

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 1142

05-0004-0614

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 8-26-85
DATE FOR REVIEW 9-4-85
DATE DUE 9-9-85

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

Approved 9-4-85 mjc Disapproved _____ Returned to Agency _____

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

Date filed w/Secretary of State 9-4-85 Revisor approved 8/27/85
disapproved _____

✓ Rule as Adopted

✓ Rule as Proposed See SR 1

✓ Order Adopting 8.26.85 Date

N/A Notice of Intent to Solicit Outside Opinion

✓ Order for rulemaking
N/A date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency

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

✓ Mailing list Certificate

✓ Publication in State Register
7.15.85 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 includes statement that Rules accomodate small biz

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~~ Certificate of ~~Mailing~~ Notice of Submission to Attorney General

N/A Notice of Submission to the Attorney General

SF-00006-03

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO: PAUL V. RIEKE
Workers' Compensation Court of Appeals

DATE: 9-4-85

ATTN: LESLIE M. ALTMAN
Special Assistant Attorney General

FROM: MARTHA J. CASSERLY mjc
Special Assistant Attorney General

PHONE: 296-4692

SUBJECT: In the Matter of the Proposed Adoption of Amendments to Rules of Procedure by the Workers' Compensation Court of Appeals

The above-referenced rule has been approved as to its legality by the Attorney General on September 4, 1985.

Enclosed is the agency's copy of the approved rule. This office has already filed two copies of the approved rule with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth copy is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submission or comments received by the agency and any extra copies of documents which the agency submitted to the Attorney General.

In order for a permanent rule without a hearing to become effective, your agency must publish a notice of adoption in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

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

MJC:pmf

Enclosures

cc: Maryanne Hruby
Executive Director
Legislative Commission to Review
Administrative Rules

Duane Harves
Chief Administrative Law Judge
Office of Administrative Hearings

SF-00006-03

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO: MARTHA J. CASSERLY
Special Assistant
Attorney General

DATE: 8/26/85

FROM: LESLIE M. ALTMAN LMA
Special Assistant
Attorney General

PHONE: 297-2367

SUBJECT: **RULES OF PROCEDURE BEFORE WORKERS' COMPENSATION COURT OF APPEALS**

The Workers' Compensation Court of Appeals adopted Rules of Procedure pursuant to its authority under Minn. Stat. § 175A.07, subd. 4 (1984). Having received no requests for a public hearing, the Court proceeded under the noncontroversial rulemaking provisions, Minn. Stat. §§ 14.21-14.28 (1984). The Court is now submitting the rules to the Attorney General for approval pursuant to Minn. Stat. § 14.26 (1984).

As the following documents demonstrate, the Court fully complied with all requirements imposed by law or rule:

1. An Order for Notice of Intent to Adopt Rules Without a Public Hearing and for Publication was issued on June 26, 1985. 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 Court.

2. A certificate verifying the accuracy and completeness of the mailing list of persons and groups requesting notice of proposed adoption of rules was prepared on July 11, 1985.

3. An Affidavit of Mailing the Notice of Intent to Adopt Rules Without a Public Hearing on July 11, 1985 to persons and groups on the certified list described in #2 was executed.

4. The Notice of Intent to Adopt Rules Without a Public Hearing was published in the State Register at 10 S.R. 109 on July 15, 1985, together with the rules as proposed. The Notice contained all of the elements required by Minn. Rules pt. 2000.0400, subp. 2.

5. 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 by July 15, 1985.

6. No requests for hearing were received by the Court during the 30 days ending on August 14, 1985. Two letters were

received in that time. For reasons described in the Findings of Fact (#8), the Court declined to incorporate those suggestions.

7. A Certificate stating that no persons or groups have requested to be notified of the submission of these rules to the Attorney General was prepared on August 26, 1985.

8. Findings of Fact were issued on August 26, 1985. These findings explain the reasons that the proposed change were not adopted.

9. An Order Adopting the Rules was issued on August 26, 1985. It states that proper notice of the proposed rulemaking was effected, fewer than 25 requests for public hearing were received, and that the rules are needed and reasonable.

