributed to the problem of dealing with third parties. In some cases, the process of resolution of who paid what portion of what bills to whom becomes very complex and time consuming. The present necessity to give recognition to the rights of third parties represents somewhat of a departure from the prior practice. As will be seen in the rule, the onus is on the attorneys under these rules. The amount of the fee of the petitioner's attorney is not usually computed on the medical expense aspect. These factors, and perhaps others, have combined to make dealing with third parties troublesome. This rule is designed to improve the ability of the workers' compensation system to balance the rights of third parties with the rights of the other parties. Thus, attorneys are required to inquire of their clients of the existence of third party payments and if such a payment has occurred, to give proper notice. The rule requires that the notice contain a copy of the office's rule on intervention as well as copies of all pleadings in the case so that the third party will be able to immediately ascertain what

steps must be taken to protect their interests and will be fully advised of what has transpired to date in the proceeding. The four elements listed are necessary for the same reasons, that is notice to the third party of what has transpired, who the parties are, how to perfect their rights, and what will occur if they fail to comply. The rule provides that if an employee's attorney fails to comply with the rule, that factor will be taken into consideration as an additional signficant factor in determining attorney's fees under the statute. It should be pointed out that this does not mandate that fees be reduced but rather that it is an element which will be taken into consideration in determining fees. Thus, this puts "teeth" in the rule which is necessary to insure compliance by the attorneys. Likewise, failure of attorneys on the other side to comply with the rule will be used to determine whether unreasonable or vexatious delay has occurred. This is the "teeth" in the enforcement of this section. Finally, the rule will not allow a claim petition to be filed unless a proof of service of written notice upon the third party is enclosed with the petition. Again, this will aid in expediting the overall procedures.

Rule 305. This rule is necessary to detail, within these rules, a paraphrase of the statutory mandate. Minnesota Laws 1981, Ch. 346, allows the Department of Labor and Industry to maintain three settlement judges. Other provisions in the law relate specifically to these settlement judges. The settlement process is but one part of the "hearing" as that generic term has been used in the law. In fact, in Section C, the retention of jurisdiction section was requested to be placed in the temporary rules of the office by the Department of Labor and Industry. A rule on this subject is necessary, even though it may paraphrase much of the statutory language, in order to place within one set of procedural rules all of the processes which a party attempting to prepare a client's case must be concerned with. While the rule primarily discusses settlement conferences to be conducted by the department, it also allows settlement conferences to be conducted by the compensation judges of the Office of Administrative Hearings. With only three settlement judges, the department's Chief Settlement Judge, Mahlon Hanson, has informed the Chief Hearing Examiner that it is their opinion that the three settlement judges will only be able to look at approximately 2,500 cases out of the approximately 6,000 claim petitions filed annually. Thus, since settlement conferences have proven in the past to be an effective manner of expediting proceedings, provisions must be made for settlement conferences to be conducted in both the department and the Office of Administrative Hearings.

A provision is included in this section to allow parties to request settlement conferences when they have not otherwise been set by the division or the office. It is necessary to have a rule which requires all parties to attend settlement conferences and that when attending they be authorized to enter into a full settlement of the case. The purpose of the workers' compensation law and the procedures to be established are to expedite the payment of claims to injured employees who are entitled to benefits. In the past, when parties have attended settlement conferences, and have not been authorized to enter into settlements, time is wasted by all parties which adds costs to the system. It is also necessary that if parties have agreed on issues, even though they have not reached a full and final settlement of all

issues, that the particular judge conducting the settlement conference be authorized to issue an order which will be binding on the compensation judge subsequently assigned to try the case. This will prevent cases from being tried and retried on the same issues. It will assist in expediting the actual trial of the case if issues have been permanently settled at an earlier date. However, the "newly discovered evidence" rule will be applied to allow persons to reopen issues subsequent to the prehearing or settlement conference.

It is reasonable that these rules contain the provisions described in the preceding paragraphs to carry forth the legislative intent of having one agency adopt rules of procedure for contested workers' compensation matters and for the reasons discussed in this statement in the comments relating to statutory authority and elsewhere.

Rule 306 involves the procedures when, pursuant to Minn. Stat. § 176.241, an employer notifies the employee that they intend to discontinue compensation benefits presently being paid. The rule also encompasses situations where an employer or insurer does not automatically discontinue payments pursuant to law, but petitions for an order allowing discontinuance. In order that an injured employee will not be unreasonably deprived of benefits, yet providing a vehicle for the employers to reduce costs, an expedited hearing is established.

It is reasonable that the rules of this office contain provisions for such notices as they are the initiating documents for the termination of benefits. The number of hearings required in these circumstances has grown dramatically. Thus, a compensation judge will be called upon to render a decision on the issues. Again, having one set of rules for all contested matters carries forth legislative intent and is statutorily authorized.

Section A of the rule pertains to the contents which are required to be in the notice of intention to discontinue compensation. Most of the items contained are self-explanatory. It is necessary to identify with particularity the name and address of the person, the file numbers assigned to the file, the attorney who represented the employee during previous proceedings, any prior orders under which payments have previously been made, and, obviously, the date the compensation is proposed to be discontinued. Then, the rule requires a list of facts which support the discontinuance. This is needed so that the employee, the employee's attorney, if any, and the Commissioner or compensation judge will be able to make a preliminary determination as to whether or not a discontinuance is justified. Subsection 6 of Section A of the rule requires that this statement be prepared with sufficient specificity to allow the employee to prepare an objection. Thus, the need for the rule is expressed within the rule itself. Likewise, if the discontinuance is based on medical evidence, the employer will have medical reports available which then can be attached to the notice of intention to discontinue. This is necessary in order to give the employee and the employee's attorney all necessary information to prepare a defense to the discontinuance and to be able to determine whether an objection should be filed. It is also necessary that a specific notice be given to the employee of his right to object to the notice of intention to discontinue, the place where the objection may be filed, and what will occur if no objection is filed. On many occasions, the attorney may no longer be representing the

employee and the employee must be able to read and understand this notice. It is necessary to require a uniform notice so that all elements are contained in every notice rather than allowing each employer to come up with their own notice. It is necessary that the name and address of the employer and insurer be given so that questions can be directed to the proper persons and so that the employee will know, especially in cases where there are several employers who have been involved in a prior determination, exactly who can be contacted and who is responsible for the discontinuance.

Section B of the rule provides a procedure for an employee to file an objection to the notice of discontinuance. It is necessary because unless an objection is filed, the Commissioner may allow payments to be discontinued without a hearing. It is necessary that objections be in writing so that all parties may be able to read them accurately. It is necessary that they be filed with the Commissioner because the law requires that the Commissioner make an initial determination. The information required by Subsection 1 is necessary so that the Commissioner may properly identify the file previously active in the agency in an expeditious fashion.

Subsection 2 of Section B is necessary to spell out the procedures for the expediting of the hearing process. While there may be instances where hearings might be set sooner than 30 days from receipt of the file, it will take the employee at least 30 days to prepare for the hearing. Such preparation will generally require the employee to return to his own doctor and for the attorney to obtain a medical report from that doctor to counter the medical evidence already in the possession of the employer. However, to delay the hearing more than 75 days could be prejudicial to the employee who should be receiving the benefits. The rule provides for expedited hearings but only if an objection is filed less than 120 days after service of the notice to discontinue. The 120-day figure was picked on the basis that it is anticipated that all hearings will be set within 90 days to 120 days of receipt of a file from the Commissioner. In fact, they may be set even sooner. Thus, there will be no need to treat matters as an expedited matter if a timely objection is not filed.

Finally, the rule allows an employer to file a petition for discontinuance without actually terminating payments. In such instances, it is necessary to allow the employer the expedited hearing process to encourage employers to use this process rather than those allowed by law where the employee would automatically be "cut off" from receiving compensation benefits. This rule is needed to provide the necessary incentive for employers to continue making payments pending the determination of their petition for discontinuance.

Rule 307. Answers. Section A of the rule is a paraphrase of the statute which is necessary so that persons reading the rule will be given a citation to the specific statutory language, yet have a basic understanding of the content of that statute without referring to it further. It is necessary that an answer be accompanied by proof of service in case parties allege that they have not received the answer. It will then be a matter of record as to how the service was made and by whom and on what date.

