

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 791

4/19 H Batteson requested to send copies of Rules as Adopted

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 4-6-82
DATE FOR REVIEW 4-15-82
DATE DUE 4-20-82

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

Approved 4-20-82 Disapproved _____ Returned to Agency 4-21-82

Resubmitted _____ Due _____
Approved _____ Disapproved _____ Returned to Agency _____

Date filed w/Secretary of State 4-21-82 Revisor approved _____ disapproved _____

_____ Rule as Adopted

_____ Rule as Proposed

_____ Order Adopting 3.22.82 Date

_____ Notice of Intent to Solicit Outside Opinion

N/A Order for rulemaking
_____ date of Hearing

N/A Certificate of Board's Authorizing Resolution

_____ Notice of rulemaking
_____ Sufficiency

? Affidavit of Mailing Notice or rulemaking
_____ At least 30 days prior to hearing/adoption
(see 3/23 memo from Valentine to Ehlmann)

? Mailing list Certificate

_____ Publication in State Register
11.23.82 At least 30/~~20~~ days prior to ~~hearing~~/adoption

N/A Hearing Examiner's Report

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

_____ Agency's Findings of Fact no changes

_____ LCRAR Report or agency Affidavit

_____ 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

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

_____ Notice of Submission to the Attorney General

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : PAUL RIEKE
Judge, Workers' Compensation
Court of Appeals

DATE: 4/20/82

ATTN : WINSTON EHLMANN, Assistant Attorney General

FROM : TED A. MARTINEZ
Special Assistant
Attorney General

PHONE: 296-0315

SUBJECT: In the Matter of the Proposed Adoption of Rules of the State 8 MCAR 5.001-5.014 Governing the Workers' Compensation Court of Appeals

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;

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

Workers' Compensation Court of Appeals

Adopted Rules Governing Rules of Procedure for the Workers' Compensation Court of Appeals (8 MCAR SS 5.001-5.014)

Rules as Adopted

8 MCAR S 5.001 Definition. For the purpose of 8 MCAR SS 5.001-5.014 "court" means the Workers' Compensation Court of Appeals.

8 MCAR S 5.002 Examination of files. Any workers' compensation division file that is in the custody of the court may be inspected by any person only when there has been compliance with Minn. Stat. S 176.231, subds. 8 and 9 and the rules of the workers' compensation division.

8 MCAR S 5.003 Preparation and form of legal documents. Pleadings, briefs and other legal documents filed with the court shall be printed or typewritten and shall use only one side of the paper. All material shall be submitted on 8-1/2 by 11 inch paper.

8 MCAR S 5.004 Temporary orders. Temporary orders filed with the court must comply with Minn. Stat. S 176.191 and the rules of the workers' compensation division regarding temporary orders unless otherwise ordered by the court.

8 MCAR S 5.005 Continuances and extensions. Continuance of any hearing may be granted only upon a showing of just cause.

Failure to make timely request to the court for a continuance is grounds for denial of the continuance.

Extensions of times for filing briefs shall be granted only for cause and if made within the time for the filing of said brief. The court shall determine the requests without oral argument. Where no brief has been filed by appellant and no extension of time granted therefore, the respondent may file a brief within 50 days of the time of filing a certification of service of transcript by the Office of Administrative Hearings

as required by 8 MCAR SS 5.001-5.014.

8 MCAR S 5.006 Notice of settlement. In every case which is settled prior to the filing of the court's decision immediate notice of the settlement must be given to the court.

8 MCAR S 5.007 Stipulation for settlement. Stipulations for settlement submitted to the court shall comply with Minn. Stat. S 176.521 and the rules of the workers' compensation division and the State Office of Administrative Hearings regarding stipulations of settlement unless otherwise ordered by the court.

8 MCAR S 5.008 Appeal of attorney fees by an employee. An employee dissatisfied with his attorney fees may make application for review of the fees by completing an application form provided by the court.

8 MCAR S 5.009 Briefs on appeal. The Office of Administrative Hearings shall file a certification with this court showing the date of service of the transcript of hearing upon the parties or their attorneys. The appellant, within 30 days from the date of said service, shall file a written brief with the court together with an affidavit stating that service of a copy of the brief has been made by the appellant upon each adverse party. Five copies of the brief shall be filed with the court where oral argument is to be made.