10. A Certificate of Compliance with Rulemaking Procedures was signed on August 26, 1985 by Leslie M. Altman, Special Assistant Attorney General.

In all respects, then, the Court complied with the requirements for noncontroversial rulemaking contained in Minn. Stat. §§ 14.21-14.288 (1984) and in Minn. Rules pt. 2000.0400 (1984).

LMA:sms

AG copy.

Workers' Compensation Court of Appeals

Adopted Rules of Procedure; Workers' Compensation Court of Appeals

Rules as Adopted

9800.0100 DEFINITIONS.

Subpart 1. **Application.** For the purpose of parts 9800.0100 to 9800.1800, the following terms have the meanings given them.

Subp. 2. **Administrator.** "Administrator" means the judge designated by the court to receive documents filed with the court.

Subp. 3. **Appellant.** "Appellant" means all parties filing notices of appeal, including cross-appellants.

Subp. 4. **Court.** "Court" means the Workers' Compensation Court of Appeals.

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

Subp. 6. **Filed.** "Filed" means the receipt and stamping of a document by the court, division, or office.

Subp. 7. **Office.** "Office" means the state Office of Administrative Hearings.

9800.0200 EXAMINATION OF FILES.

Inspection of any division file that is in the custody of the court is subject to the requirements of Minnesota Statutes, sections 176.231, subdivisions 8 and 9, and 176.138, and part 1415.0600.

9800.0400 TEMPORARY ORDERS.

Temporary orders filed with the court must conform to Minnesota Statutes, section 176.191 and part 1415.2300.

9800.0500 CONTINUANCES OF HEARINGS.

A continuance of any hearing shall be granted only upon a showing of cause. A request for a continuance must be

made within five days of the filing of notice of hearing. The court shall consider later requests only upon a showing that an earlier request could not have been made.

Subp. 2. [See Repealer.]

9800.0700 STIPULATIONS FOR SETTLEMENT.

Stipulations for settlement submitted to the court must meet the requirements of Minnesota Statutes, section 176.521 and part 1415.2000.

To be considered for approval, stipulations must be promptly filed with the court by a party. Where a case is settled prior to the filing of the court's decision, the appellant must immediately notify the court that a settlement has been reached.

9800.0800 APPEAL OF ATTORNEY FEES BY AN EMPLOYEE.

An employee dissatisfied with his attorney fees may make application for review of the fees by completing an application form provided by the court pursuant to Minnesota Statutes, section 176.081, subdivision 3.

9800.0900 BRIEFS ON APPEAL.

Subpart 1. **Filing of brief of appellant where a transcript is required.** The appellant shall file a written brief, which shall address only issues raised in the notice of appeal, within 30 days after the court receives the transcript. The brief shall be accompanied by an affidavit stating that service of a copy of the brief has been made by the appellant upon all other parties to the action. The original brief and four copies shall be filed with the court in cases where a hearing is to be held. Only the original shall be filed where the hearing is waived by all parties.

Subp. 2. **Filing of brief of appellant where no transcript of the proceedings is required.** Where no transcript of the proceedings is required, the appellant shall file a written brief, which shall address only issues raised in the notice of appeal, within 30 days after the filing of the notice of appeal. The brief shall be accompanied by an affidavit stating

that service of a copy of the brief has been made by the appellant upon all other parties to the action. The original and four copies shall be filed with the court in cases where a hearing is to be held. Only the original shall be filed where the hearing is waived by all parties.

Subp. 3. Filing of brief of respondent. The brief of respondent shall be filed with the court within 20 days after the filing of the appellant's brief. The respondent's brief shall address only issues raised in the brief of the appellant and must be accompanied by an affidavit stating that service has been made upon all other parties to the action. The original and four copies shall be filed with the court in cases where a hearing is to be held. Only the original brief shall be filed where a hearing is waived by all parties.

Subp. 4. **Filing of respondent's brief where no appellant brief is filed.** If no appellant brief is filed, briefs of respondents shall be filed within 50 days after the date that the court received the transcript of the proceedings. If no transcript of the proceedings is required and no appellant brief is filed, all other parties shall file briefs within 50 days after the date of filing of the notice of appeal. The briefs shall address only issues raised in the notice of appeal and shall be accompanied by proof of service upon all parties. The original and four copies shall be filed with the court in cases where a hearing is to be held. Only the original brief shall be filed where a hearing is waived by all parties.