The rule contains a section relating to the contents of the answer. A specific form is not provided for the same reasons as in the case of original claim petitions. Specific responses to the allegations of the petition are

needed to assist the settlement and compensation judges in a narrowing of the issues based on the pleadings. It is also necessary to allow the settlement judges an opportunity to review the file to determine whether to automatically set a settlement conference or to forward the file automatically to the Office of Administrative Hearings. A general denial would leave the settlement judge, let alone the petitioner, unaware of which issues were actually contested. Again, the need for expeditious treatment of all proceedings for workers' compensation has been stated previously. Again, the main purpose is to deliver benefits to eligible employees as soon as possible. Thus, this rule as well as others, has been drafted to meet that need. It will prevent attorneys from "game playing" by making general denials when, in fact, many of the allegations contained in the petition can be admitted without further proof. Admitting certain contents of the petition will assist in expediting the hearing itself and will greatly aid the compensation judge in the ultimate fact finding, since a summary finding on those facts admitted can be made rather than listing detailed and specific findings. If medical reports are available, as they are in most cases by the time a petition is filed, if an answer denies the existence of injury, medical reports on which this denial is based must be attached. Thus, the rule is reasonable as it creates no new burden on parties. In fact, providing that medical reports be attached to the answer will allow the petitioner to not have to use the discovery proceedings found elsewhere in this rule to obtain the copies. Those discovery rules would allow the obtaining of the copy of the report in any event.

Subsection 3 of Section C of the rule provides that if a medical examination has not already been completed, that the answer specifically detail the date on which the medical examination will be accomplished, which must be accomplished within 75 days from the date of service of the notice of intention to initiate proceedings. It is necessary to establish a deadline during which the medical examination will take place in order to avoid delay to the employee. It must be pointed out that prior to an employee serving an employer with a notice of intention to initiate proceedings, in the great majority of cases, the employer already has obtained a medical examination by a doctor of its choosing. This is especially true in cases wherein the employer has denied the employee's claim which has resulted in the employee filing the claim petition in the first place. Thus, it is only anticipated that in the rare instances where the employer is denying liability for an injury that the 75-day requirement may be too restrictive. The rule then provides a vehicle for the employer to obtain an extension. While it is recognized that in cases where specific medical specialists must be obtained that a period of 90 days to 100 days would be more appropriate, nevertheless, the ultimate goal of the workers' compensation proceedings is to deliver benefits to eligible employees as soon as possible. As indicated, in most instances a medical examination by the employer's doctor has already occurred which has been the basis for the denial which leads to the filing of the claim petition.

Answers will be filed, more likely than not, while the file is in the possession of the settlement judges at the department. It is reasonable that these rules contain the answer requirements in order to carry forth the legislative intent as discussed previously. Answers to petitions play an

important part in the hearing process by further defining the issues to be ultimately determined by the compensation judge who hears the case.

Rule 308. A rule relating to service of documents is necessary to establish a uniform procedure for such service. First class mail or personal service is appropriate to provide adequate notice and service. Certified mail would be inappropriate in that experience has shown it to be the least effective way of giving notice to parties. Affidavits of service are required in order that it may be established who served the document, in what fashion and on what date should it become an issue in the proceeding. Finally, the rule provides that computation of time for service shall be in accordance with Minn. Stat. § 645.15 which is needed to provide uniformity with the service requirements with which attorneys and parties are familiar.

It is reasonable that the procedural rules for the conduct of hearings, as adopted by this office, contain a rule relating to service so that persons will not have to review the department's rules to determine how to serve documents within the jurisdiction of the compensation judge. It is clear that the intent of the legislature was to transfer jurisdiction over contested matters from the department to the office. However, not all sections of Minn. Stat. Ch. 176 were amended by the 1981 legislation. We are faced with just such a situation in this instance. Minn. Stat. § 176.285 was not amended in 1981. That section provides for service by mail "or by such other means as the commissioner...directs." Thus, earlier discussions relating to construction of laws must be applied in this instance (see Statutory Authority discussion above).

Rule 309. Hearings. As previously indicated, the statute has utilized the generic term "hearing" to refer to all stages of contested workers' compensation proceedings. Therefore, it is necessary that the three types of hearings contemplated be specifically defined as a settlement conference, a prehearing conference and regular hearing. A general statement of the primary purpose for which each of the hearings is conducted is included and is necessary so that persons generally unfamiliar with workers' compensation proceedings will be able to know with some certainty what is expected at each of the various types of hearings. Of more important note is the requirment that where a settlement or prehearing conference is to be conducted in a location which would require a party to travel more than 50 miles to attend, that the conference must be conducted by telephone unless all parties agree otherwise. This is needed in order to save time and money for all parties and to avoid the expenditure of energy at a time when our energy resources are either in short supply or very expensive. At least 20-days notice is necessary for parties to prepare to attend these hearings because, as subsequent comments will show, certain documents must be exchanged or filed ten days before the pretrial. Therefore, parties should be given at least ten days to prepare these documents before they must serve them. While it is anticipated that more than 20-days notice will be given in most instances, nevertheless, in order to prevent unnecessary delay in the workers' compensation proceedings as a whole, it is believed that 20 days is sufficient and any more would add to delay in the process.

Section B of the rule provides for the notice of the time and place for hearings. It provides that the notice shall be in writing and served by mail

or personal service unless an oral or written notification has been given to the parties by the settlement, calendar or compensation judge at the time of the settlement or prehearing conference. As more than 6,000 cases are filed each year, if notices of hearings had to be mailed in each instance, this could result in a great cost for postage and paper. Thus, this vehicle of optional service is provided so that a date certain for trial can be established at the time of a settlement or prehearing conference and notification given to all parties, at that stage, of the regular hearing. It is further necessary that the rule contain provisions requiring attorneys to notify all of their witnesses of the date for the hearing as soon as possible so as to avoid unnecessary requests for continuances because of the unavailability of witnesses. Many requests for continuances are received just because of that problem. With respect to the timing for the notice of hearing, the rule provides at least five-days notice prior to the hearing. This is identical to the language of the statute. It is anticipated that a much greater notice period will be common but to provide more time, by rule, than is contained in the statute, may result in an illegal rule. However, the rule does provide a vehicle for an alternative time frame or less than the five days when waived by all parties, agreed to by all parties, or when notice is governed by contrary law or rule.

The section relating to continuances is necessary in order to avoid unreasonable and vexatious delay. The purpose of the workers' compensation law is to expedite payment of benefits to eligible injured employees. Continuances are inconsistent with that requirement and, thus, the rule provides for continuance only upon a showing of good cause. However, Subsection 2 of the rule provides for automatic continuances when the party requesting the continuance has obtained the consent of all other parties. This vehicle is needed because there are many times when one or more parties may agree that a continuance will be to the benefit of all parties in order to effectuate settlements, to obtain additional discovery, or for other good and valid reasons such as death in the family or serious injury or illness. This could include any of the parties or the attorneys. It removes discretion from the compensation judge which is necessary in order to provide the parties a vehicle to agree among themselves without the necessity of going to the compensation judge. However, the parties must still obtain a new hearing date which is agreeable to all parties and the compensation judge. In some instances, all parties may not agree to a continuance. Therefore, a procedure is needed to still allow a party to make a motion to the compensation judge for such continuance. Finally, while the phrase "good cause" is difficult to define with specificity, it is necessary to indicate, by rule, that certain reasons do not constitute good cause. All of these reasons are brought forward from the previous rules. They have been modified somewhat from previously-existing rules but basically contain the same or similar requirements. They are also found in the temporary rules. Written comments received based on the temporary rules also spoke to this issue.

Rule 310. Intervention. In order to insure that a final decision is in fact a "full and final" determination of the rights of all parties, it is necessary to provide a means, such as intervention, to allow for all parties who have a pecuniary or other interest in the proceeding to be part of the

proceedings. In the field of workers' compensation law, this is even more important in that injured employees generally receive benefits from numerous other sources while their workers' compensation claim is pending. These sources may include automobile insurance policies, personal health insurance policies, payments from the Special Compensation Fund, or even payments from county or state welfare agencies.