Any response to any brief shall be filed with the court within 20 days of the date of service of the brief to which the response is being made. The response must be accompanied by an affidavit stating that service has been made upon all opposing parties.

Upon appeal to this court where no certification of filing of transcript is required, the appellant shall have 30 days from the date of filing the notice of appeal to file a written brief. Response briefs shall be filed in accordance with the foregoing paragraph.

Briefs not timely filed shall not be considered by the court unless an extension of time for filing has been granted. No

extension shall be granted except as provided in 8 MCAR SS 5.001-5.014.

8 MCAR S 5.010 Hearings on appeal. A party desiring to waive oral argument before the court shall notify the court within the time limitations for the filing of a brief.

All arguments on appeal before the court shall be limited to 15 minutes by each party unless otherwise authorized by the court.

8 MCAR S 5.011 Application to set the award aside or grant a new hearing. Applications to set an award aside or grant a new hearing shall be verified and accompanied by supporting affidavits or medical reports. Sufficient copies shall be filed with the court for service upon the other parties. The application shall state in detail the grounds that constitute the cause for granting the relief requested.

Responses and other pleadings shall be served upon all parties and filed with the court at least five days before the date of hearing on the matter.

The court may, in its discretion, act on the application without hearing or may require a hearing and further proof.

8 MCAR S 5.012 Writ of certiorari. The party filing a writ of certiorari pursuant to Minn. Stat. S 176.471 ~~and Rules 103.01 and 111.04 of the Rules of Civil Appellate Procedure,~~ shall immediately provide the court with an additional copy of any transcripts of hearings pertaining to the matter on appeal.

8 MCAR S 5.013 Second injury law. In addition to those impairments set forth in Minn. Stat. S 176.131, subd. 8, the following additional impairments shall be registerable: brain tumors; Pott's disease; seizures; cancer of the bone; and leukemia.

8 MCAR S 5.014 Motions. All applications, petitions and motions for relief or consideration by the court, not otherwise provided for in 8 MCAR SS 5.001-5.014 with respect to appeals, shall be made in the following manner and within the following times,

unless otherwise directed by the court:

A. Motions shall be in writing, verified, accompanied by appropriate documentation, state the relief sought, the basis therefore, and be accompanied by an affidavit of service upon all other parties affected thereby;

B. All other parties shall have a period of five days from the date of filing of service of a motion within which to file a response in writing. A reply may be filed within two days thereafter. No motions shall be considered if filed within five days of the time set for hearing on an appeal; and

C. Oral argument shall not be permitted except upon order of the court.

Repealer. Except as expressly made applicable by 8 MCAR S 5.001-5.014 the rules of practice for the Workers' Compensation Court of Appeals and the Workers' Compensation Division of the Department of Labor and Industry, WC1-WC35, are not applicable and do not govern practice before the Workers' Compensation Court of Appeals.

OFFICE OF THE REVISOR OF STATUTES

AR0102
4/20/82

Certificate of Approval of Adopted Rules

Agency: Workers' Compensation Court of Appeals

Rule Numbers: 8 MCAR SS 5.001-5.014

Rule Title: Adopted Rules Governing Rules of Procedures for the Workers' Compensation Court of Appeals

Type of Rules: Permanent X

Temporary _____

Documents Incorporated by Reference:

STATE OF MINNESOTA
DEPARTMENT OF STATE
10:22 AM FILED
APR 21 1982
Joan Anderson Growe
Secretary of State

The attached Rules are approved as to form.

Steven C. Cross
Revisor of Statutes

APPROVED AS TO LEGALITY
April 20 1982
WARREN SPANNAUS, ATTORNEY GENERAL
BY Ted A. Mathews
SPECIAL ASSISTANT ATTORNEY GENERAL

Name: John C. Fuller

Title: Assistant Revisor

Phone: 296-0955

STATE OF MINNESOTA

In the Matter of the Proposed Adoption of Rules of the State 8 MCAR 5.001-5.014 Governing the Workers' Compensation Court of Appeals

ORDER ADOPTING RULES

Notice of the Court's intent to adopt the above-entitled rules without a public hearing was published in the State Register on November 23, 1981. After affording interested and affected persons an opportunity to submit comments for 30 days after Notice, receiving fewer than seven written requests for a public hearing within the 30-day comment period, reviewing and considering comments, and determining the need for and reasonableness of the above captioned rules,

NOW THEREFORE, IT IS ORDERED that these rules identified as 8 MCAR 5.001-5.014, governing the Workers' Compensation Court of Appeals are adopted this 22nd day of March, 1982 pursuant to the authority vested in the Court by Minn. Stat. section 175A.071, subd. 4.

