

Minnesota Attorney General: Administrative Rules Proceedings

Copyright Notice:

This material may be protected by copyright law (U.S. Code, Title 17). Researchers are liable for any infringement. For more information, visit www.mnhs.org/copyright.

Version 3
August 20, 2018

Our File No. 1048

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 7-12-84
DATE FOR REVIEW 7-20-84
DATE DUE 7-26-84

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

Approved July 26, 1984 (DOS) Disapproved ____ Returned to Agency ____

Resubmitted ____ Due ____
Approved ____ Disapproved ____ Returned to Agency ____

Date filed w/Secretary of State 7-30-84 Revisor approved 7.16.84 disapproved ____

✓ Rule as Adopted

____ Rule as Proposed

✓ Order Adopting 7.12.84 Date

✓ Notice of Intent to Solicit Outside Opinion SR. 10.17.83

____ Order for rulemaking
____ date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency

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

✓ Mailing list Certificates

✓ Publication in State Register
4.16.84 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

N/A LCRAR Report or agency Affidavit

____ Certificate of Board's Resolution Adopting Rules

____ Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness contains small biz statement

N/A Petition for Adoption of a Rule

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

✓ Certificate of Compliance w/Rulemaking Procedures

✓ Affidavit of Mailing Notice of Submission to Attorney General

N/A Notice of Submission to the Attorney General

SF-00006-02

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT ATTORNEY GENERAL

TO: STEVE KEEFE, Commissioner
Department of Labor and Industry

DUANE HARVES, Chief Administrative Law Judge, Office of Administrative Hearings

DATE: July 26, 1984

LESLIE M. ALTMAN, Special Assistant Attorney General

PHONE: 297-3493

FROM: LARRY D. STARNS, Special Assistant Attorney General LDS

SUBJECT: Joint Rules of Practice of the Workers' Compensation Division and the Office of Administrative Hearings Governing Workers' Compensation Practice and Procedure.

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.

cc: Ms. Kathy Burek
Mr. Duane Harves

LDS:cb

OB Copy 2nd Draft

Department of Labor and Industry
Worker's Compensation Division and Office of Administrative Hearings

Adopted Joint Rules of Practice of the Workers' Compensation Division and the Office of Administrative Hearings

Rules as Adopted

1415.0100 SCOPE AND PURPOSE.

Parts 1415.0100 to 1415.3500 govern all workers' compensation matters in litigation before settlement judges in the Workers' Compensation Division of the Department of Labor and Industry and compensation judges in the Office of Administrative Hearings under Minnesota Statutes, section 176.305. Parts 1415.0100 to 1415.3500 do not apply to administrative conferences conducted by the division under Minnesota Statutes, sections 176.102, 176.103, 176.135, 176.136, 176.242, and 176.243.

1415.0200 GENERAL AUTHORITY.

Subpart 1. **Assignment or transfer of cases.** The chief hearing examiner has responsibility for the assignment of cases for trial to compensation judges. The chief hearing examiner may transfer to another compensation judge the proceedings on any case in the event of the death, extended absence, or disqualification of the compensation judge to whom it has been assigned, and may otherwise reassign a case if necessary to expedite the proceedings if no oral testimony has been received in the case.

Subp. 2. **Authority of compensation judges.** In any case which has been regularly assigned to a judge for trial, a compensation judge shall have full power, jurisdiction, and authority to hear and determine all issues of fact and law presented except those issues specifically reserved to the commissioner, the department, or the board, panel, or Court of Appeals, by the act. The judge shall issue interlocutory and

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

final orders, findings, decisions, and awards necessary to the full adjudication of a case.

1415.0300 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of parts 1415.0100 to 1415.3500, the following terms have the meanings given them.

Subp. 2. **Act.** "Act" means the Workers' Compensation Act, Minnesota Statutes, chapter 176.

Subp. 3. **Board.** "Board" means the Medical Services Review Board.

Subp. 4. **Calendar judge.** "Calendar judge" means the workers' compensation judge from the Office of Administrative Hearings responsible for hearing motions and other proceedings in cases not yet assigned to a particular compensation judge.

Subp. 5. **Chief hearing examiner.** "Chief hearing examiner" means the chief hearing examiner of the Office of Administrative Hearings.

Subp. 6. **Commissioner.** "Commissioner" means the commissioner of the Department of Labor and Industry.

Subp. 7. **Compensation judge.** "Compensation judge" means a workers' compensation judge from the Office of Administrative Hearings.

Subp. 8. **Court of appeals.** "Court of appeals" means the workers' compensation court of appeals.

Subp. 9. **Division.** "Division" means the Workers' Compensation Division of the Department of Labor and Industry.

Subp. 10. **DVR.** "DVR" means the Division of Vocational Rehabilitation, Department of Economic Security.

Subp. 11. **Fund director.** "Fund director" means the director of the Special Compensation Fund, Workers' Compensation Division, Department of Labor and Industry.

Subp. 12. **Judge.** "Judge" means a calendar or compensation judge from the Office of Administrative Hearings or a settlement judge from the Department of Labor and Industry.

Subp. 13. **Office.** "Office" means the Office of Administrative Hearings.

Subp. 14. **Panel.** "Panel" means the Rehabilitation Review

APPROVED BY THE REVISOR OF STATUTES OFFICE BY:

Panel.

Subp. 15. **Petition.** "Petition" means a claim filed by or on behalf of an injured or deceased employee, employer, insurer, or special compensation fund which initiates a contested workers' compensation case requiring assignment for hearing.

Subp. 16. **Petitioner.** "Petitioner" means the injured employee, an heir or dependent of a deceased employee or a party filing on their behalf, an employer or insurer, or the special compensation fund.

Subp. 17. **Settlement judge.** "Settlement judge" means a workers' compensation judge from the Department of Labor and Industry.

1415.0400 MEDICAL AUTHORIZATIONS.

An employee shall provide the employer and insurer with appropriate signed medical authorizations within ~~15 working~~ 30 calendar days of receipt of a written request for them. A written request for medical authorization must inform the employee of the ~~15-day~~ 30-day requirement. In pending litigation failure to comply with the request for appropriate medical authorizations constitutes grounds for striking the case from the active trial calendar until authorizations are furnished. The employer or insurer may bring a motion to strike the case from the calendar if authorizations have not been furnished and the employer or insurer is unable to adequately defend its case.

1415.0500 LEGAL DOCUMENTS.

Forms and documents used or filed in all workers' compensation proceedings before the division or the office must be on standard size 8-1/2 by 11 inch paper.

Unless otherwise provided by law, requests for action by the division or office after the filing of a petition must contain the caption, the employee's social security number, any appropriate identification numbers of the case, and indicate the type of action requested.

All legal documents filed by an attorney must include the

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

attorney's Minnesota Supreme Court license number.

1415.0600 EXAMINATION OF WORKERS' COMPENSATION FILES.

Persons desiring to examine a file maintained by the division or office shall present a written authorization to inspect the file to designated personnel of the division or office. The authorization must be signed and dated by a party to the claim who is either the employee, the employer, the insurer, a dependent in death cases, or a legal guardian in cases of mental or physical incapacity. The authorization must specify the person or party authorized to review the file. The authorization is placed in and becomes part of the file.

This part does not grant greater access to the files than that given by the Minnesota Data Privacy Act or the Workers' Compensation Act.

1415.0700 SERVICE.

Subpart 1. **Service by state.** The division and the office must serve all notices, findings, orders, decisions, or awards upon the parties ~~or their attorneys or agents of record~~ by first class mail at their addresses of record or by personal service.

If the division or office has received notice that a party is represented by an attorney or authorized agent, documents required to be served on the party must also be served on the attorney or agent.

Subp. 2. **Service by parties.** A party may serve documents by first class mail or by personal service. Service of documents required to be served on a party must also be served on the party's attorney or authorized agent. Filed documents must be accompanied by an affidavit or proof of service in a form acceptable to the district courts.

Subp. 3. **Computation of time.** Computation of time for service is governed by Minnesota Statutes, section 645.15.

1415.0800 NOTICE OF REPRESENTATION.

Subpart 1. **Filing.** When an employee is represented by an attorney, written notice of representation must be filed with the division, or if the case has been certified to the office,

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

with the office.

A. The notice of representation must be signed by the attorney, signed by the employee ~~or~~, dependent, or heir, and include the address and telephone number of the attorney, the attorney's Minnesota Supreme Court license number, the employee's social security number, and the date of the claimed injury or disease. A copy of the fully executed retainer agreement must be attached to the notice of representation filed with the division or office.

B. Copies of the notice must be sent to the employer, the insurer, and other parties, if any.

C. Failure to file the notice and retainer agreement will be considered in determining attorney fees according to Minnesota Statutes, section 176.081, subdivision 5.

Subp. 2. **Substitution of attorney.** If the employee ~~or~~, dependent, or heir is represented by an attorney who may have an undetermined claim for fees and the employee ~~or~~, dependent, or heir subsequently desires to change attorneys, the attorney assuming representation shall file a substitution of attorney and consent form signed by the client, the previous attorney, and the new attorney, together with a copy of the new retainer agreement. The new notice of representation must be filed within 20 calendar days of the signing of a retainer agreement if a claim petition has been filed or if the original notice of representation has been served by the preceding attorney.

Subp. 3. **Appearance without attorney.** If a party is not represented by an attorney at legal proceedings conducted by the division or the office, the presiding official shall advise the party of the right to representation by an attorney and ask if the party wishes to proceed without an attorney.

1415.0900 NOTICE OF CLAIM FOR WORKERS' COMPENSATION BENEFITS.

Subpart 1. **Notice required.** Prior to the filing of a claim petition for workers' compensation benefits, the employee ~~or~~, dependent, or heir or the claimant's attorney shall notify the parties against whom the claim is made, including all

APPROVED BY THE REVISOR OF STATUTES OFFICE BY:

employers and insurers that will be named as parties and the special compensation fund if it will be named as a party, of the claim pursuant to Minnesota Statutes, section 176.271, subdivision 2.

Subp. 2. ~~Form of notice.--The notice of claim must specifically state, if applicable:~~

~~A.--the exact dates of temporary total disability, temporary partial disability, or permanent total disability claimed and the part of the body involved;~~

~~B.--the percentage of permanent partial disability claimed and the part of the body involved;~~

~~C.--the amount of dependency benefits claimed;~~

~~D.--an itemization of penalties claimed;~~

~~E.--an itemization of unpaid medical expenses claimed under Minnesota Statutes, section 176.135; and~~

~~F.--an itemization of other expenses or benefits claimed.~~

~~Subp. 3.~~ Supporting documentation. The employee or, dependent, or heir must attach to the notice of claim, if applicable, all medical reports, medical bills, if available, and other bills supporting the claim.

Subp. ~~4~~ 3. Defective notice. If the division determines that the notice of claim is defective, the employee or, dependent, or heir will be notified of the deficiency. The claim petition is not considered filed until the deficiency is corrected. However, the claim petition will be considered filed absent the correction where compliance with this part would result in the claim being barred by Minnesota Statutes, section 176.151 or other statutes.

1415.1000 COMMENCEMENT OF PROCEEDINGS.

Subpart 1. Commencement of proceedings. All proceedings for adjudication of claims for personal injuries or occupational diseases are instituted by petition addressed to the division, and must be on forms prescribed by the division, containing:

A. the name, address, and social security number of the employee;

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

B. the name and address of each employer at the time an injury or disease is alleged to have occurred;

C. the name of each employer's workers' compensation insurer;

D. the date of each injury or occupational disease claimed;

E. the position held by the employee at the time of the alleged injury or disease;

F. the weekly wage at the time of injury or disease;

G. the nature of the injury or disease;

H. a statement that the injury or disease arose out of and in the course of the employment and that the employer had knowledge or notice of the injury or disease;

I. an itemization of all benefits claimed, including the type of disability and the time period for which coverage is claimed;

J. an itemization of medical benefits claimed;

K. the name, address, and claim or policy number of any third party who has paid medical, disability, welfare, or unemployment benefits, or rehabilitation benefits provided by DVR; and

L. the name, address, telephone number, and Minnesota Supreme Court license number of the ~~employee's~~ petitioner's attorney.

Subp. 2. **Service of petition, filing.** The petitioner shall serve a copy of the petition on each adverse party personally or by first class mail. "Adverse party" includes all employers, insurers, potential intervenors, and the fund director, if the ~~employee~~ employer is uninsured or the special compensation fund is named. The original petition, together with the copy of the notice of claim required by Minnesota Statutes, section 176.271, subdivision 2 and any medical or other supporting documentation not filed with the notice of claim, must be filed with the division with proof of service.

Subp. 3. **Defects in petition.** If the division or office notifies the petitioner or the petitioner's attorney of any

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

defect in the petition, the defect must be corrected and the corrected petition served on the other parties. If the party fails to correct a substantial defect, the claim will be stricken from the active calendar.

Subp. 4. **Amended petitions.** A party may file an amended petition. Amended petitions must be served on the other parties. If a new claim is raised and an adverse party objects to it, the judge shall grant a continuance for the portion of the case involving new issues if the adverse party has insufficient time to prepare for a proceeding before the office or division regarding new issues raised in the amended petition.

1415.1100 NOTICE TO POTENTIAL INTERVENORS.

Subpart 1. **Responsibilities of attorneys.** All attorneys, whether representing employees, employers, or any other parties to a workers' compensation proceeding, shall ask their clients whether a third party, other than the workers' compensation insurer, has paid monetary benefits or treatment expense to the employee or on the employee's behalf. Attorneys shall specifically ask their clients whether the DVR has provided rehabilitation services to the employee.

Subp. 2. **Notice to third parties.** If inquiry discloses that a third party has made a payment, the attorney discovering that fact then has the duty to promptly place the third party on written notice of its right to petition for intervention and reimbursement. The DVR must be given notice if inquiry discloses that the DVR provided rehabilitation services to the employee. The attorney shall attach to the notice a copy of part 1415.1200, a copy of all pleadings in the case, and a copy of all notices and orders served in the case to date. The notice must specifically advise:

A. that the petitioner has commenced a proceeding to recover workers' compensation benefits, and that under Minnesota Statutes, section 176.361 and part 1415.1200 the third party has the right to petition for intervention and reimbursement of payments of monetary benefits, treatment expenses, or rehabilitation services;

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

B. the name and address of parties to the proceeding and the name and address of their attorney;

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

D. that the failure of a third party to comply with part 1415.1200 will result in a denial of the claim for reimbursement unless the judge determines that the error or omission is merely technical.

Subp. 3. **Time to notify.** Attorneys shall comply with this part within 30 days after the filing of an answer, or within 60 days of receipt of a petition if no answer is required. Attorneys shall promptly notify a potential intervenor whose interest arises upon payment made or services rendered after the claim petition or answer was filed.

1415.1200 INTERVENTION.

Subpart 1. **Motion.** A person desiring to intervene in a workers' compensation case as a party shall submit a timely motion to intervene to the compensation or settlement judge to whom the case has been assigned. If the case has not yet been assigned, the motion shall be made to the calendar judge if the case has been certified to the office, or to the division if the case has not been certified to the office.

A. The motion must be served on all parties either personally or by first class mail. A motion to intervene must be served and filed within 60 days after a person has received notice that a petition has been filed as provided in part 1415.1100. An untimely motion is subject to denial under subpart 6. In any other situation, timeliness will be determined by the judge in each case based on circumstances at the time of filing.

B. The motion must show how the moving party's interests may be determined or affected by the case; state the reasons for which intervention is sought; and indicate the moving party's statutory right to intervene. The commissioner may intervene by showing an interest in administering, enforcing, or defending the rule or law which is being

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

challenged in the proceeding. The motion must be accompanied by the following, if applicable:

(1) an itemization of disability payments showing the period during which the payments were or are being made; the weekly or monthly rate of the payments; and the amount of reimbursement claimed;

(2) a summary of the medical or treatment payments, or rehabilitation services provided by DVR, broken down by creditor, showing the total bill submitted, the period of treatment or rehabilitation covered by that bill, the amount of payment on that bill, and to whom the payment was made;

(3) copies of all medical or treatment bills on which some payment was made;

(4) copies of the work sheets or other information stating how the payments on medical or treatment bills were calculated;

(5) a copy of the relevant policy or contract provisions upon which the claim for reimbursement is based;

(6) a proposed order allowing intervention with sufficient copies to serve on all parties;

(7) the name and telephone number of the person representing the intervenor who has authority to reach a settlement of the issues in dispute;

(8) proof of service;

(9) at the option of the intervenor, a proposed stipulation which states that all of the payments for which reimbursement is claimed are related to the injury or condition in dispute in the case and that, if the petitioner is successful in proving the compensability of the claim, it is agreed that the sum be reimbursed to the intervenor; and

(10) if represented by an attorney, the name, address, telephone number, and Minnesota Supreme Court license number of the attorney.

Subp. 2. **Stipulation.** If the person serving the motion for intervention has included a proposed stipulation, all parties shall either execute and return the signed stipulation

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

to the intervenor who must file it with the division or office or serve upon the intervenor and all other parties and file with the division or office specific and detailed objections to any payments made by the intervenor which are not conceded to be correct and related to the injury or condition the petitioner has asserted is compensable. If a party has not returned the signed stipulation or filed objections within 30 days of service of the motion, the intervenor's right to reimbursement for the amount sought is established provided that the petitioner's claim is determined to be compensable.

Subp. 3. **Attendance by intervenor.** Unless a stipulation has been signed and filed or the intervenor's right to reimbursement has otherwise been established, the intervenor shall attend all settlement or pretrial conferences and shall attend the regular hearing if ordered to do so by the compensation judge.

Subp. 4. **Order.** If an objection to intervention remains following settlement or pretrial conferences, the calendar judge shall rule on the intervention and the order is binding on the compensation judge to whom the case is assigned for hearing.

Subp. 5. **Presentation of evidence by intervenor.** Unless a stipulation has been signed and filed or the intervenor's right to reimbursement has otherwise been established, the intervenor shall present evidence in support of the claim at the hearing unless otherwise ordered by the compensation judge.

Subp. 6. **Effects of noncompliance.** Failure to comply with this part will result in a denial of the claim for reimbursement unless the compensation judge determines that the noncompliance is merely technical.

1415.1300 JOINDER OF PARTIES.

Subpart 1. **Motion.** Upon a motion of a party or upon a judge's own motion, a judge may order the joinder of additional parties necessary for the full adjudication of the case.

Subp. 2. **Service.** A party requesting joinder of additional parties shall serve a copy of the motion on all existing parties, and the party to be joined, and file the

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

original with proof of service with the judge no later than the date the pretrial statement is due. The party to be joined must also be served with copies of all pleadings and notice of the date, time, and place set for a settlement or pretrial conference.

Subp. 3. **Late joinder.** When a party requests joinder after the date the pretrial statement was due, the motion must be accompanied by an affidavit of the moving party stating why joinder at a later date should be allowed. The judge shall allow joinder at a later date when the moving party has shown that the party to be joined is a necessary party; that the moving party was unable, through due diligence, to previously ascertain the name of or necessity of joining the party; and that the joinder is necessary for a full and final determination of the rights or liabilities of the parties.

Subp. 4. **Delay.** If joinder is ordered less than ten days before the hearing date, the judge shall continue the matter to allow the parties sufficient preparation time.

If the judge has denied the joinder because of the moving party's failure to meet the time requirements, the case will not be stricken, continued, or otherwise delayed for the purpose of joinder, unless the attorney for the petitioner consents to it.

Subp. 5. **Contents of motion.** All motions for joinder must include:

A. the party to be joined and its insurer, if any;

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

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

D. the supporting medical opinions relied upon, if applicable; and

E. if the party to be joined is the special compensation fund, the detailed circumstances, in affidavit form, showing the specific basis claimed for joinder, including the date of registration of prior impairment or injury where applicable.

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

Subp. 6. Order. The judge shall issue an order granting or denying the joinder.

1415.1400 ANSWER.

Subpart 1. Service, filing. An answer must be served and filed with the division within 20 days after service of the petition unless an extension has been obtained under Minnesota Statutes, section 176.321, subdivision 3. The answer must be accompanied by proof of service upon the petitioner, petitioner's attorney, and other parties to the proceedings.

Subp. 2. Form of answer. The answer must include:

A. specific responses to all material allegations regarding the date and nature of injury, the employment status, notice, wage, relationship of the injury to employment, insurance, benefits paid, medical issues raised, matters in dispute, affirmative defenses, and additional matters deemed necessary by the answering party;

B. medical reports upon which the answer is based, if available;

C. the date, time, and place for a medical examination by the employer's or insurer's doctor. If the medical examination has already taken place, the answer must so state. A request for an extension of time for scheduling the examination will be subject to the approval of the division or a compensation or settlement judge; and

D. the name, address, telephone number, and Minnesota Supreme Court license number of the attorney representing the answering party.

Subp. 3. Failure to answer. If a party fails to answer a petition within the 20-day period, an opposing party may apply for a default award under part 1415.1500.

Subp. 4. Refusal. The division shall not accept an answer which does not comply with subpart 2.

1415.1500 DEFAULT AWARD.

Subpart 1. Filing. If a party against whom an award is sought has failed to answer within the time allowed, the party

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

entitled to an award by default shall serve the other parties and file with the division or the office if the matter has been certified to the office:

A. a notice of motion and motion for default award with proof of service;

B. an affidavit of no appearance and no answer; and

C. an affidavit stating the essential facts.

Subp. 2. **Response to motion.** The defaulting party must respond to the motion within 20 days. If an answer is filed within the 20-day response period, a default will not be awarded unless the employee shows substantial prejudice due to the delay.

Subp. 3. **Hearing, order.** If the judge requires proof of the facts alleged in the claim petition, a hearing on the motion will be scheduled. If a hearing is scheduled, the parties must be served with notice of the hearing at least 20 days before the hearing. The parties may present the issues fully, including the right to introduce evidence and cross-examine adverse witnesses. Whether or not a hearing is held, the judge shall issue an order or award based upon the facts presented.

1415.1600 AWARD ON THE PLEADINGS.

After the answer is filed, a party may move for an award on the pleadings if the hearing will not be delayed because of the motion. If the parties to a proceeding stipulate to an award being entered on the pleadings, the chief hearing examiner shall immediately assign the matter to a compensation judge for determination on the pleadings. If, on a motion for an award on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the court on its own motion shall assign the matter for hearing on those issues on which testimony is necessary.

1415.1700 DISMISSAL.

Subpart 1. **Voluntary dismissal.** If contested matters are resolved by voluntary agreement between the parties, and a stipulation for settlement is not necessary, the parties may request that the petition commencing proceedings be dismissed.

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

Unless otherwise stated in the order of dismissal, the dismissal is without prejudice.

Subp. 2. **Involuntary dismissal.** The judge may, on the judge's own motion or upon motion of a party with notice to the parties, dismiss an action or claim for failure to prosecute; or to substantially comply with this chapter, the act, or an order of a judge~~;-or-any-other-reason-allowable-in-the-district-courts-of-Minnesota~~.

1415.1800 SETTLEMENT CONFERENCE BY DIVISION.

Subpart 1. **Purpose.** A settlement conference is for the primary purpose of assisting the parties in resolving disputes and for the secondary purpose of narrowing the issues and preparing for hearing.

Subp. 2. **Time limits.** Within ten days after a claim petition is filed, the commissioner shall refer the matter to a settlement judge. If the judge determines that a settlement conference is appropriate, the judge shall schedule the settlement conference within 60 days of receipt of the matter from the commissioner. The parties must be notified of the date, time, and place of the settlement conference.

If the judge determines that a settlement conference is not appropriate, the judge shall certify the matter to the chief hearing examiner within 60 days of receipt of the matter from the commissioner. If a settlement conference is held, the judge shall retain jurisdiciton if settlement is reached or upon consent of the parties so long as progress is being made toward a settlement. A party may bring a motion at any time to have the matter certified to the office on the grounds that no progress is being made.

Subp. 3. **Attendance.** All parties, including intervenors unless otherwise excused, shall attend any settlement conference conducted by a judge. A representative of a party shall be prepared to engage in meaningful settlement negotiations and shall have authority to reach a full settlement on the issues in dispute or have immediate access by telephone to a person having authority to reach a full settlement.

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

Subp. 4. **Preconference discussions.** The parties shall discuss the possibility of settlement before a settlement conference if they believe that a reasonable basis for settlement exists.

Subp. 5. **Information provided.** At the settlement conference, the parties shall provide the information required by part 1415.1900, subpart 5.

Subp. 6. **Settlement not reached.** If, following a settlement conference, a settlement has not been reached but the parties have reached an agreement on any facts, legal or medical issues, or level of benefits, the judge presiding over the settlement conference shall, if he or she approves of those matters agreed upon, issue an order confirming and approving those matters agreed upon. The order is binding on the compensation judge who is subsequently assigned to hear the case.

If a settlement is not reached at the settlement conference, the settlement judge shall certify the matter to the chief hearing examiner.

1415.1900 PRETRIAL PROCEDURES.

Subpart 1. **Independent medical evaluation.** If the claim is disputed and the employer and insurer require an independent medical evaluation, it must schedule the evaluation within 30 days of the filing of the claim petition and complete the evaluation within 120 days of the filing of the claim petition.

Subp. 2. **Conference.** All cases are subject to a pretrial conference with a calendar or compensation judge at which all parties shall attend or be represented, unless a calendar or compensation judge orders otherwise. A compensation judge shall order that a pretrial conference be conducted for the purpose of settlement, narrowing of the issues, or trial preparation, if any party requests that one be conducted. The chief hearing examiner or compensation judge may set a pretrial conference on his or her own motion once the matter has been received from the commissioner. If parties are represented by attorneys, the attorneys shall bring with them their appointment calendars. If a party is not represented by an attorney, the party shall

APPROVED IN THE REVISOR OF STATUTES

appear personally and be prepared to set a date for the hearing. Parties or their attorneys attending a pretrial conference shall be prepared to participate in meaningful settlement discussions and must have authority to ~~settle their respective claims~~ reach a full settlement on the issue in dispute or have immediate access by telephone to a person having authority to reach a full settlement.

Subp. 3. **Location, notice of conference.** A pretrial conference must be conducted by telephone if the set location would require a party to travel more than 50 miles to attend, unless the party prefers to be physically present. If a telephone conference is scheduled, the parties not in attendance must be available by telephone at the time of the conference. Written notice of the pretrial conference must be given at least 20 days before the conference.

Subp. 4. **Settlement discussions.** Prior to a pretrial conference, the parties shall discuss the possibility of settlement if they believe a reasonable basis for settlement of all or some of the issues exists. Parties or attorneys appearing at pretrial conferences shall be prepared to participate in meaningful settlement discussions and shall have authority to reach a full settlement on the issues in dispute or have immediate access by telephone to a person having authority to reach a full settlement.

Subp. 5. **Conference procedures.** At the pretrial conference:

A. Parties shall be prepared to state the issues.

B. Parties shall state the names, and addresses, if known, of all witnesses they intend to call.

C. Parties shall give notice of amendments to pleadings that may still be necessary.

D. Parties shall file copies of all medical reports not already on file. Reports of medical examinations completed after settlement or pretrial conferences must be filed as soon as available before the hearing.

E. Each party shall state what exhibits, including

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

photographs, motion picture films, video tapes, and documentary evidence, are intended to be used at the hearing. Copies of these exhibits must be made available to opposing counsel no later than ten days before the hearing. If any party requests showing of motion picture films or video tapes before the hearing, it shall pay the expense for the showing and may tax this expense as a disbursement.

F. If the petitioner plans to introduce hospital records into evidence, the petitioner or petitioner's attorney shall provide written authorizations allowing opposing counsel to examine those records if the authorizations have not previously been provided.

G. If the petitioner is claiming medical or other treatment expenses, the petitioner or the attorney shall state those expenses at the time of the settlement or pretrial conferences, and shall furnish opposing counsel with copies of itemized bills for the expenses at least ten days before the settlement or pretrial conference.

H. If the petitioner is claiming temporary total disability, the petitioner or attorney shall state the dates of time lost from work.

I. If the petitioner is claiming temporary partial disability, the petitioner or attorney shall state the dates of the claim, the approximate amount of the claim, and the names and addresses of the employers for whom the employee worked during the period of the claim. Authorizations to permit opposing counsel to confirm wages earned in those employments must be furnished, if requested, at least ten days before the pretrial conference. An itemized breakdown of the claim for temporary partial disability must be submitted to the compensation judge and opposing counsel at least ten days before the hearing.

J. The parties or their attorneys shall state whether payment of disability benefits, medical treatment, or funeral expenses has been made by a party other than the workers' compensation carrier and whether DVR has provided rehabilitation

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

services. If payment has been made, the name and address of the party making payment must be furnished to the calendar or compensation judge, together with any identifying policy or claim numbers.

K. If a dispute exists on the wage rate at the time of the injury, the attorney for the employer and insurer shall furnish to opposing counsel, at least ten days before the pretrial conference, copies of the relevant wage records of the petitioner.

L. Unless previously filed, the attorney for the petitioner shall give the calendar or compensation judge a copy of the retainer agreement with the petitioner and state the amount of retainer fee paid. ~~The attorney shall be prepared at the time of hearing or settlement to show the reasonableness of any attorney's fees or costs, in accordance with Minnesota Statutes, section 176.081.~~

Subp. 6. **Pretrial statement.** At the time a case is first set for a pretrial conference or before setting the date for a hearing, the calendar or compensation judge may order the parties to file a pretrial statement containing items in subpart 5 which the judge deems appropriate. In determining whether to require a pretrial statement, the judge shall consider the number of parties involved in the case, the nature, and extent of the medical issues, and the nature, extent, and type of disability claimed. When a pretrial statement is ordered, the petitioner shall serve the statement on the other parties and file it within 20 days of the order. The responding parties shall serve and file their statement within 30 days of the order. Thereafter, a petitioner may serve and file an amended pretrial statement based solely on information presented in the responding parties' statements and not on new issues. The amended statement must be filed within 40 days of the order.

In a petition or objection to discontinuance proceeding, each party if so ordered must file a pretrial statement within ten days of the pretrial order. Thereafter, a party may serve and file an amended pretrial statement based solely on

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

information presented in another party's statement and not on new issues. The amended pretrial statement must be filed within 15 days of the pretrial order.

Subp. 7. **Evidence not disclosed at conference.** Evidence, or other matters listed in subpart 5 which have not been disclosed at a settlement or pretrial conference or in a pretrial statement except impeachment or rebuttal witnesses, may not be presented at the hearing unless it is shown to the compensation judge that:

A. the evidence or other matters offered were discovered subsequent to the filing of a pretrial statement or pretrial conference, whichever occurs last;

B. the evidence or other matters offered were not discoverable through the exercise of due diligence before that time; and

C. the other parties have been advised of the evidence or other matters before the hearing and have had an opportunity to review them.

Subp. 8. **Matters agreed upon.** If, following a pretrial conference, a settlement has not been reached but the parties have reached an agreement on any facts, legal or medical issues, or levels of benefits, the judge presiding over the pretrial conference shall, if he or she approves of those matters agreed upon, issue an order confirming and approving those matters agreed upon. Issues once agreed upon and approved may be reopened by the compensation judge only upon motion of a party on the basis of newly discovered evidence which was not reasonably discoverable at the earlier time.

Subp. 9. **Medical, treatment issues.** If the petition includes a claim for medical or other health care treatment or supplies under Minnesota Statutes, section 176.135, the issues will be determined as provided in part 1415.2900, subpart 3, item F. If a claim petition raises medical or health care issues over which a judge has no jurisdiction together with other issues over which the judge does have jurisdiction, the claim petition will be referred first to the office for a

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

determination of the nonmedical issues and then it will be returned to the division for a determination on the medical or health care issues.

1415.2000 SETTLEMENTS.

Subpart 1. **Stipulations.** Stipulations for settlement are allowed under Minnesota Statutes, sections 176.081, subdivision 7a, and 176.521 and must conform to those sections and to the requirements of this part.

Subp. 2. **Filing.** All stipulations for settlement must be filed within 30 days of the date the settlement was negotiated. Stipulations must be filed with the division unless the matter has been certified to the office, in which case the stipulation must be filed with the office.

Subp. 3. **Approval.** Stipulations for settlement are subject to approval by a compensation judge or settlement judge except in cases filed under Minnesota Statutes, section 176.081, subdivision 7a, or where all parties are represented by attorneys and the settlement does not include a final and complete settlement of the employee's right to medical compensation or rehabilitation benefits. If the stipulation includes a final and complete settlement of medical or rehabilitation benefits, those issues are subject to approval by a judge under part 1415.2900, subpart 3, item F.

If a settlement is made under Minnesota Statutes, section 176.081, subdivision 7a, the offer and acceptance when filed, must include findings of fact, conclusions, and an award on all issues, including attorney's fees and costs. It must be filed with the division or the office which must immediately issue the agreed upon award. If approval is not required under Minnesota Statutes, section 176.521, the award shall be immediately signed by the compensation judge or settlement judge, served on all parties, and filed with the commissioner.

Subp. 4. **Contents.** Stipulations for settlement must contain, if applicable:

A. A brief statement of the admitted material facts.

B. A detailed statement of the matters in dispute.

APPROVED BY THE REVISOR OF STATUTES OFFICE BY:

stating the positions of the parties and supported by medical reports or other documents.

C. The weekly wage and compensation rate of the ~~petitioner~~ employee.

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

E. A statement that all medical, rehabilitation, or treatment expenses have been paid by the employer and insurer, or an itemization of the expenses which have not been paid by the employer and insurer, indicating which payments, if any, have been made by insurer, and which payments, if any, have been made by the employee. The stipulation must specifically state whether a third party has paid expenses, monetary benefits, or whether DVR has provided rehabilitation services. If so, the stipulation must list the name and address of the third party, relevant claim or policy numbers, and indicate whether the third party has petitioned to intervene.

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

G. ~~Where applicable,~~ A statement that the employee has been fully advised of the provisions of Minnesota Statutes, sections 176.132 and 176.645, and the effect of the settlement upon any future claims for supplementary benefits or adjustment of benefits.

H. ~~Where applicable,~~ A statement that the petitioner is claiming or waiving the right to make application for an award of attorney's fees against the employer or insurer under Minnesota Statutes, section 176.081, subdivision 7 or 8, 176.135, or 176.191.

I. Where rehabilitation, retraining, or medical benefits are closed out, a statement in which the claims and contentions of the parties are sufficiently specific to provide a basis for the judge's determination that the settlement as a whole is fair, reasonable, and in conformity with the act.

Subp. 5. Attorney's fees detailed. Stipulations for

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

settlement of cases in which the petitioner has engaged the services of an attorney must 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. The statement must provide sufficient information to show the reasonableness of the requested fees and costs under Minnesota Statutes, section 176.081, if approval is required. If no fees are requested, the stipulation must so state.

Subp. 6. **Medical reports.** Stipulations for settlement must be accompanied by copies of all relevant medical reports in the possession of the parties which have not previously been filed.

Subp. 7. **Award.** The parties involved in the settlement must submit an award on stipulation prepared for signature by a judge.

Subp. 8. **Copy to client.** The attorney representing the petitioner shall give a copy of the stipulation for settlement to the client when the client signs the stipulation.

Subp. 9. **Signatures.** Stipulations for settlement shall be signed by all parties as required by Minnesota Statutes, section 176.521.

Subp. 10. **Payment.** The employer and insurer shall make payments under an award on stipulation within 14 days from the date the award on stipulation is filed with the commissioner.

1415.2100 OBJECTIONS TO DISCONTINUANCE AND PETITIONS TO DISCONTINUE COMPENSATION PAYMENTS.

Subpart 1. **Hearing.** When either an objection to discontinuance of compensation payments or a petition to discontinue benefits has been filed and the matter has been referred to the chief hearing examiner, it must be set for hearing on a priority basis not less than 30 days nor more than 75 days from the date of the receipt of the matter from the commissioner.