Comments previously made when discussing rule 304 are equally applicable here and are incorporated herein by reference. In addition to those comments, in response to a Notice of Intent to Solicit Outside Opinion, correspondence was received by the Chief Hearing Examiner from P. Kenneth Kohnstamm, Special Assistant Attorney General assigned to the Minnesota Department of Welfare, and from Indru S. Advani, Staff Counsel for Blue Cross/Blue Shield of Minnesota. Both of the above-referenced letters will be relied upon as support for the need and reasonableness of the rule on intervention as proposed. As detailed in those letters, in Peters v. Independent School District No. 281, 297 N.W.2d 289 (Minn. 1980) the Minnesota Supreme Court spoke to the question of intervention in workers' compensation matters. In that case, as pointed out by Mr. Kohnstamm, the Minnesota Supreme Court has recognized the peculiar role of intervenors in workers' compensation cases and has indicated that intervention interests should not be defeated by unnecessary procedural requirements. As drafted, the proposed rule on intervention copies, nearly verbatim, the recommendation of the Minnesota Supreme Court as found in the Peters decision. The Supreme Court's language in recommending a specific intervention procedure is adopted as the agency's need and reasonableness presentation on the intervention rule.

There have been prior discussions on the question of statutory authority and legislative intent which will not be repeated here but are incorporated by reference. In this instance, Minn. Stat. § 176.361 entitled "Intervention" was not amended by the 1981 Legislature. The second paragraph of the section states: "The commissioner of the department of labor and industry and workers' compensation court of appeals shall adopt rules to govern the procedure for intervention." Nothing contained therein restricts the Chief Hearing Examiner from adopting a rule on intervention. Further, as the Court of Appeals no longer has jurisdiction over anything but appellate matters, any rule they adopt would have to relate solely to procedures for intervention on the appellate level. Again, legislative oversight in failing to amend this portion of the law is as obvious as their intent which has been discussed previously.

In addition to the Peters decision, it is necessary that petitions to intervene be served on all parties so that all parties will have notice of the claims of the third party payor. Service must be allowed in the same manner as all other petitions and documents. It is necessary that motions for intervention include an itemization of all payments and copies of all bills on which payments have been made in order that parties receiving the notice of intervention have sufficient information to determine whether or not they should sign the stipulation which is enclosed with the motion to intervene or to object as is allowed by the rule. The data required by Subsections 1 through 8 of Section A of the rule is procedural information and other data required to give adequate notice to other parties of the interests of the

intervenor. These requirements are reasonable in that the intervenor has the information in its possession as it has made the payments and, if it wants to protect its interests, it is reasonable to require them to include all documentation. Section B is the stipulation as discussed by the Peters case. The provisions for returning the stipulation are in response to the suggestion of the Supreme Court. The time limit for the signing and return of such stipulations is necessary to secure the rights of the intervenor where delay would otherwise be occasioned by the neglect or forgetfulness of other attorneys or parties. In response to the Peters decision which indicates that intervenors should not necessarily have to attend, once a stipulation has been agreed to or deemed to be accepted, intervenors are not required to attend. The rule is phrased on the basis that the intervenor shall attend unless the stipulation has been signed or the right to reimbursement otherwise established. They shall be required to attend the regular hearing only if ordered to do so by the compensation judge. It is necessary to have some finality to an order for intervention. Thus, once the calendar judge has issued an order on intervention, it is binding on the compensation judge to whom the case is assigned for a regular hearing. Thus, it will not be necessary for intervenors to appear once established. It is necessary to provide a specific time during which intervenors will present their evidence in order to allow the intervenor to plan attendance at the hearing at the appropriate time and so that they need not be present during the entire hearing. Obviously, this will only be necessary where stipulations have not been signed or the intervenor's right to reimbursement otherwise established prior to the hearing. Sections F and G of the rule are necessary to give the intervention rule "teeth". Without enforecment mechanisms, past practice indicates that rules will not be specifically followed. As pointed out by Mr. Kohnstamm in his memorandum, the Department of Public Welfare has been sending stipulations to parties since issuance of the Peters decision. However, parties consistently fail to submit the signed stipulation. Other parties who have petitioned for intervention have also been utilizing the stipulation process and have met with the same or similar results as have been met by Mr. Kohnstamm. The enforcement mechanisms are as previously discussed in rule 304 and the reasons given therein are incorporated herein.

Rule 311. Consolidation. A rule on consolidation is necessary in order to expedite the hearing process, where appropriate. Consolidation under this rule is discretionary with the compensation judge. The discretion must be in the compensation judge in that as a trier of fact the compensation judge is the person in the best position to determine whether consolidation would be effective. In order to guide the exercise of discretion, specific standards for consolidation are listed in Subsections 1, 2 and 3 of Section A of the rule. The rule also provides for voluntary consolidation through stipulation of all parties without the necessity of any order of the compensation judge. This is needed for in many instances the parties may be in the best position to determine whether a case should be consolidated. It is not anticipated that consolidation will occur very often. If consolidation is accomplished, rules for the procedure to be followed in the hearings are necessary. Thus, Section B provides for the receipt of evidence in consolidated cases. Section C of the rule is needed to provide specific notice requirements when an order

for consolidation has been granted and specific requirements on what the order must contain. The requirements of what the order must contain will thus be uniform from one judge to another. In those instances where one party may believe that cases should be consolidated, it is necessary to provide a vehicle for other parties who may not agree to object and have their opportunity to be heard. Thus, Section D provides the procedures to be followed with the necessary notice requirements. Then the section establishes standards by which the appropriate judge will determine whether to grant consolidation or not. Finally, in order that the records of each employee's claim will be separated, it is necessary to provide that separate pleadings and orders be filed in each case as if not consolidated.

Rule 312. One of the purposes of creating a judicial system for the trial of contested matters is to provide for fair and impartial hearings of all contested matters. Part of this inherent fairness is the requirement that the judge hearing the case be free from any actual or even perceived bias or prejudice. In the same vein, even though a judge may not possess any bias or prejudice toward one or more of the parties in a case, if any one of the parties feels that they will not get a fair trial before the judge assigned to the case, for any reason, the perception of unfairness will prevail. Thus, as in the County and District Courts for the state, a compensation judge may be disqualified upon the same grounds as a District or County judge may be disqualified. However, under the section relating to disqualification, it is necessary that parties actually show the grounds for the disqualification. Where a party feels a judge may be biased or prejudiced, the section allows for an automatic removal of an assigned judge upon the filing of an affidavit for reassignment. The format for the affidavit for reassignment is necessary to provide a form for automatic reassignment when utilized. However, in order to eliminate all regularly appointed compensation judges from having affidavits filed on them in each case, it is necessary to limit the number of automatic reassignments in each case to two. Thus, the petitioner may file an affidavit and one of the parties on the other side may file, but not all. On the other hand, the section would also allow a party responding to a petition to be the first party to file an affidavit for reassignment. The section, as drafted, is identical to the provision presently in effect for workers' compensation in the state of California. The practice in California has not resulted in difficulties in scheduling as long as a case is immediately assigned to a compensation judge upon receipt in the office and scheduled for hearing. It is further necessary that continuances not be automatically granted upon reassignment unless absolutely necessary due to the unavailability of another compensation judge, in order to carry out the purposes of the workers' compensation law which is to secure benefits to qualified employees.

Rule 313. Prehearing Procedures. In keeping with the general purpose of the workers' compensation law, providing benefits to eligible employees as soon as possible, prehearing procedures can be a vehicle to expedite the entire process by allowing parties an opportunity to review their case and, if possible, to settle all differences without the necessity of going to a full trial before a compensation judge, which will result in additional costs and delays in time. Thus, it is believed that the need for prehearing procedures,

in general, cannot be disputed. Likewise, the reasonableness of prehearing procedures, in general, would follow from the same statement. The question to be arrived at remains the need and reasonablenss of the particular prehearing procedures as they will apply to workers' compensation. It is recognized that every effort must be made to expedite workers' compensation hearings at the least possible cost to all parties concerned. On the one hand, attorneys representing petitioners have limited fees allowed by statute. On the other hand, costs of legal fees paid by employers or insurance companies on behalf of the employers go into the overall costs of workers' compensation which results in the raising of rates to be paid for the insurance.