STATE OF MINNESOTA

Judges, Workers' Compensation Court of Appeals

no changes made

AG copy

Rules as Proposed (all new material)

8 MCAR S 5.001 Definition. For the purpose of 8 MCAR SS 5.001-5.014 "court" means the Workers' Compensation Court of Appeals.

8 MCAR S 5.002 Examination of files. Any workers' compensation division file that is in the custody of the court may be inspected by any person only when there has been compliance with Minn. Stat. S 176.231, subds. 8 and 9 and the rules of the workers' compensation division.

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8 MCAR S 5.005 Continuances and extensions. Continuance of any hearing may be granted only upon a showing of just cause.

Failure to make timely request to the court for a continuance is grounds for denial of the continuance.

Extensions of times for filing briefs shall be granted only for cause and if made within the time for the filing of said brief. The court shall determine the requests without oral argument. Where no brief has been filed by appellant and no extension of time granted therefore, the respondent may file a brief within 50 days of the time of filing a certification of service of transcript by the Office of Administrative Hearings as required by 8 MCAR SS 5.001-5.014.

? see cert of compliance comment

8 MCAR S 5.006 Notice of settlement. In every case which is settled prior to the filing of the court's decision immediate notice of the settlement must be given to the court.

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

8 MCAR S 5.007 Stipulation for settlement. Stipulations for settlement submitted to the court shall comply with Minn. Stat. S 176.521 and the rules of the workers' compensation division and the State Office of Administrative Hearings regarding stipulations of settlement unless otherwise ordered by the court.

8 MCAR S 5.008 Appeal of attorney fees by an employee. An employee dissatisfied with his attorney fees may make application for review of the fees by completing an application form provided by the court.

8 MCAR S 5.009 Briefs on appeal. The Office of Administrative Hearings shall file a certification with this court showing the date of service of the transcript of hearing upon the parties or their attorneys. The appellant, within 30 days from the date of said service, shall file a written brief with the court together with an affidavit stating that service of a copy of the brief has been made by the appellant upon each adverse party. Five copies of the brief shall be filed with the court where oral argument is to be made.

Any response to any brief shall be filed with the court within 20 days of the date of service of the brief to which the response is being made. The response must be accompanied by an affidavit stating that service has been made upon all opposing parties.

Upon appeal to this court where no certification of filing of transcript is required, the appellant shall have 30 days from the date of filing the notice of appeal to file a written brief. Response briefs shall be filed in accordance with the foregoing paragraph.

Briefs not timely filed shall not be considered by the court unless an extension of time for filing has been granted. No extension shall be granted except as provided in 8 MCAR SS 5.001-5.014.

8 MCAR S 5.010 Hearings on appeal. A party desiring to waive oral argument before the court shall notify the court within the

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

time limitations for the filing of a brief.

All arguments on appeal before the court shall be limited to 15 minutes by each party unless otherwise authorized by the court.

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Responses and other pleadings shall be served upon all parties and filed with the court at least five days before the date of hearing on the matter.

The court may, in its discretion, act on the application without hearing or may require a hearing and further proof.

8 MCAR S 5.012 Writ of certiorari. The party filing a writ of certiorari pursuant to Minn. Stat. S 176.471 and Rules 103.01 and 111.04 of the Rules of Civil Appellate Procedure, shall immediately provide the court with an additional copy of any transcripts of hearings pertaining to the matter on appeal.

