

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 442

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 8-26
DATE FOR REVIEW 8-25
DATE DUE 8-30

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

Approved 8-30-83 Disapproved _____ Returned to Agency _____

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

Date filed w/Secretary of State _____ Revisor approved 8.19.83 disapproved _____

✓ Rule as Adopted

✓ Rule as Proposed See SR

✓ Order Adopting 7.28.83 Date combined with FF

_____ Notice of Intent to Solicit Outside Opinion

✓ Order for rulemaking
N/A date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency

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

✓ Mailing list Certificate

✓ Publication in State Register
6.27.83 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 combined with Order Adopting

_____ LCRAR Report or agency Affidavit

_____ Certificate of Board's Resolution Adopting Rules

_____ Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness

_____ 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

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : Duane R. Harves, Chief Hearing Examiner DATE: 8/30/83

Attn: J. Michael Miles
Assistant Attorney General

FROM : Martha J. Casserly PHONE: 296-4347
Special Assistant
Attorney General MJC

SUBJECT: In the Matter of the Proposed Amendments to Procedural Rules for 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;

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.

Encs.
MJC/ls
cc: Ms. Kathy Burek
Mr. Duane Harves

Office of Administrative Hearings

AG copy (.306 .312

Adopted Amendments to Procedural Rules for Workers' Compensation Hearings

Rules as Adopted

9 MCAR § 2.306 ~~Notice of intention~~ Objections to discontinuance and petitions to discontinue compensation payments.

A. Hearing. When either an objection to ~~a notice of intention to discontinue~~ discontinuance of compensation payments or ~~an objection to a decision of the commissioner allowing a discontinuance has been filed or where~~ a petition to discontinue benefits has been filed and the matter has been referred to the chief hearing examiner, 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. Objection to discontinuance as claim petition. Any objection filed more than 120 days after service of a notice of intention to discontinue, a notice of discontinuance, or an ~~order~~ administrative decision of the commissioner allowing the discontinuance shall be treated as a claim petition for purposes of scheduling a hearing and shall not be heard on a priority basis.

FF2

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 priroity basis as set forth in A. After an administrative conference on a notice ~~to~~ of intention to discontinue, a petition to discontinue pursuant to Minnesota Statutes, section 176.242, subdivision 5, filed more than 120 days following the issuance of the commissioner's ~~order~~ administrative decision disallowing the discontinuance shall not be given priority status for the purpose of scheduling a hearing.

spelled correctly in Revisor copies

9 MCAR § 2.312 Disqualification.

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. Any party or his attorney may make and serve on the opposing party and file with the chief hearing examiner an affidavit stating that, on account of prejudice or bias on the part of the judge who is to preside at the hearing, he has good reason to believe and does believe that he cannot have a fair hearing before the assigned judge. ~~Each party shall be allowed one filing under this section on any one case.~~ The affidavit 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, prejudice or bias, whichever occurs last. Upon the filing of the affidavit, with proof of service, the chief hearing examiner shall assign the case to another judge.

A proceeding to disqualify a compensation judge for cause other than or in addition to the foregoing is allowed. It shall be initiated by the service on all parties and the filing of a motion for disqualification supported by affidavit stating in detail the facts establishing the grounds for disqualification of the compensation judge. The motion 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. The motion shall be determined by the chief hearing examiner or his designee.

FF3

discretion only?

Unless required because of the unavailability of a compensation judge to hear the case, no continuance shall be granted by reason of 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 § 2.314 Discovery

A. [Unchanged.]

B. Depositions. Pursuant to the provisions of Minnesota Statutes, section 176.411, subdivision 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 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 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 for presenting testimony due to the unavailability of the 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 filled prior to or at the commencement of the regular hearing.

Pursuant to Minnesota Statutes, section 176.155, subdivision 5, the cross-examination of a physician or health care provider prior to hearing is specifically allowed. When a deposition for the purpose of cross-examination of a physician or health care provider is taken pursuant to this paragraph, re-direct examiner is allowed. Unless ordered otherwise by a compensation judge, the cross-examination deposition shall be completed and the original filed with the office at or prior to the hearing on the case.

The original copy of any deposition taken for purposes of presenting testimony in the case shall be filed with the office 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.-E. [Unchanged.]

9 MCAR § 2.317 The hearing.

A. [Unchanged.]

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

C. Medical evidence.

1. If a party believes that the oral testimony of a physician or health care provider is crucial to the accurate determination of the employee's disability, the party shall prepare, serve on all other parties, and file with the office a written motion, with supporting affidavits if deemed necessary, requesting a written finding from a judge on the cruciality of the oral testimony. The motion must be served and filed ~~at or prior to the filing of a pretrial statement~~ no later than 30 days prior to the scheduled hearing date. Any party may file an objection to the motion. Objections must be filed within ten calendar days of the service of the motion.

2. Upon receipt of a motion under C.1. a compensation judge shall, after waiting for objections to be filed, issue an order granting or denying the motion, stating the reasons for the order.

3. Absent a motion by a party, if, upon review of a case prior to the hearing date, a compensation judge finds that the oral testimony of a physician or health care provider may be crucial to the accurate determination of the employee's disability, the judge shall issue an order requiring that the full testimony be presented in person or by oral deposition.

4. If, during the course of a hearing, a judge determines that the appearance of the physician or health care provider is crucial to the accurate determination of the employee's disability, the judge shall either continue the hearing to a date, time, and place for the testimony to be taken, or order that the testimony be taken in full by oral deposition.