Once more the issue of authority to adopt procedural rules for a settlement conference conducted by a settlement judge from the department presents itself. Rather than repeating the same discussions again, those portions of this document relating to statutory authority, legislative intent and statutory construction are incorporated herein by reference.

It is necessary that the rule for prehearing or settlement conferences provide that all parties must attend. Obviously, this is a general rule which would, pursuant to the rules of construction found in Minn. Stat. Ch. 645, be overruled by the more specific rule relating to intervention which would allow intervenors, in certain cases, not to have to attend such conferences. As indicated in prior cases, it is absolutely necessary that the parties attending meaningful prehearing or settlement conferences have authority to settle their cases. Otherwise, a meaningful conference cannot be accomplished. On the other hand, if a pretrial conference is nothing more than a time for exchange of witnesses and setting of a case for trial, the same can be accomplished by mail or telephone and the requirement that all parties attend would not be necessary. In order to effectuate the purposes of the prehearing, it is important that parties discuss settlement prior to the prehearing which again, if agreement can be reached, can expedite not only the prehearing but potentially result in a settlement of the entire case.

Section C of the rule establishes certain elements relating to prehearing conferences which shall be binding on all parties. This section also includes specific items which the parties are to have exchanged prior to the prehearing conference. In the event they have failed to exchange them, Section D permits the settlement or calendar judge to require the filing of a prehearing statement. These items are needed in order to give the settlement or pretrial judge an opportunity to review the case prior to the conference so that the judge can be effective in securing a settlement, at the time of the conference. There should be no room in workers' compensation for "game playing" or the hiding of evidence. The purpose of the Minnesota workers' compensation law is defeated if procedures are established which allow delay in any stage of the proceeding.

The various items found in Section C are reasonable as they all relate to the claims in the case and should be available to all parties at this stage of the proceeding.

Section E is in response to a recent decision of the Court of Appeals which remanded a case to a compensation judge to allow the presentation of video tapes which had been taken of the employee subsequent to the prehearing but prior to the trial. In response to rules and practice in existence at the

time, the video tape, having not been disclosed at the pretrial conference, was not allowed in testimony. Section E provides the same prohibition but recognizes that extenuating circumstances may exist or newly discovered evidence may come to light which should be allowed as long as there are certain safeguards. Thus, Section E is needed to provide this vehicle. It is reasonable in that it uses the familiar "newly discovered evidence" rule and in that it provides that other parties have been advised of the newly discovered evidence and have had an opportunity for review and preparation.

Minn. Stat. § 176.191 contains several subdivisions relating to the issuance of orders allowing compensation benefits to be paid to employees on an interim basis pending a final determination. These laws are aimed at providing benefits to injured employees rather than forcing these employees to obtain welfare benefits or to fall behind in bills while unable to work. There may be other good and valid reasons for these sections. Thus, Sections F, G, H, I, J and K are recognition of the provisions of Minn. Stat. § 176.191. These sections are carried forward, nearly verbatim, from the previously-existing rules of the Workers' Compensation Division of the Department of Labor and Industry. All persons who have discussed this section of the rules with the Chief Hearing Examiner have indicated that the rules under the former jurisdiction worked and should be carried forward without much change. Thus, the need for these rules is established by past practice as well as the statutory requirement of providing temporary payments.

Rule 314. Discovery. A rule on discovery is necessary in order that the hearing, if necessary, may be expedited. It is a well-known fact, at least to all attorneys, that discovery practice allows them to better prepare their case and to save time at the hearing itself. The rule does not incorporate, as a rule, all of the Rules of Civil Procedure for the courts in the state of Minnesota. From experience in the conduct of constested cases under the Administrative Procedure Act, we have found that all cases do not warrant extensive discovery which can be extremely expensive to the parties. The current rule is modeled, to a certain extent, on the existing rule of the Office of Administrative Hearings which applies to contested cases under the APA. However, some discovery is needed in order to simplify, shorten and perhaps even avoid the actual hearing. Discovery leads to stipulations as to facts, foundation for evidence, agreement as to the nature and scope of the issues involved and settlement of cases. With nearly 6,000 contested workers' compensation petitions filed annually, with the number rising each year, it is necessary that a way be found to handle as many cases as possible with the limited staff available. Thus, parties are encouraged to settle their cases where appropriate. In the case of workers' compensation, because of the great number of cases and limited staff, it is even more important that these settlements occur prior to the regular hearings or prehearings, if possible.

Originally, when the temporary rules were proposed, much more liberal discovery rules were proposed. Those rules were modified substantially to the form which presently exists in the temporary rules which has been carried forward into these proposed permanent rules. Comments on the discovery rules were received from both the Minnesota Trial Lawyers Association and the Minnesota Defense Lawyers Association, to name but two.

Under workers' compensation, attorneys representing petitioners are limited in the amount of fees which they may collect for representation of the client. On the other hand, attorneys representing employers and insurers are not so limited. Thus, in establishing a discovery rule for workers' compensation, it is necessary to devise a rule which will allow for the discovery of pertinent information which will be an aid in expediting the hearings and securing settlements, while at the same time not creating a rule which is or could be oppressive in terms of time spent to the parties. In a similar vein, costs of defense of workers' compensation cases are paid by the insurers and become a part of the overall costs associated with workers' compensation. These costs are then passed along to the employers in the form of rate increases. With that thought in mind, a rule aimed at expediting the process, yet at the least possible cost to all parties, becomes even more imperative.

For the most part, the rule as proposed represents a compromise between the positions expressed by the Minnesota Trial Lawyers Association representing petitioners' attorneys and the Minnesota Defense Lawyers Association representing those attorneys defending for employers and insurers. The Trial Lawyers Association would prefer no discovery. The defense lawyers association would prefer unlimited discovery. The rule as proposed represents, at least from what was told to the Chief Hearing Examiner from lawyers representing both sides on the issue, a recognition of present practice. The Trial Lawyers Association has expressed the fact that they do provide the defense lawyers with information as they receive it for they too believe that the best method of operation is full disclosure which will facilitate settlement and save costs. Therefore, those items which are listed in the rule as mandatory items for discovery are those which they attorneys on both sides have indicated are regularly furnished. Thus, they should provide no hardship on any party or that party's attorney.

Section A of the rule represents that portion of the rule relating to the furnishing of pertinent information. Thirty days is allowed for the furnishing of certain documents, following demand. From nearly six years of experience with the contested case rules of procedure, it has been found that 30 days is a reasonable time to furnish the materials. In those instances where, for some unforeseen reason, 30 days is not enough, practice has shown that attorneys have generally allowed for extensions and, where they have not, that they hearing examiners have allowed such extensions for good cause shown. The same practice is anticipated under this rule. The names and addresses of all witnesses to be called should not be a burden, especially since this information is also required to be provided in the prehearing documents. It is reasonable to assume that prior to filing a claim petition, parties will know who the witnesses they intend to call are and where they are located. The rule provides for subsequent disclosure if additional witnesses become known, which is necessary in order that the other side may be fully apprised, at all times, of witnesses to be called. Likewise, if a party has a statement from a witness, it is necessary to allow the other side to review and copy it in order to assist in expediting the procedure. Subsection 2 of Section A provides a penalty for failure to disclose the written or recorded statements by foreclosing testimony of the witness whose statement was sought

to be obtained. It is necessary to have a penalty in order to encourage persons to comply with the rule. The question of medical privilege is carried forth from previous rules. This rule provides limited waiver of medical privilege only as to those injuries or conditions previously sustained by the employee which are similar to those alleged in the petition. Certain persons have requested a totally unlimited waiver of medical privilege. However, no supporting documentation of either the need for or reasonableness of such a proposal was furnished to the Chief Hearing Examiner and, thus, the rule remains limited to those alleged in the petition. A waiver of medical privilege is necessary in order to allow the parties defending against the injury claim to complete an investigation to ascertain whether or not the injuries are as alleged and, further, whether they are causally connected to the employment. This carries forth the general concept of discovery that there should be no surprises in order to expedite the process. Without the waiver of medical privilege, a concept which has been present in the civil courts for many years, it is unknown as to how the employers or insurers would ever properly prepare for a case and, further, how the compensation judge would have sufficient information on which to base decisions.