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8 MCAR S 5.014 Motions. All applications, petitions and motions for relief or consideration by the court, not otherwise provided for in 8 MCAR SS 5.001-5.014 with respect to appeals, shall be made in the following manner and within the following times, unless otherwise directed by the court:

?see Cert. of Compliance

A. Motions shall be in writing, verified, accompanied by appropriate documentation, state the relief sought, the basis therefore, and be accompanied by an affidavit of service upon

APPROVED BY THE REVISOR OF STATUTES OFFICE BY:

all other parties affected thereby;

B. All other parties shall have a period of five days from the date of filing of service of a motion within which to file a response in writing. A reply may be filed within two days thereafter. No motions shall be considered if filed within five days of the time set for hearing on an appeal; and

C. Oral argument shall not be permitted except upon order of the court.

Repealer. Except as expressly made applicable by 8 MCAR S 5.001-5.014 the rules of practice for the Workers' Compensation Court of Appeals and the Workers' Compensation Division of the Department of Labor and Industry, WC1-WC35, are not applicable and do not govern practice before the Workers' Compensation Court of Appeals.

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

OFFICE OF THE REVISOR OF STATUTES
PROPOSED RULES

Agency Workers' Compensation Court of Appeals

Division

Agency Contact Judge Paul Rieke Phone Number 6-6409

Title: Rules of Procedure

Type of Rules: Permanent X Temporary_____

Incorporations by References:

Rule Number	Material Incorporated
8 MCAR S 5.012	Author Title Rules of Civil Appellate Procedure Place Publisher Date Cost Places Available

See Additional references on back Yes____ No X

Duplication of Statutory Language None

Rule Number	Statutory Section Duplicated

The attached rules are approved as to form.

Steven C. Cross
Revisor of Statutes

Name: John C. Fuller

Title: Assistant Revisor

Phone: 296-0955

Workers' Compensation Court of Appeals

In the matter of the Proposed Adoption of Rules of the State 8 MCAR. 5.001-5.014, Governing Rules of Procedure for the Workers' Compensation Court of Appeals

Notice of Intent to Adopt Rules Without a Public Hearing

Notice is hereby given that the Workers' Compensation Court of Appeals (hereinafter, "Court") intends to adopt the above entitled rules without a public hearing. This Court has determined that the proposed adoption of these rules will be non-controversial in nature and has elected to follow the procedures set forth in Laws of Minn., 1981, Chapter 253, § 14.

If adopted, the proposed rules would set forth procedural guidelines and define the responsibilities of the Court and persons having business with it.

The Court is authorized to adopt these rules under Laws of Minn., 1981, Chapter 346 § 48, subd. 4.

The Court has prepared a Statement of Need and Reasonableness which describes the Court's reasons for each provision of the rules. A copy of the Statement of Need and Reasonableness and a copy of the proposed rules are available and may be obtained by contacting:

Ms. Cynthia Valentine, Assistant Administrator
Workers' Compensation Court of Appeals
Room 212, 55 Sherburne Avenue
St. Paul, MN 55103
(Telephone: (612) 297-2520

Persons interested in these rules have 30 days, specifically until December 23, 1981, to submit comments on the proposed rules. The proposed rules may be modified if the data and views submitted to the Court warrant modification and do not result in a substantial change in the proposed language of the rules.

If, during the comment period, seven or more persons submit to the Court a written request for a hearing on the proposed rules, the Court shall proceed to schedule a public hearing before adoption of the proposed rules. In the event a public hearing is required, the Court will proceed according to the provisions of Minn. Stat. § 15.0412, subd. 4-4f (1981).

Persons who wish to submit comments or to request a public hearing should submit such comments or requests no later than December 23, 1981 to Ms. Cynthia Valentine at the address given above. The Court requests that persons requesting a public hearing identify the particular provisions objected to, the suggested modifications to the rules and the reasons and data relied upon to support the requested modifications.

In the event a hearing is required, a new notice of hearing will be published in the State Register. Unless seven or more persons submit written requests for a public hearing, a public hearing will not be held and the Court will adopt the proposed rules.

After adoption of the final rules by the Court without a hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness and all written comments received and the final rules as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Ms. Cynthia Valentine at the address noted above.

RECEIVED
JAN 28 1982
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

SF-00006-02

DEPARTMENT ATTORNEY GENERAL

STATE OF MINNESOTA

Office Memorandum

TO : Cynthia Valentine
Worker's Compensation Court of Appeals

DATE: 3/15/82

FROM : Judith V. Wehrwein JVW
Legal Assistant

PHONE: 297-3471

SUBJECT: Submission of Rules for Review

As we discussed, the submission of the above-referenced rule is being withdrawn because of incomplete documentation.