Subp. 5. **Reply briefs.** Reply briefs shall be filed within ten days after the filing of the respondent's brief. They shall address only issues addressed in the respondent's brief. The original and four copies shall be filed with proof of service upon all other parties when a hearing is to be held. Only the original brief shall be filed when a hearing is waived by all parties.

Subp. 6. **Extensions.** Extensions of time for the filing of briefs shall be granted only for cause and if requested within the time for the filing of the brief. Briefs not timely filed

shall not be considered by the court unless an extension of time for filing has been granted.

9800.1000 HEARINGS ON APPEAL.

Subpart 1. **Time limits.** A hearing shall be scheduled unless it is waived by all parties as prescribed by part 9800.1600, subpart 2. Each party shall be allotted 15 minutes unless otherwise authorized by the court.

Subp. 2. **Motion pictures.** Any party desiring to show motion pictures at the hearing must so inform the court in writing within 30 days after the transcript is received by the court. This notice shall indicate the length of time necessary for viewing. The party shall furnish the necessary projection equipment on the day of the hearing. The court shall on its own motion require the showing of motion pictures when necessary for a full and fair adjudication of a case. The party in possession of the motion pictures or the party who offered them into evidence shall provide projection equipment.

9800.1100 APPLICATION TO SET AWARD ASIDE AND GRANT A NEW HEARING.

An application to set an award aside and grant a new hearing shall be verified and accompanied by supporting affidavits or medical reports. The application shall be filed with the court and accompanied by proof of service on all parties to any award to which the application applies.

Responses and other pleadings shall be served upon all parties and filed with the court within five days after the filing of an application.

The court shall grant the application if it determines that cause exists pursuant to Minnesota Statutes, section 176.461. Applications shall be scheduled for hearing.

9800.1400 APPLICATIONS, PETITIONS, AND MOTIONS.

Subpart 1. **Scope.** All applications, petitions, and motions for relief or consideration by the court, not otherwise provided for in parts 9800.0100 to 9800.1800, shall be filed in the following manner and within the following times.

Subp. 2. **Procedures for filing.** Motions shall be in

writing, verified, accompanied by appropriate documentation, state the relief sought, the basis therefor, and be accompanied by an affidavit of service upon all other parties to the action. No motions shall be considered if filed within five working days of the time set for hearing.

Subp. 3. **Responses.** All other parties shall have five working days after the filing of a motion within which to file a response in writing.

Subp. 4. **Replies.** A reply shall be filed within five working days after the filing of a response.

Subp. 5. **Hearings not permitted.** Hearings on applications, petitions, or motions shall not be permitted except upon order of the court.

9800.1500 PETITION FOR INTERVENTION.

Subpart 1. **Scope.** Persons shall be permitted to intervene in accordance with the requirements of Minnesota Statutes, section 176.361, subdivision 1. After a petition to intervene is granted, the intervenor must appear at all scheduled hearings of the court relating to the claim unless a written stipulation signed by all parties has been filed with the court which settles all issues relating to the intervention.

Subp. 2. **Notice to potential intervenors.** Any person who may have an interest in a case must be placed on written notice of the right to petition to intervene as prescribed by part 1415.1100. A petition to intervene must be filed by the potential intervenor within 30 days of receiving notice.

Subp. 3. **Contents of petition.** The contents and format of the petition to intervene shall conform to part 1415.1200. Responses to the petition shall be filed in accordance with part 9800.1400, subpart 3.

9800.1600 COMMENCEMENT OF APPEALS.

Subpart 1. **Filing notice of appeal.** An appeal is initiated by filing a notice of appeal containing the information required by Minnesota Statutes, section 176.421, subdivision 3.

A. When an appeal from a decision of a compensation judge is authorized by Minnesota Statutes, section 176.421, subdivision 4, the notice must be filed with the office within 30 days of the filing of the decision being appealed.