5. Medical reports. The production of medical evidence in the form of written reports is required by Minnesota Statutes, section 176.155, subdivision 5. These reports shall include, in the following order:

a. The date of the examination;

b. The history of the injury;

c. The patient's complaints;

d. The source of all facts set forth in the history and complaints;

e. Findings on examination;

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

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

h. The medical treatment indicated;

i. If permanent disabilty is an issue, an opinion as to whether or not the 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;

j. If a permanent disability is a result of two or more injuries or occurrences, or if part of the permanent disability is a result of a pre-existing disability that arises from a congenital condition, or is the result of a traumatic injury or incident, whether or not compensable under Minnesota Statutes, chapter 176, the report shall apportion the disability between the injuries, occurrences, or conditions; FF 6

k. If future medical care or treatment is anticipated, a statement of the nature and extent of the treatment recommended and, if possible, the anticipated results; and

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

6. Medical reports to be used to support a party's position shall be served on all other parties and filed with the office, with proof of service, ~~prior to or at the time of the filing of a pretrial statement~~ no later than 60 days prior to the scheduled hearing date, unless it can be shown that the delay in filing the report was caused by a failure of the employee to report for an adverse medical examination or to provide medical support for the claim on a timely basis or other good cause. } FF8

D.-J. [Unchanged.]

9 MCAR 2.318 The compensation judge's decision.

A. [Unchanged]

B. Compensation judge decisions.

1. Within 60 days after the close of the record, the compensation judge shall prepare his or her decision and, upon completion, it shall be served on all parties. The record shall be considered to be closed upon the submission of the entire case to the judge including any late filed exhibits, depositions, or legal memoranda but excluding the time for submission or of a proposed decision by any party. corrected in Revisor version

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. A determination on each contested issue of fact or law. 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; and

f. A memorandum only if necessary to delineate the reasons for the decision or to discuss the credibility of witnesses.

C. [Unchanged]

D. Proposed decision filed by party. Any party may file a proposed decision with the compensation judge. 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 explaining the decision on each issue.

E. Decision, extension of time. If the parties consent to extend the time for issuance of the decision, the written consent shall include a statement of the reasons for the extension, shall be filed with the compensation judge, and a copy filed with the chief hearing examiner. If the chief hearing examiner extends the time for issuance of the decision, the extension shall be in writing and shall be served on all parties of record.

9 MCAR § 2.320 Settlements.

A.-B. [Unchanged.]

C. Approval. 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 Minnesota Statutes, section 176.081, subdivision 7a, subject to approval by a compensation judge.

Where a settlement has been agreed upon pursuant to Minnesota Statutes, section 176.081, subdivision 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 Minnesota Statutes, section 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.

D. [Unchanged.]

E. Attorney's fees detailed. Stipulations for settlement of cases in which the petitioner has engaged the services of an attorney shall be accompanied by a statement of attorney's fees, on a form prescribed by the commissioner, 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 Minnesota Statutes, section 176.081, if approval is required. If no fees are requested, the stipulation shall so state.

F. [Unchanged.]

G. Award. The parties involved in the settlement shall submit an award on stipulation prepared for signature by a judge.

H.-J. [Unchanged.]

9 MCAR § 2.321 Attorney fees.

A. Controlling statute. Fees for legal services are governed by the provision of Minnesota Statutes, section 176.081.

B. Statement of fees, approval. A statement of attorney's fees, on a form prescribed by the commissioner, and a copy of the retainer agreement shall be filed as part of the record in each case, whether the case is heard to a conclusion or settled by agreement of all parties. If, at the hearing of any case or in a stipulation for settlement, all parties state on the record or include in the stipulation that they have no objection to the statement of attorney's fees, the judge shall issue an appropriate order without the necessity of waiting for the expiration of ten calendar days.

C. Fees, objection. If a timely objection to the statement of attorney's fees is filed, the compensation judge shall utilize Minnesota Statutes, section 176.081, subdivision 5, only as to those issues specifically raised by the objection.

D. Filing. A statement of attorney's fees under this rule shall be filed with the compensation judge assigned to hear the case or a calendar judge if no assignment has been made.

E. [Unchanged.]

APPROVED AS TO FORM AND LEGALITY

august 30 1983

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY Martha J Cassady
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
AUG 0 1983

Joan Anderson Growe
Secretary of State

3:32 P.M.

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

IN THE MATTER OF THE PROPOSED AMENDMENTS TO PROCEDURAL RULES FOR WORKERS' COMPENSATION HEARINGS.

FINDINGS OF FACT, CONCLUSIONS AND ORDER ADOPTING RULES

The above-entitled matter comes before the Chief Hearing Examiner for a determination to adopt rules. A notice of intention to adopt the rules without a public hearing was published in the State Register on Monday, June 27, 1983, and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minn. Stat. § 14.14, subd. 1, on June 24, 1983. After affording interested and affected persons an opportunity to submit comments for 30 days, receiving no written requests for a public hearing, after having reviewed and considered the written comments, and determining the need for and reasonableness of the above-captioned rules, the Chief Hearing Examiner makes the following:

FINDING OF FACT

1. The Statement of Need and Reasonableness dated June 24, 1983, is incorporated by reference in these Findings as it applies to the statutory authority to adopt the rules and the need for and reasonableness of the rules except as indicated in subsequent Findings.

2. As a result of comments received from the Department of Labor and Industry, 9 MCAR § 2.306 has been modified. The changes are technical rather than substantive. They are necessary to correct the "titles" of the documents which are filed following the Commissioners' administrative conference and to conform more strictly with the statutory language.

3. Based on the written comment of Robert R. Johnson and Michael D. Aafedt, 9 MCAR § 2.312 must be modified to allow a petition for disqualification of a compensation judge "for cause". The statute provides for automatic removal as in the District Courts. However, if an "automatic" affidavit has been filed, a new judge assigned and the parties come upon information showing actual bias or prejudice, the proposed amendment would not allow a subsequent filing. It is found that the legislature did not intend to foreclose a "for cause" disqualification of a judge, that by keeping the old procedure as well as the new rules will comply with District Court procedures, and that the modification is needed, reasonable and within the agency's authority to adopt.