When a complete submission is made in accordance with Attorney General's rule 1 MCAR § 1.203 (copy attached), please reference our File No. 791.

JVW:drw

Enc.

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

RECEIVED
JAN 28 1982
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

TO : MICHAEL MILES
Assistant Attorney General
530 State Office Building

DATE: 1-26-82

FROM : WINSTON EHLMANN
Assistant Attorney General
550 Space Center Building

PHONE: 296-6752

SUBJECT: Proposed Rules of the Workers' Compensation Court of Appeals

The purpose of this memo is to make comments, seriatim, on the various rules proposed by the Workers' Compensation Court of Appeals, in the light of certain comments by the chief hearing examiner.

8 MCAR 5.001

I can see no point in making any definition of "Division." The rules are rules being made by the Workers' Compensation Court of Appeals, which is a separate entity. They are in no position to define the scope or whatever of any other part of the workers' compensation mileau.

8 MCAR 5.002

This is a head-on confrontation. Who will make the rules? Obviously, the same rules should apply whether the file is in the custody of the Workers' Compensation Court of Appeals, the Division, or the Office of Administrative Hearings. Otherwise there will be gamesmanship.

8 MCAR 5.003

I had no problem is finding out what the proposed rule meant.

8 MCAR 5.004

Once more we have the head-on confrontation, as in 5.002.

8 MCAR 5.005

Since the court reporters are now a part of the Office of Administrative Hearings, and since some certification by the reporter as to delivery of transcript is necessary to set a deadline running, it follows that the Office of Administrative Hearings must necessarily have the responsibility of certifying that the transcript was, indeed, filed. I am aghast at the innocence of anyone who would think that a judge who wished to grant an extension could not find a reason within the framework of any set of rules which man chose to devise. As standards

and criteria multiply, so does, in sufficient measure, the ingenuity of judges.

8 MCAR 5.007

The phrase "unless otherwise ordered by the court" merely looks forward to the time when, to achieve some kind of rational justice, judgement will have to be substituted for ritual. The phrase "unbridled discretion," besides being a cliche, has unfortunate connotations. A bridle is a device to which is attached a bit which guides the actions of a lesser animal. I hope we do not encounter the phrase again.

8 MCAR 5.009

Here we have, once more, the confrontation. The court is subordinate to the Office of Administrative Hearings, or the Office of Administrative Hearings is subordinate to the court, and this is pivotal. It would be odd, indeed for an appellate court to be subordinate to those whose rulings it may set aside.

8 MCAR 5.011

I think the suggestion of the Hearing Examiner, as to service, is reasonable. But there may be other factors, and it is the problem of the Court of Appeals. I see "unbridled discretion" is romping about again. The suggestion that the discretion of the court is "bridled" only by those rules which are set up in some formal fashion, is enough to make men weep. The discretion is "bridled" by years of living, accumulated wisdom, the need to get the job done, impulses toward reasonableness and conformity with some abstract principles of justice, and so on and on. It is not, I truly hope, held in check only by some printed words.

8 MCAR 5.012

In my engineering days, a fellow worker had on the wall of his office a placard which said, "Before setting mouth in motion, be sure that brain is engaged."

8 MCAR 5.014

I see that discretion is once more capering about, "unbridled."

The other matters brought up are matters of judgement, which can, in the absence of public protest, be left as they are.

And, in the last paragraph discretion once more tosses his untrammelled head about.

We are in an age of computers, and there is a type of mentality which feels that everything can be reduced to some kind of rule and regulation. I once had a mathematics professor who was agog with the idea that he could invent a numerical language in which all the words would be numbers, and therefore not subject to misinterpretation. In my salad days, I thought him unique. I have since found that he was not at all unique.

I do not mean to be flippant about this business, but it is really difficult to avoid sour comments.

WE:cs

D. Capital expenditures eligible for funding. Costs eligible for funding are the capital expenditures set forth in the act, including the following:

1. land and/or building acquisition costs,
2. site preparation,
3. construction costs,
4. engineering costs,
5. equipment and/or machinery,
6. bond issuance costs,
7. underwriting or placement fees,
8. initial trustee's fee,
9. initial fee of guarantor or insuror, if applicable,
10. Small Business Administration processing and administration fee, if applicable,
11. Minnesota Small Business Finance Agency fee,
12. certain contingency costs,
13. interest costs during construction, and
14. legal fees, including those of agency's bond counsel.