Section B of the rule, as it relates to depositions, is probably the most controversial section of the rules. It is a discovery deposition which is time consuming and thus costly to all parties in litigation. Minn. Stat. § 176.411 is paraphrased in the rule and is crucial to the reader's understanding in that they must know that the statute provides as it does. As drafted, the rule allows any attorney to request the deposition of another party. If the party whose deposition to be taken objects, the party seeking the deposition must seek an order of the compensation judge. The standard by which the compensation judge will make a determination is enumerated in the third sentence of the section of the rule and is generally a good cause type of standard. This sentence is needed to give certainty and specificity to the discretion given to the compensation judge both by the statute and carried forth in the rule. The legislature has created the law giving discretion. It is necessary for an administrative agency to establish the standards and criteria by which the discretion will be exercised. The rule, as proposed, is reasonable in that it carries forth the legislative intent to allow depositions but provides a vehicle for objection to those depositions which are deemed unnecessary or inappropriate after a showing of cause to the compensation judge.

On the other hand, depositions to preserve testimony must be allowed as in approximately 50% of the cases medical witnesses are unable to testify. While the rule would address testimony from any witness, the reason for the rule is due to the problem of doctors being unavailable to testify at the regular hearing. It is necessary to allow such depositions to be taken without the necessity of an order from the compensation judge. It is common knowledge that all parties would prefer to have their medical witnesses, or any other witnesses for that matter, testify in person. Therefore, such an order from the compensation judge is unnecessary in this case. Further, the parties will know that the deposition will be introduced as evidence and thus will not use this type of deposition for the proverbial "fishing expedition". The rule differs from previous practice in workers' compensation by providing that the

depositions are to be taken sufficiently in advance of the hearing so that the deposition can be transcribed and part of the record on the date of the hearing. Past practice has shown that substantial delay has occurred because of the failure of the parties to depose their witnesses who cannot be present at the hearing sufficiently in advance of the hearing to complete the testimony. This causes difficulty for the employee because it delays the start of payment of benefits by delaying the entire proceeding, in those cases where benefits are determined to be owing. Likewise, transcripts are seldom, if ever, prepared from a hearing until an appeal is taken. Therefore, the compensation judge must prepare the final findings and determination from notes. If the compensation judge must wait several weeks or months for all of the testimony to be completed, it causes more problems in that the compensation judge will have difficulty in reconstructing evidence at a later date as opposed to preparing findings immediately following the testimony.

Section C of the rule provides for additional discovery. This is a further carry-over from the existing rules of procedure for contested cases under the APA. The rule allows the parties to request discovery from each other without requesting assistance from the compensation judge. However, if one party objects to such additional discovery, the party requesting the discovery must bring a motion before the compensation judge to allow such additional discovery. A standard is established in the last sentence of the section by which the compensation judge will exercise his discretion in ordering further discovery. The rule grants the authority to the compensation judge to allow discovery or not and, thus, in order for the rule to be adopted, it must establish standards against which the exercise of the discretion can be judged.

Section D of the rule is necessary to provide penalties for failure to comply with the rule. A penalty section is necessary in order to insure compliance with the rules. Absent such a rule, no party would have to comply with the rules which would, of course, lead to delay and disorder. This rule is taken, for the most part, from the contested case rules of the office. The office has had nearly six years of experience with the rule and has found the rule to be effective. The rule is reasonable in that it forecloses testimony from those persons not disclosed as witnesses or forecloses the presentation of testimony not disclosed upon proper order.

Section E protects information referred to as proprietary information. This is confidential information or trade secrets. If such testimony is necessary for the full development of a record, the compensation judge may issue a protective order so that the portion of the testimony relating to such information will be taken outside of public scrutiny. Such a rule is necessary in order to compel parties to provide that testimony which the compensation judge deems necessary to the full development of all issues in the case and which otherwise they might not be required to disclose.

Rule 315. Petitions for Contribution or Reimbursement. This rule is necessary to provide a vehicle for a party to a proceeding to petition for, in effect, a joinder of another party who may have financial responsibility for payment of the claim. There may be instances where the petitioner did not name all previous employers, where, at least in the opinion of the employers named in the action, the injury or condition may have started. The rule is

reasonable in that it provides that all pleadings shall be served upon the party from whom contribution is being sought and that medical evidence be attached. The rule provides that the petition must be served no later than ten days prior to a settlement or prehearing conference. This is necessary so that the person from whom contribution is sought may attend the prehearing or settlement conference. It also then gives notice to the settlement or prehearing judge that another party may be responsible for all or a portion of the benefits due the employee. The rule also provides a vehicle for the party from whom contibution is sought to supply an answer but allows that party the discretion of filing the answer. As the matter may be pending before a settlement judge or may be set for a prehearing, there may not be time for the completion of an answer and thus the discretion is left with the new party.

Rule 316. Subpoenas. Subpoenas are authorized by statute to be issued by a compensation judge or the Commissioner of Labor and Industry. It is necessary to have a rule relating to subpoenas in order that parties may know how to obtain the subpoenas. It is necessary that the name, address and telephone number of the party or attorney requesting service of the subpoena be included on the subpoena in order that the party being served will know who to contact should any questions arise or if situations might arise wherein they cannot comply with the subpoena on the date requested. It is necessary to provide a procedure for the quashing of subpoenas in the event the party subpoenaed believes attendance to be inappropriate. The "unreasonable or oppressive" standard by which the judge will exercise the discretion in compeling attendance or quashing a subpoena is necessary to give the rule specificity. The standard is one which has been in use by the courts and by the Office of Administrative Hearings in the past is found to be workable and reasonable.

Rule 317. The Hearing. In general, this comprehensive rule is necessary to give parties reading the rules and opportunity to know what will be transpiring at the hearing and what will be expected of them at the hearing.

Section A relating to notice is necessary to provide a rule by which notice will be given. Absent such a rule, only the statute would be applied. The statute gives no procedures for the notice and provides only that it will be given at least five days before the hearing. This rule requires that all parties be given sufficient information in the notice so that they can properly plan. It is necessary that a case be set for a single location, in order to complete the hearing in one place and time. The rule allows the petitioner to select the place for the hearing. This is necessary in that, under normal circumstances, most of the witnesses in a case are those called by the petitioner. Thus, the rule gives the petitioner the opportunity to select the place for hearing through the prehearing practice. It is necessary to provide a standard for additional days of hearing in the event the hearing cannot be concluded as set. If all parties agree to the date, which includes the compensation judge, that date will be agreed upon. It is necessary that the compensation judge have the final determination on the date as the compensation judge has a limited number of calendar dates available.

Section B is necessary to provide for notice to all medical witnesses immediately upon receipt of the Notice of Hearing by the parties. In the past, medical witnesses have indicated that they have received inadequate

notice of the hearing and thus cannot appear, which creates a delay in the hearing process. This rule requires immediate notification of the witnesses by the parties.

Section C encourages production of medical evidence in the form of written reports. While, as stated previously, all parties would desire that medical witnesses appear in person, the actual time for hearing can be shortened in the event medical reports are received. It is not anticipated that this section of the rule will be utilized to any great extent. However, as there may be situations where medical testimony is undisputed and the issues relate to causal connection, it is necessary to have a rule to allow for the submission of medical testimony by reports which will save time as well as costs to the parties in paying fees to the doctors to testify. While the rule allows such submission, the rule must also provide items which must be included in the medical report. It is necessary to provide the information detailed in this section so that the compensation judge will have sufficient information on which to base a decision.

Section D of the rule is necessary to insure the right to all parties to present testimony, cross-examine witnesses and to present rebuttal testimony if appropriate. The rule thus insures due process to all parties and forecloses anyone from being able to deprive them of those rights.

Section E, relating to witnesses, also provides certain due process rights to witnesses and futher provides that the testimony shall be under oath or affirmation. It is necessary to allow the alternative of an affirmation as there may be persons who, because of personal or religious convictions, will not take an oath. The rule also provides for sequestration which is necessary to give parties the same rights as they might be allowed in District Courts but, futher, in the event testimony relating to injuries or conditions might prove embarrassing to the witness, others may be excluded from the hearing room while the testimony is being given. This is to insure that a witness will be able to testify without external pressures.