4. Rule 9 MCAR § 2.314 is modified based on the comments received from Michael D. Aafedt, Robert J. Mabel and Robert R. Johnson, to specifically state that re-direct examination of a doctor or health care provider is allowed under the statute or rules, as was thought to be implicit by the drafter of the rule. Obviously, it was not clear so the rule should be modified. This clarification is needed, reasonable and within statutory authority.

5. Rule 9 MCAR § 2.317 C.1. is modified based on the comments received from Raymond W. Fitch and Michael D. Aafedt. They have raised a proper point that the employer/insurer cannot make a decision on the necessity for a motion until after receiving the medical report from the employee's attorney. The same would be true for the employee's attorney waiting for a report on the adverse medical examination. The change allows a reasonable time prior to the hearing date to make the decision rather than tying the timing to the filing of a pretrial statement which could be six months prior to the hearing. The modification is found to be reasonable, necessary and statutorily authorized.

6. Mr. Mabel also commented on Rule 9 MCAR § 2.317 C.5.j. requesting a further clarification of the new language proposed to insure that all information necessary to a full determination of apportionment of the disability is obtained. The modification does not change the proposed rule but adds further clarification and more closely "tracks" the statutory language. It is necessary to add the statutory language to the rule as physicians and health care providers will be using the rule, rather than the statute, when preparing their reports. It is needed, reasonable and statutorily authorized.

8. Rule 9 MCAR § 2.317 C.6. is modified based on comment received from Mr. Mable. Pretrial statements are now filed from four to six months prior to the hearing date. Many parties desire to wait to obtain final medical reports as close to the hearing date as possible. Thus, tying the filing of the medical report to the time of the pretrial statement is not appropriate. However, 30 days prior to the hearing does not leave sufficient time for the other parties to review the reports and make decisions relating to the depositions of the doctor or health care provider. We previously modified § 2.317 C.1. to allow 30 days to make the decisions. Therefore, a reasonable time must be provided. While Mr. Mabel's comments are well taken, a more reasonable time for filing would be 60 days. This would allow the 30 days to

decide on depositions and still leave 30 days prior to the hearing to make any motions or to complete the depositions. The modification is needed, reasonable and statutorily authorized.

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

CONCLUSIONS

1. That proper notice of this rulemaking proceeding has been given and that all other procedural and substantive requirements of law and rule have been complied with.

2. That the rules as modified herein are needed and reasonable and the Chief Hearing Examiner has the statutory authority to adopt the rules.

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

ORDER

IT IS HEREBY ORDERED that the amendments to the procedural rules for workers' compensation hearings, as modified herein, are adopted this 28th day of July, 1983.

DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Proposed
Amendments to Procedural Rules
for Workers' Compensation Hearings.

ORDER FOR NOTICE OF
INTEND TO ADOPT RULES
WITHOUT PUBLIC HEARING

IT IS ORDERED THIS 10th day of June, 1983, that a Notice of Intent to Adopt Rules Without Public Hearing in the above-entitled matter be given to all persons who have registered their names with the State Office of Administrative Hearings, Workers' Compensation Section, for that purpose and be published in the State Register.

STATE OF MINNESOTA

DUANE R. HARVES
Chief Hearing Examiner
Office of Administrative Hearings

OFFICE OF ADMINISTRATIVE HEARINGS
PROPOSED AMENDMENTS TO PROCEDURAL RULES FOR WORKERS' COMPENSATION HEARINGS
NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

Notice is hereby given that the Chief Hearing Examiner proposes to adopt amendments to the above-entitled rules without a public hearing. The Chief Hearing Examiner has determined that the proposed adoption of these amendments will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. §§ 14.21 to 14.28.

Persons interested in these rules shall have until 30 days after the date of this Notice to submit comments on the proposed amendments. The proposed amendments may be modified if the modifications are supported by the data and views submitted to the Chief Hearing Examiner and do not result in a substantial change to the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the comment period, a public hearing will not be held. In the event a public hearing is required, the office will proceed according to the provisions of Minn. Stat. §§ 14.13 to 14.20.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or requests to:

Duane R. Harves, Chief Hearing Examiner
Minnesota Office of Administrative Hearings
400 Summit Bank Building
310 Fourth Avenue South
Minneapolis, MN 55415
Telephone: 612/341-7640

Authority for the adoption of these rules is contained in Minn. Stat. § 14.51. A Statement of Need and Reasonableness which describes the need for and reasonableness of each provision of the proposed amendments and which identifies the data and information relied upon to support the proposed amendments has been prepared and is available from the Chief Hearing Examiner upon request.

Upon adoption of the final rules without a public hearing, the proposed amendments, 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 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 adopted should submit a written statement of such request to the Chief Hearing Examiner.

The proposed rules are enclosed with this Notice. The amendments to the rules are amendments to implement the provisions of Laws of Minnesota 1983, Chapter 290, which was the workers' compensation legislation.

Dated: June 27th, 1983.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

In the Matter of the Proposed
Amendments to Procedural Rules
for Workers' Compensation
Hearings.

AFFIDAVIT OF MAILING

STATE OF MINNESOTA)
)ss.
COUNTY OF HENNEPIN)

Sandra A. Haven, being first duly sworn deposes and says:

That on the 24th day of June, 1983, at the City of Minneapolis, County of Hennepin, State of Minnesota, she served the attached Notice of Intent to Adopt Rules Without Public Hearing by depositing in the United States Mail at said City of Minneapolis, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who have requested that their names be placed on file with the State Office of Administrative Hearings for the purpose of receiving notice of the proposed adoption of rules by this Office.

Sandra A. Haven

Subscribed and sworn to before me
this 21st day of July, 1983.

Susan C. Wojcik

SUSAN C. WOJCIK
NOTARY PUBLIC - MINNESOTA
RAMSEY COUNTY
My Comm. Expires Apr. 26, 1986

OFFICE OF ADMINISTRATIVE HEARINGS
PROPOSED AMENDMENTS TO PROCEDURAL RULES FOR WORKERS' COMPENSATION HEARINGS
NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

Notice is hereby given that the Chief Hearing Examiner proposes to adopt amendments to the above-entitled rules without a public hearing. The Chief Hearing Examiner has determined that the proposed adoption of these amendments will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. §§ 14.21 to 14.28.