~~The agency shall determine that an expenditure is not eligible for funding if in the opinion of the agency financing of such expenditure may adversely affect the exemption of the interest on the agency's evidences of indebtedness from federal income taxes.~~

E. Notification of determination. After approving or disapproving an application, the executive director shall notify the applicant of the determination and the treatment of the application as follows:

1. If the executive director determines that the applicant is an owner as defined in the act and that the costs specified in the application are eligible for funding, the application shall then be deemed accepted for processing and treated in accordance with the agency review provisions established in 4 MCAR § 14.023.

2. If the executive director determines that the applicant is not an owner as defined in the act, the application shall be rejected and not further considered.

3. If the executive director determines that any of the costs described in the application are not eligible for funding, the executive director shall note the deficiencies in the application and shall so notify the owner. The owner shall have 30 days from the date of the executive director's notification to amend the application. In the event the application is amended in a timely fashion to include only eligible costs, it shall be treated in accordance with the agency review provisions established in 4 MCAR § 14.021 F. If the application is not properly amended within 30 days, the application shall be deemed rejected and not further considered.

F. Rejection. In the event that an application is rejected for processing pursuant to 4 MCAR § 14.021 E.2. or 3., the applicant may, within 30 days after date of the notification by the executive director, request the executive director to submit the determination to the agency for review at the next regularly scheduled meeting of the agency for which the agenda has not been established. If the agency approves the application, the application shall be treated in accordance with 4 MCAR § 14.023.

Workers' Compensation Court of Appeals

Proposed Rules Governing Rules of Procedure for the Workers' Compensation Court of Appeals (8 MCAR §§ 5.001-5.014)

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Workers' Compensation Court of Appeals (hereinafter, "court") intends to adopt the above entitled rules without a public hearing. This court has determined that the proposed adoption of these rules will be non-controversial in nature and has elected to follow the procedures set forth in Laws of Minnesota, ch. 253, § 14 (1981).

If adopted, the proposed rules would set forth procedural guidelines and define the responsibilities of the court and persons having business with it.

The court is authorized to adopt these rules under Laws of Minnesota, ch. 346 § 48, subd. 4 (1981).

The court has prepared a statement of need and reasonableness which describes the court's reasons for each provision of the rules. A copy of the statement of need and reasonableness and a copy of the proposed rules are available and may be obtained by contacting:

Ms. Cynthia Valentine, Assistant Administrator
Workers' Compensation Court of Appeals
Room 212, 55 Sherburne Avenue
St. Paul, MN 55103
Telephone: (612) 297-2520

Persons interested in these rules have 30 days, specifically until December 23, 1981, to submit comments on the proposed rules. The proposed rules may be modified if the data and views submitted to the court warrant modification and do not result in a substantial change in the proposed language of the rules.

If, during the comment period, seven or more persons submit to the court a written request for a hearing on the proposed rules, the court shall proceed to schedule a public hearing before adoption of the proposed rules. In the event a public hearing is required, the court will proceed according to the provisions of Minn. Stat. § 15.0412, subd. 4-4f (1981).

Persons who wish to submit comments or to request a public hearing should submit such comments or requests no later than December 23, 1981 to Ms. Cynthia Valentine at the address given above. The court requests that persons requesting a public hearing identify the particular provisions objected to, the suggested modifications to the rules and the reasons and data relied upon to support the requested modifications.

In the event a hearing is required, a new notice of hearing will be published in the *State Register*. Unless seven or more persons submit written requests for a public hearing, a public hearing will not be held and the court will adopt the proposed rules.

After adoption of the final rules by the court without a hearing, the proposed rules, this notice, the statement of need and reasonableness and all written comments received and the final rules as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material or who wish to receive a copy of the final rules as proposed for adoption should submit a written statement of such request to Ms. Cynthia Valentine at the address noted above.

Rules as Proposed (all new material)

8 MCAR § 5.001 Definition. For the purpose of 8 MCAR §§ 5.001-5.014 "court" means the Workers' Compensation Court of Appeals.