Subp. 2. **Objection to discontinuance as claim petition.** Any objection filed more than 120 days after service of a notice

APPROVED IN THE REVISOR OF STATUTES

of intention to discontinue, a notice of discontinuance, or an administrative decision of the commissioner allowing the discontinuance, whichever is latest, will be treated as a claim petition for purposes of scheduling a hearing and will not be heard on a priority basis.

Subp. 3. **Petitions for discontinuance after administrative conference.** After an administrative conference on a notice of intention to discontinue, a petition to discontinue under Minnesota Statutes, section 176.242, subdivision 5, filed more than 120 days following the issuance of the commissioner's administrative decision disallowing the discontinuance will not be given priority status for the purpose of scheduling a hearing.

1415.2200 DISCOVERY.

Subpart 1. **Demand.** Each party shall, within 30 days of a demand by another party, unless a shorter time is indicated by this part, disclose or furnish the following:

A. The names and addresses of all known witnesses that a party intends to call at the hearing, including doctors by cross-examination or who will testify by report only. All witnesses unknown at the time of the disclosure must be disclosed within 15 days after they become known if a prior demand has been made.

B. Relevant written or recorded statements made by witnesses on behalf of a party. The demanding party must be permitted to inspect and reproduce such statements at the demanding party's expense. A party unreasonably failing upon demand to make the disclosure required by this part, upon proper motion made to the compensation judge at the hearing, may be foreclosed from presenting evidence at the hearing through witnesses not disclosed or through witnesses whose statements are not disclosed.

C. Medical privilege is waived as to the injuries or conditions alleged in the petition by the filing of the petition alleging injury or occupational disease. Medical authorizations must be furnished within ~~15~~ 30 calendar days of an adverse party's demand. All medical reports must be provided, upon

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

demand to adverse parties. The petitioner shall disclose the names and addresses of all persons who have treated the ~~petitioner~~ employee in the past for injuries or conditions identical or related to those alleged in the petition, the dates of the treatment, and provide medical authorization for each.

Subp. 2. **Depositions.** Under 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 judge orders otherwise.

A. When a party has objected to the taking of a deposition, the party requesting the deposition shall bring a motion before the judge, before whom the case is pending at the time of the motion, who shall determine whether the deposition should proceed. The motion must state, with specificity, the facts or other reasons supporting the need for the deposition. The judge shall order the deposition to proceed if the judge finds that:

(1) the deposition is needed for the proper presentation of a party's case;

(2) the deposition is not for purposes of delay;

(3) unusual or extraordinary circumstances exist which compel extensive discovery; or

(4) the issues or amounts in controversy are significant enough to warrant extensive discovery.

B. Depositions to preserve testimony or to present testimony due to the unavailability of the witness are allowed. The deposition must be taken sufficiently in advance of the hearing so that the deposition is filed before or at the commencement of the hearing, unless, for good cause shown, the party taking the deposition has the permission of the calendar judge or compensation judge to whom the case has been assigned for hearing to take or file the deposition subsequent to the hearing.

C. Under Minnesota Statutes, section 176.155, subdivision 5, the cross-examination of a physician or health

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

care provider before a hearing is specifically allowed. When a deposition for the purpose of cross-examination of a physician or health care provider is taken under this item, redirect examination is allowed. Unless ordered otherwise by a compensation judge, the cross-examination deposition must be completed and the original filed with the office at or before the hearing.

D. The original deposition taken for purposes of presenting testimony in the case must be filed with the office if the matter has been referred to the chief hearing examiner for assignment, or with the division if the matter has not been certified to the chief hearing examiner for hearing. The original deposition taken solely for purposes of discovery must be sealed and filed as in the case of evidentiary depositions but will not be reviewed or used in any fashion by the compensation judge unless the deposition is formally entered as evidence in the case.

E. The party initiating the taking of any deposition, including a cross-examination deposition under Minnesota Statutes, section 176.155, subdivision 5, is responsible for all costs of the deposition, including witness fees and court reporter fees.

Subp. 3. **Motions for additional discovery.** Upon the motion of a party, the judge having jurisdiction at the time of the motion may order discovery of other relevant material or information, recognizing all privileges recognized at law. The judge may order discovery available under the rules of civil procedure for the district courts of Minnesota provided that the discovery:

A. is needed for the proper presentation of a party's case;

B. is not for purposes of delay; and

C. the issues or amounts in controversy are significant enough to warrant extensive discovery.

Subp. 4. **Motion for direct testimony by physician or health care provider.** A motion for full testimony of a

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

physician or health care provider must comply with part 1415.2900, subpart 9~~,-item-C,-subitem-1~~ 3.

Subp. 5. **Penalties.** Upon the failure of a party to reasonably comply with discovery or a judge's order under this part, the following orders of the compensation judge are allowed upon a party's motion:

A. an order that the subject matter of the order for discovery or other relevant facts is established in accordance with the moving party's claim; or

B. an order ~~refusing-to-allow~~ prohibiting the party failing to comply to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence.

Subp. 6. **Proprietary information.** When a party is asked to reveal material which that party considers proprietary information or trade secrets, he or she may bring the matter to the attention of the appropriate judge, who shall make protective orders as are reasonable and necessary or as otherwise provided by law.

Subp. 7. **Employment expert examinations.** If an employee claims that his or her ability to earn has been substantially reduced because of the injury in combination with other factors, the employee must submit to a physical and oral examination by the employer's or insurer's expert, if requested by the employer or insurer. The employee shall provide appropriate authorizations relating to wages and employment to adverse parties, upon demand. Expert reports must be provided, upon demand, to adverse parties. A party who objects to the scope of the requested examination may bring a motion for protection. The motion must be served on the parties and filed with the division, or the office if the matter has been certified to the office. The judge shall issue an order allowed by Rule 26.03 of the rules of civil procedure for the district courts.

1415.2300 TEMPORARY ORDERS.

Subpart 1. Payment of benefits by insurer or self-insurer. If an insurer or self-insurer voluntarily agrees

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

to pay benefits under Minnesota Statutes, section 176.191, subdivision 1, it shall file a formal petition for a temporary order.

A. The petition must contain:

(1) the name of the employer and its insurer or self-insurer consenting to payment;

(2) the dispute involved, including the name and address of any other employer and insurer, if known, that may be liable for workers' compensation benefits and the date of the alleged injury while working for that employer;

(3) the beginning date of the employee's present disability, and the compensation rate that the insurer or self-insurer will pay; and

(4) a statement of whether an intervenor or potential intervenor has paid or is paying the employee or the employee's dependents substitute wage benefits such as group disability benefits, general assistance, or aid to families with dependent children (AFDC).

B. The original petition for a temporary order, with proof of service on necessary parties, must be filed with the division, the office, or the court of appeals, depending upon where the matter is pending.

C. Attorney fees for the employee's attorney must be withheld from the periodic payments made to the employee under the temporary order unless the employee's attorney waives the withholding of attorney fees, or the employee has no attorney.

D. The petition for temporary order must be accompanied by a prepared formal order in substantially the following form:

"I (name) have examined the petition for temporary order and the compensation files and records in this case. It appears that a temporary order for payment of compensation benefits should be issued pending a final determination under Minnesota Statutes, section 176.191, subdivision 1;

NOW, THEREFORE, IT IS ORDERED that (name of insurer or

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

self-insurer), having consented to payment of compensation benefits under Minnesota Statutes, section 176.191, shall pay to (name), the employee, compensation at the weekly rate of $(amount), during the period of the employee's disability, beginning (date) and shall also pay reasonable medical expenses and rehabilitation benefits related to this disability of the employee.

IT IS FURTHER ORDERED that following a final determination of liability and if it has been determined that some other employer or insurer is liable for all or part of the compensation paid pursuant to this temporary order, then the division, the compensation judge, or Court of Appeals shall order the parties held liable to reimburse (name of paying party) for that part of the compensation paid under this temporary order, for which the other parties are held liable, including interest at the rate of 12 percent a year.

Dated at _____, Minnesota
this _____ day of _____.

COMPENSATION JUDGE OR
COURT OF APPEALS

_____

By _____"

The original and enough copies of the order to serve necessary parties and attorneys representing them must be filed.

Subp. 2. **Payment of benefits by special compensation fund.** An employee seeking payment of benefits by the special compensation fund or the fund requesting to pay benefits under Minnesota Statutes, section 176.191, subdivision 2, shall file a formal petition for temporary order with the commissioner.

A. The petition shall contain:

(1) evidence that all parties agree that benefits are payable under the act;

(2) a statement that written demand for payment under Minnesota Statutes, section 176.191, subdivision 1, has been made against all employers and insurers party to the claim

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

and that the payment demand has been refused;

(3) the names and addresses of all employers and insurers or self-insurers who are parties to the claim;

(4) a statement as to the dispute involved and the dates of all alleged injuries while working for each employer;

(5) the beginning date of the employee's present disability, the compensation rate applicable for each injury date, the proposed compensation rate to be paid by the special compensation fund, and an itemization of all medical expenses and rehabilitation benefits requested to be paid under the temporary order;

(6) copies of medical reports supporting the claimed period of disability and the causal relationship of that disability to the petitioner's employment; and

(7) a statement of whether an intervenor or potential intervenor has paid or is paying the employee or the employee's dependents substitute wage benefits such as group disability benefits, general assistance, or aid to families with dependent children (AFDC).

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

C. Attorney fees for the employee's attorney must be withheld from the periodic payments made to the employee under the temporary order unless the employee's attorney waives the withholding of attorney fees or the employee has no attorney.

D. The petition for temporary order must be accompanied by a prepared formal order in substantially the following form:

"I, (name), have examined the petition for temporary order and the compensation files and records in this case. It appears that a temporary order for payment of compensation benefits should be issued pending a final determination, as provided by Minnesota

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

Statutes, section 176.191, subdivision 2;

NOW, THEREFORE, IT IS ORDERED that the State Treasurer, as custodian of the special compensation fund shall, under Minnesota Statutes, section 176.191, subdivision 2, pay to (name), the employee, compensation at the weekly rate of $(amount), during the period of employee's disability beginning (date), and shall also pay reasonable medical expenses and rehabilitation benefits related to this disability of the employee.

IT IS FURTHER ORDERED that following a final determination of liability and if it has been determined that one or more employers or insurers are liable for all or part of the compensation paid pursuant to this temporary order, then the division, the compensation judge, or Court of Appeals shall hold the parties liable to reimburse the State Treasurer, as custodian of the special compensation fund, for that part of the compensation paid under the temporary order, for which the other parties are held liable, including interest at the rate of 12 percent a year.

Dated at _____, Minnesota
this _____ day of _____.

WORKERS' COMPENSATION DIVISION

_____
Commissioner of
Labor and Industry"

The original and enough copies of the order to serve necessary parties and attorneys representing them must be filed.

Subp. 3. **Necessary parties.** For the purpose of this part, the following are necessary parties:

A. the employee ~~or~~, dependent, or heir;

B. insurers or self-insurers named in the petition for temporary order;

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

D. the fund director, if the petition is made under Minnesota Statutes, section 176.191, subdivision 2; and

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

E. intervenors and potential intervenors.

Subp. 4. **Answer.** Within ten days after being served with a copy of the petition for temporary order and proposed order, employers or their insurers, an intervenor, or the fund director may file a verified answer to the petition stating objections to the proposed order.

Subp. 5. **Circumstances of nonapproval of temporary order.** A temporary order will not be approved if made contingent upon the employee's waiver of the right to claim an additional award under Minnesota Statutes, section 176.225, or waiver of the right to have attorney fees assessed against the employer and insurer in addition to compensation under Minnesota Statutes, section 176.081, subdivision 8, or if it would prejudice an intervenor's claim for reimbursement.

Subp. 6. **Effect of filing.** A hearing date will not be assigned upon filing of a petition for temporary order unless it is accompanied by a petition for contribution or reimbursement.

1415.2400 PETITIONS FOR CONTRIBUTION OR REIMBURSEMENT.

Subpart 1. **Contents.** Petitions for contribution or reimbursement in cases pending before the office must describe in detail the basis of the claim for contribution or reimbursement against the additional employer, insurer, or the state treasurer, custodian of the special compensation fund. The petition must be supported by medical evidence, signed, and verified. If a claim petition is currently pending, and the party from whom contribution or reimbursement is sought is not a party, the petition for contribution or reimbursement must be accompanied by either a petition for joinder of the party from whom reimbursement or contribution is sought, or a petition for consolidation under part 1415.2500. The two actions may be combined on a joint petition.

Subp. 2. **Filing.** A petition for contribution or reimbursement must be filed no later than ten days before a pretrial conference or within 20 days of receipt of a pretrial order if a pretrial conference is not automatically set. Copies of all pleadings, including a notice of pretrial conference must

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

be served upon the additional employers or insurers by the party bringing the petition.

Subp. 3. **Answer.** Within 20 days after being served with a copy of a petition for contribution or reimbursement, employers or their insurers, other than the petitioning party, shall file a verified answer to the petition under Minnesota Statutes, section 176.321 and, if not already set for a pretrial conference, the matter may be set for a pretrial conference under part 1415.1900.

1415.2500 CONSOLIDATION.

Subpart 1. **Authorization.** Consolidation of two or more related cases may be ordered for the purpose of receiving evidence. Consolidation may be ordered upon motion by a party to the calendar or compensation judge or upon the calendar or compensation judge's own motion if the judge determines:

A. that separate cases present substantially the same issues of fact and law;

B. that a holding in one case would affect the rights of the parties in the other case; and

C. that the consolidation would not substantially prejudice the rights of any party.

Notwithstanding the requirements of this part, the parties may stipulate to consolidation.

Subp. 2. **Receipt of evidence.** After consolidation, documentary evidence previously received in an individual case must be reintroduced in the consolidated proceedings under a master file if the compensation judge assigned to try the case designates one file as a master file. When so combined, the evidence becomes part of the record of each of the several consolidated cases. Evidence received after the order of consolidation is a part of the record of each case.

Subp. 3. **Notice of order.** Following an order for consolidation, the calendar or compensation judge shall promptly serve the order on the parties. The order must contain:

A. a description of the cases for consolidation;

B. the reasons for consolidation; and

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

C. notification of a consolidated pretrial conference if one has been requested.

Subp. 4. **Objection to consolidation.** A party may object to consolidation or move for severance by filing with the calendar judge or compensation judge, if one is assigned, and serving upon all parties at least seven days before the hearing, a motion for severance from consolidation which includes reasons for the motion.

If the judge finds that justice will be best served by granting severance, the judge shall grant the motion for severance.

Subp. 5. **Service of pleadings and decisions.** Separate pleadings must be filed and separate findings, orders, decisions, and awards will be made and filed in each case consolidated for hearing.

1415.2600 DISQUALIFICATION.

Subpart 1. **By judge.** 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.

Subp. 2. **By a party.** A party or his attorney may file an affidavit of prejudice if the party reasonably believes that a hearing before the assigned judge cannot be fair due to the judge's prejudice or bias. The affidavit must be served on opposing parties and filed with the chief hearing examiner not more than ten days after the filing party has received notice of the assigned judge or has knowledge of the grounds for disqualification, whichever occurs last. Each party is allowed one filing per case under this subpart. Upon filing of the affidavit with proof of service, the chief hearing examiner shall assign the case to another judge.

A party or the party's attorney may file a motion to disqualify a compensation judge for a cause other than or in addition to that described in an affidavit of prejudice. The motion must be supported by an affidavit detailing the facts establishing the grounds for disqualification and filed with the

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

chief hearing examiner not more than ten days after the moving party has received notice of the assigned judge or has knowledge of the grounds for disqualification, whichever occurs last. The motion will be decided by the chief hearing examiner or a designee.

Subp. 3. **Continuances.** Unless required because of the unavailability of a compensation judge to hear the case, no continuance will be granted because of a disqualification under this part. If a continuance is necessary, another hearing will be scheduled as early as possible.

Subp. 4. **Consolidated cases.** Consolidated cases are considered one case under this part.

Subp. 5. **Settlement and pretrial conferences.** This part is not applicable to settlement or pretrial conferences.

1415.2700 SUBPOENAS.

Subpoenas may be obtained without charge from the office or the division. The name, address, and telephone number of the party or attorney requesting service of the subpoena must be included on the subpoena before service is tendered in accordance with Minnesota Statutes, section 357.22.

The settlement or calendar judge, or compensation judge, if the case has been assigned for hearing, shall quash or modify a subpoena upon a party's motion if the judge finds that it is unreasonable or oppressive. The motion must be promptly made, no later than the date specified in the subpoena for compliance.

1415.2800 CONTINUANCES.

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

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

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

Subp. 3. **Motion.** If all parties have not agreed to a continuance, requests for continuances must be made to the compensation or calendar judge before whom the matter is pending. When made more than ten working days before the hearing date, the request must be in writing in the form of a motion for continuance and served on all parties. If less than ten working days remain before the hearing date, notice of the motion must be made orally. A hearing on the motion will be conducted only if ordered by the compensation or calendar judge to whom the motion is made.

Subp. 4. **Good cause.** Good cause does not include:

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

B. when a law firm consists of more than one member who practice in the field of workers' compensation law, and counsel assigned to the case is unavailable because of engagement in another court or otherwise, unless all the counsel are committed elsewhere;

C. unavailability of an individual law practitioner because of engagement in another court, if he has failed to notify the judge in charge of the trial court calendar of that

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

court that he has been assigned to a date and time certain in a workers' compensation case; or

D. unavailability of a medical or other witness if the deposition of the witness could have been taken after receipt of the notice of hearing date and before the hearing.

1415.2900 THE HEARING.

Subpart 1. **Notice.** A place, date, and time certain will be assigned to each case. Written notice of the hearing will be given as soon as the assigned date is known, but must be given at least 30 days in advance of the hearing, except:

A. when notice is waived by the parties;

B. when a different time is expressly agreed to by the parties; or

C. when the notice is governed by contrary law or rule.

The notice must include the place of hearing, the amount of time allowed for the hearing, and the name of the compensation judge assigned, if known. Oral or written notice of the date, time, and place of the hearing given to the parties by a judge at a settlement or pretrial conference is sufficient notice. An attorney who receives notice of the hearing date at the settlement or pretrial conference must notify his or her client. Cases will be set for one location only, that most convenient for the petitioner. Adequate time will be allowed so that the case may be completely heard in one sitting. If an additional hearing date is required, it must be agreed to by all parties and the compensation judge. If the parties cannot agree, the compensation judge shall set the date and time.

Subp. 2. **Availability of witnesses.** As soon as the parties know the hearing date, they shall immediately notify all witnesses in writing and arrange for their presence or for the taking of their deposition under part 1415.2200.

Subp. 3. **Medical evidence.** Rules governing medical evidence are as follows:

A. If a party believes that the oral testimony of a physician or health care provider is crucial to the accurate

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

determination of the employee's disability, the party shall prepare, serve on all other parties, and file with the office a written motion and supporting affidavits, requesting a written finding from a judge on the cruciality of the oral testimony. An affidavit must contain facts sufficient upon which the judge can make a determination; a mere statement that the attorney believes that the testimony is crucial is insufficient without a further factual basis. The motion must be served and filed no later than 25 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 service of the motion. 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.

B. Whether or not a motion has been filed, the judge shall issue an order requiring that the full testimony be presented in person or by oral deposition if the 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.

C. If, during the course of a hearing, or within 25 days before the hearing, a judge determines, on a party's or the judge's motion, 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.

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

(1) the date of the examination;

(2) the history of the injury;

(3) the patient's complaints;

(4) the source of all facts in the history and

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

complaints;

(5) findings on examination;

(6) opinion as to the extent of disability and work limitations, if any;

(7) the cause of the disability and, if applicable, whether the work injury was a substantial contributing factor toward the disability;

(8) the medical treatment indicated;

(9) if permanent 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;

(10) if a permanent partial 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, traumatic injury, or incident, whether or not compensable under Minnesota Statutes, chapter 176; the physician or health care provider shall apportion the disability between the injuries, occurrences, or conditions;

(11) if future medical care or treatment is anticipated, a statement of the nature and extent of treatment recommended and, if possible, the anticipated results;

(12) the reason for each opinion; and

(13) if applicable, a statement that the physician or health care provider has read the rules concerning determination of permanent partial disability, understands them, and has applied those rules in making the determination.

E. Medical reports to be used at the hearing must be served on the parties and filed with the office, with proof of service, sufficiently in advance of the hearing to allow other parties the opportunity to cross-examine the physician or health care provider, if desired, unless 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

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

on a timely basis, or other good cause. If the report is filed too late to allow the cross-examination, the record will be held open to allow other parties to cross-examine the physician or health care provider after the hearing.

F. If the claim petition includes a claim for medical or other health care treatment or supplies under Minnesota Statutes, sections 176.103, 176.135, and 176.136, and the parties agree at or before the hearing to the reasonableness and necessity of the treatment or supplies, the judge shall approve or disapprove the agreement to settle that portion of the claim provided the agreement is placed in the record of the proceeding. If the parties are unable to reach agreement on the issues of medical or other health care treatment or supplies, that portion of the claim must be referred back to the division upon conclusion of the hearing for a determination under Minnesota Statutes, sections 176.103, 176.135, and 176.136. The parties may, however, present medical evidence at the hearing for later use by the division in determining medical issues. A party has the right, even if another party objects, to present medical evidence at the hearing. An intervenor who has paid health care benefits and whose claim remains unsettled is a real party in interest with an independent right to pursue its claim under Minnesota Statutes, section 176.103.

Subp. 4. **Rights of parties.** All parties have the right to present evidence, to cross-examine witnesses, and to present rebuttal testimony.

Subp. 5. **Witnesses.** A party may be a witness and present other witnesses at the hearing. Oral testimony at the hearing must be under oath or affirmation. At the request of a party or upon the judge's motion for good cause, the compensation judge may exclude witnesses <u>other than parties</u> from the hearing room so that they cannot hear the testimony of other witnesses.

Subp. 6. **Rules of evidence.** Rules of evidence are as follows:

A. Except as provided by the act and parts 1415.0100 to 1415.3500 the compensation judge is not bound by the common

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

law, statutory rules of evidence, or technical or formal rules of pleading or procedure.

B. All evidence to be considered in the case, including records and documents in the possession of a party, or an accurate photocopy, must be offered and made a part of the record in the case. An independent investigation by the compensation judge under Minnesota Statutes, section 176.391, subdivision 1, is part of the record if the parties are aware of the investigation and have had an opportunity to participate in it.

C. Documentary evidence in the form of copies of excerpts from books, documents, or records may be received or incorporated by reference upon agreement of the parties or if ordered by the compensation judge.

D. The compensation judge may take administrative notice of general, technical, or scientific facts within the judge's specialized knowledge under Minnesota Statutes, section 14.60, subdivision 4, but shall do so on the record and with the opportunity for any party to contest the facts so noticed.

E. A party may call an adverse party and question, contradict, and impeach the party on material matters in all respects as if they had been called by the other party. The adverse party may be examined by counsel according to the rules of civil procedure for the district courts of Minnesota applicable to direct examination, and may be cross-examined, contradicted, and impeached by any party adversely affected by the testimony. An adverse party includes:

(1) the adverse party's managing agent or employees;

(2) an officer, director, managing agent, or employee of the state, excluding judges, members of the panel or board, mediators, and other employees of the division designated to conduct conferences or hearings; and

(3) an officer, director, managing agent, or employee of:

(a) a political subdivision of the state;

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

(b) a public or private corporation;

(c) a partnership or association; or

(d) a political body.

Subp. 7. **The record.** Record requirements are as follows:

A. The compensation judge shall maintain the official record, other than the stenographic notes of a hearing reporter if one was used, in each case until the issuance of the judge's final order.

B. The record in a compensation case shall contain:

(1) all pleadings, motions, and orders, including the judgment roll, and the entire record from any previous hearing which is relevant to the issues under consideration;

(2) evidence received or considered unless, through agreement of the parties or by order of the compensation judge, custody of an exhibit is given to one of the parties;

(3) those parts of the division's official file on the matter which the compensation judge incorporates;

(4) offers of proof, objections, and the resulting rulings;

(5) the compensation judge's order;

(6) memoranda and data submitted by a party in connection with the case and accepted by the judge;

(7) a transcript of the hearing, if one was prepared; and

(8) the audio-magnetic recording tapes used to record the hearing, if any.

C. The chief hearing examiner shall direct that the verbatim record of a hearing be transcribed if requested by any person. If the record is transcribed by the office, persons who request copies of the transcript must pay a reasonable fee. If transcribed by someone other than the office, the person requesting a transcript must pay the person preparing the transcript a reasonable fee.

D. Charges for transcripts prepared by the office shall be set by the chief hearing examiner, with the approval of the department of finance, and all money received for

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

transcripts prepared by the office are payable to the State Treasurer, Office of Administrative Hearings Account.

E. Under Minnesota Statutes, section 176.421, subdivision 4, clause (3), a party may petition the chief hearing examiner for an order directing that a transcript be prepared, for purposes of appeal to the court of appeals, at no cost to the appellant. A petition filed under this provision must include:

(1) the caption of the case;

(2) case identification numbers;

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

(4) if appellant is an individual, a sworn affidavit from the appellant which must include:

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

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

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

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

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

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

(5) if appellant is a legal entity not an individual, a sworn affidavit from the legal respresentative of the appellant must include:

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

(a) appellant's monthly income from all sources, including income from trust, bonds, and other securities holdings;

(b) a list, at market value, of all stocks, bonds, or other certificates of indebtedness held by appellant;

(c) a statement of the monthly expenses for appellant including salaries, taxes, rent, and insurance;

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

(e) if the appellant owns outright or is purchasing the property in which it is located, a statement showing the market value of the property, the appellant's equity in the property, and the present monthly payments, if any.

Subp. 8. **Continuances during hearing.** If it appears in the interests of justice that further testimony should be received, the compensation judge may continue the hearing to a future date. Oral notice on the record shall be sufficient if given at the time of the original hearing. Otherwise, the notice of the date for the continued hearing must be in writing and served on all parties.

Subp. 9. **Hearing procedure.** The hearing procedure is as follows:

A. The compensation judge shall not communicate, directly or indirectly, with any party concerning issues of fact or law in a pending case, except upon notice and opportunity for all parties to participate. After the first witness is sworn all of the proceedings must be on the record, including motions, objections, offers of proof, rulings of the judge, arguments of the parties, or other comments of the parties, their representative, or the judge. A compensation judge shall not order a court reporter to refrain from recording anything said during the course of a hearing without the consent of the parties present nor shall a compensation judge turn off an audio-magnetic recording device being used to record the proceedings, other than for reasonable breaks, without the consent of the parties present. The judge shall be in complete

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

charge of the hearing. It is the judge's duty to see that the witnesses testify clearly so that the reporter may obtain a clear and transcribable record of all proceedings.

B. Unless the compensation judge determines that the substantial rights of the parties will be ascertained better in some other manner, the hearing will be conducted in the following manner:

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

(2) Stipulations, settlement agreements, or consent orders entered into by the parties before the hearing must be entered into the record.

(3) If the compensation judge requests opening statements, the party with the burden of proof shall proceed first. Other parties shall make opening statements in a sequence determined by the compensation judge.

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

(5) Cross-examination of witnesses will be conducted in a sequence determined by the compensation judge.

(6) When the parties and witnesses have been heard and if the compensation judge believes that legal issues remain unresolved, final arguments may be presented in a sequence determined by the compensation judge. Final argument may, in the discretion of the compensation judge, be in the form of written memoranda or oral argument, or both. The compensation judge shall decide when memoranda must be submitted. Final arguments shall be limited to legal issues only.

(7) After final argument, if any, the hearing will end unless it is continued by the compensation judge. If continued, it must either be continued to a time and day announced at the hearing on the record, or continued to a date

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

to be determined later, with at least 15 days written notice to the parties, including those joined at the hearing.

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

C. These procedures are to be followed in the hearing:

(1) Counsel offering an objection shall briefly state the specific legal grounds for the objection, unless invited by the judge to argue.

(2) Arguments in opposition to, or in support of, objections must be brief.

(3) Before calling a witness to the stand, counsel shall instruct the witness to be responsive to the questions and to wait until the question is completed and a ruling made on an objection before answering. Counsel shall not instruct a witness while on the stand as to the manner of answering questions but may request the court to instruct the witness.

(4) A party calling a witness for whom an interpreter is required shall advise the court in advance of the need for an interpreter.

(5) Persons in the hearing room shall not converse in a disruptive manner, read newspapers, smoke, chew gum, eat food, or drink liquids other than water while the hearing is in session, and counsel shall so instruct parties they represent, witnesses they call, and persons accompanying them.

Subp. 10. **Disruption of hearing.** No television, newsreel, motion picture, still, or other camera, and no mechanical recording devices, other than those provided by the office may be operated in the hearing room during the course of the hearing unless permission is obtained from the compensation judge. Permission is subject to conditions set by the compensation judge to avoid disruption of the hearing.

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

Under Minnesota Statutes, section 624.72, no person may interfere with the free, proper, and lawful access to or egress from the hearing room. No person may interfere or threaten interference with a hearing, or disrupt or threaten disruption of a hearing. In the event of interference or disruption or threat of interference or disruption, the compensation judge shall read this item to those persons causing the interference or disruption and proceed as the judge deems appropriate.

1415.3000 THE COMPENSATION JUDGE'S DECISION.

Subpart 1. **Basis for decision.** The compensation judge shall not consider factual information or evidence which is not a part of the record.

Subp. 2. **Compensation judge's decision.** Within 60 days after the close of the record, the compensation judge shall prepare a decision and serve it on the parties. The compensation judge's decision must include, in the following order:

A. The date and location of the hearing and the compensation judge's name.

B. Appearances by parties, if representing themselves, or their attorneys, giving the full name and mailing address, including zip code, of each.

C. The date the record of the hearing was closed.

D. A notice of the right of parties to appeal and how the appeal can be perfected.

E. A determination of each contested issue of fact or law. In cases involving many 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 its contents.

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

Subp. 3. **Readability.** A decision must be clear, concise, and written in a prose style which can be read and understood by persons of average intelligence. English, rather than Latin terms must be used unless it is necessary to use Latin terms.

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

Subp. 4. **Proposed decision filed by party.** A party may file a proposed decision with the compensation judge. The proposed decision must conform to this part and be served on the other parties. It must be in a form which would allow the compensation judge to sign and issue the decision if it is acceptable. It must also include a brief memorandum explaining the decision on each issue.

Subp. 5. **Decision, extension of time.** If the parties consent to extend the time for issuance of the decision, the written consent must include a statement of the reasons for the extension. It must 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 must be in writing and served on the parties of record.

1415.3100 REHEARING.

When a compensation judge has issued the findings, conclusions, and decision, the judge's jurisdiction over the case ends, except for taxation of disbursements or awarding of attorney's fees, unless the case is referred to the compensation judge by the court of appeals and the chief hearing examiner for supplemental findings, taking of additional testimony, rehearing, or other action. Compensation judges may correct clerical or mathematical errors in decisions any time before appeal.

1415.3200 ATTORNEY FEES.

Subpart 1. **Controlling statute.** Fees for legal services are governed by Minnesota Statutes, section 176.081.

Subp. 2. **Withholding of attorney fees.** Upon receipt of the notice of representation, the employer and insurer may withhold attorney fees on genuinely disputed portions of claims under Minnesota Statutes, section 176.081. Attorney fees must be withheld on genuinely disputed portions of claims if the employee's attorney so requests.

Subp. 3. **Statement of fees, petition for disputed or**

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

excess attorney's fees. The following procedures must be followed in claiming fees:

A. If the claim for attorney fees does not exceed the fees allowed by Minnesota Statutes, section 176.081, subdivision 1, clause (a), the party claiming fees shall file a statement of attorney's fees on a form prescribed by the commissioner, including:

(1) the caption of the case;

(2) the employee's social security number;

(3) the date of injury or disease;

(4) a list of benefits which were genuinely in dispute and which would not have been recovered without the attorney's involvement;

(5) the amount of retainer received from the employee;

(6) the amount the employee advanced for expenses;

(7) the amount the employer and insurer are currently withholding as attorney's fees, if known;

(8) the amount claimed for attorney's fees;

(9) a statement that the attorney is licensed to practice law in the state;

(10) a statement of whether or not an application is being made for attorney fees under Minnesota Statutes, sections 176.081, subdivisions 7 and 8, and 176.191;

(11) a notice that the employee or insurer has ten calendar days to object to the attorney fees requested;

(12) the date the statement was served on the employer and insurer; and

(13) the full address and phone number of the employee's attorney.

The statement must be accompanied by the retainer agreement, if not previously filed, and a copy of the usual billing statement given to the employee. If, at the hearing 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

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

appropriate order without waiting ten calendar days. An oral statement of attorney fees may be presented at the hearing on the record if the case has been tried to a conclusion, no objection is made at the hearing, and a retainer agreement is filed. An oral statement of attorney fees must contain the information in this item.

B. If a party claims fees in excess of the amounts listed in Minnesota Statutes, section 176.081, subdivision 1, clause (a), the party shall file a petition for disputed or excess attorney's fees on a form prescribed by the commissioner, including:

(1) the caption of the case;

(2) the employee's social security number;

(3) the date of the claimed injury or disease;

(4) an exhibit showing specific legal services performed, the date performed, and the time spent;

(5) the number of hours spent in the employee's representation;

(6) a statement of expertise and experience in workers' compensation matters;

(7) a brief description of the factual, medical, and legal issues in dispute;

(8) the nature of proof required in the case;

(9) a list of the benefits which were genuinely in dispute and which would not have been recovered without the attorney's involvement;

(10) the amount of the retainer;

(11) the amount employee advanced for expenses;

(12) the amount claimed in fees;

(13) the amount the employer and insurer is currently withholding, if known;

(14) a list of the disbursements incurred and if the disbursement has been paid, by whom;

(15) a statement that the attorney is licensed to practice law in the state;

(16) a statement of whether or not an application

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

is being made for attorney fees under Minnesota Statutes, sections 176.081, subdivisions 7 and 8, and 176.191;

(17) whether or not a hearing on attorney fees is requested;

(18) the date the statement was served on the employer and insurer; and

(19) the full address and phone number of the employee's attorney.

The petition must be accompanied by a copy of the retainer agreement, if not previously filed, and proof of service.

Subp. 4. **Fees, objection.** If a timely objection to the statement of attorney's fees is filed, the compensation judge or settlement judge shall use Minnesota Statutes, section 176.081, subdivision 5, only as to those issues specifically raised by the objection.

Subp. 5. **Filing.** A statement of attorney's fees or petition for disputed or excess attorney's fees under this part must be filed with the compensation judge assigned to hear the case or a calendar judge if no assignment has been made, or a settlement judge if the matter has not been certified to the office.

Subp. 6. **Settlements.** In cases where an offer or settlement has been made in writing under Minnesota Statutes, section 176.081, subdivision 7a, and the offer has not been accepted, upon receipt of the compensation judge's decision, the following procedure must be followed:

A. The party seeking to impose the sanctions of Minnesota Statutes, section 176.081, subdivision 7a, shall file proof of the offer with the chief hearing examiner and serve the other parties within ten calendar days of the date of the compensation judge's decision. The filing must include an order prepared for signature by the chief hearing examiner amending the compensation judge's decision.

B. A party objecting to the entry of the order shall, within five calendar days of receipt of the proposed order, serve and file an objection, which may be in the form of a

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

letter, stating in detail the reasons why the order should not be signed. A response to the objection, if any, must be filed within five calendar days of the objection.

C. If no objection is received, the chief hearing examiner shall sign, serve, and file the order within ten calendar days of its filing. If an objection has been received, the chief hearing examiner shall rule within ten calendar days after the filing of the objection. Parties do not have a right to a hearing on the objection. The chief hearing examiner's determination must be in writing and is appealable to the court of appeals.

1415.3300 TAXATION OF COSTS AND DISBURSEMENTS.

Subpart 1. **When allowed.** This part applies to costs in cases which have been heard by a compensation judge. Costs associated with cases settled before hearing may be recovered by agreement in a stipulation or retainer agreement.

Subp. 2. **Informal request.** Before submitting a formal request for payment or reimbursement of costs and disbursements, an informal request should be made by the taxing party on the party from whom reimbursement is sought. If agreement cannot be reached on all items, the taxing party may then proceed formally, including in the formal request an indication of those costs agreed upon.