B. When an appeal is taken from a decision of the rehabilitation review panel under Minnesota Statutes, section 176.102 or from a decision of the medical services review board under Minnesota Statutes, section 176.103, the notice must be filed with the Office of Public Affairs at the Department of Labor and Industry within 30 days of the filing of the decision being appealed.

C. When an appeal from the decision of the commissioner is authorized by Minnesota Statutes, section 176.442, the notice must be filed with the division within 30 days of the filing of the decision being appealed.

Subp. 2. **Notification of receipt of transcript.** The court shall notify the parties of the date that the transcript was received. This notification letter shall also inquire whether the:

A. Parties desire a hearing. If so, whether parties prefer a hearing before the entire court or a three member panel.

B. Issues in the matter on appeal are also pending before the workers' compensation court, medical services review board, or rehabilitation review panel to enable the court to consolidate the entire case.

Parties must file a response to the notification letter within ten days after the court files the notification.

9800.1700 TAXATION OF COSTS AND DISBURSEMENTS.

The court shall tax actual and necessary costs and disbursements as prescribed by Minnesota Statutes, section 176.511. Parties shall comply with the procedure in part 9800.1400 except that petitions under this part must be filed within 45 days of the filing of the final appellate decision in the main action.

9800.1800 SUSPENSION OF RULES.

Upon a clear showing of extraordinary circumstances not contemplated by parts 9800.0100 to 9800.1700, the court may, upon petition of a party or upon its own petition five days after serving notice on the parties, suspend any requirements of parts 9800.0100 to 9800.1700. Rules implementing requirements imposed by law shall not be suspended even upon a clear showing of extraordinary circumstances.

REPEALER. Minnesota Rules, parts 9800.0500, subpart 2; 9800.0600; and 9800.1300, are repealed.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
SEP – 4 1985

Secretary of State

1:48 PM

APPROVED AS TO FORM AND LEGALITY

September 4 1985

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY MJ Cassedy
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA

WORKERS' COMPENSATION COURT OF APPEALS

In the Matter of the Proposed Adoption of Amendments to Rules of Procedure by the Workers' Compensation Court of Appeals.

ORDER ADOPTING AMENDMENTS WITHOUT A PUBLIC HEARING

Notice of intent to adopt the above-captioned amendments without a public hearing was published in the State Register on July 15, 1985 and was sent by United States mail to all persons on the list used by the Workers' Compensation Court of Appeals pursuant to Minn. Stat. § 14.22 (1984) on July 11, 1985. After affording interested persons and groups an opportunity to submit comments and requests for a hearing for 30 days after notice, receiving fewer than 25 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 Amendments to Rules of Procedure by the Workers' Compensation Court of Appeals are adopted pursuant to authority vested in the Court by Minn. Stat. § 175A.07, subd. 4 (1984).

STATE OF MINNESOTA

Paul V. Rieke

PAUL V. RIEKE
Chief Judge

Dated: August 26, 1985.

STATE OF MINNESOTA
WORKERS' COMPENSATION COURT OF APPEALS

In the Matter of the Proposed Adoption of Amendments to Rules of Procedure by the Workers' Compensation Court of Appeals

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

IT IS ORDERED this 26th day of June, 1985, that a Notice of Intent to Adopt Amendments Without a Public Hearing in the above-captioned matter be published in the State Register and be given to all persons and groups who have requested that their names be placed on the list used by the Workers' Compensation Court of Appeals for that purpose pursuant to Minn. Stat. § 14.22 (1984).

STATE OF MINNESOTA

Paul V. Rieke

PAUL V. RIEKE
Administrator
Workers' Compensation
Court of Appeals

STATE OF MINNESOTA
WORKERS' COMPENSATION COURT OF APPEALS

In the Matter of the Proposed Adoption of Amendments to Rules of Procedure by the Workers' Compensation Court of Appeals

NOTICE OF INTENT TO ADOPT AMENDMENTS WITHOUT A PUBLIC HEARING

Notice is hereby given that the Workers' Compensation Court of Appeals proposes to adopt the above-captioned amendments without a public hearing. The Court has determined that the proposed adoption of these amendments will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. §§ 14.21 - 14.28 (1984).