8 MCAR § 5.002 Examination of files. Any workers' compensation division file that is in the custody of the court may be inspected by any person only when there has been compliance with Minn. Stat. § 176.231, subds. 8 and 9 and the rules of the workers' compensation division.

8 MCAR § 5.003 Preparation and form of legal documents. Pleadings, briefs and other legal documents filed with the court shall be printed or typewritten and shall use only one side of the paper. All material shall be submitted on 8½ by 11 inch paper.

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Failure to make timely request to the court for a continuance is grounds for denial of the continuance.

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8 MCAR § 5.006 Notice of settlement. In every case which is settled prior to the filing of the court's decision immediate notice of the settlement must be given to the court.

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.

8 MCAR § 5.007 Stipulation for settlement. Stipulations for settlement submitted to the court shall comply with Minn. Stat. § 176.521 and the rules of the workers' compensation division and the State Office of Administrative Hearings regarding stipulations of settlement unless otherwise ordered by the court.

8 MCAR § 5.008 Appeal of attorney fees by an employee. An employee dissatisfied with his attorney fees may make application for review of the fees by completing an application form provided by the court.

8 MCAR § 5.009 Briefs on appeal. The Office of Administrative Hearings shall file a certification with this court showing the date of service of the transcript of hearing upon the parties or their attorneys. The appellant, within 30 days from the date of said service, shall file a written brief with the court together with an affidavit stating that service of a copy of the brief has been made by the appellant upon each adverse party. Five copies of the brief shall be filed with the court where oral argument is to be made.

Any response to any brief shall be filed with the court within 20 days of the date of service of the brief to which the response is being made. The response must be accompanied by an affidavit stating that service has been made upon all opposing parties.

Upon appeal to this court where no certification of filing of transcript is required, the appellant shall have 30 days from the date of filing the notice of appeal to file a written brief. Response briefs shall be filed in accordance with the foregoing paragraph.

Briefs not timely filed shall not be considered by the court unless an extension of time for filing has been granted. No extension shall be granted except as provided in 8 MCAR §§ 5.001-5.014.

8 MCAR § 5.010 Hearings on appeal. A party desiring to waive oral argument before the court shall notify the court within the time limitations for the filing of a brief.

All arguments on appeal before the court shall be limited to 15 minutes by each party unless otherwise authorized by the court.

8 MCAR § 5.011 Application to set the award aside or grant a new hearing. Applications to set an award aside or grant a new hearing shall be verified and accompanied by supporting affidavits or medical reports. Sufficient copies shall be filed with the court for service upon the other parties. The application shall state in detail the grounds that constitute the cause for granting the relief requested.

Responses and other pleadings shall be served upon all parties and filed with the court at least five days before the date of hearing on the matter.

The court may, in its discretion, act on the application without hearing or may require a hearing and further proof.

8 MCAR § 5.012 Writ of certiorari. The party filing a writ of certiorari pursuant to Minn. Stat. § 176.471 and Rules 103.01 and 111.04 of the Rules of Civil Appellate Procedure, shall immediately provide the court with an additional copy of any transcripts of hearings pertaining to the matter on appeal.

8 MCAR § 5.013 Second injury law. In addition to those impairments set forth in Minn. Stat. § 176.131, subd. 8, the following additional impairments shall be registerable: brain tumors; Pott's disease; seizures; cancer of the bone; and leukemia.

8 MCAR § 5.014 Motions. All applications, petitions and motions for relief or consideration by the court, not otherwise provided for in 8 MCAR §§ 5.001-5.014 with respect to appeals, shall be made in the following manner and within the following times, unless otherwise directed by the court:

A. Motions shall be in writing, verified, accompanied by appropriate documentation, state the relief sought, the basis therefore, and be accompanied by an affidavit of service upon all other parties affected thereby;

B. All other parties shall have a period of five days from the date of filing of service of a motion within which to file a response in writing. A reply may be filed within two days thereafter. No motions shall be considered if filed within five days of the time set for hearing on an appeal; and

C. Oral argument shall not be permitted except upon order of the court.

Repealer. Except as expressly made applicable by 8 MCAR § 5.001-5.014 the rules of practice for the Workers' Compensation Court of Appeals and the Workers' Compensation Division of the Department of Labor and Industry, WC1-WC35, are not applicable and do not govern practice before the Workers' Compensation Court of Appeals.