Subp. 3. **Service of formal request.** Service of the request for taxation of costs and disbursements must be made upon the parties, or their attorneys, by the taxing party.

Subp. 4. **Service of objection.** An opposing party has ten working days from the date of service upon him or her in which to serve and file a formal objection to taxation or allowance, with admission or proof of service upon the other parties.

Subp. 5. **Hearing.** If requested, a time for hearing before the compensation judge to whom the matter has been assigned must be fixed. A notice of hearing must be given to the parties by the compensation judge.

1415.3400 OTHER HEARINGS.

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

Under Minnesota Statutes, section 14.50, all hearings not discussed in this chapter but required to be conducted by a compensation judge must be conducted in substantial compliance with this chapter. In a dispute in which an immediate hearing is necessary in order to carry out the purpose and intent of the Minnesota workers' compensation law, the notice of hearing must be given not less than five working days before the hearing. Expedited assignment of judges to these hearings must be in a manner which will allow the compensation judge's decision to be issued immediately upon conclusion of the hearing or as soon after the hearing as is reasonable and practical.

1415.3500 EXHIBITS; REMOVAL AND RETURN.

Subpart 1. **Requests for removal.** All requests for permission to remove an exhibit or document from the official file must be made to the compensation or settlement judge to whom the file has been assigned or to the supervisor of the docket section of either the office or the division.

Subp. 2. **Return without consent or notice.** Upon the expiration of the time in which to appeal, all exhibits or other documentary evidence may be returned to their source of origin without the consent of the parties or notice to them. A copy of the letter of transmittal of the exhibits or documents must remain in the file as part of the record of the case.

Subp. 3. **Request for return.** Upon expiration of the time in which to appeal, exhibits or other documentary evidence must be returned to their source upon the request of the party which produced or introduced the exhibit or evidence at the hearing. A request for return of exhibits or documents must be made in writing to the compensation judge or the division, include the title and appropriate identification number of the case, and identify the exhibits or documents requested. A telephone number of the person making the request must be included with the request.

1415.3600 SEVERABILITY.

If any provision of parts 1415.0100 to 1415.3500 is held to

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

conflict with a governing statute, applicable provisions of the Minnesota Administrative Procedure Act, or other relevant law; to exceed the statutory authority conferred; to lack a reasonable relationship to statutory purposes or to be unconstitutional, arbitrary, or unreasonable; or to be invalid or unenforceable for any other reason; the validity and enforceability of the remaining provisions of the rule shall in no manner be affected.

REPEALER. Minnesota Rules, parts 1410.0100, 1410.0200, 1410.0300, 1410.0400, 1410.0500, 1410.0600, 1410.0700, 1410.0800, 1410.0900, 1410.1000, 1410.1100, 1410.1200, 1410.1300, 1410.1400, 1410.1500, 1410.1600, 1410.1700, 1410.2000, 1410.2100, 1410.2200, 1410.2300, 1410.2400, 1410.2500, 1410.2600, 1410.3000, 1410.3100, 1410.3200, 1410.3300, 1410.3400, 1410.3500, 1410.3600, 1410.3700, 1410.3800, 1410.3900, 1410.4000, 1410.4100, 1410.4200, 1410.4400, 1410.4500, 1410.4600, 1410.4700, 1410.4800, 1410.4900, 1410.5000, 1410.5100, 1410.5200, 1410.5300, 1410.5400, 1410.5500, 1410.5600, 1410.5700, 1410.5800, 1410.5900, 1410.6000, 1410.6100, 1410.6200, 1410.6300, 1410.6400, 1410.6500, 1410.6600, 1410.6700, 1410.6800, 1410.6900, 5220.3100, 5220.3300, 5220.3400, 5220.3500, 5220.3700, 5220.3800, 5220.3900, 5220.4000, 5220.4100, 5220.4200, 5220.4300, 5220.4301, 5220.4302, 5220.4303, 5220.4304, 5220.4305, 5220.4800, 5220.4900, 5220.5100, 5220.5200, 5220.5300, 5220.5400, 5220.5500, 5220.5600, 5220.5700, 5220.6500, 5220.6600, 5220.6700, 5220.6800, 5220.6900, 5220.7000, 5220.7100, and 5220.7200 are repealed.

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

APPROVED AS TO LEGALITY

July 26, 1984

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY _____
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
JUL 30 1984
Joan Anderson Growe
Secretary of State

9:25 A.M.

DEPARTMENT OF LABOR AND INDUSTRY
WORKERS' COMPENSATION DIVISION AND
OFFICE OF ADMINISTRATIVE HEARINGS

NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

In the Matter of the Proposed Adoption of Joint Rules of Practice of the Workers' Compensation Division and the Office of Administrative Hearings Governing Workers' Compensation Practice and Procedure.

Notice is hereby given that the Department of Labor and Industry, Workers' Compensation Division, and the Office of Administrative Hearings propose to adopt the above-captioned rules without a public hearing. The Commissioner and Chief Hearing Examiner have determined that the proposed adoption of these rules will be noncontroversial in nature and have elected to follow the procedures set forth in Minnesota Statutes §§ 14.21 - 14.28 (Supp. 1983).

Persons or groups interested in these rules shall have 30 days to submit comments on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30 day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes §§ 14.13 - 14.20 (Supp. 1983).

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

Steve Keefe, Commissioner
Department of Labor and Industry
5th Floor, Space Center Building
444 Lafayette Road
St. Paul, Minnesota 55101

Authority for the adoption of these rules is contained in Minnesota Statutes §§ 14.51 and 176.83 (i) (Supp. 1983). A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available upon request from the Commissioner at the above address.

Upon adoption of the final rules without a public hearing, all jurisdictional documents, the Statement of Need and Reasonableness, all written comments and requests received, and the final Rules as Adopted will be delivered to the Attorney General for review as to legality and form as it relates to 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 their written requests to the Commissioner at the above address.

The text of the proposed rules follows this notice in the State Register. The rules specify the procedures to be followed in litigating workers' compensation claims before settlement judges in the Workers' Compensation Division and compensation judges in the Office of Administrative Hearings pursuant to Minnesota Statutes § 176.305 (1982). Administrative conferences conducted pursuant to Minnesota Statutes §§ 176.102, 176.103, 176.242, 176.243 (Supp. 1983) are specifically exempt from these rules.

One free copy of the proposed rules may be obtained from the Commissioner at the above address.

STATE OF MINNESOTA

Steve Keefe

Steve Keefe, Commissioner of
the Department of Labor and Industry

Duane R Harves

Duane Harves
Chief Hearing Examiner
Office of Administrative Hearings

Dated: 3/30/84

STATE OF MINNESOTA

DEPARTMENT OF LABOR AND INDUSTRY AND
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Proposed Adoption of Joint Rules of Practice of the Workers' Compensation Division and the Office of Administrative Hearings Governing Workers' Compensation Practice and Procedure

ORDER ADOPTING RULES WITHOUT A PUBLIC HEARING

Notice of the commissioner's and chief administrative law judge's intent to adopt the above-captioned rules without a public hearing was published in the State Register on Monday, April 16, 1984, and was sent by United States mail to all persons on the lists maintained by the agencies pursuant to Minn. Stat. § 14.22 (1982) on April 12, 1984. After affording interested persons and groups 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 the comments, and determining the need for and reasonableness of the above-captioned rules;

NOW, THEREFORE, IT IS ORDERED that the Joint Rules of Practice of the Workers' Compensation Division and the Office of Administrative Hearings Governing Workers' Compensation Practice and Procedure are adopted pursuant to authority vested in us by Minn. Stat. §§ 14.51 and 176.83(i)(Supp. 1983).

STATE OF MINNESOTA

Dated: July 12, 1984

Steve Keefe
STEVE KEEFE
Commissioner
Department of Labor and Industry

Dated: July 12, 1984

Duane R Harves
DUANE R. HARVES
Chief Administrative Law Judge
Office of Administrative Hearings

STATE OF MINNESOTA
DEPARTMENT OF LABOR AND INDUSTRY
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Proposed Adoption of Joint Rules of Practice of the Workers' Compensation Division and the Office of Administrative Hearings Governing Workers' Compensation Practice and Procedure.

ORDER FOR NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING AND FOR PUBLICATION

IT IS ORDERED this 30th day of March, 1984, that a Notice of Intent to Adopt Rules Without a Public Hearing in the above-captioned matter be given to all persons and groups who have requested that their names be placed on the lists maintained by the Department of Labor and Industry and the Office of Administrative Hearings for that purpose pursuant to Minnesota Statutes § 14.22 (Supp. 1983) and be published in the State Register.

STATE OF MINNESOTA

Steve Keefe

Steve Keefe, Commissioner of
the Department of Labor and Industry

Duane R Harves

Duane Harves
Chief Hearing Examiner
Office of Administrative Hearings

STATE OF MINNESOTA)
) ss
COUNTY OF HENNEPIN)

AFFIDAVIT OF MAILING

In the Matter of the Proposed Adoption of Joint Rules of Practice of the Workers' Compensation Division and the Office of Administrative Hearings Governing Workers' Compensation Practice and Procedure.

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

That on the 12th day of April, 1984, at the City of Minneapolis, County of Hennepin, State of Minnesota, she served the attached Notice of Intent to Adopt Rules Without a Public Hearing by depositing in the United States mail at said City of Minneapolis, a true and correct copy thereof, properly enveloped, with first class postage prepaid, to all persons and associations who have requested that their names be placed on file with the Office of Administrative Hearings for the purpose of receiving notice of the proposed adoption of rules by the Workers' Compensation Section.

Dated this 16th day of April, 1984.

Sandra A. Haven
SANDRA A. HAVEN
Office of Administrative Hearings

Subscribed and sworn to before me
this 16th day of April, 1984.

Susan C. Wojcik
Notary Public

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

In the Matter of the Proposed Adoption of Joint Rules of Practice of the Workers' Compensation Division and the Office of Administrative Hearings Governing Workers' Compensation Practice and Procedure

AFFIDAVIT OF MAILING

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Abby Struck, being first duly sworn, deposes and says:

That on the 12th day of April, 1984, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Intent to Adopt Rules Without a Hearing by depositing in the State of Minnesota Central Mail System for United States mailing at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, on all persons and groups who have requested that their names be placed on the list maintained by the Department of Labor and Industry, Workers' Compensation Division for the purpose of receiving notice of the proposed adoption of rules by the Department of Labor and Industry.

Abby Struck
ABBY STRUCK

Subscribed and sworn to before me
this 12 day of April, 1984.

Rosemary L. LaRue

ROSEMARY L. LaRUE
NOTARY PUBLIC - MINNESOTA
RAMSEY COUNTY
My Commission Expires Nov. 11, 1984

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

CERTIFICATE

In the Matter of the Proposed Adoption of Joint Rules of Practice of the Workers' Compensation Division and the Office of Administrative Hearings Governing Workers' Compensation Practice and Procedure

I hereby certify that no persons or groups have requested, pursuant to Minn. Stat. § 14.26 (1982), that their names be placed on lists maintained by the Department of Labor and Industry for the purpose of receiving notice that the above-captioned rules have been submitted to the Attorney General.

Dated: 7/12/84

Jane Brice

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

CERTIFICATE

In the Matter of the Proposed Adoption of Joint Rules of Practice of the Workers' Compensation Division and the Office of Administrative Hearings Governing Workers' Compensation Practice and Procedure

I hereby certify that no persons or groups have requested, pursuant to Minn. Stat. § 14.26 (1982), that their names be placed on lists maintained by the Office of Administrative Hearings for the purpose of receiving notice that the above-captioned rules have been submitted to the Attorney General.

Dated: July 12th, 1984

Duane L. Harner

STATE OF MINNESOTA)
) ss
COUNTY OF HENNEPIN)

CERTIFICATE

In the Matter of the Proposed Adoption of Joint Rules of Practice of the Workers' Compensation Division and the Office of Administrative Hearings Governing Workers' Compensation Practice and Procedure.

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minnesota Statutes § 14.14, subd. 1 (1982), that their names be placed on file with and maintained by the Office of Administrative Hearings for the purpose of receiving notice of the proposed adoption of rules by the Workers' Compensation Section is accurate and complete as of April 12, 1984.

Nancy M Thomas

NANCY M. THOMAS
Workers' Compensation Section
Office of Administrative Hearings

Subscribed and sworn to before me
this 13th day of April, 1984.

Sandra A. Haven

Notary Public

SANDRA A. HAVEN
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES AUGUST 21, 1990

In the Matter of Proposed Adoption of
Joint Rules of Practice of the Workers'
Compensation Division and the Office of
Administrative Hearings Governing Workers'
Compensation Practice and Procedure

CERTIFICATE

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

I hereby certify that the list of interested persons and groups who have requested, pursuant to Minn, Stat. § 14.14, subd 1, 14.22, 14.30 (1982), that their names be placed on the list maintained by the Department of Labor and Industry for the purpose of receiving notice of the proposed adoption of rules by this department is accurate and complete as of 3:00 p.m. this 11th day of April, 1984.

Abby Struck

ABBY STRUCK

Department of Health
Health Systems Division

Notice of Intent to Solicit Outside Opinion Regarding a Proposed Temporary Rule Governing the Relocation of Residents of Nursing Homes and Certified Boarding Care Homes

Notice is hereby given that the Health Systems Division of the Department of Health is seeking information or opinions from sources outside the agency in preparing to promulgate a temporary rule governing the relocation of residents from nursing homes or certified boarding care homes, in accordance with a mandate given by the interagency board pursuant to Laws of 1983, chapter 199, section 5, subdivision 4. The promulgation of this temporary rule is authorized by Laws of 1983, chapter 199, section 16. The temporary rule concerns the relocation of residents from a nursing home or certified boarding care home which is curtailing operations or services or is closing.

The Health Systems Division of the Department of Health requests information and comments concerning this temporary rule. Interested or affected persons or groups may submit written statements of information and comments to:

H. Michael Tripple
Survey and Compliance Section
Minnesota Department of Health
717 Delaware Street Southeast — P.O. Box 9441
Minneapolis, Minnesota 55440
(612) 623-5448

Statements of information and comment will be accepted until the close of the business day on October 28, 1983. Any written material received by that date by the Department of Health shall become part of the record in the event that the temporary rule is promulgated.

Department of Labor and Industry
Workers' Compensation Division

Notice of Intent to Solicit Information and Opinions from Sources Outside of the Agency on Proposed Rules Governing Workers' Compensation Practice and Procedure

Notice is hereby given that the Department of Labor and Industry is seeking information and comments from persons or organizations outside of the agency in preparing to promulgate new rules and amend or repeal existing rules governing Workers' Compensation practice and procedure. Procedural rules governing the formal litigation process will be promulgated jointly with the Office of Administrative Hearings. Other procedural rules will be promulgated as separate rules of the Department of Labor & Industry. Promulgation of these rules is authorized by Minnesota Statutes 176.83.

The Department of Labor & Industry requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit information or comment orally or in writing to Commissioner Steve Keefe, Department of Labor & Industry, 444 Lafayette Road, St. Paul, MN 55101.

Minnesota State Retirement System

Regular Meeting, Board of Directors

A meeting of the Board of Directors, Minnesota State Retirement System, will be held on Friday, October 21, 1983 at 8:30 a.m. in the office of the System, 529 Jackson Street, St. Paul, Minnesota.

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.

Department of Labor and Industry Workers' Compensation Division and Office of Administrative Hearings

Proposed Joint Rules of Practice of the Workers' Compensation Division and the Office of Administrative Hearings

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Department of Labor and Industry, Workers' Compensation Division, and the Office of Administrative Hearings propose to adopt the above-captioned rules without a public hearing. The Commissioner and Chief Hearing Examiner have determined that the proposed adoption of these rules will be noncontroversial in nature and have elected to follow the procedures set forth in Minnesota Statutes §§ 14.21-14.28 (Supp. 1983).

Persons or groups interested in these rules shall have 30 days to submit comments on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30 day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes §§ 14.13-14.20 (Supp. 1983).

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

Steve Keefe, Commissioner
Department of Labor and Industry
5th Floor, Space Center Building
444 Lafayette Road
St. Paul, Minnesota 55101

Authority for the adoption of these rules is contained in Minnesota Statutes §§ 14.51 and 176.83 (i) (Supp. 1983). A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available upon request from the Commissioner at the above address.

Upon adoption of the final rules without a public hearing, all jurisdictional documents, the Statement of Need and Reasonableness, all written comments and requests received, and the final Rules as Adopted will be delivered to the Attorney General for review as to legality and form as it relates to 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 their written requests to the Commissioner at the above address.

The text of the proposed rules follows this notice in the *State Register*. The rules specify the procedures to be followed in litigating workers' compensation claims before settlement judges in the Workers' Compensation Division and compensaton

judges in the Office of Administrative Hearings pursuant to Minnesota Statutes § 176.305 (1982). Administrative conferences conducted pursuant to Minnesota Statutes §§ 176.102, 176.103, 176.242, 176.243 (Supp. 1983) are specifically exempt from these rules.

One free copy of the proposed rules may be obtained from the Commissioner at the above address.

March 30, 1984

Steve Keefe, Commissioner of
the Department of Labor and Industry

Duane Harves
Chief Hearing Examiner
Office of Administrative Hearings

Rules as Proposed (all new material)

1415.0100 SCOPE AND PURPOSE.

Parts 1415.0100 to 1415.3500 govern all workers' compensation matters in litigation before settlement judges in the Workers' Compensation Division of the Department of Labor and Industry and compensation judges in the Office of Administrative Hearings under Minnesota Statutes, section 176.305. Parts 1415.0100 to 1415.3500 do not apply to administrative conferences conducted by the division under Minnesota Statutes, sections 176.102, 176.103, 176.135, 176.136, 176.242, and 176.243.

1415.0200 GENERAL AUTHORITY.

Subpart 1. Assignment or transfer of cases. The chief hearing examiner has responsibility for the assignment of cases for trial to compensation judges. The chief hearing examiner may transfer to another compensation judge the proceedings on any case in the event of the death, extended absence, or disqualification of the compensation judge to whom it has been assigned, and may otherwise reassign a case if necessary to expedite the proceedings if no oral testimony has been received in the case.

Subp. 2. Authority of compensation judges. In any case which has been regularly assigned to a judge for trial, a compensation judge shall have full power, jurisdiction, and authority to hear and determine all issues of fact and law presented except those issues specifically reserved to the commissioner, the department, or the board, panel, or Court of Appeals, by the act. The judge shall issue interlocutory and final orders, findings, decisions, and awards necessary to the full adjudication of a case.

1415.0300 DEFINITIONS.

Subpart 1. Scope. For the purposes of parts 1415.0100 to 1415.3500, the following terms have the meanings given them.

Subp. 2. Act. "Act" means the Workers' Compensation Act, Minnesota Statutes, chapter 176.

Subp. 3. Board. "Board" means the Medical Services Review Board.

Subp. 4. Calendar judge. "Calendar judge" means the workers' compensation judge from the Office of Administrative Hearings responsible for hearing motions and other proceedings in cases not yet assigned to a particular compensation judge.

Subp. 5. Chief hearing examiner. "Chief hearing examiner" means the chief hearing examiner of the Office of Administrative Hearings.

Subp. 6. Commissioner. "Commissioner" means the commissioner of the Department of Labor and Industry.

Subp. 7. Compensation judge. "Compensation judge" means a workers' compensation judge from the Office of Administrative Hearings.

Subp. 8. Court of appeals. "Court of appeals" means the workers' compensation court of appeals.

Subp. 9. Division. "Division" means the Workers' Compensation Division of the Department of Labor and Industry.

Subp. 10. DVR. "DVR" means the Division of Vocational Rehabilitation, Department of Economic Security.

Subp. 11. Fund director. "Fund director" means the director of the Special Compensation Fund, Workers' Compensation Division, Department of Labor and Industry.

Subp. 12. Judge. "Judge" means a calendar or compensation judge from the Office of Administrative Hearings or a settlement judge from the Department of Labor and Industry.

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.

Subp. 13. Office. "Office" means the Office of Administrative Hearings.

Subp. 14. Panel. "Panel" means the Rehabilitation Review Panel.

Subp. 15. Petition. "Petition" means a claim filed by or on behalf of an injured or deceased employee, employer, insurer, or special compensation fund which initiates a contested workers' compensation case requiring assignment for hearing.

Subp. 16. Petitioner. "Petitioner" means the injured employee, an heir or dependent of a deceased employee or a party filing on their behalf, an employer or insurer, or the special compensation fund.

Subp. 17. Settlement judge. "Settlement judge" means a workers' compensation judge from the Department of Labor and Industry.

1415.0400 MEDICAL AUTHORIZATIONS.

An employee shall provide the employer and insurer with appropriate signed medical authorizations within 15 working days of receipt of a written request for them. A written request for medical authorization must inform the employee of the 15-day requirement. In pending litigation failure to comply with the request for appropriate medical authorizations constitutes grounds for striking the case from the active trial calendar until authorizations are furnished. The employer or insurer may bring a motion to strike the case from the calendar if authorizations have not been furnished and the employer or insurer is unable to adequately defend its case.

1415.0500 LEGAL DOCUMENTS.

Forms and documents used or filed in all workers' compensation proceedings before the division or the office must be on standard size 8½ by 11 inch paper.

Unless otherwise provided by law, requests for action by the division or office after the filing of a petition must contain the caption, the employee's social security number, any appropriate identification numbers of the case, and indicate the type of action requested.

All legal documents filed by an attorney must include the attorney's Minnesota Supreme Court license number.

1415.0600 EXAMINATION OF WORKERS' COMPENSATION FILES.

Persons desiring to examine a file maintained by the division or office shall present a written authorization to inspect the file to designated personnel of the division or office. The authorization must be signed and dated by a party to the claim who is either the employee, the employer, the insurer, a dependent in death cases, or a legal guardian in cases of mental or physical incapacity. The authorization must specify the person or party authorized to review the file. The authorization is placed in and becomes part of the file.

This part does not grant greater access to the files than that given by the Minnesota Data Privacy Act or the Workers' Compensation Act.

1415.0700 SERVICE.

Subpart 1. Service by state. The division and the office must serve all notices, findings, orders, decisions, or awards upon the parties or their attorneys or agents of record by first class mail at their addresses of record or by personal service.

Subp. 2. Service by parties. A party may serve documents by first class mail or by personal service. Service of documents required to be served on a party must also be served on the party's attorney or authorized agent. Filed documents must be accompanied by an affidavit or proof of service in a form acceptable to the district courts.

Subp. 3. Computation of time. Computation of time for service is governed byMinnesota Statutes, section 645.15.

1415.0800 NOTICE OF REPRESENTATION.

Subpart 1. Filing. When an employee is represented by an attorney, written notice of representation must be filed with the division, or if the case has been certified to the office, with the office.

A. The notice of representation must be signed by the attorney, signed by the employee or dependent, and include the address and telephone number of the attorney, the attorney's Minnesota Supreme Court license number, the employee's social security number, and the date of the claimed injury or disease. A copy of the fully executed retainer agreement must be attached to the notice of representation filed with the division or office.

B. Copies of the notice must be sent to the employer, the insurer, and other parties, if any.

C. Failure to file the notice and retainer agreement will be considered in determining attorney fees.

Subp. 2. Substitution of attorney. If the employee or dependent is represented by an attorney who may have an undetermined claim for fees and the employee or dependent subsequently desires to change attorneys, the attorney assuming representation shall file a substitution of attorney and consent form signed by the client, the previous attorney, and the new attorney, together

with a copy of the new retainer agreement. The new notice of representation must be filed within 20 calendar days of the signing of a retainer agreement.

Subp. 3. Appearance without attorney. If a party is not represented by an attorney at legal proceedings conducted by the division or the office, the presiding official shall advise the party of the right to representation by an attorney and ask if the party wishes to proceed without an attorney.

1415.0900 NOTICE OF CLAIM FOR WORKERS' COMPENSATION BENEFITS.

Subpart 1. Notice required. Prior to the filing of a claim petition for workers' compensation benefits, the employee or dependent or the claimant's attorney shall notify the parties against whom the claim is made, including all employers and insurers that will be named as parties and the special compensation fund if it will be named as a party, of the claim pursuant to Minnesota Statutes, section 176.271, subdivision 2.

Subp. 2. Form of notice. The notice of claim must specifically state, if applicable:

A. the exact dates of temporary total disability, temporary partial disability, or permanent total disability claimed and the part of the body involved;

B. the percentage of permanent partial disability claimed and the part of the body involved;

C. the amount of dependency benefits claimed;

D. an itemization of penalties claimed;

E. an itemization of unpaid medical expenses claimed under Minnesota Statutes, section 176.135; and

F. an itemization of other expenses or benefits claimed.

Subp. 3. Supporting documentation. The employee or dependent must attach to the notice of claim all medical reports, medical bills, and other bills supporting the claim.

Subp. 4. Defective notice. If the division determines that the notice of claim is defective, the employee or dependent will be notified of the deficiency. The claim petition is not considered filed until the deficiency is corrected. However, the claim petition will be considered filed absent the correction where compliance with this part would result in the claim being barred by Minnesota Statutes, section 176.151 or other statutes.

1415.1000 COMMENCEMENT OF PROCEEDINGS.

Subpart 1. Commencement of proceedings. All proceedings for adjudication of claims for personal injuries or occupational diseases are instituted by petition addressed to the division, and must be on forms prescribed by the division, containing:

A. the name, address, and social security number of the employee;

B. the name and address of each employer at the time an injury or disease is alleged to have occurred;

C. the name of each employer's workers' compensation insurer;

D. the date of each injury or occupational disease claimed;

E. the position held by the employee at the time of the alleged injury or disease;

F. the weekly wage at the time of injury or disease;

G. the nature of the injury or disease;

H. a statement that the injury or disease arose out of and in the course of employment and that the employer had knowledge or notice of the injury or disease;

I. an itemization of all benefits claimed, including the type of disability and the time period for which coverage is claimed;

J. an itemization of medical benefits claimed;

K. the name, address, and claim or policy number of any third party who has paid medical, disability, welfare, or unemployment benefits, or rehabilitation benefits provided by DVR; and

L. the name, address, telephone number, and Minnesota Supreme Court license number of the employee's attorney.

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.

Subpart 2. Service of petition, filing. The petitioner shall serve a copy of the petition on each adverse party personally or by first class mail. "Adverse party" includes all employers, insurers, potential intervenors, and the fund director, if the employee is uninsured or the special compensation fund is named. The original petition, together with the copy of the notice of claim required by Minnesota Statutes, section 176.271, subdivision 2 and any medical or other supporting documentation not filed with the notice of claim, must be filed with the division with proof of service.

Subp. 3. Defects in petition. If the division or office notifies the petitioner or the petitioner's attorney of any defect in the petition, the defect must be corrected and the corrected petition served on the other parties. If the party fails to correct a substantial defect, the claim will be stricken from the active calendar.

Subp. 4. Amended petitions. A party may file an amended petition. Amended petitions must be served on the other parties. If a new claim is raised and an adverse party objects to it, the judge shall grant a continuance for the portion of the case involving new issues if the adverse party has insufficient time to prepare for a proceeding before the office or division regarding new issues raised in the amended petition.

1415.1100 NOTICE TO POTENTIAL INTERVENORS.

Subpart 1. Responsibilities of attorneys. All attorneys, whether representing employees, employers, or any other parties to a workers' compensation proceeding, shall ask their clients whether a third party, other than the workers' compensation insurer, has paid monetary benefits or treatment expense to the employee or on the employee's behalf. Attorneys shall specifically ask their clients whether the DVR has provided rehabilitation services to the employee.

Subp. 2. Notice to third parties. If inquiry discloses that a third party has made a payment, the attorney discovering that fact then has the duty to promptly place the third party on written notice of its right to petition for intervention and reimbursement. The DVR must be given notice if inquiry discloses that the DVR provided rehabilitation services to the employee. The attorney shall attach to the notice a copy of part 1415.1200, a copy of all pleadings in the case, and a copy all notices and orders served in the case to date. The notice must specifically advise:

A. that the petitioner has commenced a proceeding to recover workers' compensation benefits, and that under Minnesota Statutes, section 176.361 and part 1415.1200, the third party has the right to petition for intervention and reimbursement of payments of monetary benefits, treatment expenses, or rehabilitation services;

B. the name and address of parties to the proceeding and the name and address of their attorney;

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

D. that the failure of a third party to comply with part 1415.1200 will result in a denial of the claim for reimbursement unless the judge determines that the error or omission is merely technical.

Subp. 3. Time to notify. Attorneys shall comply with this part within 30 days after the filing of an answer, or within 60 days of receipt of a petition if no answer is required. Attorneys shall promptly notify a potential intervenor whose interest arises upon payment made or services rendered after the claim petition or answer was filed.

1415.1200 INTERVENTION.

Subpart 1. Motion. A person desiring to intervene in a workers' compensation case as a party shall submit a timely motion to intervene to the compensation or settlement judge to whom the case has been assigned. If the case has not yet been assigned, the motion shall be made to the calendar judge if the case has been certified to the office, or to the division if the case has not been certified to the office.

A. The motion must be served on all parties either personally or by first class mail. A motion to intervene must be served and filed within 60 days after a person has received notice that a petition has been filed as provided in part 1415.1100. An untimely motion is subject to denial under subpart 6. In any other situation, timeliness will be determined by the judge in each case based on circumstances at the time of filing.

B. The motion must show how the moving party's interests may be determined or affected by the case; state the reasons for which intervention is sought; and indicate the moving party's statutory right to intervene. The commissioner may intervene by showing an interest in administering, enforcing, or defending the rule or law which is being challenged in the proceeding. The motion must be accompanied by the following, if applicable:

(1) an itemization of disability payments showing the period during which the payments were or are being made; the weekly or monthly rate of the payments; and the amount of reimbursement claimed;

(2) a summary of the medical or treatment payments, or rehabilitation services provided by DVR, broken down by creditor, showing the total bill submitted, the period of treatment or rehabilitation covered by that bill, the amount of payment on that bill, and to whom the payment was made;

(3) copies of all medical or treatment bills on which some payment was made;

(4) copies of the work sheets or other information stating how the payments on medical or treatment bills were calculated;

(5) a copy of the relevant policy or contract provisions upon which the claim for reimbursement is based;

(6) a proposed order allowing intervention with sufficient copies to serve on all parties;

(7) the name and telephone number of the person representing the intervenor who has authority to reach a settlement of the issues in dispute;

(8) proof of service;

(9) at the option of the intervenor, a proposed stipulation which states that all of the payments for which reimbursement is claimed are related to the injury or condition in dispute in the case and that, if the petitioner is successful in proving the compensability of the claim, it is agreed that the sum be reimbursed to the intervenor; and

(10) if represented by an attorney, the name, address, telephone number, and Minnesota Supreme Court license number of the attorney.

Subp. 2. Stipulation. If the person serving the motion for intervention has included a proposed stipulation, all parties shall either execute and return the signed stipulation to the intervenor who must file it with the division or office or serve upon the intervenor and all other parties and file with the division or office specific and detailed objections to any payments made by the intervenor which are not conceded to be correct and related to the injury or condition the petitioner has asserted is compensable. If a party has not returned the signed stipulation or filed objections within 30 days of service of the motion, the intervenor's right to reimbursement for the amount sought is established provided that the petitioner's claim is determined to be compensable.

Subp. 3. Attendance by intervenor. Unless a stipulation has been signed and filed or the intervenor's right to reimbursement has otherwise been established, the intervenor shall attend all settlement or pretrial conferences and shall attend the regular hearing if ordered to do so by the compensation judge.

Subp. 4. Order. If an objection to intervention remains following settlement or pretrial conferences, the calendar judge shall rule on the intervention and the order is binding on the compensation judge to whom the case is assigned for hearing.

Subp. 5. Presentation of evidence by intervenor. Unless a stipulation has been signed and filed or the intervenor's right to reimbursement has otherwise been established, the intervenor shall present evidence in support of the claim at the hearing unless otherwise ordered by the compensation judge.

Subp. 6. Effects of noncompliance. Failure to comply with this part will result in a denial of the claim for reimbursement unless the compensation judge determines that the noncompliance is merely technical.

1415.1300 JOINDER OF PARTIES.

Subpart 1. Motion. Upon a motion of a party or upon a judge's own motion, a judge may order the joinder of additional parties necessary for the full adjudication of the case.

Subp. 2. Service. A party requesting joinder of additional parties shall serve a copy of the motion on all existing parties, and the party to be joined, and file the original with proof of service with the judge no later than the date the pretrial statement is due. The party to be joined must also be served with copies of all pleadings and notice of the date, time, and place set for a settlement or pretrial conference.

Subp. 3. Late joinder. When a party requests joinder after the date the pretrial statement was due, the motion must be accompanied by an affidavit of the moving party stating why joinder at a later date should be allowed. The judge shall allow joinder at a later date when the moving party has shown that the party to be joined is a necessary party; that the moving party was unable, through due diligence, to previously ascertain the name of or necessity of joining the party; and that the joinder is necessary for a full and final determination of the rights or liabilities of the parties.

Subp. 4. Delay. If joinder is ordered less than ten days before the hearing date, the judge shall continue the matter to allow the parties sufficient preparation time.

If the judge has denied the joinder because of the moving party's failure to meet the time requirements, the case will not be stricken, continued, or otherwise delayed for the purpose of joinder, unless the attorney for the petitioner consents to it.

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.

Subp. 5. Contents of motion. All motions for joinder must include:

A. the party to be joined and its insurer, if any;

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

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

D. the supporting medical opinions relied upon, if applicable; and

E. if the party to be joined is the special compensation fund, the detailed circumstances, in affidavit form, showing the specific basis claimed for joinder, including the date of registration of prior impairment or injury where applicable.

Subp. 6. Order. The judge shall issue an order granting or denying the joinder.

1415.1400 ANSWER.

Subpart 1. Service, filing. An answer must be served and filed with the division within 20 days after service of the petition unless an extension has been obtained under Minnesota Statutes, section 176.321, subdivision 3. The answer must be accompanied by proof of service upon the petitioner, petitioner's attorney, and other parties to the proceedings.

Subp. 2. Form of answer. The answer must include:

A. specific responses to all material allegations regarding the date and nature of injury, the employment status, notice, wage, relationship of the injury to employment, insurance, benefits paid, medical issues raised, matters in dispute, affirmative defenses, and additional matters deemed necessary by the answering party;

B. medical reports upon which the answer is based, if available;

C. the date, time, and place for a medical examination by the employer's or insurer's doctor. If the medical examination has already taken place, the answer must so state. A request for an extension of time for scheduling the examination will be subject to the approval of the division or a compensation or settlement judge; and

D. the name, address, telephone number, and Minnesota Supreme Court license number of the attorney representing the answering party.

Subp. 3. Failure to answer. If a party fails to answer a petition within the 20-day period, an opposing party may apply for a default award under part 1415.1500.

Subp. 4. Refusal. The division shall not accept an answer which does not comply with subpart 2.

1415.1500 DEFAULT AWARD.

Subpart 1. Filing. If a party against whom an award is sought has failed to answer within the time allowed, the party entitled to an award by default shall serve the other parties and file with the division or the office if the matter has been certified to the office:

A. a notice of motion and motion for default award with proof of service;

B. an affidavit of no appearance and no answer; and

C. an affidavit stating the essential facts.

Subp. 2. Response to motion. The defaulting party must respond to the motion within 20 days. If an answer is filed within the 20-day response period, a default will not be awarded unless the employee shows substantial prejudice due to the delay.

Subp. 3. Hearing, order. If the judge requires proof of the facts alleged in the claim petition, a hearing on the motion will be scheduled. If a hearing is scheduled, the parties must be served with notice of the hearing at least 20 days before the hearing. The parties may present the issues fully, including the right to introduce evidence and cross-examine adverse witnesses. Whether or not a hearing is held, the judge shall issue an order or award based upon the facts presented.