Persons or groups interested in these amendments shall have 30 days to submit comments in support of or in opposition to the proposed amendments are encouraged. Each comment should identify the portion of the proposed amendments addressed, the reason for the comment, and any change proposed. The proposed amendments may be modified if the modifications are supported by the data and views submitted to the Court and do not result in a substantial change in the proposed language.

A public hearing will be held if 25 or more persons submit written requests for a public hearing on the proposed amendments within the 30-day comment period. If a public hearing is required, the Court will proceed according to the provisions of Minn. Stat. §§ 14.131 - 14.20 (1984). Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed amendment addressed, the reason for the request, and any change proposed.

Comments or written requests for a public hearing should be submitted to:

Sandra Lynott, Legal Technician
Workers' Compensation
Court of Appeals
212 MEA Building
55 Sherburne Avenue
St. Paul, MN 55103
Telephone (612) 297-2520

Authority for the adoption of these amendments is contained Minn. Stat. § 175A.07, subd. 4 (1984). The amendments eliminate ambiguities in the Court's existing procedural rules, incorporate statutory modifications, and streamline procedures. They govern all aspects of practice before the Court including requirements for initiation of appeals, motions, intervention, hearings, and filing of briefs.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed amendments, identifies the data and information relied upon to support the proposed amendments and assesses the impact of the proposed amendments on small business and on local public bodies has been prepared and is available from Ms. Lynott upon request at the above address.

Upon adoption of the final amendments without a public hearing, all jurisdictional documents, the Statement of Need and Reasonableness, all written comments and requests for hearing received, and the final amendments as adopted, will be delivered to the Attorney General. The amendments will then be reviewed by the Attorney General as to legality and form as it relates to legality, including the issues of substantial change, the Court's authority to adopt the amendments and the existence of a rational basis for the need for and reasonableness of the proposed amendments. Persons who wish to be notified of the submission of this material to the Attorney General, including modifications to the amendments as originally proposed, should submit a written request to Ms. Lynott at the above address.

A copy of the proposed amendments follows this notice. One free copy of the proposed amendments may be obtained by contacting Ms. Lynott at the above address or by calling (612) 297-2520.

STATE OF MINNESOTA

Paul V. Rieke

PAUL V. RIEKE
Administrator
Workers' Compensation
Court of Appeals

Dated: June 26, 1985

In the Matter of the Proposed Adoption
of Amendments to Rules of Procedure
by the Workers' Compensation
Court of Appeals

AFFIDAVIT OF MAILING

STATE OF MINNESOTA)
) SS
COUNTY OF RAMSEY)

SANDRA LYNOTT, being first duly sworn, deposes and says:

That on the 11 day of July, 1985 at the City of St. Paul, County of Ramsey, State of Minnesota, she served a copy of the attached Notice of Intent to Adopt Amendments Without a Public Hearing by depositing it in the State of Minnesota Central Mail System for United States mailing at said City of St. Paul, properly enveloped, with postage prepaid, on all persons and groups who have requested that their names be placed on the list used by the Workers' Compensation Court of Appeals for the purpose of receiving notice of the proposed adoption of amendments by this Court.

Sandra Lynott
SANDRA LYNOTT

Subscribed and sworn to before me
this 11th day of July, 1985.

Elizabeth A. Miller

ELIZABETH A. MILLER
NOTARY PUBLIC-MINNESOTA
DAKOTA COUNTY
My Commission Expires Jun. 18, 1987

STATE OF MINNESOTA)
) §§
COUNTY OF RAMSEY)

CERTIFICATE

In the Matter of the Proposed
Adoption of Amendments to Rules
of Procedure by the Workers'
Compensation Court of Appeals

I hereby certify that the list of interested persons and groups who have requested, pursuant to Minn. Stat. § 14.22 (1984), that their names be placed on the list used by the Workers' Compensation Court of Appeals for the purpose of receiving notice of the proposed adoption of amendments by this Court is accurate and complete as of this 11 day of July, 1985.