Persons interested in these rules shall have until 30 days after the date of this Notice to submit comments on the proposed amendments. The proposed amendments may be modified if the modifications are supported by the data and views submitted to the Chief Hearing Examiner and do not result in a substantial change to the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the comment period, a public hearing will not be held. In the event a public hearing is required, the office will proceed according to the provisions of Minn. Stat. §§ 14.13 to 14.20.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or requests to:

Duane R. Harves, Chief Hearing Examiner
Minnesota Office of Administrative Hearings
400 Summit Bank Building
310 Fourth Avenue South
Minneapolis, MN 55415
Telephone: 612/341-7640

Authority for the adoption of these rules is contained in Minn. Stat. § 14.51. A Statement of Need and Reasonableness which describes the need for and reasonableness of each provision of the proposed amendments and which identifies the data and information relied upon to support the proposed amendments has been prepared and is available from the Chief Hearing Examiner upon request.

Upon adoption of the final rules without a public hearing, the proposed amendments, 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 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 adopted should submit a written statement of such request to the Chief Hearing Examiner.

The proposed rules are enclosed with this Notice. The amendments to the rules are amendments to implement the provisions of Laws of Minnesota 1983, Chapter 290, which was the workers' compensation legislation.

Dated: June 27th, 1983.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

In the Matter of the Proposed
Amendments to Procedural Rules
for Workers' Compensation
Hearings.

CERTIFICATE

STATE OF MINNESOTA)
)ss.
COUNTY OF HENNEPIN)

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minn. Stat. § 14.14, subd. 1, 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 2:00 P.m., this 24th day of June, 1983.

Nancy M. Thomas
NANCY M. THOMAS

Subscribed and sworn to before me
this 21st day of July, 1983.

Susan C. Wojcik

SUSAN C. WOJCIK
NOTARY PUBLIC - MINNESOTA
RAMSEY COUNTY
My Comm. Expires Apr. 26, 1986

PROPOSED RULES

Pursuant to Minn. Stat. of 1980, §§ 14.21, 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 §§ 14.13-14.20 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. § 14.29, 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 Amendments to Procedural Rules for Workers' Compensation Hearings

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Chief Hearing Examiner proposes to adopt amendments to the above-entitled rules without a public hearing. The Chief Hearing Examiner has determined that the proposed adoption of these amendments will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. §§ 14.21 to 14.28.

Persons interested in these rules shall have until 30 days after publication in the *State Register* to submit comments on the proposed amendments. The proposed amendments may be modified if the modifications are supported by the data and views submitted to the Chief Hearing Examiner and do not result in a substantial change to the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the comment period, a public hearing will not be held. In the event a public hearing is required, the office will proceed according to the provisions of Minn. Stat. §§ 14.13 to 14.20.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or requests to:

Duane R. Harves, Chief Hearing Examiner
Minnesota Office of Administrative Hearings
400 Summit Bank Building
310 Fourth Avenue South
Minneapolis, MN 55415
Telephone No. 612/341-7640

Authority for the adoption of these rules is contained in Minn. Stat. § 14.51. A statement of need and reasonableness that describes the need for and reasonableness of each provision of the proposed amendments and which identifies the data and information relied upon to support the proposed amendments has been prepared and is available from the Chief Hearing Examiner upon request.

Upon adoption of the final rules without a public hearing, the proposed amendments, 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 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 the Chief Hearing Examiner.

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.

The proposed rules follow this notice. The amendments to the rules are amendments to implement the provisions of laws of Minnesota 1983 Chapter 290 which was the Workers' Compensation legislation.

Rules as Proposed

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

A. Hearing. When an objection to a notice of intention to discontinue compensation payments or an objection to a decision of the commissioner allowing a discontinuance has been filed or where ~~it appears to the commissioner that the right to compensation may not have terminated~~ a petition to discontinue has been filed and the matter has been referred to the chief hearing examiner, 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. Objection as claim petition. Any objection filed more than 120 days after service of a notice to discontinue or an order of the commissioner allowing the discontinuance 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 A. After an administrative conference on a notice to discontinue, a petition to discontinue pursuant to Minnesota Statutes, section 176.242, subdivision 5, filed more than 120 days following the issuance of the commissioner's order disallowing the discontinuance shall not be given priority status for the purpose of scheduling a hearing.

9 MCAR § 2.312 Disqualification.

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 stating in detail facts establishing grounds for disqualification of the compensation judge to whom a case or proceeding has been assigned. The motion for disqualification~~ Any party or his attorney may make and serve on the opposing party and file with the chief hearing examiner an affidavit stating that, on account of prejudice or bias on the part of the judge who is to preside at the hearing, he has good reason to believe and does believe that he cannot have a fair hearing before the assigned judge. Each party shall be allowed one filing under this section on any one case. The affidavit 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, prejudice, or bias, whichever occurs last. ~~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~~ Upon the filing of the affidavit, with proof of service, the chief hearing examiner shall assign the case to another judge.

Unless required because of the unavailability of a compensation judge to hear the case, no continuance shall be granted by reason of 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 § 2.314 Discovery.

A. [Unchanged.]

B. Depositions. Pursuant to the provisions of ~~Minn. Stat. §~~ Minnesota Statutes, section 176.411, ~~subd.~~ subdivision 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 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 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 testimony due to the unavailability of the 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.

Pursuant to Minnesota Statutes, section 176.155, subdivision 5, the cross-examination of a physician or health care provider prior to hearing is specifically allowed. Unless ordered otherwise by a compensation judge, the cross-examination deposition shall be completed and the original filed with the office at or prior to the hearing on the case.

The original copy of any deposition taken for purposes of presenting testimony in the case shall be filed with the office 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.-E. [Unchanged.]