Section F relates to the rules of evidence. As indicated in the rule, Minn. Stat. § 176.411, subd. 1, establishes the evidentiary rules for workers' compensation hearings. It is necessary to cite and paraphrase that section of the law in order to give the reader of the rules an understanding, in one place, of the standard for presentation of evidence. This rule, with the exception of the first subsection, is similar to the rule which has existed for contested cases conducted under the APA for nearly six years. That rule has proven to be reasonable and workable. The rule establishes that the only items which can be taken into consideration are those which have been presented in the case. The rule thus would prohibit a compensation judge from taking into consideration those items which are not part of the evidence. Minn. Stat. § 176.391, subd. 1, allows an independent investigation by the compensation judge. In a discussion with the existing compensation judges, none have ever implemented the section. However, in the event any judge does exercise such discretion, it is necessary that it be part of the record and thus the rule is necessary in requiring the investigation to be part of the record. It is necessary to have a rule relating to documentary evidence to allow photostatic copies or excerpts of larger documents to be included in the record. This will prohibit the introduction of large books or studies out of

which only one or two pages or less may be pertinent to the case. Likewise, it will allow photostatic copies to be introduced so that the original documents need not be introduced and maintained in the record thus requiring their return to the appropriate source upon completion. It is necessary to put in rule form the common law method by which judicial notice is taken so that the judges will be bound by the rule and so that all parties will have knowledge of the manner in which such facts may be noticed and what will occur should be request such notice be taken. Subsection 5 carries forward the traditional concept that any party may cross-examine an adverse witness. It is necessary to establish a rule to provide a similar vehicle as is available in the courts and further to specifically indicate which parties are subject to such examination and the subject matters upon which examination can be conducted. Section G, relating to the record, is necessary to provide notice to all parties of what the record will contain and who will maintain the record. It is necessary that the judge maintain the record until the final decision has been made so that the judge will have the information available at the time the determinations are made. Under normal circumstances, a transcript of a hearing is not completed unless an appeal is taken. If a transcript is prepared, either prior to or subsequent to an appeal, this rule provides that the transcript will be part of the record. A verbatim transcript is the actual record of the testimony and, thus, it cannot reasonably be argued that it is not part of the record. The rule provides a means for any person, not only parties, to request that a transcript be prepared but that, if made, that person shall pay the cost of the transcriptions. It is necessary to provide that the payment for transcripts be paid to the office, if the transcript is made by the office, in that Minn. Stat. § 15.052 provides that all fees for services rendered by the office shall be payable to the Office of Administrative Hearings' account in the State Treasury. Likewise, as the office contracts with qualified court reporters throughout the state to provide a record at many hearings, it is necessary that it specifically be established, by rule, that when a person outside of the office prepares a transcript, that the person requesting shall be liable to that particular court reporter for the transcript charges. Subsection 3 b carries forth existing law and practice in that transcript charges are set by the Chief Hearing Examiner subject to the approval of the Minnesota Department of Finance and futher carries forth a statutory mandate that these fees be paid to the State Treasurer, Office of Administrative Hearings' account, as provided by Minn. Stat. § 15.052. Subsection 3 c carries forth the mandate of Minn. Stat. § 176.421, subd. 4, clause (3) which allows the Chief Hearing Examiner to allow a transcript to be prepared free of charge to any party who, due to lack of funds, could not otherwise perfect an appeal to the Court of Appeals. The law allows for the prepartion of transcripts in these cases but does not provide standards by which the decision of the Chief Hearing Examiner will be made. Therefore, it is necessary to provide a rule which provides a procedure for parties to apply for this free transcript. Thus, the rule spells out the information which must be supplied to the Chief Hearing Examiner when a party requests a free transcript. It is necessary to establish these items so that other information may not be arbitrarily taken into consideration by the Chief

Hearing Examiner. Since July 1, 1981, two requests for a transcript under this section of the statute have been made. In both instances, the Chief Hearing Examiner has requested the information detailed in the rule. In one instance, the appeal was subsequently withdrawn and thus the request for a transcript was withdrawn. In the other instance, the party furnished the information without delay and a transcript was ordered.

The section relating to continuances is necessary to establish a standard by which the compensation judge will exercise discretion in continuing a hearing. It is also necessary that oral notice be allowed in order to save costs and time. The oral notice, on the record, is reasonable in that the parties will be present at the time of the initial hearing, at which time the decision for the continuance will be made and thus will have the notice at that time. In the event a continuance cannot be granted at that time, the rule provides for the usual written notice.

Section I relating to the actual procedure to be followed at the hearing is necessary to give certainty to the procedures to followed at the hearing so that all parties will have notice, in advance, of how the hearing will be conducted. Subsection I 1 is necessary to specifically, by rule, prohibit ex parte communications. A rule prohibiting ex parte communications is necessary to preserve the integrity of the hearing record and to insure that all parties are present when any other party discusses the case with the compensation judge, at least on the issues of fact or law. The hearing procedures established need not be followed if the compensation judge determines that the substantial rights of the parties will be ascertained better in some other manner. Compensation judges are required, by law, to conduct the hearing in such a fashion so that these substantial rights of parties will be secure. It is necessary that the compensation judge review the procedures to be followed in the event a person is not represented by an attorney who would be familiar with the procedural rules. A hearing of this nature could be traumatic to such a person and thus having the judge review the procedures to be followed at the outset will insure this pro se litigant the opportunity to understand the procedures. The obvious time to enter any stipulations or agreements is at the inception of the hearing so that unnecessary testimony need not be given. It is necessary to establish, by rule, the sequence of presenting opening statements and testimony in order to prevent argument on the issue of who should begin the case. It is necessary to allow the compensation judge the opportunity to control the sequence in order to maintain order. Subsection I f allows the parties to present final argument only if the compensation judge believes that legal issues remain unresolved and that he needs argument by counsel. It must be remembered that while legal rights of parties are determined in these hearings, they are not identical to court trials and thus no absolute right to a final argument is provided. It has been found that final arguments are unnecessary in the majority of cases and only serve to increase costs and add to delay in the process. However, it is necesssary to provide a vehicle for the compensation judge to secure final arguments but only on legal issues rather than allowing a "rehash" of the facts of the case. The rule then provides for the continuation of the hearing if ordered by the compensation judge and provides the means for notice of the continued hearing. The 15 days written notice is reasonable as a compromise

before the usual 20 or 30 days notice and the minimum of 5 days notice required in most instances by the statute. The compensation judge must be able to control his/her own calendar. Thus, in the event a case can be reset when the judge has an opening in the calendar, the judge must have the opportunity to reset the case as appropirate. Finally, the rule provides a time when the record of the case will be closed. This is necessary to provide some finality so that the judge can commence the preparation and issuance of the findings of fact necessary.

Section J is carried forward, verbatim, from the rules of procedure for contested cases of the Office of Administrative Hearings. It is necessary to prohibit unnecessary disruption during the hearing process and to allow the compensation judge the authority to control the hearing room. Again, nearly six years of experience with this rule by the office has shown it to be reasonable. No persons have objected to the rule nor has the rule had to be enforced. Rather, in the event TV cameras or the like are present, the rule provides a vehicle for the judge to utilize, if necessary, to avoid the disruption. It remains up to the particular compensation judge to enforce the rule.

Rule 318. It is necessary to provide, by rule, a basis for the compensation judge's decision so that no information which is not part of the record will be utilized in the formulation of the findings and determination. To allow otherwise would be a violation of the rights of all parties to have knowledge of the information being utilized by the compensation judge and, in addition, deprives them of the basic right of cross-examination. The rule does provide that administrative notice may be taken but that it can only be taken after compliance with Minn. Stat. § 15.0419, subd. 4. It futher provides, by rule, the traditional common law right of notice to all parties and the right of those parties to rebut the facts.