1415.1600 AWARD ON THE PLEADINGS.

After the answer is filed, a party may move for an award on the pleadings if the hearing will not be delayed because of the motion. If the parties to a proceeding stipulate to an award being entered on the pleadings, the chief hearing examiner shall immediately assign the matter to a compensation judge for determination on the pleadings. If, on a motion for an award on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the court on its own motion shall assign the matter for hearing on those issues on which testimony is necessary.

1415.1700 DISMISSAL.

Subpart 1. Voluntary dismissal. If contested matters are resolved by voluntary agreement between the parties, and a stipulation for settlement is not necessary, the parties may request that the petition commencing proceedings be dismissed. Unless otherwise stated in the order of dismissal, the dismissal is without prejudice.

Subp. 2. Involuntary dismissal. The judge may, on the judge's own motion or upon motion of a party with notice to the parties, dismiss an action or claim for failure to prosecute; or to substantially comply with this chapter, the act, or an order of a judge; or any other reason allowable in the district courts of Minnesota.

1415.1800 SETTLEMENT CONFERENCE BY DIVISION.

Subpart 1. Purpose. A settlement conference is for the primary purpose of assisting the parties in resolving disputes and for the secondary purpose of narrowing the issues and preparing for hearing.

Subp. 2. Time limits. Within ten days after a claim petition is filed, the commissioner shall refer the matter to a settlement judge. If the judge determines that a settlement conference is appropriate, the judge shall schedule the settlement conference within 60 days of receipt of the matter from the commissioner. The parties must be notified of the date, time, and place of the settlement conference.

If the judge determines that a settlement conference is not appropriate, the judge shall certify the matter to the chief hearing examiner within 60 days of receipt of the matter from the commissioner. If a settlement conference is held, the judge shall retain jurisdiction if settlement is reached or upon consent of the parties so long as progress is being made toward a settlement. A party may bring a motion at any time to have the matter certified to the office on the grounds that no progress is being made.

Subp. 3. Attendance. All parties, including intervenors unless otherwise excused, shall attend any settlement conference conducted by a judge. A representative of a party shall be prepared to engage in meaningful settlement negotiations and shall have authority to reach a full settlement on the issues in dispute or have immediate access by telephone to a person having authority to reach a full settlement.

Subp. 4. Preconference discussions. The parties shall discuss the possibility of settlement before a settlement conference if they believe that a reasonable basis for settlement exists.

Subp. 5. Information provided. At the settlement conference, the parties shall provide the information required by part 1415.1900, subpart 5.

Subp. 6. Settlement not reached. If, following a settlement conference, a settlement has not been reached but the parties have reached an agreement on any facts, legal or medical issues, or level of benefits, the judge presiding over the settlement conference shall, if he or she approves of those matters agreed upon, issue an order confirming and approving those matters agreed upon. The order is binding on the compensation judge who is subsequently assigned to hear the case.

If a settlement is not reached at the settlement conference, the settlement judge shall certify the matter to the chief hearing examiner.

1415.1900 PRETRIAL PROCEDURES.

Subpart 1. Independent medical evaluation. If the claim is disputed and the employer and insurer require an independent medical evaluation, it must schedule the evaluation within 30 days of the filing of the claim petition and complete the evaluation within 120 days of the filing of the claim petition.

Subp. 2. Conference. All cases are subject to a pretrial conference with a calendar or compensation judge at which all parties shall attend or be represented, unless a calendar or compensation judge orders otherwise. A compensation judge shall order that a pretrial conference be conducted for the purpose of settlement, narrowing of the issues, or trial preparation, if any party requests that one be conducted. The chief hearing examiner or compensation judge may set a pretrial conference on his or her own motion once the matter has been received from the commissioner. If parties are represented by attorneys, the attorneys shall bring with them their appointment calendars. If a party is not represented by an attorney, the party shall appear personally and be prepared to set a date for the hearing. Parties or their attorneys attending a pretrial conference must have authority to settle their respective claims.

Subp. 3. Location, notice of conference. A pretrial conference must be conducted by telephone if the set location would require a party to travel more than 50 miles to attend, unless the party prefers to be physically present. If a telephone conference is scheduled, the parties not in attendance must be available by telephone at the time of the conference. Written notice of the pretrial conference must be given at least 20 days before the conference.

Subp. 4. Settlement discussions. Prior to a pretrial conference, the parties shall discuss the possibility of settlement if they believe a reasonable basis for settlement of all or some of the issues exists. Parties or attorneys appearing at pretrial conferences

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.

shall be prepared to participate in meaningful settlement discussions and shall have authority to reach a full settlement on the issues in dispute or have immediate access by telephone to a person having authority to reach a full settlement.

Subp. 5. Conference procedures. At the pretrial conference:

A. Parties shall be prepared to state the issues.

B. Parties shall state the names, and addresses, if known, of all witnesses they intend to call.

C. Parties shall give notice of amendments to pleadings that may still be necessary.

D. Parties shall file copies of all medical reports not already on file. Reports of medical examinations completed after settlement or pretrial conferences must be filed as soon as available before the hearing.

E. Each party shall state what exhibits, including photographs, motion picture films, video tapes, and documentary evidence, are intended to be used at the hearing. Copies of these exhibits must be made available to opposing counsel no later than ten days before the hearing. If any party requests showing of motion picture films or video tapes before the hearing, it shall pay the expense for the showing and may tax this expense as a disbursement.

F. If the petitioner plans to introduce hospital records into evidence, the petitioner or petitioner's attorney shall provide written authorizations allowing opposing counsel to examine those records if the authorizations have not previously been provided.

G. If the petitioner is claiming medical or other treatment expenses, the petitioner or the attorney shall state those expenses at the time of the settlement or pretrial conferences, and shall furnish opposing counsel with copies of itemized bills for the expenses at least ten days before the settlement or pretrial conference.

H. If the petitioner is claiming temporary total disability, the petitioner or attorney shall state the dates of time lost from work.

I. If the petitioner is claiming temporary partial disability, the petitioner or attorney shall state the dates of the claim, the approximate amount of the claim, and the names and addresses of the employers for whom the employee worked during the period of the claim. Authorizations to permit opposing counsel to confirm wages earned in those employments must be furnished, if requested, at least ten days before the pretrial conference. An itemized breakdown of the claim for temporary partial disability must be submitted to the compensation judge and opposing counsel at least ten days before the hearing.

J. The parties or their attorneys shall state whether payment of disability benefits, medical treatment, or funeral expenses has been made by a party other than the workers' compensation carrier and whether DVR has provided rehabilitation services. If payment has been made, the name and address of the party making payment must be furnished to the calendar or compensation judge, together with any identifying policy or claim numbers.

K. If a dispute exists on the wage rate at the time of the injury, the attorney for the employer and insurer shall furnish to opposing counsel, at least ten days before the pretrial conference, copies of the relevant wage records of the petitioner.

L. The attorney for the petitioner shall give the calendar or compensation judge a copy of the retainer agreement with the petitioner and state the amount of retainer fee paid. The attorney shall be prepared at the time of hearing or settlement to show the reasonableness of any attorney's fees or costs, in accordance with Minnesota Statutes, section 176.081.

Subp. 6. Pretrial statement. At the time a case is first set for a pretrial conference or before setting the date for a hearing, the calendar or compensation judge may order the parties to file a pretrial statement containing items in subpart 5 which the judge deems appropriate. In determining whether to require a pretrial statement, the judge shall consider the number of parties involved in the case, the nature, and extent of the medical issues, and the nature, extent, and type of disability claimed. When a pretrial statement is ordered, the petitioner shall serve the statement on the other parties and file it within 20 days of the order. The responding parties shall serve and file their statement within 30 days of the order. Thereafter, a petitioner may serve and file an amended pretrial statement based solely on information presented in the responding parties' statements and not on new issues. The amended statement must be filed within 40 days of the order.

In a petition or objection to discontinuance proceeding, each party if so ordered must file a pretrial statement within ten days of the pretrial order. Thereafter, a party may serve and file an amended pretrial statement based solely on information presented in another party's statement and not on new issues. The amended pretrial statement must be filed within 15 days of the pretrial order.

Subp. 7. Evidence not disclosed at conference. Evidence, or other matters listed in subpart 5 which have not been disclosed at a settlement or pretrial conference or in a pretrial statement except impeachment or rebuttal witnesses, may not be presented at the hearing unless it is shown to the compensation judge that:

A. the evidence or other matters offered were discovered subsequent to the filing of a pretrial statement or pretrial evidence, whichever occurs last;

B. the evidence or other matters offered were not discoverable through the exercise of due diligence before that time; and

C. the other parties have been advised of the evidence or other matters before the hearing and have had an opportunity to review them.

Subp. 8. Matters agreed upon. If, following a pretrial conference, a settlement has not been reached but the parties have reached an agreement on any facts, legal or medical issues, or levels of benefits, the judge presiding over the pretrial conference shall, if he or she approves of those matters agreed upon, issue an order confirming and approving those matters agreed upon. Issues once agreed upon and approved may be reopened by the compensation judge only upon motion of a party on the basis of newly discovered evidence which was not reasonably discoverable at the earlier time.

Subp. 9. Medical, treatment issues. If the petition includes a claim for medical or other health care treatment or supplies under Minnesota Statutes, section 176.135, the issues will be determined as provided in part 1415.2900, subpart 3, item F. If a claim petition raises medical or health care issues over which a judge has no jurisdiction together with other issues over which the judge does have jurisdiction, the claim petition will be referred first to the office for a determination of the nonmedical issues and then it will be returned to the division for a determination on the medical or health care issues.

1415.2000 SETTLEMENTS.

Subpart 1. Stipulations. Stipulations for settlement are allowed under Minnesota Statutes, sections 176.081, subdivision 7a, and 176.521 and must conform to those sections and to the requirements of this part.

Subp. 2. Filing. All stipulations for settlement must be filed within 30 days of the date the settlement was negotiated. Stipulations must be filed with the division unless the matter has been certified to the office, in which case the stipulation must be filed with the office.

Subp. 3. Approval. Stipulations for settlement are subject to approval by a compensation judge or settlement judge except in cases filed under Minnesota Statutes, section 176.081, subdivision 7a, or where all parties are represented by attorneys and the settlement does not include a final and complete settlement of the employee's right to medical compensation or rehabilitation benefits. If the stipulation includes a final and complete settlement of medical or rehabilitation benefits, those issues are subject to approval by a judge under part 1415.2900, subpart 3, item F.

If a settlement is made under Minnesota Statutes, section 176.081, subdivision 7a, the offer and acceptance when filed, must include findings of fact, conclusions, and an award on all issues, including attorney's fees and costs. It must be filed with the division or the office which must immediately issue the agreed upon award. If approval is not required under Minnesota Statutes, section 176.521, the award shall be immediately signed by the compensation judge or settlement judge, served on all parties, and filed with the commissioner.

Subp. 4. Contents. Stipulations for settlement must contain:

A. A brief statement of the admitted material facts.

B. A detailed statement of the matters in dispute, stating the positions of the parties and supported by medical reports or other documents.

C. The weekly wage and compensation rate of the petitioner.

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

E. A statement that all medical, rehabilitation, or treatment expenses have been paid by the employer and insurer, or an itemization of the expenses which have not been paid by the employer and insurer, indicating which payments, if any, have been made by insurer, and which payments, if any, have been made by the employee. The stipulation must specifically state whether a third party has paid expenses, monetary benefits, or whether DVR has provided rehabilitation services. If so, the stipulation must list the name and address of the third party, relevant claim or policy numbers, and indicate whether the third party has petitioned to intervene.

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

G. Where applicable, a statement that the employee has been fully advised of the provisions of Minnesota Statutes,

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.

sections 176.132 and 176.645, and the effect of the settlement upon any future claims for supplementary benefits or adjustment of benefits.

H. Where applicable, a statement that the petitioner is claiming or waiving the right to make application for an award of attorney's fees against the employer or insurer under Minnesota Statutes, section 176.081, subdivision 7 or 8, 176.135, or 176.191.

I. Where rehabilitation, retraining, or medical benefits are closed out, a statement in which the claims and contentions of the parties are sufficiently specific to provide a basis for the judge's determination that the settlement is fair, reasonable, and in conformity with the act.

Subp. 5. Attorney's fees detailed. Stipulations for settlement of cases in which the petitioner has engaged the services of an attorney must 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. The statement must provide sufficient information to show the reasonableness of the requested fees and costs under Minnesota Statutes, section 176.081, if approval is required. If no fees are requested, the stipulation must so state.

Subp. 6. Medical reports. Stipulations for settlement must be accompanied by copies of all relevant medical reports in the possession of the parties which have not previously been filed.

Subp. 7. Award. The parties involved in the settlement must submit an award on stipulation prepared for signature by a judge.

Subp. 8. Copy to client. The attorney representing the petitioner shall give a copy of the stipulation for settlement to the client when the client signs the stipulation.

Subp. 9. Signatures. Stipulations for settlement shall be signed by all parties as required by Minnesota Statutes, section 176.521.

Subp. 10. Payment. The employer and insurer shall make payments under an award on stipulation within 14 days from the date the award on stipulation is filed with the commissioner.

1415.2100 OBJECTIONS TO DISCONTINUANCE AND PETITIONS TO DISCONTINUE COMPENSATION PAYMENTS.

Subpart 1. Hearing. When either an objection to discontinuance of compensation payments or a petition to discontinue benefits has been filed and the matter has been referred to the chief hearing examiner, it must be set for hearing on a priority basis not less than 30 days nor more than 75 days from the date of the receipt of the matter from the commissioner.

Subp. 2. 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 administrative decision of the commissioner allowing the discontinuance, whichever is latest, will be treated as a claim petition for purposes of scheduling a hearing and will not be heard on a priority basis.

Subp. 3. Petitions for discontinuance after administrative conference. After an administrative conference on a notice of intention to discontinue, a petition to discontinue under Minnesota Statutes, section 176.242, subdivision 5, filed more than 120 days following the issuance of the commissioner's administrative decision disallowing the discontinuance will not be given priority status for the purpose of scheduling a hearing.

1415.2200 DISCOVERY.

Subpart 1. Demand. Each party shall, within 30 days of a demand by another party, unless a shorter time is indicated by this part, disclose or furnish the following:

A. The names and addresses of all known witnesses that a party intends to call at the hearing, including doctors by cross-examination or who will testify by report only. All witnesses unknown at the time of the disclosure must be disclosed within 15 days after they become known if a prior demand has been made.

B. Relevant written or recorded statements made by witnesses on behalf of a party. The demanding party must be permitted to inspect and reproduce such statements at the demanding party's expense. A party unreasonably failing upon demand to make the disclosure required by this part, upon proper motion made to the compensation judge at the hearing, may be foreclosed from presenting evidence at the hearing through witnesses not disclosed or through witnesses whose statements are not disclosed.

C. Medical privilege is waived as to the injuries or conditions alleged in the petition by the filing of the petition alleging injury or occupational disease. Medical authorizations must be furnished within 15 days of an adverse party's demand. All medical reports must be provided, upon demand to adverse parties. The petitioner shall disclose the names and addresses of all persons who have treated the petitioner in the past for injuries or conditions identical or related to those alleged in the petition, the dates of the treatment, and provide medical authorization for each.

Subp. 2. Depositions. Under 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 judge orders otherwise.

A. When a party has objected to the taking of a deposition, the party requesting the deposition shall bring a motion before the judge, before whom the case is pending at the time of the motion, who shall determine whether the deposition should proceed. The motion must state, with specificity, the facts or other reasons supporting the need for the deposition. The judge shall order the deposition to proceed if the judge finds that:

(1) the deposition is needed for the proper presentation of a party's case;

(2) the deposition is not for purposes of delay;

(3) unusual or extraordinary circumstances exist which compel extensive discovery; or

(4) the issues or amounts in controversy are significant enough to warrant extensive discovery.

B. Depositions to preserve testimony or to present testimony due to the unavailability of the witness are allowed. The deposition must be taken sufficiently in advance of the hearing so that the deposition is filed before or at the commencement of the hearing, unless, for good cause shown, the party taking the deposition has the permission of the calendar judge or compensation judge to whom the case has been assigned for hearing to take or file the deposition subsequent to the hearing.

C. Under Minnesota Statutes, section 176.155, subdivision 5, the cross-examination of a physician or health care provider before a hearing is specifically allowed. When a deposition for the purpose of cross-examination of a physician or health care provider is taken under this item, redirect examination is allowed. Unless ordered otherwise by a compensation judge, the cross-examination deposition must be completed and the original filed with the office at or before the hearing.

D. The original deposition taken for purposes of presenting testimony in the case must be filed with the office if the matter has been referred to the chief hearing examiner for assignment, or with the division if the matter has not been certified to the chief hearing examiner for hearing. The original deposition taken solely for purposes of discovery must be sealed and filed as in the case of evidentiary depositions but will not be reviewed or used in any fashion by the compensation judge unless the deposition is formally entered as evidence in the case.

E. The party initiating the taking of any deposition, including a cross-examination deposition under Minnesota Statutes, section 176.155, subdivision 5, is responsible for all costs of the deposition, including witness fees and court reporter fees.

Subp. 3. Motions for additional discovery. Upon the motion of a party, the judge having jurisdiction at the time of the motion may order discovery of other relevant material or information, recognizing all privileges recognized at law. The judge may order discovery available under the rules of civil procedure for the district courts of Minnesota provided that the discovery:

A. is needed for the proper presentation of a party's case;

B. is not for purposes of delay; and

C. the issues or amounts in controversy are significant enough to warrant extensive discovery.

Subp. 4. Motion for direct testimony by physician or health care provider. A motion for full testimony of a physician or health care provider must comply with part 1415.2900, subpart 9, item C, subitem 1.

Subp. 5. Penalties. Upon the failure of a party to reasonably comply with discovery or a judge's order under this part, the following orders of the compensation judge are allowed upon a party's motion:

A. an order that the subject matter of the order for discovery or other relevant facts is established in accordance with the moving party's claim; or

B. an order refusing to allow the party failing to comply to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence.

Subp. 6. Proprietary information. When a party is asked to reveal material which that party considers proprietary information or trade secrets, he or she may bring the matter to the attention of the appropriate judge, who shall make protective orders as are reasonable and necessary or as otherwise provided by law.

Subp. 7. Employment expert examinations. If an employee claims that his or her ability to earn has been substantially reduced because of the injury in combination with other factors, the employee must submit to a physical and oral examination by the

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.

employer's or insurer's expert, if requested by the employer or insurer. The employee shall provide appropriate authorizations relating to wages and employment to adverse parties, upon demand. Expert reports must be provided, upon demand, to adverse parties. A party who objects to the scope of the requested examination may bring a motion for protection. The motion must be served on the parties and filed with the division, or the office if the matter has been certified to the office. The judge shall issue an order allowed by Rule 26.03 of the rules of civil procedure for the district courts.

1415.2300 TEMPORARY ORDERS.

Subpart 1. Payment of benefits by insurer or self-insurer. If an insurer or self-insurer voluntarily agrees to pay benefits under Minnesota Statutes, section 176.191, subdivision 1, it shall file a formal petition for a temporary order.

A. The petition must contain:

(1) the name of the employer and its insurer or self-insurer consenting to payment;

(2) the dispute involved, including the name and address of any other employer and insurer, if known, that may be liable for workers' compensation benefits and the date of the alleged injury while working for that employer;

(3) the beginning date of the employee's present disability, and the compensation rate that the insurer or self-insurer will pay; and

(4) a statement of whether an intervenor or potential intervenor has paid or is paying the employee or the employee's dependents substitute wage benefits such as group disability benefits, general assistance, or aid to families with dependent children (AFDC).

B. The original petition for a temporary order, with proof of service on necessary parties, must be filed with the division, the office, or the court of appeals, depending upon where the matter is pending.

C. Attorney fees for the employee's attorney must be withheld from the periodic payments made to the employee under the temporary order unless the employee's attorney waives the withholding of attorney fees, or the employee has no attorney.

D. The petition for temporary order must be accompanied by a prepared formal order in substantially the following form:

"I (name) have examined the petition for temporary order and the compensation files and records in this case. It appears that a temporary order for payment of compensation benefits should be issued pending a final determination under Minnesota Statutes, section 176.191, subdivision 1;

"NOW, THEREFORE, IT IS ORDERED that (name of insurer or self-insurer), having consented to payment of compensation benefits under Minnesota Statutes, section 176.191, shall pay to (name), the employee, compensation at the weekly rate of $(amount), during the period of the employee's disability, beginning (date) and shall also pay reasonable medical expenses and rehabilitation benefits related to this disability of the employee.

"IT IS FURTHER ORDERED that following a final determination of liability and if it has been determined that some other employer or insurer is liable for all or part of the compensation paid pursuant to this temporary order, then the division, the compensation judge, or Court of Appeals shall order the parties held liable to reimburse (name of paying party) for that part of the compensation paid under this temporary order, for which the other parties are held liable, including interest at the rate of 12 percent a year.

Dated at _____, Minnesota
this _____ day of _____.

COMPENSATION JUDGE OR
COURT OF APPEALS

_____

By _____"

The original and enough copies of the order to serve necessary parties and attorneys representing them must be filed.

Subp. 2. Payment of benefits by special compensation fund. An employee seeking payment of benefits by the special compensation fund or the fund requesting to pay benefits under Minnesota Statutes, section 176.191, subdivision 2, shall file a formal petition for temporary order with the commissioner.

A. The petition shall contain:

(1) evidence that all parties agree that benefits are payable under the act;

(2) a statement that written demand for payment under Minnesota Statutes, section 176.191, subdivision 1, has been made against all employers and insurers party to the claim and that the payment demand has been refused;

(3) the names and addresses of all employers and insurers or self-insurers who are parties to the claim;

(4) a statement as to the dispute involved and the dates of all alleged injuries while working for each employer;

(5) the beginning date of the employee's present disability, the compensation rate applicable for each injury date, the proposed compensation rate to be paid by the special compensation fund, and an itemization of all medical expenses and rehabilitation benefits requested to be paid under the temporary order;

(6) copies of medical reports supporting the claimed period of disability and the causal relationship of that disability to the petitioner's employment; and

(7) a statement of whether an intervenor or potential intervenor has paid or is paying the employee or the employee's dependents substitute wage benefits such as group disability benefits, general assistance, or aid to families with dependent children (AFDC).

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

C. Attorney fees for the employee's attorney must be withheld from the periodic payments made to the employee under the temporary order unless the employee's attorney waives the withholding of attorney fees or the employee has no attorney.

D. The petition for temporary order must be accompanied by a prepared formal order in substantially the following form:

"I, (name), have examined the petition for temporary order and the compensation files and records in this case. It appears that a temporary order for payment of compensation benefits should be issued pending a final determination, as provided by Minnesota Statutes, section 176.191, subdivision 2;

"NOW, THEREFORE, IT IS ORDERED that the State Treasurer, as custodian of the special compensation fund shall, under Minnesota Statutes, section 176.191, subdivision 2, pay to (name), the employee, compensation at the weekly rate of $(amount), during the period of employee's disability beginning (date), and shall also pay reasonable medical expenses and rehabilitation benefits related to this disability of the employee.

"IT IS FURTHER ORDERED that following a final determination of liability and if it has been determined that one or more employers or insurers are liable for all or part of the compensation paid pursuant to this temporary order, then the division, the compensation judge, or Court of Appeals shall hold the parties liable to reimburse the State Treasurer, as custodian of the special compensation fund, for that part of the compensation paid under the temporary order, for which the other parties are held liable, including interest at the rate of 12 percent a year.

Dated at _____, Minnesota
this _____ day of _____.

WORKERS' COMPENSATION DIVISION

_____

Commissioner of
Labor and Industry"

The original and enough copies of the order to serve necessary parties and attorneys representing them must be filed.

Subp. 3. Necessary parties. For the purpose of this part, the following are necessary parties:

A. the employee or dependent;

B. insurers or self-insurers named in the petition for temporary order;

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

D. the fund director, if the petition is made under Minnesota Statutes, section 176.191, subdivision 2; and

E. intervenors and potential intervenors.

Subp. 4. Answer. Within ten days after being served with a copy of the petition for temporary order and proposed order, employers or their insurers, an intervenor, or the fund director may file a verified answer to the petition stating objections to the proposed order.

Subp. 5. Circumstances of nonapproval of temporary order. A temporary order will not be approved if made contingent upon the employee's waiver of the right to claim an additional award under Minnesota Statutes, section 176.225, or waiver of the right to have attorney fees assessed against the employer and insurer in addition to compensation under Minnesota Statutes, section 176.081, subdivision 8, or if it would prejudice an intervenor's claim for reimbursement.

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.

Subp. 6. Effect of filing. A hearing date will not be assigned upon filing of a petition for temporary order unless it is accompanied by a petition for contribution or reimbursement.

1415.2400 PETITIONS FOR CONTRIBUTION OR REIMBURSEMENT.

Subpart 1. Contents. Petitions for contribution or reimbursement in cases pending before the office must describe in detail the basis of the claim for contribution or reimbursement against the additional employer, insurer, or the state treasurer, custodian of the special compensation fund. The petition must be supported by medical evidence, signed, and verified. If a claim petition is currently pending, and the party from whom contribution or reimbursement is sought is not a party, the petition for contribution or reimbursement must be accompanied by either a petition for joinder of the party from whom reimbursement or contribution is sought, or a petition for consolidation under part 1415.2500. The two actions may be combined on a joint petition.

Subp. 2. Filing. A petition for contribution or reimbursement must be filed no later than ten days before a pretrial conference or within 20 days of receipt of a pretrial order if a pretrial conference is not automatically set. Copies of all pleadings, including a notice of pretrial conference must be served upon the additional employers or insurers by the party bringing the petition.

Subp. 3. Answer. Within 20 days after being served with a copy of a petition for contribution or reimbursement, employers or their insurers, other than the petitioning party, shall file a verified answer to the petition under Minnesota Statutes, section 176.321 and, if not already set for a pretrial conference, the matter may be set for a pretrial conference under part 1415.1900.

1415.2500 CONSOLIDATION.

Subpart 1. Authorization. Consolidation of two or more related cases may be ordered for the purpose of receiving evidence. Consolidation may be ordered upon motion by a party to the calendar or compensation judge or upon the calendar or compensation judge's own motion if the judge determines:

A. that separate cases present substantially the same issues of fact and law;

B. that a holding in one case would affect the rights of the parties in the other case; and

C. that the consolidation would not substantially prejudice the rights of any party.

Notwithstanding the requirements of this part, the parties may stipulate to consolidation.

Subp. 2. Receipt of evidence. After consolidation, documentary evidence previously received in an individual case must be reintroduced in the consolidated proceedings under a master file if the compensation judge assigned to try the case designates one file as a master file. When so combined, the evidence becomes part of the record of each of the several consolidated cases. Evidence received after the order of consolidation is a part of the record of each case.

Subp. 3. Notice of order. Following an order for consolidation, the calendar or compensation judge shall promptly serve the order on the parties. The order must contain:

A. a description of the cases for consolidation;

B. the reasons for consolidation; and

C. notification of a consolidated pretrial conference if one has been requested.

Subp. 4. Objection to consolidation. A party may object to consolidation or move for severance by filing with the calendar judge or compensation judge, if one is assigned, and serving upon all parties at least seven days before the hearing, a motion for severance from consolidation which includes reasons for the motion.

If the judge finds that justice will be best served by granting severance, the judge shall grant the motion for severance.

Subp. 5. Service of pleadings and decisions. Separate pleadings must be filed and separate findings, orders, decisions, and awards will be made and filed in each case consolidated for hearing.

1415.2600 DISQUALIFICATION.

Subpart 1. By judge. A compensation judge shall withdraw from participation in a case at any time if the judge deem himself or herself disqualified, prejudiced, or biased for any reason.

Subp. 2. By a party. A party or his attorney may file an affidavit of prejudice if the party reasonably believes that a hearing before the assigned judge cannot be fair due to the judge's prejudice or bias. The affidavit must be served on opposing parties and filed with the chief hearing examiner not more than ten days after the filing party has received notice of the assigned judge or has knowledge of the grounds for disqualification, whichever occurs last. Each party is allowed one filing per case under this subpart. Upon filing of the affidavit with proof of service, the chief hearing examiner shall assign the case to another judge.

A party or the party's attorney may file a motion to disqualify a compensation judge for a cause other than or in addition to that described in an affidavit of prejudice. The motion must be supported by an affidavit detailing the facts establishing the grounds for disqualification and filed with the chief hearing examiner not more than ten days after the moving party has received

notice of the assigned judge or has knowledge of the grounds for disqualification, whichever occurs last. The motion will be decided by the chief hearing examiner or a designee.

Subp. 3. **Continuances.** Unless required because of the unavailability of a compensation judge to hear the case, no continuance will be granted because of a disqualification under this part. If a continuance is necessary, another hearing will be scheduled as early as possible.

Subp. 4. **Consolidated cases.** Consolidated cases are considered one case under this part.

Subp. 5. **Settlement and pretrial conferences.** This part is not applicable to settlement or pretrial conferences.

1415.2700 SUBPOENAS.

Subpoenas may be obtained without charge from the office or the division. The name, address, and telephone number of the party or attorney requesting service of the subpoena must be included on the subpoena before service is tendered in accordance with Minnesota Statutes, section 357.22.

The settlement or calendar judge, or compensation judge, if the case has been assigned for hearing, shall quash or modify a subpoena upon a party's motion if the judge finds that it is unreasonable or oppressive. The motion must be promptly made, no later than the date specified in the subpoena for compliance.

1415.2800 CONTINUANCES.

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

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

Subp. 3. **Motion.** If all parties have not agreed to a continuance, requests for continuances must be made to the compensation or calendar judge before whom the matter is pending. When made more than ten working days before the hearing date, the request must be in writing in the form of a motion for continuance and served on all parties. If less than ten working days remain before the hearing date, notice of the motion must be made orally. A hearing on the motion will be conducted only if ordered by the compensation or calendar judge to whom the motion is made.

Subp. 4. **Good cause.** Good cause does not include:

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

B. when a law firm consists of more than one member who practice in the field of workers' compensation law, and counsel assigned to the case is unavailable because of engagement in another court or otherwise, unless all the counsel are committed elsewhere;

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

D. unavailability of a medical or other witness if the deposition of the witness could have been taken after receipt of the notice of hearing date and before the hearing.

1415.2900 THE HEARING

Subpart 1. Notice. A place, date, and time certain will be assigned to each case. Written notice of the hearing will be given as soon as the assigned date is known, but must be given at least 30 days in advance of the hearing, except:

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.

A. when notice is waived by the parties;

B. when a different time is expressly agreed to by the parties; or

C. when the notice is governed by contrary law or rule.

The notice must include the place of hearing, the amount of time allowed for the hearing, and the name of the compensation judge assigned, if known. Oral or written notice of the date, time, and place of the hearing given to the parties by a judge at a settlement or pretrial conference is sufficient notice. An attorney who receives notice of the hearing date at the settlement or pretrial conference must notify his or her client. Cases will be set for one location only, that most convenient for the petitioner. Adequate time will be allowed so that the case may be completely heard in one sitting. If an additional hearing date is required, it must be agreed to by all parties and the compensation judge. If the parties cannot agree, the compensation judge shall set the date and time.

Subp. 2. Availability of witnesses. As soon as the parties know the hearing date, they shall immediately notify all witnesses in writing and arrange for their presence or for the taking of their deposition under part 1415.2200.

Subp. 3. Medical evidence. Rules governing medical evidence are as follows:

A. 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 and supporting affidavits, requesting a written finding from a judge on the cruciality of the oral testimony. An affidavit must contain facts sufficient upon which the judge can make a determination; a mere statement that the attorney believes that the testimony is crucial is insufficient without a further factual basis. The motion must be served and filed no later than 25 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 service of the motion. A compensation judge shall, after writing for objections to be filed, issue an order granting or denying the motion, stating the reasons for the order.

B. Whether or not a motion has been filed, the judge shall issue an order requiring that the full testimony be presented in person or by oral deposition if the 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.

C. If, during the course of a hearing, or within 25 days before the hearing, a judge determines, on a party's or the judge's motion, 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.

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

(1) the date of the examination;

(2) the history of the injury;

(3) the patient's complaints;

(4) the source of all facts in the history and complaints;

(5) findings on examination;

(6) opinion as to the extent of disability and work limitations, if any;

(7) the cause of the disability and, if applicable, whether the work injury was a substantial contributing factor toward the disability;

(8) the medical treatment indicated;

(9) if permanent 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;

(10) if a permanent partial 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, traumatic injury, or incident, whether or not compensable under Minnesota Statutes, chapter 176; the physician or health care provider shall apportion the disability between the injuries, occurrences, or conditions;

(11) if future medical care or treatment is anticipated, a statement of the nature and extent of treatment recommended and, if possible, the anticipated results;

(12) the reason for each opinion; and

(13) if applicable, a statement that the physician or health care provider has read the rules concerning determination of permanent partial disability, understands them, and has applied those rules in making the determination.

E. Medical reports to be used at the hearing must be served on the parties and filed with the office, with proof of service, sufficiently in advance of the hearing to allow other parties the opportunity to cross-examine the physician or health care provider, if desired, unless 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. If the report is filed too late to allow the cross-examination, the record will be held open to allow other parties to cross-examine the physician or health care provider after the hearing.

F. If the claim petition includes a claim for medical or other health care treatment or supplies under Minnesota Statutes, sections 176.103, 176.135, and 176.136, and the parties agree at or before the hearing to the reasonableness and necessity of the treatment or supplies, the judge shall approve or disapprove the agreement to settle that portion of the claim provided the agreement is placed in the record of the proceeding. If the parties are unable to reach agreement on the issues of medical or other health care treatment or supplies, that portion of the claim must be referred back to the division upon conclusion of the hearing for a determination under Minnesota Statutes, sections 176.103, 176.135, and 176.136. The parties may, however, present medical evidence at the hearing for later use by the division in determining medical issues. A party has the right, even if another party objects, to present medical evidence at the hearing. An intervenor who has paid health care benefits and whose claim remains unsettled is a real party in interest with an independent right to pursue its claim under Minnesota Statutes, section 176.103.

Subp. 4. Rights of parties. All parties have the right to present evidence, to cross-examine witnesses, and to present rebuttal testimony.

Subp. 5. Witnesses. A party may be a witness and present other witnesses at the hearing. Oral testimony at the hearing must be under oath or affirmation. At the request of a party or upon the judge's motion for good cause, the compensation judge may exclude witnesses from the hearing room so that they cannot hear the testimony of other witnesses.

Subp. 6. Rules of evidence. Rules of evidence are as follows:

A. Except as provided by the act and parts 1415.0100 to 1415.3500 the compensation judge is not bound by the common law, statutory rules of evidence, or technical or formal rules of pleading or procedure.

B. All evidence to be considered in the case, including records and documents in the possession of a party, or an accurate photocopy, must be offered and made a part of the record in the case. An independent investigation by the compensation judge under Minnesota Statutes, section 176.391, subdivision 1, is part of the record if the parties are aware of the investigation and have had an opportunity to participate in it.

C. Documentary evidence in the form of copies of excerpts from books, documents, or records may be received or incorporated by reference upon agreement of the parties or if ordered by the compensation judge.

D. The compensation judge may take administrative notice of general, technical, or scientific facts within the judge's specialized knowledge under Minnesota Statutes, section 14.60, subdivision 4, but shall do so on the record and with the opportunity for any party to contest the facts so noticed.

E. A party may call an adverse party and question, contradict, and impeach the party on material matters in all respects as if they had been called by the other party. The adverse party may be examined by counsel according to the rules of civil procedure for the district courts of Minnesota applicable to direct examination, and may be cross-examined, contradicted, and impeached by any party adversely affected by the testimony. An adverse party includes:

(1) the adverse party's managing agent or employees;

(2) an officer, director, managing agent, or employee of the state, excluding judges, members of the panel or board, mediators, and other employees of the division designated to conduct conferences or hearings; and

(3) an officer, director, managing agent, or employee of:

(a) a political subdivision of the state;

(b) a public or private corporation;

(c) a partnership or association; or

(d) a political body.

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.