STATE OF MINNESOTA
WORKERS' COMPENSATION COURT OF APPEALS

IN RE RULES GOVERNING MATTERS BEFORE THE WORKERS' COMPENSATION COURT OF APPEALS

STATEMENT OF NEED AND REASONABLENESS

Laws of Minnesota 1981, Ch. 346, § 42, created the Workers' Compensation Court of Appeals as an independent agency in the executive branch of Minnesota state government.

Laws of Minnesota 1981, Ch. 346, § 48, subd. 4 provides: "Workers' Compensation Court of Appeals shall prescribe rules of practice before it in appellate matters."

The rules outlined herein are prescribed under the authority of the above cited statute.

Rule by Rule Analysis.

Rule 8 MCAR § 5.001 Definition.

Clarification of the use of the term "court" in these rules in order that the reader of the rules is not confused.

Rule 8 MCAR § 5.002 Examination of Files.

Specifies needed requirements for inspection of files in the Workers' Compensation Court of Appeals custody so as to protect privacy and confidentiality rights of the parties.

Rule 8 MCAR § 5.003 Preparation and Form of Legal Documents.

Provides uniformity in submission of documents for convenience in handling and filing and to conform to the rules of the Minnesota Supreme Court.

Rule 8 MCAR § 5.004 Temporary Orders.

Specifies content of temporary orders to facilitate handling and to conform to the practices of the Workers' Compensation Division and the Office of Administrative Hearings.

Rule 8 MCAR § 5.005 Continuances and Extensions.

Specifies the basis for and the time limitations for obtaining additional time to submit documents or have hearings before the Workers' Compensation Court of Appeals. This is necessary to make allowances for unforseeable scheduling problems.

Rule 8 MCAR § 5.006 Notice of Settlement.

Provides for notice to the Workers' Compensation Court of Appeals of settlements in order to reduce or eliminate loss of hearing time before the court.

Rule 8 MCAR § 5.007 Stipulation for Settlement.

Specifies content of stipulations of settlement to facilitate handling and to conform to the practices of the Workers' Compensation Division and the Office of Administrative Hearings.

Rule 8 MCAR § 5.008 Appeal of Attorney Fees by an Employee.

To assist employees who are not legally trained in obtaining a fair hearing regarding attorney fees.

Rule 8 MCAR § 5.009 Briefs on Appeal.

To clarify and facilitate the hearing appellate process between the

Office of Administrative Hearings and the Workers' Compensation Court of Appeals and to specify the time requirements for filing briefs. These time requirements are necessary to insure timely hearings of appellate matters.

Rule 8 MCAR § 5.010 Hearings on Appeal.

To eliminate setting of hearings and delay of determinations when the parties do not wish a hearing. Sets time limitations for oral argument so as to promote orderly disposition of appealed matters.

Rule 8 MCAR § 5.011 Application to Set the Award Aside or Grant a New Hearing.

Specifies content of petitions to set aside awards or for new hearings so as to facilitate the disposition of appealed matters before the Workers' Compensation Court of Appeals. Further provides for methods of service of documents to insure proper notice to all parties.

Rule 8 MCAR § 5.012 Writ of Certiorari.

Provides for the filing of additional copy of transcripts to comply with the rules of the Supreme Court.

Rule 8 MCAR § 5.013 Second Injury Law.

Provides for specific additional impairments deemed properly registerable with the second injury fund by the Workers' Compensation Court of Appeals pursuant to M.S. 176.131, subd. 8 clause (p).

Rule 8 MCAR § 5.014 Motion.

Provides for handling of other matters not more specifically provided for in these rules so as to guide the parties involved and facilitate handling before the Workers' Compensation Court of Appeals.

Rule 8 MCAR § 5.015 Repealer

Disposes of prior rules upon the implementation of these rules so as to avoid duplication and confusion concerning practice before the Workers' Compensation Court of Appeals.

In the Matter of the Proposed Adoption of Rules of the State Governing the Workers' Compensation Court of Appeals

8 MCAR 5.001-5.014

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

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

Winston E. Blumann
Assistant Attorney General

Dated: 4/2/82

Possible improvements:

Page 3 - line 29 should read 5.001 - 5.013

Page 1 - line 30 should read "as required by 8 MCAR 5.009