Section B, Subsection 1, paraphrases Minn. Stat. § 176.281. At the time of the preparation of this report, a request has been made to the Governor by the Commissioner of Labor and Industry and the Chief Hearing Examiner for the Governor's approval to request a reorganization order under Minn. Stat. Ch. 16 from the Commissioner of Administration allowing the Office of Administrative Hearings to issue the orders. In the 1981 legislation, it is obviously an oversight that the Legislature required the compensation judge to forward the decision to the Commissioner for issuance. Appeals must be filed with the Office of Administrative Hearings. Thus, once the Commissioner issues the order, the file must still be maintained by the Office of Administrative Hearings. The law also requires the removal of the compensation judges from the same building wherein the Department is located. Thus, the statute and the rule as proposed would delay. However, in the event a reorganization order is not approved, it is necessary to paraphrase the statute, by rule, in order that persons reading the rule will have notice of the statute. Subsection 2 of Section B is necessary to provide uniformity in the issuance of compensation judge decisions. Certain information is necessary for the identification of all findings and determinations. It is necessary that the date and location of the hearing be included for those purposes. Likewise, the compensation judge's name should be included so that parties will have a recollection of the case and to provide them information which must be given

in the notice of appeal. It is necessary that the parties appearing have their addresses given at the outset so that those appealing may have the addresses of record available in order to serve the appeals. Because there has been much complaint over the length of time for completion of workers' compensation matters, it is necessary that the decision contain the date on which the record of the hearing closed. In many instances, medical depositions are not received until months following the hearing. Injured employees or employers then call the office, their legislators, or the Governor's office to complain about the length of time for decisions. This will allow the parties to know exactly the length of time taken to complete the issuance of the findings and determination once the record has been completed. Likewise, it is important that all parties know the exact date on which the record closed in order to know when their briefs were filed. It is important that a notice of the party's right to appeal appear in the order so that those persons, especially those not represented by attorneys, if they are aggrieved by the decision, will know how to proceed without having to hire an attorney or to seek out such information from others. Subsection 2 e of Section B begins by paraphrasing the law which requires that there be findings of fact, conclusions and determinations on all issues. It is necessary to allow the compensation judge discretion in organizing the final report in such a fashion that will accomplish the end result in the most expeditious fashion. The rule will buttress the requirements of law in requiring specific findings of fact, conclusions and a determination on each issue raised.

It is necessary that reports be readable. While this may seem to "go without saying", nevertheless having a rule specifically requiring readability of reports is necessary for purposes of evaluation of compensation judges. Pro se parties do not generally have the same education as the compensation judge.

Section D of the rule is necessary to provide authority for parties to file proposed findings of fact. In the past, as indicated by attorneys in discussions with the Chief Hearing Examiner, they have been foreclosed from preparing proposed findings for one reason or another. This rule specifically allows the preparation and filing of a proposed decision. There is no requirement that it must be provided, but, in the event it is provided, the rule requires that it be served on all other parties. This is necessary to give all other parties an opportunity to see exactly what is being proposed for decision by one party. The submission of a proposed decision in a manner which will allow the compensation judge merely to sign and issue will save all parties time and money. The time delay creates additional costs to the process.

Rule 319. Rehearings. Minn. Stat. Ch. 176 does not allow petitions for rehearing to be filed with the compensation judge. Rather, only the Court of Appeals may issue orders for rehearing. This rule is needed to further indicate that, except for clerical errors, the compensation judge's jurisdiction ends upon issuance of the findings, conclusions and decision, except for subsequent filing of requests for taxation of costs or awarding of attorneys fees. Obviously, this is subject to the requirement of rehearing if remanded by the Court of Appeals.

Rule 320. Settlements. Stipulations for settlement are encouraged and are needed in that the existing cadre of compensation judge cannot humanly handle the number of cases presently filed. Cases which are settled do solve the backlog problem. However, the law still requires, in most instances, that stipulations be reviewed by the compensation judge prior to approval. This rule provides a vehicle for stipulatons to be submitted which can be simply signed and issued by the compensation judge. This is necessary to speed up the process which again saves costs to the system. It is necessary to provide a rule for submission to either the Commissioner or the compensation judge in that once a petition has been filed, the case is in litigation and thus subject to these rules. It is necessary to provide, by rule, what the stipulations will contain in order that parties preparing them will know exactly what is expected. It will thus speed up the process again. The items listed are necessary for the compensation judge reviewing the file to have sufficient information on which to base a decision on approving or disapproving the settlement. All items listed are necessary as facts needed in this decision-making process. It is also necessary that attorneys fees be delineated at the time the stipulation for settlement is submitted so that the final award can include the attorneys fees. This will prevent the subsequent filing of attorney fee requests which add to the time a compensation judge must spend on the case and could add to further delay. Parties are required, by this rule, to submit a proposed award on stipulation to be signed by the judge. Again, this will save much time and effort in the event the applicable judge agrees with the stipulation and approves the settlement.

Rule 321. Attorneys Fees. Minn. Stat. § 176.081 allows attorneys fees but limits the amount of attorney fees. At the same time, provision is made within the statute for attorneys fees in excess of that allowed by the statute. Attorney fees are subject to approval by the compensation judge in litigated cases. The first sentence of Section A of the rule paraphrases the statutory requirement and is needed to insure that all persons reading the rule will be able to have an overall understanding of the statute and rules combined. Thus, it is deemed crucial to a person's overall understanding of the procedures. It is reasonable that the employee receive notice that attorney fees are being withheld in the event the employee has not been made aware that this will occur by his or her attorney. Section B provides that the simple filing of certain cases will be deemed to be an application for attorney fees. This removes the necessity of filing separate petitions or applications for attorney fees which takes time and is costly. It is necessary that a vehicle be provided for any party to a proceeding to apply for the determination and approval of claims for legal services in order that these persons might have some certainty even though they are not the party who may be receiving the legal fees. It is assumed that this provision will be used seldom. However, in the event of uncertainty, it is believed that this rule will allow persons to seek certainty in attorneys fees in order to bring the issue to conclusion. The information detailed in the rule is necessary for the compensation judge to make an ultimate decision. It is further allowed, by this rule, that separate applications are not necessary if they have been filed as part of the stipulation for settlement as provided in an earlier rule.

Rule 322. Taxation of Costs and Disbursements. Minnesota Statutes allows taxation of costs and disbursements under certain circumstances. This rule provides the means for a party to request taxation of costs. It is necessary that such requests be served upon all of the parties in order that they might have an opportunity to object for it is they who will be requested to pay these costs. It is reasonable to require any party opposing the taxation of these costs five working days to object in order that the matter may be brought to an ultimate decision as soon as possible. However, if they do object, the formal objection must be filed. This formal objection must also be served on the other parties which is necessary to given them notice that a potential hearing may be held to make a determination on the costs. Finally, the rule allows an oral hearing, if requested, before the same compensation judge who heard the case. It is necessary that the compensation judge who heard the case handle the particular hearing for taxation of costs for the trial compensation judge is most familiar with the case itself and the time required by all parties as well as the costs. If the hearing is conducted, the compensation judge must give notice to all parties.

Rule 323. Second Injury Law. This rule is taken, nearly verbatim, from the previously existing rules of the workers' compensation division of the Department of Labor and Industry. Because the law provides for such a fund, as well as the other provisions, this vehicle for the referral of the matter for hearing before a compensation judge is necessary. This rule merely provides procedures for the filing of the petitions and the referral as discussed previously.

Rule 324. This rule provides for expedited hearings where deemed necessary. Minn. Stat. § 15.052, subd. 3, requires all hearings required by Chapter 176 be conducted by a compensation judge of the Office of Administrative Hearings. Thus, it is necessary to have a general "catch-all" rule to provide a procedural vehicle for those hearings not specifically enumerated in these rules. Likewise, it is necessary to provide for expedited hearings in those instances wherein the employee may need such expedited treatment in order to continue to receive benefits for which he or she has been deemed eligible. Likewise, there may be instances where an employer/insurer should have a right to an expedited treatment in order to stop payments of benefits. This rule provides for this expedited treatment.

Rule 325. This rule is needed to satisfy the requirements of Minn. Stat. § 176.152, subd. 7. The permanent partial disability panel is a temporary or trial panel and includes only three counties, at the present time. These counties include the counties of St. Louis, Ramsey and Nobles. This rule provides the procedures to be followed when permanent partial disability is a significant issue in those three counties. It is the Chief Hearing Examiner's understanding that the workers' compensation Court of Appeals is establishing procedural rules for the permanent partial disability panel. Obviously, these rules must not conflict with those rules, but still must provide for procedures for the use of the panel. The questions to the panel are required by statute. It is necessary that the questions be served on all parties so that the parties will have an opportunity to review the questions while the panel is considering them. Then, when the panel's report is issued, they will already have the questions and will be able to refer to them when reviewing

the answers. As the law provides for disputes on the payment of panel members, it is necessary to have a vehicle by which these disputes can be resolved. Thus, Section D provides a procedure for persons to give notice that they are contesting or disputing the fees by giving notice to the compensation judge and to all parties. The judge will then determine the dispute as in all other cases.