Subp. 7. The record. Record requirements are as follows:

A. The compensation judge shall maintain the official record, other than the stenographic notes of a hearing reporter if one was used, in each case until the issuance of the judge's final order.

B. The record in a compensation case shall contain:

(1) all pleadings, motions, and orders, including the judgment roll, and the entire record from any previous hearing which is relevant to the issues under consideration;

(2) evidence received or considered unless, through agreement of the parties or by order of the compensation judge, custody of an exhibit is given to one of the parties;

(3) those parts of the division's official file on the matter which the compensation judge incorporates;

(4) offers of proof, objections, and the resulting rulings;

(5) the compensation judge's order;

(6) memoranda and data submitted by a party in connection with the case and accepted by the judge;

(7) a transcript of the hearing, if one was prepared; and

(8) the audio-magnetic recording tapes used to record the hearing, if any.

C. The chief hearing examiner shall direct that the verbatim record of a hearing be transcribed if requested by any person. If the record is transcribed by the office, persons who request copies of the transcript must pay a reasonable fee. If transcribed by someone other than the office, the person requesting a transcript must pay the person preparing the transcript a reasonable fee.

D. Charges for transcripts prepared by the office shall be set by the chief hearing examiner, with the approval of the department of finance, and all money received for transcripts prepared by the office are payable to the State Treasurer, Office of Administrative Hearings Account.

E. Under Minnesota Statutes, section 176.421, subdivision 4, clause (3), a party may petition the chief hearing examiner for an order directing that a transcript be prepared, for purposes of appeal to the court of appeals, at no cost to the appellant. A petition filed under this provision must include:

(1) the caption of the case;

(2) case identification numbers;

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

(4) a sworn affidavit from the appellant which must include:

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

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

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

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

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

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

Subp. 8. Continuances during hearing. If it appears in the interests of justice that further testimony should be received, the compensation judge may continue the hearing to a future date. Oral notice on the record shall be sufficient if given at the time of the original hearing. Otherwise, the notice of the date for the continued hearing must be in writing and served on all parties.

Subp. 9. Hearing procedure. The hearing procedure is as follows:

A. The compensation judge shall not communicate, directly or indirectly, with any party concerning issues of fact or law in a pending case, except upon notice and opportunity for all parties to participate. After the first witness is sworn all of the proceedings must be on the record, including motions, objections, offers of proof, rulings of the judge, arguments of the parties, or other comments of the parties, their representative, or the judge. A compensation judge shall not order a court reporter to refrain from recording anything said during the course of a hearing without the consent of the parties present nor shall a

compensation judge turn off an audio-magnetic recording device being used to record the proceedings, other than for reasonable breaks, without the consent of the parties present. The judge shall be in complete charge of the hearing. It is the judge's duty to see that the witnesses testify clearly so that the reporter may obtain a clear and transcribable record of all proceedings.

B. Unless the compensation judge determines that the substantial rights of the parties will be ascertained better in some other manner, the hearing will be conducted in the following manner:

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

(2) Stipulations, settlement agreements, or consent orders entered into by the parties before the hearing must be entered into the record.

(3) If the compensation judge requests opening statements, the party with the burden of proof shall proceed first. Other parties shall make opening statements in a sequence determined by the compensation judge.

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

(5) Cross-examination of witnesses will be conducted in a sequence determined by the compensation judge.

(6) When the parties and witnesses have been heard and if the compensation judge believes that legal issues remain unresolved, final arguments may be presented in a sequence determined by the compensation judge. Final argument may, in the discretion of the compensation judge, be in the form of written memoranda or oral argument, or both. The compensation judge shall decide when memoranda must be submitted. Final arguments shall be limited to legal issues only.

(7) After final argument, if any, the hearing will end unless it is continued by the compensation judge. If continued, it must either be continued to a time and day announced at the hearing on the record, or continued to a date to be determined later, with at least 15 days written notice to the parties, including those joined at the hearing.

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

C. These procedures are to be followed in the hearing:

(1) Counsel offering an objection shall briefly state the specific legal grounds for the objection, unless invited by the judge to argue.

(2) Arguments in opposition to, or in support of, objections must be brief.

(3) Before calling a witness to the stand, counsel shall instruct the witness to be responsive to the questions and to wait until the question is completed and a ruling made on an objection before answering. Counsel shall not instruct a witness while on the stand as to the manner of answering questions but may request the court to instruct the witness.

(4) A party calling a witness for whom an interpreter is required shall advise the court in advance of the need for an interpreter.

(5) Persons in the hearing room shall not converse in a disruptive manner, read newspapers, smoke, chew gum, eat food, or drink liquids other than water while the hearing is in session, and counsel shall so instruct parties they represent, witnesses they call, and persons accompanying them.

Subp. 10. Disruption of hearing. No television, newsreel, motion picture, still, or other camera, and no mechanical recording devices, other than those provided by the office may be operated in the hearing room during the course of the hearing unless permission is obtained from the compensation judge. Permission is subject to conditions set by the compensation judge to avoid disruption of the hearing.

Under Minnesota Statutes, section 624.72, no person may interfere with the free, proper, and lawful access to or egress from the hearing room. No person may interfere or threaten interference with a hearing, or disrupt or threaten disruption of a hearing. In the event of interference or disruption or threat of interference or disruption, the compensation judge shall read this item to those persons causing the interference or disruption and proceed as the judge deems appropriate.

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.

1415.3000 THE COMPENSATION JUDGE'S DECISION.

Subpart 1. **Basis for decision.** The compensation judge shall not consider factual information or evidence which is not a part of the record.

Subp. 2. **Compensation judge's decision.** Within 60 days after the close of the record, the compensation judge shall prepare a decision and serve it on the parties. The compensation judge's decision must include, in the following order:

A. The date and location of the hearing and the compensation judge's name.

B. Appearances by parties, if representing themselves, or their attorneys, giving the full name and mailing address, including zip code, of each.

C. The date the record of the hearing was closed.

D. A notice of the right of parties to appeal and how the appeal can be perfected.

E. A determination of each contested issue of fact or law. In cases involving many 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 its contents.

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

Supb. 3. **Readability.** A decision must be clear, concise, and written in a prose style which can be read and understood by persons of average intelligence. English, rather than Latin terms must be used unless it is necessary to use Latin terms.

Subp. 4. **Proposed decision filed by party.** A party may file a proposed decision with the compensation judge. The proposed decision must conform to this part and be served on the other parties. It must be in a form which would allow the compensation judge to sign and issue the decision if it is acceptable. It must also include a brief memorandum explaining the decision on each issue.

Subp. 5. **Decision, extension of time.** If the parties consent to extend the time for issuance of the decision, the written consent must include a statement of the reasons for the extension. It must 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 must be in writing and served on the parties of record.

1415.3100 REHEARING.

When a compensation judge has issued the findings, conclusions, and decision, the judge's jurisdiction over the case ends, except for taxation of disbursements or awarding of attorney's fees, unless the case is referred to the compensation judge by the court of appeals and the chief hearing examiner for supplemental findings, taking of additional testimony, rehearing, and other action. Compensation judges may correct clerical or mathematical errors in decisions any time before appeal.

1415.3200 ATTORNEY FEES.

Subpart 1. Controlling statute. Fees for legal services are governed by Minnesota Statutes, section 176.081.

Subp. 2. **Withholding of attorney fees.** Upon receipt of the notice of representation, the employer and insurer may withhold attorney fees on genuinely disputed portions of claims under Minnesota Statutes, section 176.081. Attorney fees must be withheld on genuinely disputed portions of claims if the employee's attorney so requests.

Subp. 3. **Statement of fees, petition for disputed or excess attorney's fees.** The following procedures must be followed in claiming fees:

A. If the claim for attorney fees does not exceed the fees allowed by Minnesota Statutes, section 176.081, subdivision 1, clause (1) (a), the party claiming fees shall file a statement of attorney's fees on a form prescribed by the commissioner, including:

(1) the caption of the case;

(2) the employee's social security number;

(3) the date of injury or disease;

(4) a list of benefits which were genuinely in dispute and which would not have been recovered without the attorney's involvement;

(5) the amount of retainer received from the employee;

(6) the amount the employee advanced for expenses;

(7) the amount the employer and insurer are currently withholding as attorney's fees, if known;

(8) the amount claimed for attorney's fees;

(9) a statement that the attorney is licensed to practice law in the state;

(10) a statement of whether or not an application is being made for attorney fees under Minnesota Statutes, sections 176.081, subdivisions 7 and 8, and 176.191;

(11) a notice that the employee or insurer has ten calendar days to object to the attorney fees requested;

(12) the date the statement was served on the employer and insurer; and

(13) the full address and phone number of the employee's attorney.

The statement must be accompanied by the retainer agreement, if not previously filed, and a copy of the usual billing statement given to the employee. If, at the hearing 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 waiting ten calendar days. An oral statement of attorney fees may be presented at the hearing on the record if the case has been tried to a conclusion, no objection is made at the hearing, and a retainer agreement is filed. An oral statement of attorney fees must contain the information in this item.

B. If a party claims fees in excess of the amounts listed in Minnesota Statutes, section 176.081, subdivision 1, clause (1), the party shall file a petition for disputed or excess attorney's fees on a form prescribed by the commissioner, including:

(1) the caption of the case;

(2) the employee's social security number;

(3) the date of the claimed injury or disease;

(4) an exhibit showing specific legal services performed, the date performed, and the time spent;

(5) the number of hours spent in the employee's representation;

(6) a statement of expertise and experience in workers' compensation matters;

(7) a brief description of the factual, medical, and legal issues in dispute;

(8) the nature of proof required in the case;

(9) a list of the benefits which were genuinely in dispute and which would not have been recovered without the attorney's involvement;

(10) the amount of the retainer;

(11) the amount employee advanced for expenses;

(12) the amount claimed in fees;

(13) the amount the employer and insurer is currently withholding, if known;

(14) a list of the disbursements incurred and if the disbursement has been paid, by whom;

(15) a statement that the attorney is licensed to practice law in the state;

(16) a statement of whether or not an application is being made for attorney fees under Minnesota Statutes, sections 176.081, subdivisions 7 and 8, and 176.191;

(17) whether or not a hearing on attorney fees is requested;

(18) the date the statement was served on the employer and insurer; and

(19) the full address and phone number of the employee's attorney.

The petition must be accompanied by a copy of the retainer agreement, if not previously filed, and proof of service.

Subp. 4. Fees, objection. If a timely objection to the statement of attorney's fees is filed, the compensation judge or settlement judge shall use Minnesota Statutes, section 176.081, subdivision 5, only as to those issues specifically raised by the objection.

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.

Subp. 5. Filing. A statement of attorney's fees or petition for disputed or excess attorney's fees under this part must be filed with the compensation judge assigned to hear the case or a calendar judge if no assignment has been made, or a settlement judge if the matter has not been certified to the office.

Subp. 6. Settlements. In cases where an offer or settlement has been made in writing under Minnesota Statutes, section 176.081, subdivision 7a, and the offer has not been accepted, upon receipt of the compensation judge's decision, the following procedure must be followed:

A. The party seeking to impose the sanctions of Minnesota Statutes, section 176.081, subdivision 7a, shall file proof of the offer with the chief hearing examiner and serve the other parties within ten calendar days of the date of the compensation judge's decision. The filing must include an order prepared for signature by the chief hearing examiner amending the compensation judge's decision.

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

C. If no objection is received, the chief hearing examiner shall sign, serve, and file the order within ten calendar days of its filing. If an objection has been received, the chief hearing examiner shall rule within ten calendar days after the filing of the objection. Parties do not have a right to a hearing on the objection. The chief hearing examiner's determination must be in writing and is appealable to the court of appeals.

1415.3300 TAXATION OF COSTS AND DISBURSEMENTS.

Subpart 1. When allowed. This part applies to costs in cases which have been heard by a compensation judge. Costs associated with cases settled before hearing may be recovered by agreement in a stipulation or retainer agreement.

Subp. 2. Informal request. Before submitting a formal request for payment or reimbursement of costs and disbursements, an informal request should be made by the taxing party on the party from whom reimbursement is sought. If agreement cannot be reached on all items, the taxing party may then proceed formally, including in the formal request an indication of those costs agreed upon.

Subp. 3. Service of formal request. Service of the request for taxation of costs and disbursements must be made upon the parties, or their attorneys, by the taxing party.

Subp. 4. Service of objection. An opposing party has ten working days from the date of service upon him or her in which to serve and file a formal objection to taxation or allowance, with admission or proof of service upon the other parties.

Subp. 5. Hearing. If requested, a time for hearing before the compensation judge to whom the matter has been assigned must be fixed. A notice of hearing must be given to the parties by the compensation judge.

1415.3400 OTHER HEARINGS.

Under Minnesota Statutes, section 14.50, all hearings not discussed in this chapter but required to be conducted by a compensation judge must be conducted in substantial compliance with this chapter. In a dispute in which an immediate hearing is necessary in order to carry out the purpose and intent of the Minnesota workers' compensation law, the notice of hearing must be given not less than five working days before the hearing. Expedited assignment of judges to these hearings must be in a manner which will allow the compensation judge's decision to be issued immediately upon conclusion of the hearing or as soon after the hearing as is reasonable and practical.

1415.3500 EXHIBITS; REMOVAL AND RETURN.

Subpart 1. Requests for removal. All requests for permission to remove an exhibit or document from the official file must be made to the compensation or settlement judge to whom the file has been assigned or to the supervisor of the docket section of either the office or the division.

Subp. 2. Return without consent or notice. Upon the expiration of the time in which to appeal, all exhibits or other documentary evidence may be returned to their source of origin without the consent of the parties or notice to them. A copy of the letter of transmittal of the exhibits or documents must remain in the file as part of the record of the case.

Subp. 3. Request for return. Upon expiration of the time in which to appeal, exhibits or other documentary evidence must be returned to their source upon the request of the party which produced or introduced the exhibit or evidence at the hearing. A request for return of exhibits or documents must be made in writing to the compensation judge or the division, include the title and appropriate identification number of the case, and identify the exhibits or documents requested. A telephone number of the person making the request must be included with the request.

1415.3600 SEVERABILITY.

If any provision of parts 1415.0100 to 1415.3500 is held to conflict with a governing statute, applicable provisions of the

Minnesota Administrative Procedure Act, or other relevant law; to exceed the statutory authority conferred; to lack a reasonable relationship to statutory purposes or to be unconstitutional, arbitrary, or unreasonable; or to be invalid or unenforceable for any other reason; the validity and enforceability of the remaining provisions of the rule shall in no manner be affected.

REPEALER. Minnesota Rules, parts 1410.0100, 1410.0200, 1410.0300, 1410.0400, 1410.0500, 1410.0600, 1410.0700, 1410.0800, 1410.0900, 1410.1000, 1410.1100, 1410.1200, 1410.1300, 1410.1400, 1410.1500, 1410.1600, 1410.1700, 1410.2000, 1410.2100, 1410.2200, 1410.2300, 1410.2400, 1410.2500, 1410.2600, 1410.3000, 1410.3100, 1410.3200, 1410.3300, 1410.3400, 1410.3500, 1410.3600, 1410.3700, 1410.3800, 1410.3900, 1410.4000, 1410.4100, 1410.4200, 1410.4400, 1410.4500, 1410.4600, 1410.4700, 1410.4800, 1410.4900, 1410.5000, 1410.5100, 1410.5200, 1410.5300, 1410.5400, 1410.5500, 1410.5600, 1410.5700, 1410.5800, 1410.5900, 1410.6000, 1410.6100, 1410.6200, 1410.6300, 1410.6400, 1410.6500, 1410.6600, 1410.6700, 1410.6800, 1410.6900, 5220.3100, 5220.3300, 5220.3400, 5220.3500, 5220.3700, 5220.3800, 5220.3900, 5220.4000, 5220.4100, 5220.4200, 5220.4300, 5220.4301, 5220.4302, 5220.4303, 5220.4304, 5220.4305, 5220.4800, 5220.4900, 5220.5100, 5220.5200, 5220.5300, 5220.5400, 5220.5500, 5220.5600, 5220.5700, 5220.6500, 5220.6600, 5220.6700, 5220.6800, 5220.6900, 5220.7000, 5220.7100, and 5220.7200 are repealed.

Pollution Control Agency

Proposed Rules Governing Hazardous Waste Priority Assessment Criteria

Notice of Intent to Adopt Rules Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Pollution Control Agency (Agency) intends, without a public hearing, to adopt the above-referenced proposed rules. The Agency has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. §§ 14.21-14.28 (Supp. 1983).

The proposed rules are authorized by Minn. Stat. § 115B.17, subd. 13 (Supp. 1983). One free copy of the rules is available on request from the Agency. Please contact the person whose name and address appears below.

The Agency has prepared a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon by the Agency to support the proposed rules. Copies of the Statement of Need and Reasonableness and of the proposed rules are available and may be obtained by contacting:

Dale Trippler
Minnesota Pollution Control Agency
Division of Solid and Hazardous Waste
1935 West County Road B2
Roseville, MN 55113
Telephone: (612) 296-7774

Interested persons have until 4:30 p.m. on May 15, 1984, to submit comments on the proposed rules. The proposed rules may be modified if the data and views received by the Agency before the end of the comment period warrant modification and the modification does not result in a substantial change in the proposed rules.

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 that a public hearing is required, the Agency will proceed according to the provisions of Minn. Stat. §§ 14.11-14.20 (Supp. 1983).

Persons who wish to submit oral or written comments or a written request for a public hearing should submit such comments or request to Dale Trippler at the Agency address previously stated (telephone: (612) 296-7774), no later than 4:30 p.m. on May 15, 1984. If a person desires to request a public hearing, the Agency requests that the person identify the particular provisions objected to, the suggested modifications to the proposed language, and the reasons and data relied on to support the suggested modifications.

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.

STATE OF MINNESOTA

DEPARTMENT OF LABOR AND INDUSTRY AND
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Proposed Adoption of Joint Rules of Practice of the Workers' Compensation Division and the Office of Administrative Hearings Governing Workers' Compensation Practice and Procedure

FINDINGS OF FACT AND CONCLUSIONS

The above-captioned rules were published in the State Register, together with a Notice of Intent to Adopt Rules Without a Public Hearing, on the 16th day of April, 1984. Proper notice was served upon all interested persons or groups registered with the Minnesota Department of Labor and Industry, Division of Workers' Compensation, and with the Office of Administrative Hearings for that purpose as required by Minn. Stat. § 14.22 (1982).

After affording interested persons and groups an opportunity to present written and oral data, statements and arguments, and having considered all of the evidence adduced upon the records, files, and proceedings herein, we find the following:

1. During the 30 day comment period following publication of the proposed rules, comments were received from Laurence F. Koll, who represents self-insurers, Michael D. Aafedt, who represents insurers, Robert R. Johnson, who represents employees, and Indru S. Advani, who represents an insurer and intervenor. Each of these persons is a practicing workers' compensation attorney and is a member of an ad hoc committee formed by the Office of Administrative Hearings to advise the agencies on the proposed rules. Their comments and suggestions are the basis for the changes to the proposed rules described at finding 2 below.

2. The rationale for the changes, all of which are nonsubstantial, is as follows:

   a. Page 3, lines 15, 16 and 18. Part 1415.0400.

   MEDICAL AUTHORIZATIONS.

   The time period within which the employee must provide written medical authorizations increased from 15 working days to 30 calendar days, an actual difference of about one week.

This change was unanimously approved by the ad hoc committee to allow employees sufficient time to execute an appropriate authorization. It is needed and reasonable to enable the employee to consult an attorney if, for example, the insurer has prepared an overly broad authorization or failed to provide any prepared authorization.

The addition of one week to the time allowed for submission of authorizations is not a substantial change because substantive rights of parties are not affected; the procedural rights of the employee are expanded, but without any effect on employer or insurer rights. Employers and insurers can expedite authorization by supplying to employees authorizations that require no redrafting.

b. Page 4, lines 18 and 20-23. Part 1415.0700.

SERVICE.

The new language requires the service of documents by the division or office on the parties and their attorneys or authorized representatives. The earlier version required service either on the party or on the attorney.

This change is needed and reasonable because it ensures consistency in the procedures used by the state and parties to serve documents. As originally proposed, the state was required to serve parties or their representatives, but parties were required to serve parties and their representatives. (See part 1415.0700, subpart 2). Under the revised language, both the state and parties must serve parties and their representatives. Further, the rule as proposed did not specify whom to serve when a party was represented, the party or the representative.

This modification does not constitute a substantial change. It imposes no new burdens on parties, as the requirements for service by parties remain unchanged. The rule now also reflects existing practices of the office and the division.

c. Page 5, lines 13-14. Part 1415.0700.

SERVICE.

The citation to Minn. Stat. § 176.081, subd. 5 was added in subpart. 1 C.

This clarifies that the rule does not affect the statutory presumption regarding the reasonableness of attorney fees when they do not exceed the amount prescribed by Minn.

Stat. § 176.081, subd. 1(a) (Supp. 1983). Failure to file a notice of representation and retainer agreement may only be considered when excess fees are claimed under Minn. Stat. § 176.081, subd. 5 (Supp. 1983) or when an objection to a fee request is filed under Minn. Stat. § 176.081, subd. 1(b) (Supp. 1983).

The amendment clarifies the intended meaning of the provision and thus is not a substantial change.

d. Page 5, lines 23-25. Part 1415.0700.

SERVICE.

Under the subpart as revised, a new notice of representation must be filed within 20 days of the signing of a retainer only if a claim petition has been filed or if the original attorney has filed a notice of representation.

This change is reasonable because an attorney should be subject to a deadline in deciding whether to assume representation only if litigation is in progress. Where a slower decision would not delay litigation, attorneys should be allowed additional time to investigate a case before deciding whether to assume representation.

The modification is not a substantial change. It does not place additional burdens on any party but merely clarifies the intended scope of the rule.

e. Page 6, lines 3-15. Part 1415.0900.

NOTICE OF CLAIM FOR WORKERS' COMPENSATION BENEFITS.

Subpart 2 has been deleted as repetitious of part 1415.1000, subpart 1.

It is unnecessary to require the employee to submit the same information to the employer in the notice of claim and again in the claim petition. Employees would avoid this requirement simply by serving the claim petition as a notice of claim and then reserving the same document 15 days later as a claim petition. Use of the claim petition as a notice of claim also discourages the settlement of disputes as it implies that litigation has already commenced. Finally, Minn. Stat § 176.271, subd. 2 (1982) sets forth sufficiently specific criteria for the contents of the notice, making the restatement of those requirements in the rule superfluous.

The amendment relieves the employee of an unnecessary burden without adversely affecting other parties, and is thus not a substantial change.

f. Page 6, line 16. Part 1415.0900.

NOTICE OF CLAIM FOR WORKERS' COMPENSATION BENEFITS.

It is necessary to renumber subpart 3 as subpart 2 following the deletion of subpart 2 described in e. above. This is a technical editorial change, not a substantial change.

g. Page 6, lines 17 and 18. Part 1415.0900.

NOTICE OF CLAIM FOR WORKERS' COMPENSATION BENEFITS.

The phrase, "if applicable" was added to subpart 2, which identifies documents to be attached to the notice of claim. Also, medical bills need only be attached to the notice "if available".

This modification is needed and reasonable to discourage the filing of unnecessary papers and to avoid the erroneous inference that only claims which are based on a medical bill or report may be filed.

The rule is not intended to require a medical report where one is not otherwise necessary. The amendments clarify this intent, have no effect on the rights of the parties, and thus are not substantial changes.

h. Page 6, line 20. Part 1415.0900.

NOTICE OF CLAIM FOR WORKERS' COMPENSATION BENEFITS.

It is necessary to renumber subpart 4 as subpart 3 following the deletion of subpart 2 described in e. above. This technical editorial change is not substantial.

i. Page 7, line 26. Part 1415.1000.

COMMENCEMENT OF PROCEEDINGS.

The word "employer" replaces the word "employee."

This corrects a typographical error contained in the rules as originally proposed. Only employers are uninsured, not employees. As an editorial change, it is not substantial.

j. Page 15, lines 3 and 4. Part 1415.1700.

DISMISSAL.

The last clause of subpart 2 was deleted in order to clarify the grounds for involuntary dismissal of claims. As modified, the rule limits the grounds for dismissal to those specifically described. Under the original language, an action could also be dismissed for any reason allowed in district court.

The change is needed and reasonable because it eliminates a vague, undefined basis for dismissal of a claim. It is particularly important for workers' compensation litigants who may be unaware of dismissal procedures in district court.

This change is not substantial because it merely adds specificity to the proposed rule. The grounds for dismissal remaining in the modified rule represent the typical bases for dismissal in workers' compensation proceedings.

k. Page 16, lines 34-36. Part 1415.1900.

PRETRIAL PROCEDURES.

Under the original language, parties were to "have authority to settle their respective claims." It has been reworded to conform to the comparable provision in part 1415.1800, subpart 3 governing settlement conferences.

Pretrial conferences at the Office are partly intended to encourage the settlement of claims. This part is modified to clarify that settlement procedures at the Office and the Division are the same.

Because the change only clarifies the original intent of the rule without affecting the duties of the parties, it is not substantial.

l. Page 19, line 6. Part 1415.1900.

PRETRIAL PROCEDURES.

The amendment to subpart 5 L. deletes the requirement of filing a retainer agreement at the time of the pretrial conference when it has previously been filed.

This eliminates unnecessary duplication. If it has previously been submitted, the retainer agreement will be in the file available to the settlement judge. It is thus unnecessary to file a duplicate.

The amendment places no additional burdens on parties, and is thus not a substantial change.

m. Page 19, lines 9-12. Part 1415.1900.

PRETRIAL PROCEDURES.

The requirement to show the reasonableness of attorney fees and costs at the hearing or upon settlement is deleted from subpart 5 L.

Attorneys should not be expected to prematurely justify the fee they will charge at the end of the case. This change is reasonable because of the difficulty in predicting in advance the amount of time the case will require. It also reflects current practice.

Because no added burdens are placed on parties, the change is not substantial.

n. Page 21, line 30. Part 1415.2000.

SETTLEMENTS.

Subpart 4 is amended to require that items listed for inclusion in stipulations for settlement are required only when they are applicable to the particular case.

The change is necessary so as not to mistakenly imply that stipulations are valid only if they contain all of these elements. For example, an itemization of all prior temporary total disability payments is irrelevant to a settlement involving only permanent partial disability. The costs of negotiating and drafting stipulations are reduced if they are kept as simple as possible.

The change is not substantial. It clarifies the intended application of the rule and does not place further burdens on the parties.

o. Page 22, lines 17 and 22, Part 1415.2000.

SETTLEMENTS.

The words "where applicable" in subpart 4 G. and H. are deleted as duplicative following the addition of "if applicable" described in n. above. This editorial clarification does not constitute a substantial change.

p. Page 22, lines 30-31, Part 1415.2000.

SETTLEMENTS.

This amendment to subpart 4 I. provides that a stipulation closing out benefits must contain an explanation which shows that the settlement is fair, reasonable, and in conformity with the act when the stipulation is viewed as a whole.

This change is necessary because stipulations must be viewed in their entirety to determine whether they are reasonable and fair as required by Minn. Stat. § 176.521, subd. 2 (Supp. 1983). An examination only of excerpts from the stipulation may not accurately reflect whether the criteria of Minn. Stat. § 176.521, subd. 2 (Supp. 1983) are met.

The change merely clarifies the rule's intent and is thus not a substantial change.

q. Page 24, line 31, Part 1415.2200.

DISCOVERY.

The time limit for providing medical authorizations was extended from 15 working days to 30 calendar days to make this provision consistent with the change to part 1415.0400 as described in finding 2 c.

r. Page 26, line 34, Part 1415.2200.

DISCOVERY.

The citation to subpart 9, item C, subitem 1 now appears as subpart 3.

This editorial change corrects an improper reference. Because the subpart refers to medical testimony, it should cite to subpart 3 regarding medical evidence. This is a technical, not a substantial change.

s. Page 27, line 6. Part 1415.2200.

DISCOVERY.

For clarity, the word "prohibiting" was substituted for "refusing to allow" in subpart 5 B.

As amended, the terminology of the first clause is consistent with that of the second clause. The amendment is needed and reasonable to remove awkward language.

This editorial clarification does not change the meaning of the rule and thus is not a substantial change.

t. Page 40, line 27. Part 1415.2900.

THE HEARING.

The language added to subpart 5 provides that parties who testify may not be excluded from the hearing during the testimony of other witnesses.

This amendment is needed and reasonable to explicitly recognize that parties are entitled to be present at their own hearing.

The change is not substantial because it does not add burdens to parties or reduce their legal rights.

3. Minnesota Statutes, Section 14.115 does not apply to these rules because they do not affect small businesses directly. Minn. Stat. § 14.115, subd. 7(b). The rules affect litigation of workers' compensation matters between employees and insurers or self-insurers. There are no self-insured employers which are "small businesses," as defined in Minn. Stat. § 14.115, subd. 1. Only large corporations have the financial capability to be self-insured. Since the rules do not directly affect any small businesses, the agencies did not consider methods for reducing the impact of the rules on small businesses. Minn. Stat. § 14.115, subd. 2.

THEREFORE, based on all of the evidence in the record, files and proceedings, these are our findings of fact and conclusions In the Matter of the Proposed Adoption of Joint Rules of Practice of the Department of Labor and Industry and the Office of Administrative Hearings Governing Workers' Compensation Practice and Procedure.

STATE OF MINNESOTA

Dated: July 12, 1984.

Steve Keefe

STEVE KEEFE
Commissioner
Department of Labor and Industry

Dated: July 12, 1984.

Duane R. Harves

DUANE R. HARVES
Chief Administrative Law Judge
Office of Administrative Hearings

DEPARTMENT OF LABOR AND INDUSTRY

Workers' Compensation Division

and

OFFICE OF ADMINISTRATIVE HEARINGS

STATEMENT OF NEED AND REASONABLENESS

In the matter of the proposed adoption of Joint Rules of Practice of the Workers' Compensation Division and the Office of Administrative Hearings.

In 1983, the legislature enacted Minn. Stat. 176.83, Subdivision (i), allowing the promulgation of joint rules of the Workers' Compensation Division and either or both of the Office of Administrative Hearings and the Workers' Compensation Court of Appeals.

These proposed rules are a consolidation and revision of the Rules of Practice for the Workers' Compensation Division and the Workers' Compensation Rules of the Office of Administrative Hearings. Nine of the Rules of Practice for the Workers' Compensation Division will remain in effect. They are currently under revision.

This statement will address the need for and reasonableness of the changes to the existing rules and will not attempt to justify the unchanged portions of the existing rules. Since that has already been done in earlier proceedings, it is not an appropriate consideration at this time.

Throughout these rules, archaic language and male pronouns have been stricken and replaced with simple English and gender neutral terms. "Shall" has been replaced with "must" or "will" where the "shall" did not refer to an action by a person.

Input into these rules has included suggestions of compensation judges, the chief hearing examiner, petitioner's attorneys, defense attorneys, intervenors, and the Workers' Compensation Division staff.

Part 1415.0100/Scope and Purpose.

Part 1415.0100, formerly 9 MCAR 2.310, describes the scope of the joint rules, indicating the situations in which these rules are applicable.

a. The rules are intended to apply to formal litigation which is filed with the Department but for which the hearing is held at the office. The rules are not intended to apply to informal proceedings, such as administrative conferences conducted solely by the Department and which may be formally litigated thereafter.

b. The rules are being adopted as joint rules of the two agencies because both agencies have jurisdiction over formal litigation and joint rules will assure uniform policies and procedures with respect to the litigation. Confusion over inconsistencies in handling litigation between the two agencies will then be eliminated.

c. Policies and procedures that are solely within the jurisdiction of the Department are not covered by these joint rules and will be the subject of separate rules promulgated solely by the Department. Reference to the Administrative Procedure Act is deleted to avoid the misleading impression that all the provisions of the APA apply. Workers' Compensation hearings are specifically exempted from the contested case procedures of the APA in Minn. Stat. § 14.03, Subd. 2 (e).

Part 1415.0200/General Authority.

Part 1415.0200 repeats the language of 9 MCAR 2.302 A and B with a couple of minor changes. Male pronouns are changed to neutral terms and language is added to clarify that compensation judges are prohibited by the act from deciding those issues reserved to the commissioner and appellate bodies, such as resolving medical and rehabilitation issues.

Part 1415.0300/Definitions.

The definitions include those previously found in 9 MCAR 2.302 with some additions. Definitions of "Board", "Court of Appeals", "Fund Director", and "Panel" were added because of the use of these terms in the Rules of Practice. "Act" is defined to avoid the repetitious use of "Workers' Compensation Act". "DVR" has been added due to several references in the rules to DVR. The references in these rules to DVR are necessary to implement Minn. Stat. 176.104 which provides for referral to DVR when the

employee is eligible for rehabilitation and primary liability is being denied. "Judge" is defined to avoid the repetitious listing of the three types of judges when the reference is to any one of the three judges. It is reasonable to delete these references to maximize readability and comprehension. "Calendar judge" is further defined to differentiate between a calendar and compensation judge. Previously, the definitions were identical. A distinction is needed to avoid confusion.

The Special Compensation Fund is added to the list of persons who may be petitioners in subpart 16. The fund is sometimes a petitioner seeking a temporary order or contribution from another party.

Part 1415.0400/Medical Authorization.

Part 1415.0400 is a revision of WC 7. The basic rule that medical authorizations must be furnished within 15 days of receipt of a written request remains the same. An addition is that the request must advise the employee of the 15 day requirement. Part 1415.0400 allows the employer or insurer to bring a motion to strike the case from the active calendar if authorizations are not furnished as requested. The addition gives the employer or insurer a remedy for failing to furnish authorizations. Notice to the employer of the time limitation is intended to encourage compliance through fair warning of the existence of the rule.

Part 1415.0500/Legal Documents.

WC 12 has been replaced with Part 1415.0500 and is consistent with the recent changes to letter size paper by all Minnesota Courts. The change to standard size paper reduces overall cost.

The information required on requests for action enables the division to efficiently and accurately identify the file.

The Supreme Court license number which is now required on legal documents, is an addition to aid the Office of Administrative Hearings in the computerization of their records. Time and money can be saved through the use of a five-digit number in place of the attorney's name, address, and phone number. The district courts are requiring the license number as well. The license

number is also included in Parts 1415.0800, 1415.1000, 1415.1200 and 1415.1400 of these rules; the rationale for its inclusion is the same as that given in this rule.

Part 1415.0600/Examination of Workers' Compensation Files.

Part 1415.0600 leaves WC 10 intact, but adds a requirement that the authorization must be dated and specify the person to whom access is given. This protects the employee by prohibiting unlimited access to his or her file through one general authorization which was not intended to give open access.

The last sentence has also been added to prevent invasions of the employee's right to privacy.

Part 1415.0700/Service.

The service rule is a revision of 9 MCAR 2.307. Minor changes in wording have been made to simplify and clarify the rule. A party now must serve a party's attorney as well as the party; previously service on the attorney was merely permissible. Service on the attorney is a reasonable requirement to ensure that the attorney has ample time and opportunity to take appropriate action on behalf of the employee.

The first sentence of the old section C is deleted as redundant.

Part 1415.0800/Notice of Representation.

Part 1415.0800 expands WC 9 to include the information that must be contained in the Notice of Representation, the persons who must receive a copy, the procedures necessary to change attorneys, and where and what must be filed. The information required in the notice is needed to properly match the notice with the claim petition. The parties need to be informed of the representation to redirect communications about the case to the attorney. Likewise, the state file must contain current information regarding representation. The attached retainer agreement is useful in determining attorney fees. The last sentence of WC 9 requiring the presiding official to assist an

unrepresented party in the questioning of witnesses has been deleted. The mandate is unnecessary given a judge's duty to conduct hearings in an equitable manner.

Part 1415.0900/Notice of Claim for Workers' Compensation Benefits.

This new rule describes what to include on a Notice of Claim for workers' compensation benefits, who must be served, what supporting documentation is required, and a warning to claimants that defective notices are not considered filed until the deficiency is corrected. The purpose of the rule is to require the claimant to specify in as precise terms as possible, the nature of the potential claim. The intent is to encourage settlement through early identification of issues as well as to enable the employer and insurer to prepare their defenses.