9 MCAR § 2.317 The hearing.

A. [Unchanged.]

B. Availability of ~~medical~~ witnesses. As soon as the parties are apprised of the date scheduled for the 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~~ evidence.

1. If a party believes that the oral testimony of a physician or health care provider is crucial to the accurate determination of the employee's disability, the party shall prepare, serve on all other parties, and file with the office a written motion, with supporting affidavits if deemed necessary, requesting a written finding from a judge on the cruciality of the oral testimony. The motion must be filed at or prior to the filing of a pretrial statement. Any party may file an objection to the motion. Objections must be filed within ten calendar days of the service of the motion.

2. Upon receipt of a motion under C.1. a compensation judge shall, after waiting for objections to be filed, issue an order granting or denying the motion, stating the reasons for the order.

3. Absent a motion by a party, if, upon review of a case prior to the hearing date, a compensation judge finds that the oral testimony of a physician or health care provider may be crucial to the accurate determination of the employee's disability, the judge shall issue an order requiring that the full testimony be presented in person or by oral deposition.

4. If, during the course of a hearing, a judge determines that the appearance of the physician or health care provider is crucial to the accurate determination of the employee's disability, the judge shall either continue the hearing to a date, time, and place for the testimony to be taken, or order that the testimony be taken in full by oral deposition.

5. The production of medical evidence in the form of written reports~~, by stipulation of the parties is encouraged~~ is required by Minnesota Statutes, section 176.155, subdivision 5. These reports ~~should~~ shall include, in the following order:

~~1.~~ a. The date of the examination;

~~2.~~ b. The history of the injury;

~~3.~~ c. The patient's complaints;

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

~~5.~~ e. Findings on examination;

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

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

~~8.~~ h. The medical treatment indicated;

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~~9.~~ i. If permanent ~~partial~~ disability is an issue, an opinion as to whether or not the 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~~

j. If a permanent disability is a result of two or more injuries or occurrences, or if part of the permanent disability is a result of a preexisting disability that arises from a congenital condition, the report shall apportion the disability between the injuries, occurrences, or conditions;

k. If future medical care or treatment is anticipated, a statement of the nature and extent of the treatment recommended and, if possible, the anticipated results; and

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

6. Medical reports to be used to support a party's position shall be served on all other parties and filed with the office, with proof of service, prior to or at the time of the filing of a pretrial statement, unless it can be shown that the delay in filing the report was caused by a failure of the employee to report for an adverse medical examination or to provide medical support for the claim on a timely basis or other good cause.

D.-J. [Unchanged.]

9 MCAR § 2.318 The compensation judge's decision.

A. [Unchanged.]

B. Compensation judge decisions.

1. ~~Following~~ Within 60 days after the close of the record, the compensation judge shall prepare his or her decision and, upon completion, it shall be served on all parties. The record shall be considered to be closed upon the submission of the entire case to the judge including any late filed exhibits, depositions, or legal memoranda but excluding the time for submission or a proposed decision by any party.

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 contested issue ~~raised~~ of fact or law. 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; and

f. A memorandum only if necessary to delineate the reasons for the decision or to discuss the credibility of witnesses.

C. [Unchanged.]

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.

E. Decision, extension of time. If the parties consent to extend the time for issuance of the decision, the written consent shall include a statement of the reasons for the extension, shall be filed with the compensation judge, and a copy filed with the chief hearing examiner. If the chief hearing examiner extends the time for issuance of the decision, the extension shall be in writing and shall be served on all parties of record.

9 MCAR § 2.320 Settlements.

A.-B. [Unchanged.]

C. Approval. 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. §~~ Minnesota Statutes, section 176.081, ~~subd.~~ subdivision 7a, subject to approval by ~~the~~ a compensation judge ~~assigned to hear the case or a calendar judge if the matter has not yet been assigned~~.

Where a settlement has been agreed upon pursuant to ~~Minn. Stat. §~~ Minnesota Statutes, section 176.081, ~~subd.~~ subdivision 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. §~~ Minnesota Statutes, section 176.521, the award required by 9 MCAR § 2.320 G. shall be immeidately signed by the compensation judge, served on all parties, and filed with the commissioner.

D. [Unchanged.]

E. Attorney's fees detailed. Stipulations for settlement of cases in which the petitioner ~~have~~ has engaged the services of an attorney shall be accompanied by a statement of ~~the amount of~~ attorney's fees ~~requested~~, on a form prescribed by the commissioner, 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. §~~ Minnesota Statutes, section 176.081, if approval is required. If no fees are requested, the stipulation shall so state.

F. [Unchanged.]

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

H.-J. [Unchanged.]

9 MCAR § 2.321 Attorney fees.

~~A. Notice of representation. Whenever an employer or insurer receives notice that an attorney is representing 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. § 176.081. Written notice that the compensation is being withheld shall immediately be mailed to the 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. § 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 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 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. § 176.081, subd. 5.~~

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

A. Controlling statute. Fees for legal services are governed by the provision of Minnesota Statutes, section 176.081.

B. Statement of fees, approval. A statement of attorney's fees, on a form prescribed by the commissioner, and a copy of the retainer agreement shall be filed as part of the record in each case, whether the case is heard to a conclusion or settled by agreement of all parties. If, at the hearing of any case or in a stipulation for settlement, all parties state on the record or include in the stipulation that they have no objection to the statement of attorney's fees, the judge shall issue an appropriate order without the necessity of waiting for the expiration of ten calendar days.

C. Fees, objection. If a timely objection to the statement of attorney's fees is filed, the compensation judge shall utilize Minnesota Statutes, section 176.081, subdivision 5, only as to those issues specifically raised by the objection.

D. Filing. ~~Applications~~ A statement of attorney's fees under this rule shall be filed with the compensation judge assigned to hear the case or a calendar judge if no assignment has been made.