Rule 326. Exhibits. This rule was requested to be included by Compensation Judge P. Nadine James on behalf of other compensation judges. In the past, exhibits have been removed from files without control being maintained and without the knowledge of the compensation judge. It is necessary that a procedure for the return of exhibits be established so that the office can maintain control of all records. It is also necessary to provide a vehicle for the return of exhibits so that the State will not have to maintain boxes of records and exhibits not otherwise necessary for the proper maintenance of the employee's records and the Division of Workers' Compensation at the Department of Labor and Industry. The rule provides for the automatic return of those exhibits deemed appropriate by the compensation judge or the return of other exhibits upon the request of a party, as long as all other parties are given notice of this request.

General Support From Other Sources. In addition to the foregoing statements, the Chief Hearing Examiner is relying, as support for the rules, on data and views submitted at the time of the publication of a Notice of Intent to Solicit Outside Information both for purposes of drafting temporary rules and permanent rules. Likewise, the Chief Hearing Examiner relies on data and views submitted by parties subsequent to the publication of temporary rules. The items relied upon include the following:

1. July 20, 1981, submission of Lawrence F. Koll on behalf of the Minnesota Defense Lawyers Association and the submission of that association received on that date;

2. July 17, 1981, submission on behalf of the Minnesota Trial Lawyers Association submitted by Timothy McCoy;

3. July 14, 1981, correspondence from Attorney John L. Levy;

4. July 9, 1981, correspondence from Attorney Samuel I. Sigal;

5. July 9, 1981, correspondence received from Attorney John T. (Jack) Anderson;

6. July 20, 1981, correspondence from the Department of Labor and Industry submitted by Arthur H. Anderson, Assistant Commissioner;

7. July 21, 1981, correspondence received from the law firm of Mahoney, Dougherty and Mahoney;

8. July 14, 1981, submission of Compensation Judge P. Nadine James;

9. June 22, 1981, comments submitted by Compensation Judge Thomas Walsh;

10. August 10, 1981, correspondence received from Dan Gustafson, Secretary-Treasurer of the Minnesota AFL-CIO;

11. September 4, 1981, letter on behalf of Blue Cross-Blue Shield submitted by Indru S. Advani;

12. September 4, 1981, memorandum and enclosures from P. Kenneth Kohnstamm, Special Assistant Attorney General on behalf of the Minnesota Department of Public Welfare;

13. September 4, 1981, comments received from Attorney Debra A. Wilson on behalf of the law firm of Fitch and Johnson;

14. September 9, 1981, correspondence received from Candice E. Hektner on behalf of the Minnesota Defense Lawyers Associations, Workers' Compensation Committee;

15. September 11, 1981, correspondence received from Michael J. Sauntry;

16. September 8, 1981, correspondence received from John G. Brian, III, on behalf of the Minnesota Trial Lawyers Association.

Dated this 9th day of October, 1981.

DUANE R. HARVES
Chief Hearing Examiner

OAH-82-001-PE

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

IN THE MATTER OF THE ADOPTION OF RULES RELATING TO THE PRCEDURAL REQUIREMENTS OF WORKERS' COMPENSATION HEARINGS.

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 Administration Hearings, and the rules of the Attorney General, have been followed. Any exceptions are noted below.

Dated this 7th day of January, 1982.

J. MICHAEL MILES
Assistant Attorney General

IN THE MATTER OF THE ADOPTION OF RULES RELATING TO THE PROCEDURAL REQUIREMENTS OF WORKERS' COMPENSATION HEARINGS.

AFFIDAVIT OF MAILING NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

STATE OF MINNESOTA)
) ss
COUNTY OF HENNEPIN)

Sandra A. Haven, being first duly sworn, deposes and says:

That on the 6th day of January, 1982, in the City of Minneapolis, County of Hennepin, State of Minnesota, she served the attached Notice of Submission to the Attorney General by depositing in the State of Minnesota Central Mail System for first class mailing a copy thereof, properly enveloped, to all persons and associations who requested notice that the rules in the above-entitled matter have been submitted to the Attorney General.

Sandra A. Haven

Subscribed and sworn to before me this
6th day of January, 1982.

Eileen A. Gaiovnik
Notary Public

EILEEN A. GAIOVNIK
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Commission Expires Jun. 8, 1988

EILEEN A. GAIOVNIK
NOTARY PUBLIC-MINNESOTA
COUNTY
Jun. 8, 1988

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
400 SUMMIT BANK BUILDING
310 SOUTH FOURTH AVENUE
MINNEAPOLIS, MINNESOTA 55415
(612) 341-7600

January 6, 1982

To All Interested Persons:

Notice is hereby given that on this date the rules relating to the procedural conduct of workers' compensation cases have been adopted as recommended by the Hearing Examiner and as approved by the Chief Hearing Examiner's Designee and have been submitted to the Attorney General and the Revisor of Statutes for their review.

Yours very truly,

DUANE R. HARVES
Chief Hearing Examiner

Telephone: 612/341-7640

DRH:sh

AN EQUAL OPPORTUNITY EMPLOYER

If you wish to be notified when the Hearing Examiner's Report is available, please put your name and address on one of the envelopes supplied.

RULE HEARING REGISTER

PLEASE PRINT CLEARLY

NAME	REPRESENTING	COMPLETE ADDRESS	TELEPHONE	CHECK HERE IF YOU WISH TO MAKE A STATEMENT AT THE HEARING	CHECK HERE IF YOU WISH TO BE NOTIFIED BY THE AGENCY WHEN THE HEARING RECORD HAS BEEN SUBMITTED TO THE ATTORNEY GENERAL
Samuel A. Lipoli	Minn. Council of Labor Unions [illegible]	120 S PLYMOUTH BLDG [illegible]	333 5631	✓	✓
Victor Johnson	Fitch Johnson	2101 Hennepin Ave S0 Mpls, Minn 55405	870-0881	✓	✓
[illegible] E Foreman	self	500 Space Center St Paul 55101	290-0585		✓
HARRY J. PETERSON	SELF	2101 HENNEPIN AVE. S, MPLS.	870-0881	✓	✓
Winston Ehlmann	MPTV	2937 Oakland	823-2547	✓	✓
[illegible] Mahlon Fraser	L + D	444 Lafayette Rd. St. Paul Mn	296-2276		
[illegible]	S & L	444 Lafayette Rd St Paul Mn	296-2276		
[illegible] Johnston	Dept Public Welfare	515 Transportation Bldg	296-8453	✓	✓
John Briggs	Minnesota Trial Lawyers	1210 Minnesota Bldg St Paul 55101	224-5584	✓	✓
Brian Fahey	M.A.C.I.	420 Cedar, St. Paul, Mn 55101	292-4670		✓
Norris James	Self	118 Windsor Court, New Brighton Mn	633-0135	✓	✓
Jo Nevin	Nelco Consultants Inc	2717 Oakridge Circle Burnsville Mn	890-7652		✓
Scott Stevenson	MURPHY MOTOR FREIGHT	P.O. BOX 43640 St Paul 55164	222-3753		
John R Parker	Self	617 Black Conservation Bldg St	475-3396		
Michael Charlett	Self	440 - Pillsbury Bldg Mpls	332-5965	✓	✓
Richard Johnson	MTLA	200 Bradbeer [illegible]	338-5771	✓	✓
Robert J. Mills	Blue Cross Blue Shield of Mn	3533 Blue Cross Road, St Paul, Mn	456-8024	?	✓
Timothy F Pawlenty	Metropolitan Medical Center	900 South 8th St. Minneapolis MN 55404	347-5121		✓
James Pomush	Self	7 W. Golden Lake Rd Circle Pines Mn 55014	786-7547	✓	✓
[illegible]	[illegible]	2622 AMERICAN NATIONAL BANK	291-4115		✓