Part 1415.1000/Commencement of Proceedings.

Part 1415.1000 combines and revises 9 MCAR 2.304 and WC 14. Subpart 1 sets forth the items which must be included on a petition in order to adequately inform the adverse parties of the nature of the claim and to identify potential intervenors. The old section B, governing consolidation, is now a separate rule, Part 1415.2500. Subpart 2 incorporates provisions of WC 14. The items formerly listed in C have been moved to subpart 1. Section D of 9 MCAR 2.304 is now Part 1415.1100.

Subparts 3 and 4 are new. Consistent with Part 1415.0900, parties are again required to correct defects before further processing of the claim. As in Part 1415.0900, the intent is to facilitate a clear definition of issues and promote settlement, thereby avoiding unnecessary discovery and litigation. Amended petitions are allowed so long as adequate notice is given to the parties before the hearing or other proceeding at the Workers' Compensation Division or Office of Administrative Hearings. It is reasonable to allow parties to revise claims when to do so does not prejudice the other parties.

Part 1415.1100/Notice to Potential Intervenors.

This rule is 9 MCAR 2.304D with a few modifications. Attorneys are required in subpart 3 to notify potential intervenors within 30 days after the filing of an answer or within 60 days of

receipt of a petition if no answer is required. Potential intervenors whose interest arises after the claim petition or answer is filed, must be promptly notified. The language requiring inquiry regarding potential intervenors within five days of receipt of a notice of a pretrial order or pretrial conference is deleted. The purpose of the change is to protect the interests of intervenors by early notice of the claim. The revision serves this purpose.

Additions to subparts 1 and 2 require that the attorney inquire about services provided by DVR and, if services have been provided, to notify DVR of the pending claim. This is reasonable in light of the increased role of DVR in workers' compensation cases due to Minn. Stat. § 176.104. Other changes are merely simplifications of the original language.

The last two sentences of 9 MCAR 2.304D has been deleted as unnecessary. Not only do other sufficient sanctions exist to assure that an attorney notifies potential intervenors, but also the deleted sanctions could still be applied under other provisions.

Part 1415.1200/Intervention.

Part 1415.1200 combines 9 MCAR 2.310 and WC 19. Changes in subpart 1 clarify which judge will hear the motion for intervention. The time to serve the motion for intervention is enlarged from 30 days following receipt of notice under Part 1415.1100 to 60 days. This is to allow potential intervenors a more realistic time period within which to receive notice, forward the notice to the appropriate person, determine the proper course of action, and file a motion for intervention, if appropriate.

Subpart 1.B has been revised to simplify the language: "legal rights, duties, or privileges" is now "interests" and "grounds and purposes" is now "reasons". An addition to subpart 1.B allows the commissioner to intervene upon the showing of an interest in administering, enforcing, or defending a challenged rule or law. The provision codifies a recent court decision allowing intervention.

Subpart 1.B.(2) adds "rehabilitation services provided by DVR" for the same reason discussed in Parts 1415.0300 and 1415.1100.

In subpart 2, the proposed stipulation and objections to payments by the intervenor must be filed with the division or office, depending upon which office has jurisdiction, rather than at the division as previously required.

Section G of 9 MCAR 2.310 has been deleted as unnecessary because other sufficient sanctions exist. Moreover, the deleted sanctions could still be imposed under other provisions, that is, attorneys fees under Part 1415.3200 and penalties under a rule soon to be promulgated.

Part 1415.1300/Joinder of Parties.

The previous joinder rules are 9 MCAR 2.303 and WC 16. The last sentence of 9 MCAR 2.303A is stricken as redundant of subpart 2. In subpart 2, the confusing language regarding when the motion must be filed is deleted and replaced with a clear deadline. This resolves the conflicting time limits of WC 16 and 9 MCAR 2.303B. The remaining language deleted from subpart 2 is now contained in subpart 3.

The first sentence of subpart 4 has been added to enable the parties to adequately prepare for the hearing after a late joinder.

The option for a hearing on joinder is eliminated in subpart 6 to reduce unnecessary appearances by attorneys and the parties. Arguments regarding joinder may be presented in writing. Moreover, joinder may be addressed at the regular hearing and on appeal.

Part 1415.1400/Answer.

The addition of subpart 1 to WC 15 is necessary to implement Minn. Stat. § 176.321, Subd. 1 providing that answeres must be filed.

The deadline for scheduling an adverse medical examination is moved to Part 1415.1800 on pretrial procedures. It is reasonable to assume that the provision will be more easily found in Rule 18.

Subparts 3 and 4 are new. Subpart 3 warns the answering party of a potential default award under Part 1415.1500 for failure to answer, thus encouraging prompt compliance. Subpart 4 requires the division to reject defective answers. The petitioner is entitled to a prompt and specific response to the petition.

Part 1415.1500/Default Award.

Part 1415.1500 is a new rule to implement Minn. Stat. § 176.331. Subpart 2 protects the late-answering party from a default award where no prejudice has been caused by the delay. This is consistent with court decisions which have set aside default orders and remanded the cases for hearing where no prejudice is shown.

Subpart 3 provides for a hearing on the motion if a judge determines that proof of alleged facts is needed. A hearing must be provided in appropriate cases to satisfy the requirements of due process.

Part 1415.1600/Award on the Pleadings.

This new rule creates an opportunity for an early decision based upon the pleadings, thus avoiding lengthy discovery, other pretrial proceedings, and a hearing in cases which arguably are clear-cut. If a party presents matters beyond the pleadings, the case will be assigned to a judge for hearing if testimony is necessary. This protects the parties from a quick hearing without adequate preparation and discourages the use of a motion to bypass the usual procedure in the average case.

Part 1415.1700/Dismissal.

Part 1415.1700, a new rule, allows a judge to dismiss some voluntarily resolved matters without prejudice, thus clearing the calendar of settled claims.

Subpart 2 allows the judge to sanction parties for substantial violations of these procedural rules, other existing rules, the workers' compensation act, or a judge's order, by dismissing the claim. The goals of order and fairness are served by sanctions which encourage compliance with an existing law or order.

Part 1415.1800/Settlement Conference by Division.

The current settlement conference rules are 9 MCAR 2.305 and WC 21. Part 1415.1800 does not closely resemble either rule. but is rather a mesh of those rules, 9 MCAR 2.313, and Part 1415.1900. The modifications are necessary for consistency and clarification. To avoid confusion, prehearing conferences by the division are referred to as settlement conferences and those conducted by the Office of Administrative Hearings are referred to as pretrial conferences. The function is essentially the same, with greater emphasis placed on hearing preparation at a pretrial conference.

Subpart 2.B. sets a reasonable limit on the time a settlement judge may retain jurisdiction over a pending settlement. If progress is being made, there is no need to refer the matter to the office. If progress is not being made, a motion to certify the matter to the office is appropriate and now specifically allowed.

The remainder of Part 1415.1800 corresponds to Part 1415.1900; many of the requirements for pretrial conferences are also required for settlement conferences due to the similar function.

Part 1415.1900/Pretrial Procedures.

Part 1415.1900 is taken from 9 MCAR 2.313. The first sentence of Part 1415.1900 formerly was part of WC 15 on answers. The previous requirement that the adverse medical examination must take place within 75 days from the filing of a claim petition was difficult to achieve due to long waiting lists to see specialists. The proposed "schedule within 30 days and complete within 120 days" is more realistic and reasonable.

Language is added to subpart 2 to allow the judge to set a pretrial conference on the judge's motion, even if a party does not request it. Pretrial conferences often result in settlement or narrowing of the issues and save judicial time. The goal is to shorten the waiting period for hearings.

Supart 3 has been added to allow telephone conferences for those parties who would otherwise be required to travel more than 50 miles to attend a conference. This is consistent with Part 1415.1800 on settlement conferences.

The last sentence of subpart 4 has been expanded to facilitate settlement. thus avoiding lengthy and costly litigation.

Subpart 6.A. follows the current rule with minor stylistic changes. In addition, the rule now states that the pretrial statement must be served on the other parties.

Subpart 6.B. codifies the current procedure for filing pretrial statements when an objection to discontinuance has been filed.

The temporary order portion of 9 MCAR 2.313 is now Part 1415.2300. The rule is more easily found as a separate rule.

An amendment to subpart 7 states that evidence or witnesses not disclosed through discovery may, nevertheless, be used as impeachment evidence or rebuttal witnesses. This is an exception to the rule that evidence must be disclosed prior to the hearing to be used at the hearing. It is unrealistic to expect the parties to anticipate every shred of evidence which they will use at the hearing. The addition makes the rule more reasonable and thus encourages compliance with the rule.

The order described in subpart 8 is necessary to preserve the validity of partial settlements. Without this provision, anything less than a complete settlement would be useless because of unenforceability in light of Minn. Stat. § 176.521. The language is taken from 9 MCAR 2.305 on settlement conferences.

Subpart 9 contains a cross-reference to a provision governing procedures for the treatment of medical issues under the 1983 statutory changes. It also provides that the non-medical portion of a claim will be determined before the medical portion. The reason for this is that based on experience, the vast majority of medical issues will be settled by the time the non-medical issues have been determined.

Part 1415.2000/Settlements.

Part 1415.2000 is 9 MCAR 2.320 with a few changes. The last sentence of subpart 2 is added to explain where a stipulation for settlement is filed.

Subpart 3 is amended to conform to a change in Minn. Stat. 176.521, Subdivision 2, requiring a judge's approval of settlements which close out future medical or rehabilitation benefits.

The second paragraph of subpart 3 is reworded to clarify that the division or office issues an award under Minn. Stat. § 176.081, Subd. 7a, rather than the chief hearing examiner. The chief hearing examiner lacks the authority to issue awards. If a judge's approval is not required, a compensation or settlement judge immediately signs the award, as provided in Minn. Stat. § 176.081, Subdivision 1b.

Subpart 4.E. specifically mentions DVR in order to require the parties and the judge to consider DVR as a potential intervenor in appropriate cases.

Subpart 4.I. is added to assist the judge in determining whether the close out of future medical and/or rehabilitation benefits is just. To promote the legislative purpose of safeguarding an injured employee's rights, the employer or insurer should be able to affirmatively justify the action.

Part 1415.2100/Objections to Discontinuance and Petitions to Discontinue Compensation Payments.

Part 1415.2100, formerly 9 MCAR 2.306, contains procedures for formal hearings involving discontinuance of compensation. Informal adminstrative procedures at the division will be addressed in the Rules of Practice for the Workers' Compensation Division. The Rules of Practice are currently under revision.

The phrase "whichever is latest" is added to subpart 2 to eliminate confusion about the beginning and end of the 120 day period during which an objection to discontinuance must be filed to be heard on a priority basis. The first sentence of 9 MCAR 2.306C is stricken as repetitious of subpart 1. The remainder of 9 MCAR 2.306 is retained.

Part 1415.2200/Discovery.

Part 1415.2200 was formerly 9 MCAR 2.314. In addition to disclosure of the names and addresses of medical witnesses who will testify in person, subpart 1.A now requires the disclosure of the names and addresses of doctors who will testify by deposition, report, or cross-examination. Recent statutory changes encourage the parties to present testimony in written form. It is fair and reasonable to require the disclosure of the names and addresses of these witnesses in addition to the

in-person witnesses. A time limit of 15 days for disclosure of new medical witnesses and to provide medical authorizations is inserted in subparts 1.A and 1.C. Disclosing all medical witnesses and providing medical authorizations early in the process encourages settlement based on full knowledge of the facts. The phrase "upon demand" is deleted in subpart 1.C as repetitious of subpart 1.

Subpart 2.B is rewritten for clarity; there is no change in meaning.

Subpart 2.E requiring the party taking a deposition to pay the costs associated with the deposition, is a statement of the current practice. It is stated in this rule to ensure uniform application in all cases and to discourage the taking of unnecessary depositions.

Subpart 4 simply cross-references this rule with part 1415.2900, subpart 3.A which contains additional procedures relating to medical testimony.

Subpart 7 is a new section allowing employers and insurers to obtain the services of an employment expert and requires the employee to submit to the expert's examination. This allows insurers to adequately defend against arguments regarding the inability to obtain work because of the current economy and labor market. The employee is protected from intrusive examination through the availability of a protective order.

Part 1415.2300/Temporary Orders.

Part 1414.2300 is a revision of WC 17 and 9 MCAR 2.313 F. Subpart 1.A.4 is inserted to insure that the rights of potential intervenors are considered before a temporary order is issued. Subpart 1.B requires service of the petition on intervenors and potential intervenors to protect their rights as necessary parties.

Subpart 1.C provides for the withholding of attorney fees under temporary orders unless the attorney waives the right to have them withheld. Temporary orders, by definition, are issued in cases in which there is a dispute about which party is liable. Therefore, a portion of the claim is disputed and the withholding of attorneys fees is allowed by the act. The rationale for withholding attorney fees in other contested cases applies here as well.

The substance of the petition for a temporary order in subpart 1.D has not been altered except to change the annual interest rate to 12 percent a year in accordance with a statutory change; the "legalese" has been omitted or rewritten to facilitate readability and comprehension by the general public.

The first sentence of subpart 2 now includes the special compensation fund as a potential petitioner for a temporary order. The fund is the appropriate petitioner if the employer is uninsured or the employee is unrepresented and the insurers have not reached an agreement as to which insurer will make the preliminary payments.

Subpart 2.A(1) is included to eliminate temporary orders in cases in which primary liability has been denied. If there is a dispute about whether benefits are payable at all, a temporary order is not appropriate for the following reason. If primary liability is ultimately not found, the insurer paying under a temporary order would be unable to recover the benefits paid unless the employee's claim was not made in good faith. Therefore, without this provision, insurers would risk losing substantial amounts of money.

Subpart 2.A(7) and 2.C are the same provisions as in subparts 1.A(4) and 1.C. above. Therefore, the rationale given above applies here as well. Changes in the form of the order in subpart 2.D. are the same as in subpart 1.D. above.

Intervenors and potential intervenors are now listed as necessary parties in subpart 3.E for purposes of service of temporary orders. As discussed above, the purpose of this provision is to notify these parties and potential parties before action is taken which prejudices their rights.

The last six words of subpart 4 have been added to direct the answering parties to specify objections to the proposed order. An answer containing specific objections gives notice of the party's position, thereby promoting communication between the parties and a clear statement of disputed issues.

The last clause of subpart 5 prohibiting approval of temporary orders which prejudice an intervenor's claim for reimbursement is new. If the rights of all potential parties are protected at an early stage of the proceedings, a full resolution of the issues is encouraged.

Part 1415.2400/Petitions for Contribution or Reimbursement.

Part 1415.2400 revises 9 MCAR 2.315 and WC 18. The last two sentences of subpart 1, requiring joinder or consolidation if a current claim is pending, are added to avoid multiple proceedings in one case. Where a claim petition is pending, a reimbursement or contribution issue involving the same employee and injury must be joined or consolidated with the original action.

In subpart 3, "may file a verified answer" is changed to "shall file a verified answer" to conform to the statutory change.

9 MCAR 2.315 D which required notice to the employee of proceedings for contribution or reimbursement is deleted. Contribution and reimbursement issues do not affect the employee's right to benefits or the amount of the benefits. It is therefore, not necessary to involve the employee in this aspect of the process; it confuses and concerns the employee needlessly. In addition, attorney fees may also be incurred unncessarily if the employee is notified.

Part 1415.2500/Consolidation.

Part 1415.2500 is the former 9 MCAR 2.311. In subpart 3, service of the order on the commissioner is omitted as unnecessary and serving no useful purpose.

In subpart 4.B., the standard to be applied to a motion for severance is changed to when "justice will be best served" rather than when "consolidation would prejudice the rights of the party". There may be situations in which rights are not prejudiced by consolidation, but a party would be greatly inconvenienced or otherwise adversely affected. It is reasonable to allow serverance in such cases.

Part 1415.2600/Disqualification.

Nothing substantial has been changed from the former rule, 9 MCAR 2.312. However, organization of the provisions, sentence structure, and terminology have been altered to simplify the rule and clarify the intended meaning of its provisions.

Part 1415.2700/Subpoenas.

Part 1415.2700 is a revision of 9 MCAR 2.316. "Or the division" is added to the first sentence to make it clear that the Division may also issue subpoenas. The second paragraph is reworded, but no substantive changes are made.

Part 1415.2800/Continuances.

Part 1415.2800 leaves 9 MCAR 2.309 intact with minor language revisions to promote readability.

Part 1415.2900/The Hearing.

Part 1415.2900 revises 9 MCAR 2.317. Exceptions to the 30 day notice of hearing requirement in subpart 1 are transferred from 9 MCAR 2.308. An addition to subpart 1 is that oral or written notice at a settlement or pretrial conference is sufficient notice. In such cases, a subsequent notice would merely be duplicative.

In subpart 3.A, language is added to require that the affidavit supporting a motion to take oral testimony contain sufficient facts for the judge to make a determination of cruciality. The judge decides the issue without a hearing and cannot fulfill his or her obligation to make a determination based upon facts, if a bare legal conclusion is substituted in place of needed facts. The time limit for filing a motion to take oral testimony is reduced to 25 days before the hearing due to the fact that the notice of hearing need not be given until 30 days before the hearing. The prior 30 day period in which to file a motion is unreasonable; it required the motion to be filed the same day the party must be notified of the hearing date, leaving no time for preparation or decision.

The addition to subpart 3.C of "on a party or the judge's motion", allows the judge to rule on the cruciality of oral medical testimony, even when the parties have not requested medical testimony. The words "or within 25 days before the hearing" are added to leave no room for doubt that the judge may decide that medical testimony is crucial at any time before the end of the hearing. Subparts 3.B and 3.C together confer this authority.

Subpart 3.D(13) requiring that health care providers verify that, where applicable, the new permanent partial disability rules have been applied, reduces the chance for error and a resulting delay in payment or other resolution of the issue.

Subpart 3.E no longer mandates that medical reports must be filed 60 days before the hearing. The new standard is "sufficiently in advance of the hearing to allow opportunity for cross-examination." The last sentence, allowing cross-examination subsequent to the hearing, is necessary so that parties may respond to late-filed reports. The deletion of the 60 day deadline also eliminates the possibility that notice of the hearing might be received after the deadline to file reports has passed. The rights of all parties are thus protected while allowing the parties more flexibility in hearing preparation.

Subpart 3.F outlines the procedures for handling medical issues which accompany contested cases. This new procedure results from the adoption of Minnesota Statutes § 176.103 and legislative changes in Minnesota Statutes § 176.135 and § 176.136. A compensation judge may approve or disapprove settlements involving medical treatment or supply issues, but may not resolve a contested issue involving medical treatment or supplies. Hence, the compensation judge must refer the contested health care issues to the Workers' Compensation Division if they are not settled by agreement. To save time and expense, a party may present medical evidence at the hearing and simply submit a transcript to the division for later disposition on the health care issues.

The last sentence of subpart 3.F gives intervenors the right to petition the division for resolution of medical treatment or supply issues, thereby granting these interested parties access to an informal administrative process in addition to the right to intervene in a litigated matter.

A change in subpart 6.A clarifies that judges are bound by these rules and Chapter 176 but no other technical or formal rules. The rule was misleading as previously written.

The addition of "from books, documents, or records" in subpart 6.C is intended to explain "excerpts" and is not meant to limit any prior interpretation of the provision. The meaning of "excerpts", when used alone, is unclear.

New language in subpart 6.D, taken from Minnesota Statutes § 14.60, subd. 4, sets out the types of facts which parties have not introduced into evidence, but which judges may nevertheless consider before making a decision, so long as the facts are entered into the record and the parties allowed to respond to them. The phrase "general, technical, or scientific facts within the judges specialized knowledge" is more descriptive and therefore, directive, than "judicially cognizable facts".

Subpart 6.E is rewritten in a more coherent manner. In addition, members of the panel or board, mediators, and other employees of the division designated to conduct conferences or hearings are included in the list of persons who may not be called as adverse witnesses in a hearing before a compensation judge. These individuals are acting in a quasi-judicial capacity. It is not appropriate to require neutral decision-makers to advocate for a particular party, thus compromising the integrity of the division or appellate body.

Subpart 7.B(6) is revised to include only memoranda and data "accepted by the judge" as part of the record. Memoranda and data not accepted by the judge are returned to the parties and do not become a part of the record.

"With the consent of all parties" is deleted from subpart 8, thus allowing the judge to unilaterally continue a case if the judge believes that further testimony should be received in the interest of justice. It is unlikely that a conflict will exist, but the judge should have the right to compel a continuance if all or some of the parties want to cut the hearing short for their own convenience and justice requires that additional testimony be received.

A change in subpart 9.A now requires that final arguments be recorded. Objections during arguments are sometimes made requiring a ruling by the judge. An incorrect ruling might be grounds for reversal and therefore, a record is needed for review by the appellate court. The last two sentences of subpart 9.A have been added to require the judge to control the testimony so that an audible recording is made. A complete, accurate record enables the reviewing court to make a reasonable decision based on all the evidence presented.

The reference to omitting final arguments from the record in subpart 9.A(6) is deleted for the reason discussed in the preceeding paragraph.

Subpart 9.B(7) provides for written notice of a continuance if the date is not determined at the hearing. An addition to this subitem requires notice to parties joined at the hearing to provide equitable treatment of the parties and to avoid further continuances due to inadvertent omission of new parties.

Subpart 9.C, a new section on decorum, is intended to instill respect for the administrative process and persons involved in it, by maintaining a degree of formality and order in the hearing room. Suparts 9.C(1), (2), and (3) save court time by restricting unnecessary arguments and testimony. Subpart 9.C(4), requiring advance notice of the need for an interpreter, also saves court time. These small bits of time saved are rather insignificant individually, but accumulate to produce a smaller backlog. Subpart 9.C(3) requires attorneys to instruct witnesses to wait until a ruling is made on an objection before answering. If the witness blurts out an answer which should not be considered, the excluded testimony is difficult to ignore. This procedure discourages the introduction of prejudicial testimony.

Part 1415.3000/The Compensation Judge's Decision.

Part 1415.3000 revises 9 MCAR 2.318. Section A.2 of 9 MCAR 2.318 on adminstrative notice, is deleted as repetitious of part 1415.2900, subpart 6.D. Also, facts administratively noticed must be entered on the record and therefore are included in subpart 1.
The last sentence of 9 MCAR 2.318 B.1 which provides for the closing of the record, is stricken as repetitive of part 1415.2900, subpart 9.B(8).

Part 1415.3100/Rehearing.

Part 1415.3100, formerly 9 MCAR 2.319, contains no substantive changes.

Part 1415.3200/Attorney Fees

Part 1415.3200 is a revision of 9 MCAR 2.321 and WC 25. Subpart 2 is changed to provide for the permissive withholding of attorney fees on disputed claims and mandatory withholding only if the attorney so requests. Fees may not be withheld if benefits are not disputed and need not be withheld on disputed

portions of claims if the attorney would rather collect the fee in another way. This subpart balances the right of the attorney to be paid and the right of the employee to receive the full amount of benefits to which he or she is entitled.

Subpart 3 is divided into two sections to differentiate between a Statement of Attorney Fees to be used when the total fee is within the limits of Minn. Stat. 176.081, subd. 1(a), and a Petition for Disputed or Excess Attorney's Fees to be used when the fees exceed those limits, or are disputed by another party. Subparts 3.A and 3.B prescribe the items necessary to an informed calculation of appropriate fees. Subpart 3.A allows the attorney to present the required information orally if there is no objection by the other parties. The parties are thus saved the extra time and expense required to prepare a written statement. In addition, the judge's time and administrative costs are not wasted in a useless formality.

Subpart 6.A combines 9 MCAR 2.321 E.1 and 2.

Part 1415.3300/Taxation of Costs and Disbursements.

Part 1415.3300 revises 9 MCAR 2.322 and incorporates WC 26. Subpart 1 is added to eliminate requests for payment of costs not authorized by statute.

In subpart 4, the objection time allowed an opposing party is enlarged to ten days, rather than five. Ten days is a more reasonable time limit, eliminating forclosure of the opportunity to object simply because of the brief absence of an attorney from work.

Part 1415.3400/Other Hearings.

This part was formerly 9 MCAR 2.324. No substantive changes have been made.

Part 1415.3500/Exhibits: Removal and Return.

This part combines 9 MCAR 2.326 and WC 27. Subparts 1 and 3 are amended to include files at the division as well as at the office. The official file is sent from the division to the office when the matter is referred to a compensation judge, and returned

to the division upon conclusion of the litigation. Therefore, the party seeking return of exhibits might need to retrieve the exhibits from the file at the division.

Part 1415.3600/Severability.

Part 1415.3600 is a standard severability clause, added to preserve the enforceability of the remainder of these rules if any other part is invalidated.

Repealer.

The repealer lists the rules which these rules replace. The Rules of Practice for the Workers' Compensation Division which are not repealed are currently under revision and will be promulgated as additions to these joint rules or as amended Rules of Practice.

9 MCAR 2.308 is repealed and incorporated into other parts of these joint rules. Sections A.1 and A.2 are now incorporated into parts 1415.1800 and 1415.1900 on settlement conferences and pretrial conferences. References to "regular hearing" and the definition of "hearing" in section A of 9 MCAR § 2.308 have been deleted as confusing and unnecessary. Section B is now included in part 1415.2900, subpart 1.

The following rules have been repealed and not revised:

9 MCAR 2.323 addressing second injury law is repealed. Its only addition to the statute is an authorization for the chief hearing examiner to assign a compensation judge to a referred reimbursement case. A rule on second injuries will be added to these joint rules in the future which will also include the provisions of WC 20.

9 MCAR 2.325 is repealed because the statutory provision creating a Permanent Partial Disability Panel has been repealed.

AG copy

Department of Labor and Industry
Worker's Compensation Division and Office of Administrative Hearings

Adopted Joint Rules of Practice of the Workers' Compensation Division and the Office of Administrative Hearings

Rules as Adopted

1415.0100 SCOPE AND PURPOSE.

Parts 1415.0100 to 1415.3500 govern all workers' compensation matters in litigation before settlement judges in the Workers' Compensation Division of the Department of Labor and Industry and compensation judges in the Office of Administrative Hearings under Minnesota Statutes, section 176.305. Parts 1415.0100 to 1415.3500 do not apply to administrative conferences conducted by the division under Minnesota Statutes, sections 176.102, 176.103, 176.135, 176.136, 176.242, and 176.243.

1415.0200 GENERAL AUTHORITY.

Subpart 1. **Assignment or transfer of cases.** The chief hearing examiner has responsibility for the assignment of cases for trial to compensation judges. The chief hearing examiner may transfer to another compensation judge the proceedings on any case in the event of the death, extended absence, or disqualification of the compensation judge to whom it has been assigned, and may otherwise reassign a case if necessary to expedite the proceedings if no oral testimony has been received in the case.

Subp. 2. **Authority of compensation judges.** In any case which has been regularly assigned to a judge for trial, a compensation judge shall have full power, jurisdiction, and authority to hear and determine all issues of fact and law presented except those issues specifically reserved to the commissioner, the department, or the board, panel, or Court of Appeals, by the act. The judge shall issue interlocutory and

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

final orders, findings, decisions, and awards necessary to the full adjudication of a case.

1415.0300 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of parts 1415.0100 to 1415.3500, the following terms have the meanings given them.

Subp. 2. **Act.** "Act" means the Workers' Compensation Act, Minnesota Statutes, chapter 176.

Subp. 3. **Board.** "Board" means the Medical Services Review Board.

Subp. 4. **Calendar judge.** "Calendar judge" means the workers' compensation judge from the Office of Administrative Hearings responsible for hearing motions and other proceedings in cases not yet assigned to a particular compensation judge.

Subp. 5. **Chief hearing examiner.** "Chief hearing examiner" means the chief hearing examiner of the Office of Administrative Hearings.

Subp. 6. **Commissioner.** "Commissioner" means the commissioner of the Department of Labor and Industry.

Subp. 7. **Compensation judge.** "Compensation judge" means a workers' compensation judge from the Office of Administrative Hearings.

Subp. 8. **Court of appeals.** "Court of appeals" means the workers' compensation court of appeals.

Subp. 9. **Division.** "Division" means the Workers' Compensation Division of the Department of Labor and Industry.

Subp. 10. **DVR.** "DVR" means the Division of Vocational Rehabilitation, Department of Economic Security.

Subp. 11. **Fund director.** "Fund director" means the director of the Special Compensation Fund, Workers' Compensation Division, Department of Labor and Industry.

Subp. 12. **Judge.** "Judge" means a calendar or compensation judge from the Office of Administrative Hearings or a settlement judge from the Department of Labor and Industry.

Subp. 13. **Office.** "Office" means the Office of Administrative Hearings.

Subp. 14. **Panel.** "Panel" means the Rehabilitation Review

APPROVED BY THE REVISOR OF STATUTES OFFICE BY:

Panel.

Subp. 15. **Petition.** "Petition" means a claim filed by or on behalf of an injured or deceased employee, employer, insurer, or special compensation fund which initiates a contested workers' compensation case requiring assignment for hearing.

Subp. 16. **Petitioner.** "Petitioner" means the injured employee, an heir or dependent of a deceased employee or a party filing on their behalf, an employer or insurer, or the special compensation fund.

Subp. 17. **Settlement judge.** "Settlement judge" means a workers' compensation judge from the Department of Labor and Industry.

1415.0400 MEDICAL AUTHORIZATIONS.

An employee shall provide the employer and insurer with appropriate signed medical authorizations within ~~15 working~~ 30 calendar days of receipt of a written request for them. A written request for medical authorization must inform the employee of the ~~15-day~~ 30-day requirement. In pending litigation failure to comply with the request for appropriate medical authorizations constitutes grounds for striking the case from the active trial calendar until authorizations are furnished. The employer or insurer may bring a motion to strike the case from the calendar if authorizations have not been furnished and the employer or insurer is unable to adequately defend its case.

FF 2a

1415.0500 LEGAL DOCUMENTS.

Forms and documents used or filed in all workers' compensation proceedings before the division or the office must be on standard size 8-1/2 by 11 inch paper.

Unless otherwise provided by law, requests for action by the division or office after the filing of a petition must contain the caption, the employee's social security number, any appropriate identification numbers of the case, and indicate the type of action requested.

All legal documents filed by an attorney must include the

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

attorney's Minnesota Supreme Court license number.

1415.0600 EXAMINATION OF WORKERS' COMPENSATION FILES.

Persons desiring to examine a file maintained by the division or office shall present a written authorization to inspect the file to designated personnel of the division or office. The authorization must be signed and dated by a party to the claim who is either the employee, the employer, the insurer, a dependent in death cases, or a legal guardian in cases of mental or physical incapacity. The authorization must specify the person or party authorized to review the file. The authorization is placed in and becomes part of the file.

? what about "heir" in death cases. see definition of "petitioner"

This part does not grant greater access to the files than that given by the Minnesota Data Privacy Act or the Workers' Compensation Act.

1415.0700 SERVICE.

Subpart 1. **Service by state.** The division and the office must serve all notices, findings, orders, decisions, or awards upon the parties ~~or their attorneys or agents of record~~ by first class mail at their addresses of record or by personal service.

If the division or office has received notice that a party is represented by an attorney or authorized agent, documents required to be served on the party must also be served on the attorney or agent.

FoF 25.

Subp. 2. **Service by parties.** A party may serve documents by first class mail or by personal service. Service of documents required to be served on a party must also be served on the party's attorney or authorized agent. Filed documents must be accompanied by an affidavit or proof of service in a form acceptable to the district courts.

Subp. 3. **Computation of time.** Computation of time for service is governed by Minnesota Statutes, section 645.15.

1415.0800 NOTICE OF REPRESENTATION.

Subpart 1. **Filing.** When an employee is represented by an attorney, written notice of representation must be filed with the division, or if the case has been certified to the office

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

with the office.

A. The notice of representation must be signed by the attorney, signed by the employee or dependent, and include the address and telephone number of the attorney, the attorney's Minnesota Supreme Court license number, the employee's social security number, and the date of the claimed injury or disease. A copy of the fully executed retainer agreement must be attached to the notice of representation filed with the division or office.

B. Copies of the notice must be sent to the employer, the insurer, and other parties, if any.

C. Failure to file the notice and retainer agreement will be considered in determining attorney fees according to Minnesota Statutes, section 176.081, subdivision 5.

Subp. 2. **Substitution of attorney.** If the employee or dependent is represented by an attorney who may have an undetermined claim for fees and the employee or dependent subsequently desires to change attorneys, the attorney assuming representation shall file a substitution of attorney and consent form signed by the client, the previous attorney, and the new attorney, together with a copy of the new retainer agreement. The new notice of representation must be filed within 20 calendar days of the signing of a retainer agreement if a claim petition has been filed or if the original notice of representation has been served by the preceding attorney.

Subp. 3. **Appearance without attorney.** If a party is not represented by an attorney at legal proceedings conducted by the division or the office, the presiding official shall advise the party of the right to representation by an attorney and ask if the party wishes to proceed without an attorney.

1415.0900 NOTICE OF CLAIM FOR WORKERS' COMPENSATION BENEFITS.

Subpart 1. **Notice required.** Prior to the filing of a claim petition for workers' compensation benefits, the employee or dependent or the claimant's attorney shall notify the parties against whom the claim is made, including all employers and insurers that will be named as parties and the special

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

compensation fund if it will be named as a party, of the claim pursuant to Minnesota Statutes, section 176.271, subdivision 2.

Subp. 2. ~~Form of notice.--The notice of claim must specifically state, if applicable:~~

~~A.--the exact dates of temporary total disability, temporary partial disability, or permanent total disability claimed and the part of the body involved;~~

~~B.--the percentage of permanent partial disability claimed and the part of the body involved;~~

~~C.--the amount of dependency benefits claimed;~~

~~D.--an itemization of penalties claimed;~~

~~E.--an itemization of unpaid medical expenses claimed under Minnesota Statutes, section 176.135; and~~

~~F.--an itemization of other expenses or benefits claimed.~~

FF 2c

~~Subp.--3.~~ **Supporting documentation.** The employee or dependent must attach to the notice of claim, if applicable, all medical reports, medical bills, if available, and other bills supporting the claim.

FF 2f

FF 2g

~~Subp. 4~~ 3. **Defective notice.** If the division determines that the notice of claim is defective, the employee or dependent will be notified of the deficiency. The claim petition is not considered filed until the deficiency is corrected. However, the claim petition will be considered filed absent the correction where compliance with this part would result in the claim being barred by Minnesota Statutes, section 176.151 or other statutes.

FF 2h + here ?

1415.1000 COMMENCEMENT OF PROCEEDINGS.

Subpart 1. **Commencement of proceedings.** All proceedings for adjudication of claims for personal injuries or occupational diseases are instituted by petition addressed to the division, and must be on forms prescribed by the division, containing:

A. the name, address, and social security number of the employee;

B. the name and address of each employer at the time an injury or disease is alleged to have occurred;

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

C. the name of each employer's workers' compensation insurer;

D. the date of each injury or occupational disease claimed;

E. the position held by the employee at the time of the alleged injury or disease;

F. the weekly wage at the time of injury or disease;

G. the nature of the injury or disease;

H. a statement that the injury or disease arose out of and in the course of the employment and that the employer had knowledge or notice of the injury or disease;

I. an itemization of all benefits claimed, including the type of disability and the time period for which coverage is claimed;

J. an itemization of medical benefits claimed;

K. the name, address, and claim or policy number of any third party who has paid medical, disability, welfare, or unemployment benefits, or rehabilitation benefits provided by DVR; and

if represented by an attorney ?

L. the name, address, telephone number, and Minnesota Supreme Court license number of the employee's attorney. petitioners ?