E. [Unchanged.]

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STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Proposed
Amendments to Procedural Rules
for Workers' Compensation
Hearings.

STATEMENT OF NEED AND REASONABLENESS

Minn. Stat. § 14.51 (1982) authorizes the Chief Hearing Examiner to 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. To that end, in 1982, the Office of Administrative Hearings adopted procedural rules relating to workers' compensation hearings which are found at 9 MCAR §§ 2.301 through 2.326.

During the 1983 Legislative Session, the Minnesota Legislature amended the Minnesota Workers' Compensation Law (Minn. Stat. Ch. 176). The amendments are found in Minn. Laws 1983, Ch. 290. That legislation is a comprehensive reform of the Minnesota Workers' Compensation system. Included in the legislation were numerous procedural changes which impact on the procedures utilized in the conduct of contested workers' compensation claims, the hearings for which are conducted by compensation judges from the Office of Administrative Hearings.

Because the newly-enacted statute now would supersede the previously adopted procedural rules with which they are in conflict, it is necessary amend the procedural rules to conform to the statute and to implement those sections of the statute which require additional specificity.

The following are statements of the need for and reasonableness of the amendments to the existing rules, identified through the section of the existing rule being amended.

9 MCAR § 2.306

This rule relates to hearings conducted when an employer/insurer has discontinued the payment of benefits to an injured employee or when they have petitioned to discontinue the compensation payments. Under the prior law, an employer/insurer could file a notice of discontinuance and cease paying benefits on the date the notice was served and filed with the Commissioner. Also, an employer/insurer could simply petition the Commissioner for a discontinuance. In the initial instance, when an employee objected to the discontinuance, the matter was referred to the Office of Administrative Hearings for assignment to a compensation judge for hearing within 75 days of the receipt of the file in the office. A petition to discontinue was treated in the same fashion.

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Minn. Laws 1983, § 140 (to be codified Minn. Stat. § 176.242) changes the procedure for discontinuances of compensation. Under the statutory changes, when an employer/insurer files a notice of discontinuance, if the employee objects within 10 calendar days, the benefits may not be discontinued until such time as the Commissioner of Labor and Industry has conducted an administrative conference and has ruled that the benefits can be discontinued. In that event, if the employee then files an objection to the discontinuance, the

matter is immediately referred to the Office of Administrative Hearings for assignment to a compensation judge. Following the administrative conference, if the Commissioner rules that the discontinuance is improper, the employer/insurer may file a petition for discontinuance which will be sent to the Office of Administrative Hearings for assignment to a compensation judge for hearing within 75 days.

It is necessary to amend Rule 9 MCAR § 2.306 to conform to the statutory changes. The changes in the rule are made to reflect the fact that the office will now receive cases based on the objection to a decision of the Commissioner or on a petition to discontinue following the Commissioner's decision. The rule is also amended to provide that priority treatment (setting a case within 75 days of receipt of the file) will not be given unless the objection has been filed within 120 days of the notice of discontinuance or following an order of the Commissioner allowing the discontinuance. Finally, language must be added to the rule to indicate that priority status will be given to petitions to discontinue which are filed within 120 days following an order of the Commissioner indicating that the discontinuance should not be allowed.

The purpose in giving priority treatment is to ensure that cases of discontinuance will be heard promptly so that if employees have been wrongly discontinued, their benefits can be reinstated as soon as possible. Over the past two years, this writer has received numerous calls from individuals whose benefits have been discontinued indicating that they are having their cars repossessed, and their houses foreclosed because of inability to pay their bills. Likewise, it is reasonable that an insurance carrier be given a hearing as promptly as possible so that it will not be paying benefits where benefits should not be paid. When an insurer has been making payments which should not be paid, it raises the total cost of the workers' compensation system in the State of Minnesota which has an end result of raising the rates paid by Minnesota employers to insurance carriers for liability insurance. This further raises the costs of doing business in the State of Minnesota which results in higher prices which must be paid for the goods and services provided by the employer, all of which is to the detriment of citizens of the State of Minnesota. Therefore, it is reasonable that priority treatment be given as long as objections or petitions are filed within a reasonable time (120 days) following action of the Commissioner. (The 120-day time frame is not new to these rules.)

9 MCAR § 2.312

This rule relates to the disqualification of a workers' compensation judge. Under the existing rule, compensation judges must withdraw from cases if they feel they are disqualified for any reason. The amendments will not change that provision. However, under the existing rule; if a person files an affidavit of prejudice against a judge, it is not an automatic removal of the judge from the case but, rather, they must show absolute cause for the removal of the judge and a determination as to whether or not the judge would be removed from the case was left with the Chief Hearing Examiner to be determined as a part of the record.

Minn. Laws 1983, Ch. 290, § 144 (to be codified Minn. Stat. § 176.312) specifically now allows the filing of an affidavit of prejudice against a compensation judge, in the same manner as an affidavit of prejudice is filed pursuant to law or rule of District Court. Once filed, the affidavit has the same effect and shall be treated in the same manner as in the courts. In the district courts, an affidavit properly filed results in the automatic removal of the judge to whom the case was assigned.

Based on the foregoing, it is necessary to amend our rule to comply with the statutory mandate. It is reasonable that a party filing an affidavit be required to serve a copy of the affidavit on the opposing party or parties in order that the other parties may have notice of the fact that the assigned trial judge will not be hearing the case. It is reasonable that the original affidavit be filed with the Chief Hearing Examiner for it is the Chief Hearing Examiner's specific responsibility, by statute, to assign or reassign judges to hear workers' compensation cases. It is reasonable that each party be allowed no more than one such filing under a case in order to prohibit "judge shopping", undue delay in the process and to conform to the practice before the district courts of this state. Finally, language must be added to provide that the case will be reassigned immediately upon the filing of the affidavit, with proof of service, with the Chief Hearing Examiner.

9 MCAR § 2.314

This rule, relating to depositions, must be amended in two ways. First of all, the Revisor of Statutes has recommended that the proper citation be given to Minnesota Statutes. Secondly, the substantive change is required as a result of Minn. Laws 1983, § 111, which amends Minn. Stat. § 176.155, subd. 5 (1982). That newly-enacted section of law requires that all medical evidence presented in a workers' compensation case is to be presented by written report only unless a compensation judge makes a written finding that the appearance of the position of health care provider is crucial to the accurate determination of the employee's disability. It also provides the right to cross-examination, by deposition, of the physician or health care provider, but provides that all of these reports and depositions are to be taken and submitted prior to or at the time of the hearing or they will not be considered by the compensation judge. Again, the compensation judge does have the authority to allow submissions following the hearing.

The amendments to this rule simply reference the new statutory section, indicating that the cross-examination of a physician or health care provider prior to the hearing is specifically allowed. It is found that it is crucial to the person reading these rules relating to depositions that they have a total understanding of all such depositions which are allowable and that they be informed of this fact without the necessity of having to read the very lengthy and complex sections of the Minnesota Workers' Compensation law. It is also necessary to paraphrase the statute in order that the persons will have an understanding, by reading the rules, that the cross-examination depositions are to be completed and filed prior to or at the hearing unless otherwise ordered by the judge. The new language merely paraphrases the statute but is crucial to the reader's understanding of the rules of depositions in their entirety.

9 MCAR § 2.317

The amendments to this rule are necessary to conform the rules to the provisions of Minn. Laws 1983, § 111, which were discussed above. It is necessary to spell out a procedure whereby a party may obtain an order from a compensation judge allowing the full testimony either by deposition or in person of a physician or health care provider. It is also necessary to provide a procedure whereby a compensation judge, on his or her own motion, can order the full testimony to be taken.

The new language of the statute indicates that all evidence related to health care must be submitted by written report "as prescribed by the chief hearing examiner". It is therefore necessary to specifically delineate, by rule, the fact that medical evidence must be submitted in a specific format and that it answer the questions necessary to a full determination of the workers' compensation case. Finally, it is necessary that the rules specifically provide the procedures for the exchange of medical reports, prior to the hearing, and the filing at a specific time so that the case can proceed.

It is reasonable that a party requesting that the oral testimony of a physician or health care provider be allowed in full not be required to bring on an oral motion before a compensation judge. Appearing personally before a judge would take time from the judge, would be costly to all parties, and could create delays in all of the workers' compensation system. Therefore, the procedure to make this request, by written motion, is the most reasonable method. It is reasonable that such a motion be filed prior to or at the time of the filing of a pretrial statement because the medical reports required by the statute and by the proposed amendments to these rules required that the reports must be filed with the pretrial statement. Obviously, due process requires an opportunity for persons to object to any motions of this nature and, therefore, a procedure for filing of an objection and the minimum 10 calendar days for the filing of such an objection are provided by the rule. It is reasonable that a judge would wait until the objections are filed before issuing a decision and that, in granting or denying the motion, state the specific reasons for the order so that persons desiring to utilize the granting or denying of the motion as a grounds for appeal will be able to state with specificity the errors alleged.

In some cases, a judge will not know whether the full testimony of a physician or health care provider is necessary until the hearing has started and the judge hears other testimony. It is therefore reasonable to provide a vehicle for a judge, on his or her own motion, to issue an order requiring the full testimony to be presented either in person or by oral deposition. It is also reasonable for the judge to either continue the hearing for the testimony to be taken or to order that the testimony be taken in full by oral deposition. This will prohibit parties from seeking unreasonable delays. it also will lead to an expeditious handling of the case by the judge.

Rather than adopt a form for physician or health care providers to present their medical testimony, which would limit the amount of information provided, it is reasonable to prescribe only a format for the doctors to follow, allowing the doctors to state as much or as little as they deem appropriate in

the medical report. It is reasonable to require that all medical reports contain the data in the order prescribed so that uniformity can be accomplished in the system. A study of other states wherein this process is followed indicates that all doctors have been able to utilize the same format which has been a great aid in the expeditious handling in workers' compensation cases.

It is necessary to add item j. to the rules as a result of changes in the Workers' Compensation Law allowing a compensation judge to apportion the responsibility for the payment of benefits between different injuries. This apportionment can only occur following the testimony of a physician or health care provider. It is also necessary that testimony be presented on apportionment, in order that the judge can determine the respective liabilities when two or more employers are involved. Finally, it is necessary that a doctor give an opinion on the necessity for future medical care or treatment, and a statement of the nature and extent of the treatment so that the judge can made a proper determination on the liability of the employer/insurer to continue compensation payments following the hearing.

9 MCAR § 2.318

Minn. Laws 1983, Ch. 296, § 149, amended Minn. Stat. § 176.371 (1982) by deleting the requirement that compensation judges' decisions contain findings of fact and conclusions of law. The statute now closely tracks the requirements imposed on county and district court judges which is that the judges shall determine all contested issues of fact and law and issue an award or disallowance of compensation following those determinations. It is also required that the judge's decision be issued and filed with the Commissioner within 60 days after the submission of the case, which is when the record in the matter has closed, and if they fail to do so, unless the parties have agreed to an extension of the 60-day time limit or the Chief Hearing Examiner has extended the time, no part of the compensation judge's salary shall be paid. Finally, the statute spells out what is and is not required by a memorandum attached to the decision.

It is necessary to amend 9 MCAR § 2.318 B. and E. to conform to the statutory amendments. Previously, the rule indicated that the compensation judge would issue the decision following the close of the record. It is necessary to amend the rule to conform to the 60-day requirement. Because there is a very substantial penalty to a compensation judge for failure to issue a decision within the 60 days, it is necessary to delineate when a record is considered to be closed which is the date of final submission to the judge. It is reasonable to keep the record in a case open for the submission of all evidence on which the decision must be based but not including any proposed findings submitted by a party which are not actual evidence in the case. A proposed decision is not evidence in a case and, thus, the record should not remain open for receipt of such proposals. It is also reasonable to point out, by rule, the fact that a memorandum is necessary only to delineate the reasons for the decision or discuss the credibility of witnesses, which conforms the rule to the statute. This is necessary because parties will look to this rule for advice when they, themselves, are preparing a proposed decision for a compensation judge, which proposed decision must comply with the rules.