Subp. 2. **Service of petition, filing.** The petitioner shall serve a copy of the petition on each adverse party personally or by first class mail. "Adverse party" includes all employers, insurers, potential intervenors, and the fund director, if the ~~employee~~ FF 2i employer is uninsured or the special compensation fund is named. The original petition, together with the copy of the notice of claim required by Minnesota Statutes, section 176.271, subdivision 2 and any medical or other supporting documentation not filed with the notice of claim, must be filed with the division with proof of service.

Subp. 3. **Defects in petition.** If the division or office notifies the petitioner or the petitioner's attorney of any defect in the petition, the defect must be corrected and the corrected petition served on the other parties. If the party fails to correct a substantial defect, the claim will be

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

stricken from the active calendar.

Subp. 4. **Amended petitions.** A party may file an amended petition. Amended petitions must be served on the other parties. If a new claim is raised and an adverse party objects to it, the judge shall grant a continuance for the portion of the case involving new issues if the adverse party has insufficient time to prepare for a proceeding before the office or division regarding new issues raised in the amended petition.

1415.1100 NOTICE TO POTENTIAL INTERVENORS.

Subpart 1. **Responsibilities of attorneys.** All attorneys, whether representing employees, employers, or any other parties to a workers' compensation proceeding, shall ask their clients whether a third party, other than the workers' compensation insurer, has paid monetary benefits or treatment expense to the employee or on the employee's behalf. Attorneys shall specifically ask their clients whether the DVR has provided rehabilitation services to the employee.

Subp. 2. **Notice to third parties.** If inquiry discloses that a third party has made a payment, the attorney discovering that fact then has the duty to promptly place the third party on written notice of its right to petition for intervention and reimbursement. The DVR must be given notice if inquiry discloses that the DVR provided rehabilitation services to the employee. The attorney shall attach to the notice a copy of part 1415.1200, a copy of all pleadings in the case, and a copy of all notices and orders served in the case to date. The notice must specifically advise:

A. that the petitioner has commenced a proceeding to recover workers' compensation benefits, and that under Minnesota Statutes, section 176.361 and part 1415.1200 the third party has the right to petition for intervention and reimbursement of payments of monetary benefits, treatment expenses, or rehabilitation services;

B. the name and address of parties to the proceeding and the name and address of their attorney;

C. the name of a third party's insured, the nature of

APPROVED IN THE REVISOR OF STATUTES' OFFICE BY:

the payments made, and any identifying claim and policy number;

D. that the failure of a third party to comply with part 1415.1200 will result in a denial of the claim for reimbursement unless the judge determines that the error or omission is merely technical.

Subp. 3. **Time to notify.** Attorneys shall comply with this part within 30 days after the filing of an answer, or within 60 days of receipt of a petition if no answer is required. Attorneys shall promptly notify a potential intervenor whose interest arises upon payment made or services rendered after the claim petition or answer was filed.

1415.1200 INTERVENTION.

Subpart 1. **Motion.** A person desiring to intervene in a workers' compensation case as a party shall submit a timely motion to intervene to the compensation or settlement judge to whom the case has been assigned. If the case has not yet been assigned, the motion shall be made to the calendar judge if the case has been certified to the office, or to the division if the case has not been certified to the office.

A. The motion must be served on all parties either personally or by first class mail. A motion to intervene must be served and filed within 60 days after a person has received notice that a petition has been filed as provided in part 1415.1100. An untimely motion is subject to denial under subpart 6. In any other situation, timeliness will be determined by the judge in each case based on circumstances at the time of filing.

B. The motion must show how the moving party's interests may be determined or affected by the case; state the reasons for which intervention is sought; and indicate the moving party's statutory right to intervene. The commissioner may intervene by showing an interest in administering, enforcing, or defending the rule or law which is being challenged in the proceeding. The motion must be accompanied by the following, if applicable:

(1) an itemization of disability payments showing

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

the period during which the payments were or are being made; the weekly or monthly rate of the payments; and the amount of reimbursement claimed;

(2) a summary of the medical or treatment payments, or rehabilitation services provided by DVR, broken down by creditor, showing the total bill submitted, the period of treatment or rehabilitation covered by that bill, the amount of payment on that bill, and to whom the payment was made;

(3) copies of all medical or treatment bills on which some payment was made;

(4) copies of the work sheets or other information stating how the payments on medical or treatment bills were calculated;

(5) a copy of the relevant policy or contract provisions upon which the claim for reimbursement is based;

(6) a proposed order allowing intervention with sufficient copies to serve on all parties;

(7) the name and telephone number of the person representing the intervenor who has authority to reach a settlement of the issues in dispute;

(8) proof of service;

(9) at the option of the intervenor, a proposed stipulation which states that all of the payments for which reimbursement is claimed are related to the injury or condition in dispute in the case and that, if the petitioner is successful in proving the compensability of the claim, it is agreed that the sum be reimbursed to the intervenor; and

(10) if represented by an attorney, the name, address, telephone number, and Minnesota Supreme Court license number of the attorney.

Subp. 2. **Stipulation.** If the person serving the motion for intervention has included a proposed stipulation, all parties shall either execute and return the signed stipulation to the intervenor who must file it with the division or office or serve upon the intervenor and all other parties and file with the division or office specific and detailed objections to any

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

payments made by the intervenor which are not conceded to be correct and related to the injury or condition the petitioner has asserted is compensable. If a party has not returned the signed stipulation or filed objections within 30 days of service of the motion, the intervenor's right to reimbursement for the amount sought is established provided that the petitioner's claim is determined to be compensable.

Subp. 3. **Attendance by intervenor.** Unless a stipulation has been signed and filed or the intervenor's right to reimbursement has otherwise been established, the intervenor shall attend all settlement or pretrial conferences and shall attend the regular hearing if ordered to do so by the compensation judge.

Subp. 4. **Order.** If an objection to intervention remains following settlement or pretrial conferences, the calendar judge shall rule on the intervention and the order is binding on the compensation judge to whom the case is assigned for hearing.

Subp. 5. **Presentation of evidence by intervenor.** Unless a stipulation has been signed and filed or the intervenor's right to reimbursement has otherwise been established, the intervenor shall present evidence in support of the claim at the hearing unless otherwise ordered by the compensation judge.

Subp. 6. **Effects of noncompliance.** Failure to comply with this part will result in a denial of the claim for reimbursement unless the compensation judge determines that the noncompliance is merely technical.

1415.1300 JOINDER OF PARTIES.

Subpart 1. **Motion.** Upon a motion of a party or upon a judge's own motion, a judge may order the joinder of additional parties necessary for the full adjudication of the case.

Subp. 2. **Service.** A party requesting joinder of additional parties shall serve a copy of the motion on all existing parties, and the party to be joined, and file the original with proof of service with the judge no later than the date the pretrial statement is due. The party to be joined must also be served with copies of all pleadings and notice of the

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

date, time, and place set for a settlement or pretrial conference.

Subp. 3. **Late joinder.** When a party requests joinder after the date the pretrial statement was due, the motion must be accompanied by an affidavit of the moving party stating why joinder at a later date should be allowed. The judge shall allow joinder at a later date when the moving party has shown that the party to be joined is a necessary party; that the moving party was unable, through due diligence, to previously ascertain the name of or necessity of joining the party; and that the joinder is necessary for a full and final determination of the rights or liabilities of the parties.

Subp. 4. **Delay.** If joinder is ordered less than ten days before the hearing date, the judge shall continue the matter to allow the parties sufficient preparation time.

If the judge has denied the joinder because of the moving party's failure to meet the time requirements, the case will not be stricken, continued, or otherwise delayed for the purpose of joinder, unless the attorney for the petitioner consents to it.

Subp. 5. **Contents of motion.** All motions for joinder must include:

A. the party to be joined and its insurer, if any;

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

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

D. the supporting medical opinions relied upon, if applicable; and

E. if the party to be joined is the special compensation fund, the detailed circumstances, in affidavit form, showing the specific basis claimed for joinder, including the date of registration of prior impairment or injury where applicable.

Subp. 6. **Order.** The judge shall issue an order granting or denying the joinder.

1415.1400 ANSWER.

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

Subpart 1. **Service, filing.** An answer must be served and filed with the division within 20 days after service of the petition unless an extension has been obtained under Minnesota Statutes, section 176.321, subdivision 3. The answer must be accompanied by proof of service upon the petitioner, petitioner's attorney, and other parties to the proceedings.

Subp. 2. **Form of answer.** The answer must include:

A. specific responses to all material allegations regarding the date and nature of injury, the employment status, notice, wage, relationship of the injury to employment, insurance, benefits paid, medical issues raised, matters in dispute, affirmative defenses, and additional matters deemed necessary by the answering party;

B. medical reports upon which the answer is based, if available;

C. the date, time, and place for a medical examination by the employer's or insurer's doctor. If the medical examination has already taken place, the answer must so state. A request for an extension of time for scheduling the examination will be subject to the approval of the division or a compensation or settlement judge; and

D. the name, address, telephone number, and Minnesota Supreme Court license number of the attorney representing the answering party.

Subp. 3. **Failure to answer.** If a party fails to answer a petition within the 20-day period, an opposing party may apply for a default award under part 1415.1500.

Subp. 4. **Refusal.** The division shall not accept an answer which does not comply with subpart 2.

1415.1500 DEFAULT AWARD.

Subpart 1. **Filing.** If a party against whom an award is sought has failed to answer within the time allowed, the party entitled to an award by default shall serve the other parties and file with the division or the office if the matter has been certified to the office:

A. a notice of motion and motion for default award

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

with proof of service;

B. an affidavit of no appearance and no answer; and

C. an affidavit stating the essential facts.

Subp. 2. **Response to motion.** The defaulting party must respond to the motion within 20 days. If an answer is filed within the 20-day response period, a default will not be awarded unless the employee shows substantial prejudice due to the delay.

Subp. 3. **Hearing, order.** If the judge requires proof of the facts alleged in the claim petition, a hearing on the motion will be scheduled. If a hearing is scheduled, the parties must be served with notice of the hearing at least 20 days before the hearing. The parties may present the issues fully, including the right to introduce evidence and cross-examine adverse witnesses. Whether or not a hearing is held, the judge shall issue an order or award based upon the facts presented.

1415.1600 AWARD ON THE PLEADINGS.

After the answer is filed, a party may move for an award on the pleadings if the hearing will not be delayed because of the motion. If the parties to a proceeding stipulate to an award being entered on the pleadings, the chief hearing examiner shall immediately assign the matter to a compensation judge for determination on the pleadings. If, on a motion for an award on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the court on its own motion shall assign the matter for hearing on those issues on which testimony is necessary.

1415.1700 DISMISSAL.

Subpart 1. **Voluntary dismissal.** If contested matters are resolved by voluntary agreement between the parties, and a stipulation for settlement is not necessary, the parties may request that the petition commencing proceedings be dismissed. Unless otherwise stated in the order of dismissal, the dismissal is without prejudice.

Subp. 2. **Involuntary dismissal.** The judge may, on the judge's own motion or upon motion of a party with notice to the

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

parties, dismiss an action or claim for failure to prosecute; or to substantially comply with this chapter, the act, or an order of a judge~~;-or-any-other-reason-allowable-in-the-district-courts-of-Minnesota~~. FF2j

1415.1800 SETTLEMENT CONFERENCE BY DIVISION.

Subpart 1. **Purpose.** A settlement conference is for the primary purpose of assisting the parties in resolving disputes and for the secondary purpose of narrowing the issues and preparing for hearing.

Subp. 2. **Time limits.** Within ten days after a claim petition is filed, the commissioner shall refer the matter to a settlement judge. If the judge determines that a settlement conference is appropriate, the judge shall schedule the settlement conference within 60 days of receipt of the matter from the commissioner. The parties must be notified of the date, time, and place of the settlement conference.

If the judge determines that a settlement conference is not appropriate, the judge shall certify the matter to the chief hearing examiner within 60 days of receipt of the matter from the commissioner. If a settlement conference is held, the judge shall retain jurisdiciton if settlement is reached or upon consent of the parties so long as progress is being made toward a settlement. A party may bring a motion at any time to have the matter certified to the office on the grounds that no progress is being made.

Subp. 3. **Attendance.** All parties, including intervenors unless otherwise excused, shall attend any settlement conference conducted by a judge. A representative of a party shall be prepared to engage in meaningful settlement negotiations and shall have authority to reach a full settlement on the issues in dispute or have immediate access by telephone to a person having authority to reach a full settlement.

Subp. 4. **Preconference discussions.** The parties shall discuss the possibility of settlement before a settlement conference if they believe that a reasonable basis for settlement exists.

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

Subp. 5. **Information provided.** At the settlement conference, the parties shall provide the information required by part 1415.1900, subpart 5.

Subp. 6. **Settlement not reached.** If, following a settlement conference, a settlement has not been reached but the parties have reached an agreement on any facts, legal or medical issues, or level of benefits, the judge presiding over the settlement conference shall, if he or she approves of those matters agreed upon, issue an order confirming and approving those matters agreed upon. The order is binding on the compensation judge who is subsequently assigned to hear the case.

If a settlement is not reached at the settlement conference, the settlement judge shall certify the matter to the chief hearing examiner.

1415.1900 PRETRIAL PROCEDURES.

Subpart 1. **Independent medical evaluation.** If the claim is disputed and the employer and insurer require an independent medical evaluation, it must schedule the evaluation within 30 days of the filing of the claim petition and complete the evaluation within 120 days of the filing of the claim petition.

Subp. 2. **Conference.** All cases are subject to a pretrial conference with a calendar or compensation judge at which all parties shall attend or be represented, unless a calendar or compensation judge orders otherwise. A compensation judge shall order that a pretrial conference be conducted for the purpose of settlement, narrowing of the issues, or trial preparation, if any party requests that one be conducted. The chief hearing examiner or compensation judge may set a pretrial conference on his or her own motion once the matter has been received from the commissioner. If parties are represented by attorneys, the attorneys shall bring with them their appointment calendars. If a party is not represented by an attorney, the party shall appear personally and be prepared to set a date for the hearing. Parties or their attorneys attending a pretrial conference shall be prepared to participate in meaningful settlement discussions and must have authority to ~~settle their respective claims~~ reach

FF 2k

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

a full settlement on the issue in dispute or have immediate access by telephone to a person having authority to reach a full settlement. FF 2k

Subp. 3. **Location, notice of conference.** A pretrial conference must be conducted by telephone if the set location would require a party to travel more than 50 miles to attend, unless the party prefers to be physically present. If a telephone conference is scheduled, the parties not in attendance must be available by telephone at the time of the conference. Written notice of the pretrial conference must be given at least 20 days before the conference.

Subp. 4. **Settlement discussions.** Prior to a pretrial conference, the parties shall discuss the possibility of settlement if they believe a reasonable basis for settlement of all or some of the issues exists. Parties or attorneys appearing at pretrial conferences shall be prepared to participate in meaningful settlement discussions and shall have authority to reach a full settlement on the issues in dispute or have immediate access by telephone to a person having authority to reach a full settlement.

Subp. 5. **Conference procedures.** At the pretrial conference:

A. Parties shall be prepared to state the issues.

B. Parties shall state the names, and addresses, if known, of all witnesses they intend to call.

C. Parties shall give notice of amendments to pleadings that may still be necessary.

D. Parties shall file copies of all medical reports not already on file. Reports of medical examinations completed after settlement or pretrial conferences must be filed as soon as available before the hearing.

E. Each party shall state what exhibits, including photographs, motion picture films, video tapes, and documentary evidence, are intended to be used at the hearing. Copies of these exhibits must be made available to opposing counsel no later than ten days before the hearing. If any party requests

APPROVED IN THE REVISOR OF STATUTES' OFFICE BY:

showing of motion picture films or video tapes before the hearing, it shall pay the expense for the showing and may tax this expense as a disbursement.

F. If the petitioner plans to introduce hospital records into evidence, the petitioner or petitioner's attorney shall provide written authorizations allowing opposing counsel to examine those records if the authorizations have not previously been provided.

G. If the petitioner is claiming medical or other treatment expenses, the petitioner or the attorney shall state those expenses at the time of the settlement or pretrial conferences, and shall furnish opposing counsel with copies of itemized bills for the expenses at least ten days before the settlement or pretrial conference.

H. If the petitioner is claiming temporary total disability, the petitioner or attorney shall state the dates of time lost from work.

I. If the petitioner is claiming temporary partial disability, the petitioner or attorney shall state the dates of the claim, the approximate amount of the claim, and the names and addresses of the employers for whom the employee worked during the period of the claim. Authorizations to permit opposing counsel to confirm wages earned in those employments must be furnished, if requested, at least ten days before the pretrial conference. An itemized breakdown of the claim for temporary partial disability must be submitted to the compensation judge and opposing counsel at least ten days before the hearing.

J. The parties or their attorneys shall state whether payment of disability benefits, medical treatment, or funeral expenses has been made by a party other than the workers' compensation carrier and whether DVR has provided rehabilitation services. If payment has been made, the name and address of the party making payment must be furnished to the calendar or compensation judge, together with any identifying policy or claim numbers.

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

K. If a dispute exists on the wage rate at the time of the injury, the attorney for the employer and insurer shall furnish to opposing counsel, at least ten days before the pretrial conference, copies of the relevant wage records of the petitioner.

L. Unless previously filed, the attorney for the petitioner shall give the calendar or compensation judge a copy of the retainer agreement with the petitioner and state the amount of retainer fee paid. ~~The attorney shall be prepared at the time of hearing or settlement to show the reasonableness of any attorney's fees or costs, in accordance with Minnesota Statutes, section 176.081.~~ FF 2m

Subp. 6. **Pretrial statement.** At the time a case is first set for a pretrial conference or before setting the date for a hearing, the calendar or compensation judge may order the parties to file a pretrial statement containing items in subpart 5 which the judge deems appropriate. In determining whether to require a pretrial statement, the judge shall consider the number of parties involved in the case, the nature, and extent of the medical issues, and the nature, extent, and type of disability claimed. When a pretrial statement is ordered, the petitioner shall serve the statement on the other parties and file it within 20 days of the order. The responding parties shall serve and file their statement within 30 days of the order. Thereafter, a petitioner may serve and file an amended pretrial statement based solely on information presented in the responding parties' statements and not on new issues. The amended statement must be filed within 40 days of the order.

In a petition or objection to discontinuance proceeding, each party if so ordered must file a pretrial statement within ten days of the pretrial order. Thereafter, a party may serve and file an amended pretrial statement based solely on information presented in another party's statement and not on new issues. The amended pretrial statement must be filed within 15 days of the pretrial order.

Subp. 7. **Evidence not disclosed at conference.** Evidence,

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

or other matters listed in subpart 5 which have not been disclosed at a settlement or pretrial conference or in a pretrial statement except impeachment or rebuttal witnesses, may not be presented at the hearing unless it is shown to the compensation judge that:

A. the evidence or other matters offered were discovered subsequent to the filing of a pretrial statement or pretrial conference, whichever occurs last;

B. the evidence or other matters offered were not discoverable through the exercise of due diligence before that time; and

C. the other parties have been advised of the evidence or other matters before the hearing and have had an opportunity to review them.

Subp. 8. **Matters agreed upon.** If, following a pretrial conference, a settlement has not been reached but the parties have reached an agreement on any facts, legal or medical issues, or levels of benefits, the judge presiding over the pretrial conference shall, if he or she approves of those matters agreed upon, issue an order confirming and approving those matters agreed upon. Issues once agreed upon and approved may be reopened by the compensation judge only upon motion of a party on the basis of newly discovered evidence which was not reasonably discoverable at the earlier time.

Subp. 9. **Medical, treatment issues.** If the petition includes a claim for medical or other health care treatment or supplies under Minnesota Statutes, section 176.135, the issues will be determined as provided in part 1415.2900, subpart 3, item F. If a claim petition raises medical or health care issues over which a judge has no jurisdiction together with other issues over which the judge does have jurisdiction, the claim petition will be referred first to the office for a determination of the nonmedical issues and then it will be returned to the division for a determination on the medical or health care issues.

1415.2000 SETTLEMENTS.

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

Subpart 1. **Stipulations.** Stipulations for settlement are allowed under Minnesota Statutes, sections 176.081, subdivision 7a, and 176.521 and must conform to those sections and to the requirements of this part.

Subp. 2. **Filing.** All stipulations for settlement must be filed within 30 days of the date the settlement was negotiated. Stipulations must be filed with the division unless the matter has been certified to the office, in which case the stipulation must be filed with the office.

Subp. 3. **Approval.** Stipulations for settlement are subject to approval by a compensation judge or settlement judge except in cases filed under Minnesota Statutes, section 176.081, subdivision 7a, or where all parties are represented by attorneys and the settlement does not include a final and complete settlement of the employee's right to medical compensation or rehabilitation benefits. If the stipulation includes a final and complete settlement of medical or rehabilitation benefits, those issues are subject to approval by a judge under part 1415.2900, subpart 3, item F.

If a settlement is made under Minnesota Statutes, section 176.081, subdivision 7a, the offer and acceptance when filed, must include findings of fact, conclusions, and an award on all issues, including attorney's fees and costs. It must be filed with the division or the office which must immediately issue the agreed upon award. If approval is not required under Minnesota Statutes, section 176.521, the award shall be immediately signed by the compensation judge or settlement judge, served on all parties, and filed with the commissioner.

Subp. 4. **Contents.** Stipulations for settlement must contain, if applicable: FF 2 n.

A. A brief statement of the admitted material facts.

B. A detailed statement of the matters in dispute, stating the positions of the parties and supported by medical reports or other documents.

C. The weekly wage and compensation rate of the petitioner. employee ?

petitioner may be someone other than employee

?

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

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

E. A statement that all medical, rehabilitation, or treatment expenses have been paid by the employer and insurer, or an itemization of the expenses which have not been paid by the employer and insurer, indicating which payments, if any, have been made by insurer, and which payments, if any, have been made by the employee. The stipulation must specifically state whether a third party has paid expenses, monetary benefits, or whether DVR has provided rehabilitation services. If so, the stipulation must list the name and address of the third party, relevant claim or policy numbers, and indicate whether the third party has petitioned to intervene.

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

G. ~~Where applicable,~~ A statement that the employee has been fully advised of the provisions of Minnesota Statutes, sections 176.132 and 176.645, and the effect of the settlement upon any future claims for supplementary benefits or adjustment of benefits.

H. ~~Where applicable,~~ A statement that the petitioner is claiming or waiving the right to make application for an award of attorney's fees against the employer or insurer under Minnesota Statutes, section 176.081, subdivision 7 or 8, 176.135, or 176.191.

I. Where rehabilitation, retraining, or medical benefits are closed out, a statement in which the claims and contentions of the parties are sufficiently specific to provide a basis for the judge's determination that the settlement <u>as a whole</u> is fair, reasonable, and in conformity with the act.

Subp. 5. **Attorney's fees detailed.** Stipulations for settlement of cases in which the petitioner has engaged the services of an attorney must 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

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

responsible for payment of each cost. The statement must provide sufficient information to show the reasonableness of the requested fees and costs under Minnesota Statutes, section 176.081, if approval is required. If no fees are requested, the stipulation must so state.

Subp. 6. **Medical reports.** Stipulations for settlement must be accompanied by copies of all relevant medical reports in the possession of the parties which have not previously been filed.

Subp. 7. **Award.** The parties involved in the settlement must submit an award on stipulation prepared for signature by a judge.

Subp. 8. **Copy to client.** The attorney representing the petitioner shall give a copy of the stipulation for settlement to the client when the client signs the stipulation.

Subp. 9. **Signatures.** Stipulations for settlement shall be signed by all parties as required by Minnesota Statutes, section 176.521.

Subp. 10. **Payment.** The employer and insurer shall make payments under an award on stipulation within 14 days from the date the award on stipulation is filed with the commissioner.

1415.2100 OBJECTIONS TO DISCONTINUANCE AND PETITIONS TO DISCONTINUE COMPENSATION PAYMENTS.

Subpart 1. **Hearing.** When either an objection to discontinuance of compensation payments or a petition to discontinue benefits has been filed and the matter has been referred to the chief hearing examiner, it must be set for hearing on a priority basis not less than 30 days nor more than 75 days from the date of the receipt of the matter from the commissioner.

Subp. 2. **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 administrative decision of the commissioner allowing the discontinuance, whichever is latest, will be treated as a claim petition for purposes of scheduling a hearing and will not be

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

heard on a priority basis.

Subp. 3. **Petitions for discontinuance after administrative conference.** After an administrative conference on a notice of intention to discontinue, a petition to discontinue under Minnesota Statutes, section 176.242, subdivision 5, filed more than 120 days following the issuance of the commissioner's administrative decision disallowing the discontinuance will not be given priority status for the purpose of scheduling a hearing.

1415.2200 DISCOVERY.

Subpart 1. **Demand.** Each party shall, within 30 days of a demand by another party, unless a shorter time is indicated by this part, disclose or furnish the following:

A. The names and addresses of all known witnesses that a party intends to call at the hearing, including doctors by cross-examination or who will testify by report only. All witnesses unknown at the time of the disclosure must be disclosed within 15 days after they become known if a prior demand has been made.

B. Relevant written or recorded statements made by witnesses on behalf of a party. The demanding party must be permitted to inspect and reproduce such statements at the demanding party's expense. A party unreasonably failing upon demand to make the disclosure required by this part, upon proper motion made to the compensation judge at the hearing, may be foreclosed from presenting evidence at the hearing through witnesses not disclosed or through witnesses whose statements are not disclosed.

C. Medical privilege is waived as to the injuries or conditions alleged in the petition by the filing of the petition alleging injury or occupational disease. Medical authorizations must be furnished within ~~15~~ 30 calendar days of an adverse party's demand. All medical reports must be provided, upon demand to adverse parties. The petitioner shall disclose the names and addresses of all persons who have treated the petitioner in the past for injuries or conditions identical or related to those alleged in the petition, the dates of the

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

treatment, and provide medical authorization for each.

Subp. 2. **Depositions.** Under 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 judge orders otherwise.

A. When a party has objected to the taking of a deposition, the party requesting the deposition shall bring a motion before the judge, before whom the case is pending at the time of the motion, who shall determine whether the deposition should proceed. The motion must state, with specificity, the facts or other reasons supporting the need for the deposition. The judge shall order the deposition to proceed if the judge finds that:

(1) the deposition is needed for the proper presentation of a party's case;

(2) the deposition is not for purposes of delay;

(3) unusual or extraordinary circumstances exist which compel extensive discovery; or

(4) the issues or amounts in controversy are significant enough to warrant extensive discovery.

B. Depositions to preserve testimony or to present testimony due to the unavailability of the witness are allowed. The deposition must be taken sufficiently in advance of the hearing so that the deposition is filed before or at the commencement of the hearing, unless, for good cause shown, the party taking the deposition has the permission of the calendar judge or compensation judge to whom the case has been assigned for hearing to take or file the deposition subsequent to the hearing.

C. Under Minnesota Statutes, section 176.155, subdivision 5, the cross-examination of a physician or health care provider before a hearing is specifically allowed. When a deposition for the purpose of cross-examination of a physician or health care provider is taken under this item, redirect examination is allowed. Unless ordered otherwise by a

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

compensation judge, the cross-examination deposition must be completed and the original filed with the office at or before the hearing.

D. The original deposition taken for purposes of presenting testimony in the case must be filed with the office if the matter has been referred to the chief hearing examiner for assignment, or with the division if the matter has not been certified to the chief hearing examiner for hearing. The original deposition taken solely for purposes of discovery must be sealed and filed as in the case of evidentiary depositions but will not be reviewed or used in any fashion by the compensation judge unless the deposition is formally entered as evidence in the case.

E. The party initiating the taking of any deposition, including a cross-examination deposition under Minnesota Statutes, section 176.155, subdivision 5, is responsible for all costs of the deposition, including witness fees and court reporter fees.

Subp. 3. **Motions for additional discovery.** Upon the motion of a party, the judge having jurisdiction at the time of the motion may order discovery of other relevant material or information, recognizing all privileges recognized at law. The judge may order discovery available under the rules of civil procedure for the district courts of Minnesota provided that the discovery:

A. is needed for the proper presentation of a party's case;

B. is not for purposes of delay; and

C. the issues or amounts in controversy are significant enough to warrant extensive discovery.

Subp. 4. **Motion for direct testimony by physician or health care provider.** A motion for full testimony of a physician or health care provider must comply with part 1415.2900, subpart 9~~, item C, subitem 1~~ 3. FF 2R

Subp. 5. **Penalties.** Upon the failure of a party to reasonably comply with discovery or a judge's order under this

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

part, the following orders of the compensation judge are allowed upon a party's motion:

A. an order that the subject matter of the order for discovery or other relevant facts is established in accordance with the moving party's claim; or

FF 25

B. an order ~~refusing to allow~~ prohibiting the party failing to comply to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence.

Subp. 6. **Proprietary information.** When a party is asked to reveal material which that party considers proprietary information or trade secrets, he or she may bring the matter to the attention of the appropriate judge, who shall make protective orders as are reasonable and necessary or as otherwise provided by law.

Subp. 7. **Employment expert examinations.** If an employee claims that his or her ability to earn has been substantially reduced because of the injury in combination with other factors, the employee must submit to a physical and oral examination by the employer's or insurer's expert, if requested by the employer or insurer. The employee shall provide appropriate authorizations relating to wages and employment to adverse parties, upon demand. Expert reports must be provided, upon demand, to adverse parties. A party who objects to the scope of the requested examination may bring a motion for protection. The motion must be served on the parties and filed with the division, or the office if the matter has been certified to the office. The judge shall issue an order allowed by Rule 26.03 of the rules of civil procedure for the district courts.

1415.2300 TEMPORARY ORDERS.

Subpart 1. **Payment of benefits by insurer or self-insurer.** If an insurer or self-insurer voluntarily agrees to pay benefits under Minnesota Statutes, section 176.191, subdivision 1, it shall file a formal petition for a temporary order.

A. The petition must contain:

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

(1) the name of the employer and its insurer or self-insurer consenting to payment;

(2) the dispute involved, including the name and address of any other employer and insurer, if known, that may be liable for workers' compensation benefits and the date of the alleged injury while working for that employer;

(3) the beginning date of the employee's present disability, and the compensation rate that the insurer or self-insurer will pay; and

(4) a statement of whether an intervenor or potential intervenor has paid or is paying the employee or the employee's dependents substitute wage benefits such as group disability benefits, general assistance, or aid to families with dependent children (AFDC).

B. The original petition for a temporary order, with proof of service on necessary parties, must be filed with the division, the office, or the court of appeals, depending upon where the matter is pending.

C. Attorney fees for the employee's attorney must be withheld from the periodic payments made to the employee under the temporary order unless the employee's attorney waives the withholding of attorney fees, or the employee has no attorney.

D. The petition for temporary order must be accompanied by a prepared formal order in substantially the following form:

"I (name) have examined the petition for temporary order and the compensation files and records in this case. It appears that a temporary order for payment of compensation benefits should be issued pending a final determination under Minnesota Statutes, section 176.191, subdivision 1;

NOW, THEREFORE, IT IS ORDERED that (name of insurer or self-insurer), having consented to payment of compensation benefits under Minnesota Statutes, section 176.191, shall pay to (name), the employee, compensation at the weekly rate of $(amount), during

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

the period of the employee's disability, beginning (date) and shall also pay reasonable medical expenses and rehabilitation benefits related to this disability of the employee.

IT IS FURTHER ORDERED that following a final determination of liability and if it has been determined that some other employer or insurer is liable for all or part of the compensation paid pursuant to this temporary order, then the division, the compensation judge, or Court of Appeals shall order the parties held liable to reimburse (name of paying party) for that part of the compensation paid under this temporary order, for which the other parties are held liable, including interest at the rate of 12 percent a year.

Dated at _____, Minnesota
this _____ day of _____.

COMPENSATION JUDGE OR
COURT OF APPEALS

_____

By _____"

The original and enough copies of the order to serve necessary parties and attorneys representing them must be filed.

Subp. 2. **Payment of benefits by special compensation fund.** An employee seeking payment of benefits by the special compensation fund or the fund requesting to pay benefits under Minnesota Statutes, section 176.191, subdivision 2, shall file a formal petition for temporary order with the commissioner.

A. The petition shall contain:

(1) evidence that all parties agree that benefits are payable under the act;

(2) a statement that written demand for payment under Minnesota Statutes, section 176.191, subdivision 1, has been made against all employers and insurers party to the claim and that the payment demand has been refused;

(3) the names and addresses of all employers and insurers or self-insurers who are parties to the claim;

(4) a statement as to the dispute involved and

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

the dates of all alleged injuries while working for each employer;

(5) the beginning date of the employee's present disability, the compensation rate applicable for each injury date, the proposed compensation rate to be paid by the special compensation fund, and an itemization of all medical expenses and rehabilitation benefits requested to be paid under the temporary order;

(6) copies of medical reports supporting the claimed period of disability and the causal relationship of that disability to the petitioner's employment; and

(7) a statement of whether an intervenor or potential intervenor has paid or is paying the employee or the employee's dependents substitute wage benefits such as group disability benefits, general assistance, or aid to families with dependent children (AFDC).

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

C. Attorney fees for the employee's attorney must be withheld from the periodic payments made to the employee under the temporary order unless the employee's attorney waives the withholding of attorney fees or the employee has no attorney.

D. The petition for temporary order must be accompanied by a prepared formal order in substantially the following form:

"I, (name), have examined the petition for temporary order and the compensation files and records in this case. It appears that a temporary order for payment of compensation benefits should be issued pending a final determination, as provided by Minnesota Statutes, section 176.191, subdivision 2;

NOW, THEREFORE, IT IS ORDERED that the State Treasurer, as custodian of the special compensation fund shall, under Minnesota Statutes, section 176.191,

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

subdivision 2, pay to (name), the employee, compensation at the weekly rate of $(amount), during the period of employee's disability beginning (date), and shall also pay reasonable medical expenses and rehabilitation benefits related to this disability of the employee.

IT IS FURTHER ORDERED that following a final determination of liability and if it has been determined that one or more employers or insurers are liable for all or part of the compensation paid pursuant to this temporary order, then the division, the compensation judge, or Court of Appeals shall hold the parties liable to reimburse the State Treasurer, as custodian of the special compensation fund, for that part of the compensation paid under the temporary order, for which the other parties are held liable, including interest at the rate of 12 percent a year.

Dated at _____, Minnesota
this _____ day of _____.

WORKERS' COMPENSATION DIVISION

_____
Commissioner of
Labor and Industry"

The original and enough copies of the order to serve necessary parties and attorneys representing them must be filed.

Subp. 3. **Necessary parties.** For the purpose of this part, the following are necessary parties:

A. the employee or dependent;

B. insurers or self-insurers named in the petition for temporary order;

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

D. the fund director, if the petition is made under Minnesota Statutes, section 176.191, subdivision 2; and

E. intervenors and potential intervenors.

Subp. 4. **Answer.** Within ten days after being served with a copy of the petition for temporary order and proposed order, employers or their insurers, an intervenor, or the fund director

REVISOR OF STATUTES
OFFICE BY:

may file a verified answer to the petition stating objections to the proposed order.

Subp. 5. **Circumstances of nonapproval of temporary order.** A temporary order will not be approved if made contingent upon the employee's waiver of the right to claim an additional award under Minnesota Statutes, section 176.225, or waiver of the right to have attorney fees assessed against the employer and insurer in addition to compensation under Minnesota Statutes, section 176.081, subdivision 8, or if it would prejudice an intervenor's claim for reimbursement.

Subp. 6. **Effect of filing.** A hearing date will not be assigned upon filing of a petition for temporary order unless it is accompanied by a petition for contribution or reimbursement.

1415.2400 PETITIONS FOR CONTRIBUTION OR REIMBURSEMENT.

Subpart 1. **Contents.** Petitions for contribution or reimbursement in cases pending before the office must describe in detail the basis of the claim for contribution or reimbursement against the additional employer, insurer, or the state treasurer, custodian of the special compensation fund. The petition must be supported by medical evidence, signed, and verified. If a claim petition is currently pending, and the party from whom contribution or reimbursement is sought is not a party, the petition for contribution or reimbursement must be accompanied by either a petition for joinder of the party from whom reimbursement or contribution is sought, or a petition for consolidation under part 1415.2500. The two actions may be combined on a joint petition.