Section D. is amended to conform this rule to the rest of the rules that the proposed decision is submitted without any indication of it being included as part of the record and also so that it cannot be implied that the submission would keep the record open. Finally, because the statute provides for extensions of time for the issuance of the decisions, it is necessary and reasonable to specify a procedure whereby the written consent of the parties will be submitted. As the Chief Hearing Examiner is responsible for enforcement of the law, it is necessary and reasonable that a copy of the written consent be filed with the Chief Hearing Examiner. It is necessary and reasonable that the written consent explain the reasons in order that the office may be able to respond to questions from persons who call wondering why the decisions have not been issued and, if an extension has been granted, what the reasons for the extension given by the parties was. It is also necessary that we be able to compile the information on the reasons for extensions in order that we may properly respond to questions from the Legislature on this issue. It is also reasonable that, if the Chief Hearing Examiner grants an extensions pursuant to the statute, that the extension be in writing and that all parties be informed of the extension and the reasons. Again, the public has a right to know what a state agency is doing and the reasons for it. Further, a question could arise that the extension might be appealable to the courts but without a specific written extension explaining reasons, the party would be foreclosed from obtaining relief from a court.

9 MCAR § 2.320 Ch. 290

Minn. Laws 1983, §§ 156 through 159 amend Minn. Stat. § 176.521 (1982) which relate to settlement of workers' compensation matters. The amendments to the law clarify the fact that certain settlements are not subject to approval by a compensation judge, but rather, if all parties are represented by counsel, they are not subject to approval and the judge is to simply sign an award and issue the decision.

Several of the amendments in this rule are statutory citations which are form changes required by the Revisor of Statutes.

In order to expedite the handling of all stipulations, rather than requiring that a case be given to the judge previously assigned to the case for the signing of the award on stipulation, the rule is amended to provide that any compensation judge may sign the award. We have found that substantial delays result when a judge is on an extended vacation or is conducting hearings away from the office, for the rule required that this particular judge review the case and issue the award. This will give the office flexibility which will result in stipulations for settlement being concluded and final awards issued much faster which will benefit all parties and, especially, the injured employees. The statutory changes also relate to attorneys' fees and now require a filing of a statement of attorneys' fees "on a form prescribed by the Commissioner" (see, Minn. Laws 1983, Ch. 290, § 36. It is therefore necessary to amend the rule to indicate that the form for the statement of attorneys' fees must be that prescribed by the Commissioner of Labor and Industry.

9 MCAR § 2.321

As indicated above, Minn. Laws 1983, §§ 36 through 38 amend Minn. Stat. § 176.081 (1982) which relates to attorneys' fees. Under prior law, all attorneys' fees were subject to review and approval by a compensation judge or the Workers' Compensation Court of Appeals. Compensation judges were limited to approving fees of up to $6,500. Any requests for fees in excess of $6,500 were required to be petitioned to and approved by the Workers' Compensation Court of Appeals. The 1983 amendments delete the requirement for approval of any fees up to $6,500 and, further, requires that petitions for fees in excess of $6,500 are to be submitted to a compensation judge rather than the Court of Appeals. It is therefore necessary and reasonable that the existing rules on applications and petitions for attorneys' fees be repealed where they are in conflict with the statute as in the case of §§ 2.321 A., B. and C. In their place, it is reasonable to cite the readers of the rule to the statutes which are now very specific and which control the issuance of awards on attorneys' fees. It is believed that, for the most part, the statute is sufficiently specific and needs no further specificity in order to be implemented.

The Workers' Compensation Law requires that a retainer agreement be obtained by an attorney and that it be furnished as part of the record in a case. It is therefore reasonable that the rule provides a vehicle for the filing of this retainer agreement along with the Commissioner's prescribed statement of attorneys' fees so that they will be a part of the record.

The statute specifies that parties have 10 days to object following the filing of a statement of attorneys' fees. In order that a final decision by a judge will not be delayed when all parties are in agreement with the attorneys' fees, it is reasonable to provide a procedure whereby parties can agree, on the record, to the statement of attorneys' fees as filed and, in addition, to provide a procedure for the same thing to occur when stipulations for settlements are filed with the compensation judge for approval. To do otherwise would unnecessarily delay the issuance of an award and thereby delay the payment of benefits to injured employees.

The last two paragraphs of § 36 of Minn. Laws 1983, Ch. 290, create some uncertainty with respect to the question of when a compensation judge will apply all of the criteria of Minn. Stat. § 176.081, subd. 5 in approving these. Therefore, it is necessary and reasonable that the law be made specific in order that it may properly implement the legislative intent. It is clear that the intent of the Legislature is that attorneys' fees are not subject to approval by a compensation judge if the amount requested is less than $6,500, unless a specific objection is made. When an objection is made, the judge is directed to § 176.081, subd. 5 in order to clarify and rule on the objection. It cannot be stated that it was the intent of the Legislature than an objection on one issue would trigger all of the provisions of § 176.081, subd. 5, and require approval of all of the fees.

9 MCAR § 2.321 C. clarifies this ambiguity by stating that the compensation judge shall utilize the subdivision 5 criteria only as to those issues specifically raised by the objection.

Dated: June 24th, 1983.

DUANE R. HARVES
Chief Hearing Examiner

In the Matter of the Proposed
Amendments to Procedural Rules
for Workers' Compensation
Hearings.

STATEMENT OF COMPLIANCE
WITH RULEMAKING PROCEDURES

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

J. Michael Miles

Dated: 8/16/83