Subp. 2. **Filing.** A petition for contribution or reimbursement must be filed no later than ten days before a pretrial conference or within 20 days of receipt of a pretrial order if a pretrial conference is not automatically set. Copies of all pleadings, including a notice of pretrial conference must be served upon the additional employers or insurers by the party bringing the petition.

Subp. 3. **Answer.** Within 20 days after being served with a copy of a petition for contribution or reimbursement, employers

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

or their insurers, other than the petitioning party, shall file a verified answer to the petition under Minnesota Statutes, section 176.321 and, if not already set for a pretrial conference, the matter may be set for a pretrial conference under part 1415.1900.

1415.2500 CONSOLIDATION.

Subpart 1. **Authorization.** Consolidation of two or more related cases may be ordered for the purpose of receiving evidence. Consolidation may be ordered upon motion by a party to the calendar or compensation judge or upon the calendar or compensation judge's own motion if the judge determines:

A. that separate cases present substantially the same issues of fact and law;

B. that a holding in one case would affect the rights of the parties in the other case; and

C. that the consolidation would not substantially prejudice the rights of any party.

Notwithstanding the requirements of this part, the parties may stipulate to consolidation.

Subp. 2. **Receipt of evidence.** After consolidation, documentary evidence previously received in an individual case must be reintroduced in the consolidated proceedings under a master file if the compensation judge assigned to try the case designates one file as a master file. When so combined, the evidence becomes part of the record of each of the several consolidated cases. Evidence received after the order of consolidation is a part of the record of each case.

Subp. 3. **Notice of order.** Following an order for consolidation, the calendar or compensation judge shall promptly serve the order on the parties. The order must contain:

A. a description of the cases for consolidation;

B. the reasons for consolidation; and

C. notification of a consolidated pretrial conference if one has been requested.

Subp. 4. **Objection to consolidation.** A party may object to consolidation or move for severance by filing with the

APPROVED IN THE REVISOR OF STATUTES' OFFICE BY:

calendar judge or compensation judge, if one is assigned, and serving upon all parties at least seven days before the hearing, a motion for severance from consolidation which includes reasons for the motion.

If the judge finds that justice will be best served by granting severance, the judge shall grant the motion for severance.

Subp. 5. **Service of pleadings and decisions.** Separate pleadings must be filed and separate findings, orders, decisions, and awards will be made and filed in each case consolidated for hearing.

1415.2600 DISQUALIFICATION.

Subpart 1. **By judge.** 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.

Subp. 2. **By a party.** A party or his attorney may file an affidavit of prejudice if the party reasonably believes that a hearing before the assigned judge cannot be fair due to the judge's prejudice or bias. The affidavit must be served on opposing parties and filed with the chief hearing examiner not more than ten days after the filing party has received notice of the assigned judge or has knowledge of the grounds for disqualification, whichever occurs last. Each party is allowed one filing per case under this subpart. Upon filing of the affidavit with proof of service, the chief hearing examiner shall assign the case to another judge.

A party or the party's attorney may file a motion to disqualify a compensation judge for a cause other than or in addition to that described in an affidavit of prejudice. The motion must be supported by an affidavit detailing the facts establishing the grounds for disqualification and filed with the chief hearing examiner not more than ten days after the moving party has received notice of the assigned judge or has knowledge of the grounds for disqualification, whichever occurs last. The motion will be decided by the chief hearing examiner or a

APPROVED IN THE REVISOR OF STATUTES' OFFICE BY:

designee.

Subp. 3. **Continuances.** Unless required because of the unavailability of a compensation judge to hear the case, no continuance will be granted because of a disqualification under this part. If a continuance is necessary, another hearing will be scheduled as early as possible.

Subp. 4. **Consolidated cases.** Consolidated cases are considered one case under this part.

Subp. 5. **Settlement and pretrial conferences.** This part is not applicable to settlement or pretrial conferences.

1415.2700 SUBPOENAS.

Subpoenas may be obtained without charge from the office or the division. The name, address, and telephone number of the party or attorney requesting service of the subpoena must be included on the subpoena before service is tendered in accordance with Minnesota Statutes, section 357.22.

The settlement or calendar judge, or compensation judge, if the case has been assigned for hearing, shall quash or modify a subpoena upon a party's motion if the judge finds that it is unreasonable or oppressive. The motion must be promptly made, no later than the date specified in the subpoena for compliance.

1415.2800 CONTINUANCES.

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

Subp. 2. **Request.** When a continuance is requested before the hearing date, the party requesting the continuance shall first contact all other parties to determine whether mutual agreement to the continuance can be reached and, if the

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

continuance is granted, the availability of all parties for hearing at future specific dates. When all parties are in agreement with the request for continuance and have agreed to a date for a future hearing, which date has been approved by the compensation or calendar judge before whom the matter is pending, and when the continuance request is made no less than ten working days before the hearing date, the continuance will be granted.

Subp. 3. **Motion.** If all parties have not agreed to a continuance, requests for continuances must be made to the compensation or calendar judge before whom the matter is pending. When made more than ten working days before the hearing date, the request must be in writing in the form of a motion for continuance and served on all parties. If less than ten working days remain before the hearing date, notice of the motion must be made orally. A hearing on the motion will be conducted only if ordered by the compensation or calendar judge to whom the motion is made.

Subp. 4. **Good cause.** Good cause does not include:

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

B. when a law firm consists of more than one member who practice in the field of workers' compensation law, and counsel assigned to the case is unavailable because of engagement in another court or otherwise, unless all the counsel are committed elsewhere;

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

D. unavailability of a medical or other witness if the deposition of the witness could have been taken after

APPROVED IN THE REVISOR OF STATUTES' OFFICE BY:

receipt of the notice of hearing date and before the hearing.

1415.2900 THE HEARING.

Subpart 1. **Notice.** A place, date, and time certain will be assigned to each case. Written notice of the hearing will be given as soon as the assigned date is known, but must be given at least 30 days in advance of the hearing, except:

A. when notice is waived by the parties;

B. when a different time is expressly agreed to by the parties; or

C. when the notice is governed by contrary law or rule.

The notice must include the place of hearing, the amount of time allowed for the hearing, and the name of the compensation judge assigned, if known. Oral or written notice of the date, time, and place of the hearing given to the parties by a judge at a settlement or pretrial conference is sufficient notice. An attorney who receives notice of the hearing date at the settlement or pretrial conference must notify his or her client. Cases will be set for one location only, that most convenient for the petitioner. Adequate time will be allowed so that the case may be completely heard in one sitting. If an additional hearing date is required, it must be agreed to by all parties and the compensation judge. If the parties cannot agree, the compensation judge shall set the date and time.

Subp. 2. **Availability of witnesses.** As soon as the parties know the hearing date, they shall immediately notify all witnesses in writing and arrange for their presence or for the taking of their deposition under part 1415.2200.

Subp. 3. **Medical evidence.** Rules governing medical evidence are as follows:

A. 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 and supporting affidavits, requesting a written finding from a judge on the cruciality of the oral testimony.

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

An affidavit must contain facts sufficient upon which the judge can make a determination; a mere statement that the attorney believes that the testimony is crucial is insufficient without a further factual basis. The motion must be served and filed no later than 25 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 service of the motion. 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.

B. Whether or not a motion has been filed, the judge shall issue an order requiring that the full testimony be presented in person or by oral deposition if the 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.

C. If, during the course of a hearing, or within 25 days before the hearing, a judge determines, on a party's or the judge's motion, 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.

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

(1) the date of the examination;

(2) the history of the injury;

(3) the patient's complaints;

(4) the source of all facts in the history and complaints;

(5) findings on examination;

(6) opinion as to the extent of disability and work limitations, if any;

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

(7) the cause of the disability and, if applicable, whether the work injury was a substantial contributing factor toward the disability;

(8) the medical treatment indicated;

(9) if permanent 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;

(10) if a permanent partial 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, traumatic injury, or incident, whether or not compensable under Minnesota Statutes, chapter 176; the physician or health care provider shall apportion the disability between the injuries, occurrences, or conditions;

(11) if future medical care or treatment is anticipated, a statement of the nature and extent of treatment recommended and, if possible, the anticipated results;

(12) the reason for each opinion; and

(13) if applicable, a statement that the physician or health care provider has read the rules concerning determination of permanent partial disability, understands them, and has applied those rules in making the determination.

E. Medical reports to be used at the hearing must be served on the parties and filed with the office, with proof of service, sufficiently in advance of the hearing to allow other parties the opportunity to cross-examine the physician or health care provider, if desired, unless 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. If the report is filed too late to allow the cross-examination, the record will be held open to allow other parties to cross-examine the physician or health care provider after the hearing.

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

F. If the claim petition includes a claim for medical or other health care treatment or supplies under Minnesota Statutes, sections 176.103, 176.135, and 176.136, and the parties agree at or before the hearing to the reasonableness and necessity of the treatment or supplies, the judge shall approve or disapprove the agreement to settle that portion of the claim provided the agreement is placed in the record of the proceeding. If the parties are unable to reach agreement on the issues of medical or other health care treatment or supplies, that portion of the claim must be referred back to the division upon conclusion of the hearing for a determination under Minnesota Statutes, sections 176.103, 176.135, and 176.136. The parties may, however, present medical evidence at the hearing for later use by the division in determining medical issues. A party has the right, even if another party objects, to present medical evidence at the hearing. An intervenor who has paid health care benefits and whose claim remains unsettled is a real party in interest with an independent right to pursue its claim under Minnesota Statutes, section 176.103.

Subp. 4. **Rights of parties.** All parties have the right to present evidence, to cross-examine witnesses, and to present rebuttal testimony.

Subp. 5. **Witnesses.** A party may be a witness and present other witnesses at the hearing. Oral testimony at the hearing must be under oath or affirmation. At the request of a party or upon the judge's motion for good cause, the compensation judge may exclude witnesses <u>other than parties</u> FF 2L from the hearing room so that they cannot hear the testimony of other witnesses.

Subp. 6. **Rules of evidence.** Rules of evidence are as follows:

A. Except as provided by the act and parts 1415.0100 to 1415.3500 the compensation judge is not bound by the common law, statutory rules of evidence, or technical or formal rules of pleading or procedure.

B. All evidence to be considered in the case, including records and documents in the possession of a party, or

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

an accurate photocopy, must be offered and made a part of the record in the case. An independent investigation by the compensation judge under Minnesota Statutes, section 176.391, subdivision 1, is part of the record if the parties are aware of the investigation and have had an opportunity to participate in it.

C. Documentary evidence in the form of copies of excerpts from books, documents, or records may be received or incorporated by reference upon agreement of the parties or if ordered by the compensation judge.

D. The compensation judge may take administrative notice of general, technical, or scientific facts within the judge's specialized knowledge under Minnesota Statutes, section 14.60, subdivision 4, but shall do so on the record and with the opportunity for any party to contest the facts so noticed.

E. A party may call an adverse party and question, contradict, and impeach the party on material matters in all respects as if they had been called by the other party. The adverse party may be examined by counsel according to the rules of civil procedure for the district courts of Minnesota applicable to direct examination, and may be cross-examined, contradicted, and impeached by any party adversely affected by the testimony. An adverse party includes:

(1) the adverse party's managing agent or employees;

(2) an officer, director, managing agent, or employee of the state, excluding judges, members of the panel or board, mediators, and other employees of the division designated to conduct conferences or hearings; and

(3) an officer, director, managing agent, or employee of:

(a) a political subdivision of the state;

(b) a public or private corporation;

(c) a partnership or association; or

(d) a political body.

Subp. 7. **The record.** Record requirements are as follows:

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

A. The compensation judge shall maintain the official record, other than the stenographic notes of a hearing reporter if one was used, in each case until the issuance of the judge's final order.

B. The record in a compensation case shall contain:

(1) all pleadings, motions, and orders, including the judgment roll, and the entire record from any previous hearing which is relevant to the issues under consideration;

(2) evidence received or considered unless, through agreement of the parties or by order of the compensation judge, custody of an exhibit is given to one of the parties;

(3) those parts of the division's official file on the matter which the compensation judge incorporates;

(4) offers of proof, objections, and the resulting rulings;

(5) the compensation judge's order;

(6) memoranda and data submitted by a party in connection with the case and accepted by the judge;

(7) a transcript of the hearing, if one was prepared; and

(8) the audio-magnetic recording tapes used to record the hearing, if any.

C. The chief hearing examiner shall direct that the verbatim record of a hearing be transcribed if requested by any person. If the record is transcribed by the office, persons who request copies of the transcript must pay a reasonable fee. If transcribed by someone other than the office, the person requesting a transcript must pay the person preparing the transcript a reasonable fee.

D. Charges for transcripts prepared by the office shall be set by the chief hearing examiner, with the approval of the department of finance, and all money received for transcripts prepared by the office are payable to the State Treasurer, Office of Administrative Hearings Account.

E. Under Minnesota Statutes, section 176.421, subdivision 4, clause (3), a party may petition the chief

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

hearing examiner for an order directing that a transcript be prepared, for purposes of appeal to the court of appeals, at no cost to the appellant. A petition filed under this provision must include:

(1) the caption of the case;

(2) case identification numbers;

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

(4) a sworn affidavit from the appellant which must include:

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

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

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

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

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

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

Subp. 8. **Continuances during hearing.** If it appears in the interests of justice that further testimony should be received, the compensation judge may continue the hearing to a future date. Oral notice on the record shall be sufficient if given at the time of the original hearing. Otherwise, the notice of the date for the continued hearing must be in writing and served on all parties.

? is the appellant always the employee — if not some of this info requirement appears inappropriate

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

Subp. 9. **Hearing procedure.** The hearing procedure is as follows:

A. The compensation judge shall not communicate, directly or indirectly, with any party concerning issues of fact or law in a pending case, except upon notice and opportunity for all parties to participate. After the first witness is sworn all of the proceedings must be on the record, including motions, objections, offers of proof, rulings of the judge, arguments of the parties, or other comments of the parties, their representative, or the judge. A compensation judge shall not order a court reporter to refrain from recording anything said during the course of a hearing without the consent of the parties present nor shall a compensation judge turn off an audio-magnetic recording device being used to record the proceedings, other than for reasonable breaks, without the consent of the parties present. The judge shall be in complete charge of the hearing. It is the judge's duty to see that the witnesses testify clearly so that the reporter may obtain a clear and transcribable record of all proceedings.

B. Unless the compensation judge determines that the substantial rights of the parties will be ascertained better in some other manner, the hearing will be conducted in the following manner:

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

(2) Stipulations, settlement agreements, or consent orders entered into by the parties before the hearing must be entered into the record.

(3) If the compensation judge requests opening statements, the party with the burden of proof shall proceed first. Other parties shall make opening statements in a sequence determined by the compensation judge.

(4) After opening statements, the party with the burden of proof shall begin the presentation of evidence. That party will be followed by the other parties in a sequence

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

determined by the compensation judge.

(5) Cross-examination of witnesses will be conducted in a sequence determined by the compensation judge.

(6) When the parties and witnesses have been heard and if the compensation judge believes that legal issues remain unresolved, final arguments may be presented in a sequence determined by the compensation judge. Final argument may, in the discretion of the compensation judge, be in the form of written memoranda or oral argument, or both. The compensation judge shall decide when memoranda must be submitted. Final arguments shall be limited to legal issues only.

(7) After final argument, if any, the hearing will end unless it is continued by the compensation judge. If continued, it must either be continued to a time and day announced at the hearing on the record, or continued to a date to be determined later, with at least 15 days written notice to the parties, including those joined at the hearing.

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

C. These procedures are to be followed in the hearing:

(1) Counsel offering an objection shall briefly state the specific legal grounds for the objection, unless invited by the judge to argue.

(2) Arguments in opposition to, or in support of, objections must be brief.

(3) Before calling a witness to the stand, counsel shall instruct the witness to be responsive to the questions and to wait until the question is completed and a ruling made on an objection before answering. Counsel shall not instruct a witness while on the stand as to the manner of answering questions but may request the court to instruct the witness.

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

(4) A party calling a witness for whom an interpreter is required shall advise the court in advance of the need for an interpreter.

(5) Persons in the hearing room shall not converse in a disruptive manner, read newspapers, smoke, chew gum, eat food, or drink liquids other than water while the hearing is in session, and counsel shall so instruct parties they represent, witnesses they call, and persons accompanying them.

Subp. 10. **Disruption of hearing.** No television, newsreel, motion picture, still, or other camera, and no mechanical recording devices, other than those provided by the office may be operated in the hearing room during the course of the hearing unless permission is obtained from the compensation judge. Permission is subject to conditions set by the compensation judge to avoid disruption of the hearing.

Under Minnesota Statutes, section 624.72, no person may interfere with the free, proper, and lawful access to or egress from the hearing room. No person may interfere or threaten interference with a hearing, or disrupt or threaten disruption of a hearing. In the event of interference or disruption or threat of interference or disruption, the compensation judge shall read this item to those persons causing the interference or disruption and proceed as the judge deems appropriate.

1415.3000 THE COMPENSATION JUDGE'S DECISION.

Subpart 1. **Basis for decision.** The compensation judge shall not consider factual information or evidence which is not a part of the record.

Subp. 2. **Compensation judge's decision.** Within 60 days after the close of the record, the compensation judge shall prepare a decision and serve it on the parties. The compensation judge's decision must include, in the following order:

A. The date and location of the hearing and the compensation judge's name.

B. Appearances by parties, if representing

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

themselves, or their attorneys, giving the full name and mailing address, including zip code, of each.

C. The date the record of the hearing was closed.

D. A notice of the right of parties to appeal and how the appeal can be perfected.

E. A determination of each contested issue of fact or law. In cases involving many 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 its contents.

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

Subp. 3. **Readability.** A decision must be clear, concise, and written in a prose style which can be read and understood by persons of average intelligence. English, rather than Latin terms must be used unless it is necessary to use Latin terms.

Subp. 4. **Proposed decision filed by party.** A party may file a proposed decision with the compensation judge. The proposed decision must conform to this part and be served on the other parties. It must be in a form which would allow the compensation judge to sign and issue the decision if it is acceptable. It must also include a brief memorandum explaining the decision on each issue.

Subp. 5. **Decision, extension of time.** If the parties consent to extend the time for issuance of the decision, the written consent must include a statement of the reasons for the extension. It must 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 must be in writing and served on the parties of record.

1415.3100 REHEARING.

When a compensation judge has issued the findings, conclusions, and decision, the judge's jurisdiction over the case ends, except for taxation of disbursements or awarding of attorney's fees, unless the case is referred to the compensation

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

judge by the court of appeals and the chief hearing examiner for supplemental findings, taking of additional testimony, rehearing, or other action. Compensation judges may correct clerical or mathematical errors in decisions any time before appeal.

1415.3200 ATTORNEY FEES.

Subpart 1. **Controlling statute.** Fees for legal services are governed by Minnesota Statutes, section 176.081.

Subp. 2. **Withholding of attorney fees.** Upon receipt of the notice of representation, the employer and insurer may withhold attorney fees on genuinely disputed portions of claims under Minnesota Statutes, section 176.081. Attorney fees must be withheld on genuinely disputed portions of claims if the petitioner's employee's attorney so requests.

Subp. 3. **Statement of fees, petition for disputed or excess attorney's fees.** The following procedures must be followed in claiming fees:

A. If the claim for attorney fees does not exceed the fees allowed by Minnesota Statutes, section 176.081, subdivision 1, clause (a), the party claiming fees shall file a statement of attorney's fees on a form prescribed by the commissioner, including:

(1) the caption of the case;

(2) the employee's social security number;

(3) the date of injury or disease;

(4) a list of benefits which were genuinely in dispute and which would not have been recovered without the attorney's involvement;

(5) the amount of retainer received from the petitioner employee;

(6) the amount the petitioner employee advanced for expenses;

(7) the amount the employer and insurer are currently withholding as attorney's fees, if known;

(8) the amount claimed for attorney's fees;

(9) a statement that the attorney is licensed to practice law in the state;

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

(10) a statement of whether or not an application is being made for attorney fees under Minnesota Statutes, sections 176.081, subdivisions 7 and 8, and 176.191;

(11) a notice that the employee or insurer has ten calendar days to object to the attorney fees requested;

(12) the date the statement was served on the employer and insurer; and

(13) the full address and phone number of the employee's attorney.

The statement must be accompanied by the retainer agreement, if not previously filed, and a copy of the usual billing statement given to the employee. If, at the hearing 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 waiting ten calendar days. An oral statement of attorney fees may be presented at the hearing on the record if the case has been tried to a conclusion, no objection is made at the hearing, and a retainer agreement is filed. An oral statement of attorney fees must contain the information in this item.

B. If a party claims fees in excess of the amounts listed in Minnesota Statutes, section 176.081, subdivision 1, clause (a), the party shall file a petition for disputed or excess attorney's fees on a form prescribed by the commissioner, including:

(1) the caption of the case;

(2) the employee's social security number;

(3) the date of the claimed injury or disease;

(4) an exhibit showing specific legal services performed, the date performed, and the time spent;

(5) the number of hours spent in the employee's representation;

(6) a statement of expertise and experience in workers' compensation matters;

(7) a brief description of the factual, medical,

APPROVED BY THE REVISOR OF STATUTES OFFICE BY:

and legal issues in dispute;

(8) the nature of proof required in the case;

(9) a list of the benefits which were genuinely in dispute and which would not have been recovered without the attorney's involvement;

(10) the amount of the retainer;

(11) the amount petitioner employee advanced for expenses;

(12) the amount claimed in fees;

(13) the amount the employer and insurer is currently withholding, if known;

(14) a list of the disbursements incurred and if the disbursement has been paid, by whom;

(15) a statement that the attorney is licensed to practice law in the state;

(16) a statement of whether or not an application is being made for attorney fees under Minnesota Statutes, sections 176.081, subdivisions 7 and 8, and 176.191;

(17) whether or not a hearing on attorney fees is requested;

(18) the date the statement was served on the employer and insurer; and

(19) the full address and phone number of the petitioner employee's attorney.

The petition must be accompanied by a copy of the retainer agreement, if not previously filed, and proof of service.

Subp. 4. **Fees, objection.** If a timely objection to the statement of attorney's fees is filed, the compensation judge or settlement judge shall use Minnesota Statutes, section 176.081, subdivision 5, only as to those issues specifically raised by the objection.

Subp. 5. **Filing.** A statement of attorney's fees or petition for disputed or excess attorney's fees under this part must be filed with the compensation judge assigned to hear the case or a calendar judge if no assignment has been made, or a settlement judge if the matter has not been certified to the office.

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

Subp. 6. **Settlements.** In cases where an offer or settlement has been made in writing under Minnesota Statutes, section 176.081, subdivision 7a, and the offer has not been accepted, upon receipt of the compensation judge's decision, the following procedure must be followed:

A. The party seeking to impose the sanctions of Minnesota Statutes, section 176.081, subdivision 7a, shall file proof of the offer with the chief hearing examiner and serve the other parties within ten calendar days of the date of the compensation judge's decision. The filing must include an order prepared for signature by the chief hearing examiner amending the compensation judge's decision.

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

C. If no objection is received, the chief hearing examiner shall sign, serve, and file the order within ten calendar days of its filing. If an objection has been received, the chief hearing examiner shall rule within ten calendar days after the filing of the objection. Parties do not have a right to a hearing on the objection. The chief hearing examiner's determination must be in writing and is appealable to the court of appeals.

1415.3300 TAXATION OF COSTS AND DISBURSEMENTS.

Subpart 1. **When allowed.** This part applies to costs in cases which have been heard by a compensation judge. Costs associated with cases settled before hearing may be recovered by agreement in a stipulation or retainer agreement.

Subp. 2. **Informal request.** Before submitting a formal request for payment or reimbursement of costs and disbursements, an informal request should be made by the taxing party on the party from whom reimbursement is sought. If agreement cannot be reached on all items, the taxing party may then proceed

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

formally, including in the formal request an indication of those costs agreed upon.

Subp. 3. **Service of formal request.** Service of the request for taxation of costs and disbursements must be made upon the parties, or their attorneys, by the taxing party.

Subp. 4. **Service of objection.** An opposing party has ten working days from the date of service upon him or her in which to serve and file a formal objection to taxation or allowance, with admission or proof of service upon the other parties.

Subp. 5. **Hearing.** If requested, a time for hearing before the compensation judge to whom the matter has been assigned must be fixed. A notice of hearing must be given to the parties by the compensation judge.

1415.3400 OTHER HEARINGS.

Under Minnesota Statutes, section 14.50, all hearings not discussed in this chapter but required to be conducted by a compensation judge must be conducted in substantial compliance with this chapter. In a dispute in which an immediate hearing is necessary in order to carry out the purpose and intent of the Minnesota workers' compensation law, the notice of hearing must be given not less than five working days before the hearing. Expedited assignment of judges to these hearings must be in a manner which will allow the compensation judge's decision to be issued immediately upon conclusion of the hearing or as soon after the hearing as is reasonable and practical.

1415.3500 EXHIBITS; REMOVAL AND RETURN.

Subpart 1. **Requests for removal.** All requests for permission to remove an exhibit or document from the official file must be made to the compensation or settlement judge to whom the file has been assigned or to the supervisor of the docket section of either the office or the division.

Subp. 2. **Return without consent or notice.** Upon the expiration of the time in which to appeal, all exhibits or other documentary evidence may be returned to their source of origin without the consent of the parties or notice to them. A copy of

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

the letter of transmittal of the exhibits or documents must remain in the file as part of the record of the case.

Subp. 3. **Request for return.** Upon expiration of the time in which to appeal, exhibits or other documentary evidence must be returned to their source upon the request of the party which produced or introduced the exhibit or evidence at the hearing. A request for return of exhibits or documents must be made in writing to the compensation judge or the division, include the title and appropriate identification number of the case, and identify the exhibits or documents requested. A telephone number of the person making the request must be included with the request.

1415.3600 SEVERABILITY.

If any provision of parts 1415.0100 to 1415.3500 is held to conflict with a governing statute, applicable provisions of the Minnesota Administrative Procedure Act, or other relevant law; to exceed the statutory authority conferred; to lack a reasonable relationship to statutory purposes or to be unconstitutional, arbitrary, or unreasonable; or to be invalid or unenforceable for any other reason; the validity and enforceability of the remaining provisions of the rule shall in no manner be affected.

REPEALER. Minnesota Rules, parts 1410.0100, 1410.0200, 1410.0300, 1410.0400, 1410.0500, 1410.0600, 1410.0700, 1410.0800, 1410.0900, 1410.1000, 1410.1100, 1410.1200, 1410.1300, 1410.1400, 1410.1500, 1410.1600, 1410.1700, 1410.2000, 1410.2100, 1410.2200, 1410.2300, 1410.2400, 1410.2500, 1410.2600, 1410.3000, 1410.3100, 1410.3200, 1410.3300, 1410.3400, 1410.3500, 1410.3600, 1410.3700, 1410.3800, 1410.3900, 1410.4000, 1410.4100, 1410.4200, 1410.4400, 1410.4500, 1410.4600, 1410.4700, 1410.4800, 1410.4900, 1410.5000, 1410.5100, 1410.5200, 1410.5300, 1410.5400, 1410.5500, 1410.5600, 1410.5700, 1410.5800, 1410.5900, 1410.6000, 1410.6100, 1410.6200, 1410.6300, 1410.6400, 1410.6500, 1410.6600, 1410.6700, 1410.6800,

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

1410.6900, 5220.3100, 5220.3300, 5220.3400, 5220.3500, 5220.3700, 5220.3800, 5220.3900, 5220.4000, 5220.4100, 5220.4200, 5220.4300, 5220.4301, 5220.4302, 5220.4303, 5220.4304, 5220.4305, 5220.4800, 5220.4900, 5220.5100, 5220.5200, 5220.5300, 5220.5400, 5220.5500, 5220.5600, 5220.5700, 5220.6500, 5220.6600, 5220.6700, 5220.6800, 5220.6900, 5220.7000, 5220.7100, and 5220.7200 are repealed.

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

To: Larry.
Date: 7/23/84
Re: Dept. of Labor + Industry and Office of Administrative Hearings — Practice of Workers' Compensation Division and OAH.

Rules as Adopted

p. 4
line 8

.0600
Since a petitioner for workers' compensation is defined to include an heir of a deceased employee, it would seem appropriate to include "heir" in the list of persons providing authorization for examination of case files.

p. 5
lines 3, 17, 34

.0800
Same reason as above for including "heir"

p. 6
line 21

p. 7
line 20
line 21

.1000, subp. L
It appears that a petitioner, under these rules, does not have to be represented by an attorney, yet this section calls for data regarding petitioner's attorney. It would be better to add "if represented by an attorney...." Also, "employee" should be changed to "petitioner" since persons other than the subject employee may file workers' comp. claims

p. 21 · 2000
line 36 It is necessary to include wage + compensation Rate of subject employee but since a petitioner can be someone other than subject employee, in this instance "employee" should be substituted for "petitioner"

p. 24 · 2200
line 35 Same reasoning as above — "employee" should be substituted for "petitioner"

p. 28 · 2300, subp 1.C. and subpt. 2.C.
lines 19, 20, 21, 22 Same reasoning as above — "petitioner" should be substituted for "employee"

p. 30, lines 21, 22, 23 and p. 32, line 5 and p. 48, lines 14, 30, 31
and p. 49, lines 49, 52, 32 and p. 50, line 7

· 2300, subp 2.A.(6).
"employee" should be substituted for "petitioner"

p. 43 · 2900, subp. 9.E
line 4 et seq. It would seem that an appellant in a workers' comp. matter is not always the employee or other petitioner — might not an appellant be the employer or insurer? If the latter, some of this required information appears irrelevant or inappropriate

L. Altman phonecon | RR file #1048: 7-27-84

.0600 No. mention of heir in Stat.

.0800 May say heirs — O.K. — put in.

subp. 1 & subp 2

.0900 176.271 subp 1 add heir.

subp. 3 "

.1000 subp 1(1) add pet's

.2000 subp. 4(c) "employee" substitute P

.2100 subp. 1(c) — "employee" substituted

2300 1c — leap over to Stat's lang.

2a6 — "Employees"

2c etc. Sec. — only employee attly reg D in statute x

5 Sec. — Statute

2900 free transmigt

(5) If appellant is a legal entity ~~other than an~~ and not an individual, ~~the petition must contain an~~ the affidavit ~~must include~~ from a legal representative of appellant which must include:

a) the appellant's monthly income from all sources, including income from T. B.'s and other monies holding of appellant;

b) a list of, at what value, of

Rule File #1048

[§14.51
§176.83(i)(1983) > auditing legis.

p.3 "medical authorization" — for what? is this clearly defined elsewhere in rules, other rules, statutes et al?

employer – party – petitioner.
– appellant x

p.12 transcript fee to OAH acct. – an appropriation?

> 14.54 Ok

p.46 charges
need newspaper
drinking liquids other than water.

> reasonable

"heirs" – not an entitled class w/in statute x "Dependent employee" appears in only category.

Attorney

176.021 Employee shall do
Notice to heirs x

① Need to have heirs in def. of "Ret."
② Only employees have certain rights w/o dependents or heirs.

SF-00006-03

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO: LARRY D. STARNS
Special Assistant
Attorney General

DATE: 7/12/84

FROM: LESLIE M. ALTMAN LMA
Special Assistant
Attorney General

PHONE: 297-2972

SUBJECT: Joint Rules of Practice of the Workers' Compensation Division and the Office of Administrative Hearings Governing Workers' Compensation Practice and Procedure

The Workers' Compensation Division of the Department of Labor and Industry and the Office of Administrative Hearings wish to promulgate Joint Rules of Practice pursuant to authority conferred by Minn. Stat. §§ 14.51 and 176.83(i)(Supp. 1983).

The agencies chose to attempt to promulgate these rules noncontroversially. As you will note at #5 below, they published a Notice of Intent to Adopt Rules Without a Public Hearing in the State Register on April 16, 1984. The rulemaking process is thus governed by Minn. Stat. §§ 14.21 - 14.28 (Supp. 1983). The 1984 amendments to the Administrative Procedure Act do not apply under Minn. Laws 1984, ch. 640, § 34.

Having complied with the requirements for noncontroversial rulemaking prescribed by Minn. Stat. §§ 14.21 - 14.28 (Supp. 1983), the agencies are now submitting the rules to the Attorney General's Office for its approval.

The following documents are enclosed, as required by Minn. Rules, part 2000.0400 (1983):

1. A Notice of Intent to Solicit Outside Opinion on the proposed rules' soliciting data and views from interested persons or groups was published in the State Register on October 17, 1983. Data and views received in response to this notice were considered in the drafting of the rules and they are included in the enclosed materials.

2. An Order for Notice of Intent to Adopt Rules Without a Public Hearing and for Publication was issued by the commissioner and the chief hearing examiner on March 30, 1984. It directed the publication of the Notice in the State Register and the mailing of the Notice to all persons on the lists maintained by the agencies.

3. Certificates verifying the accuracy and completeness of each agency's mailing list of persons and groups

requesting notice of proposed adoption of rules were prepared by the Department of Labor and Industry on April 11, 1984, and the Office of Administrative Hearings on April 12, 1984.

4. Affidavits of mailing the Notice of Intent to Adopt Rules without a Public Hearing on April 12, 1984, to persons and groups on the certified list described in #3 were executed by the Department of Labor and Industry and the Office of Administrative Hearings.

5. The Notice of Intent to Adopt Rules Without a Public Hearing was published in the State Register on April 16, 1984, together with the rules as proposed. The Notice contained all of the elements required by Minn. Rules, part 2000.0400, subpart 2.

6. A Statement of Need and Reasonableness describing the reasons, arguments, and evidence supporting a finding of need for and reasonableness of each proposed rule was drafted and made available to the public on April 16, 1984.

7. Comments were received by the Department of Labor and Industry and the Office of Administrative Hearings for 30 days ending on May 16, 1984. Only one request for hearing was received in that time. The Department and Office reviewed the comments and decided to incorporate several of them as described in the Findings of Fact in #8.

8. Findings of Fact were issued on July 12, 1984, by the commissioner and the chief administrative law judge (formerly the chief hearing examiner) concerning the proposed rules. These findings explain the need for and reasonableness of the modifications to the rules as originally proposed. The modifications are not substantial changes because they merely clarify the intent of the rules as originally proposed without affecting the rights of any parties. The findings also show that the agencies considered the effect of the rules on small businesses, but found none.

9. The proposed rules as modified were approved as to form by the revisor of statutes on July 12, 1984.

10. An Order Adopting the Rules was issued by the commissioner and the chief administrative law judge on July 12, 1984. It states that a Notice of Intent to

Adopt Rules without a Public Hearing was published, fewer than seven requests for public hearing were received, and that the rules are needed and reasonable.

11. A Certificate of Compliance with Rulemaking Procedures was signed on July 12, 1984 by Leslie M. Altman, Special Assistant Attorney General.

12. Certificates verifying that the Department of Labor and Industry and Office of Administrative Hearings received no requests for Notice of Submission to the Attorney General were prepared on July 12, 1984. Accordingly, neither a Notice of Submission to the Attorney General, Certificates of completeness and accuracy of the mailing lists for this purpose, nor Affidavits of mailing Notice of Submission to the Attorney General are enclosed.

In all respects, then, the Department of Labor and Industry and the Office of Administrative Hearings have complied with the requirements for noncontroversial rulemaking contained in Minn. Stat. §§ 14.21 - 14.28 (Supp. 1983) and in Minn. Rules, part 2000.0400 (1983).

LMA:pmk

STATE OF MINNESOTA

DEPARTMENT OF LABOR AND INDUSTRY AND
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Proposed Adoption of Joint Rules of Practice of the Workers' Compensation Division and the Office of Administrative Hearings Governing Workers' Compensation Practice and Procedure

CERTIFICATE OF COMPLIANCE WITH RULEMAKING PROCEDURES

I hereby certify 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.

Dated: July 12, 1984

Leslie M. Altman

LESLIE M. ALTMAN
Special Assistant
Attorney General