Sandra Lynott
SANDRA LYNOTT

Workers' Compensation Court of Appeals

Proposed Rules of Procedure; Workers' Compensation Court of Appeals

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Workers' Compensation Court of Appeals proposes to adopt the above-captioned amendments without a public hearing. The Court has determined that the proposed adoption of these amendments will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. §§ 14.21-14.28 (1984).

Persons or groups interested in these amendments shall have 30 days to submit comments in support of or in opposition to the proposed amendments are encouraged. Each comment should identify the portion of the proposed amendments addressed, the reason for the comment, and any change proposed. The proposed amendments may be modified if the modifications are supported by the data and views submitted to the Court and do not result in a substantial change in the proposed language.

A public hearing will be held if 25 or more persons submit written requests for a public hearing on the proposed amendments within the 30-day comment period. If a public hearing is required, the Court will proceed according to the provisions of Minn. Stat. §§ 14.131-14.20 (1984). Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed amendment addressed, the reason for the request, and any change proposed.

Comments or written requests for a public hearing should be submitted to:

Sandra Lynott, Legal Technician
Workers' Compensation
Court of Appeals
212 MEA Building
55 Sherburne Avenue
St. Paul, MN 55103
Telephone (612) 297-2520

Authority for the adoption of these amendments is contained in Minn. Stat. § 175A.07, subd. 4 (1984). The amendments eliminate ambiguities in the Court's existing procedural rules, incorporate statutory modifications, and streamline procedures. They govern all aspects of practice before the Court including requirements for initiation of appeals, motions, intervention, hearings and filing of briefs.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed amendments, identifies the data and information relied upon to support the proposed amendments and assesses the impact of the proposed amendments on small business and on local public bodies has been prepared and is available from Ms. Lynott upon request at the above address.

Upon adoption of the final amendments without a public hearing, all jurisdictional documents, the Statement of Need and Reasonableness, all written comments and requests for hearing received, and the final amendments as adopted, will be delivered to the Attorney General. The amendments will then be reviewed by the Attorney General as to legality and form as it relates to legality, including the issues of substantial change, the Court's authority to adopt the amendments and the existence of a rational basis for the need for and reasonableness of the proposed amendments. Persons who wish to be notified of the submission of this material to the Attorney General, including modifications to the amendments as originally proposed, should submit a written request to Ms. Lynott at the above address.

A copy of the proposed amendments follows this notice. One free copy of the proposed amendments may be obtained by contacting Ms. Lynott at the above address or by calling (612) 297-2520.

June 26, 1985

Paul V. Rieke
Administrator
Workers' Compensation
Court of Appeals

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.

Rules as Proposed

9800.0100 ~~DEFINITION~~ DEFINITIONS.

Subpart 1. Application. For the purpose of parts 9800.0100 to ~~9800.1400~~ ~~"court" means the Workers' Compensation Court of Appeals~~ 9800.1800, the following terms have the meanings given them.

Subp. 2. Administrator. "Administrator" means the judge designated by the court to receive documents filed with the court.

Subp. 3. Appellant. "Appellant" means all parties filing notices of appeal, including cross-appellants.

Subp. 4. Court. "Court" means the Workers' Compensation Court of Appeals.

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

Subp. 6. Filed. "Filed" means the receipt and stamping of a document by the court, division, or office.

Subp. 7. Office. "Office" means the state Office of Administrative Hearings.

9800.0200 EXAMINATION OF FILES.

Inspection of any ~~Workers' Compensation~~ division file that is in the custody of the court ~~may be inspected by any person only when there has been compliance with~~ is subject to the requirements of Minnesota Statutes, ~~section~~ sections 176.231, subdivisions 8 and 9, and 176.138, and ~~the rules of the Workers' Compensation Division~~ part 1415.0600.

9800.0400 TEMPORARY ORDERS.

Temporary orders filed with the court must ~~comply with~~ conform to Minnesota Statutes, section 176.191 and ~~the rules of the Workers' Compensation Division regarding temporary orders unless otherwise ordered by the court~~ part 1415.2300.

9800.0500 CONTINUANCES ~~AND EXTENSIONS~~ OF HEARINGS.

Subpart 1. Continuances. A continuance of any hearing ~~may~~ shall be granted only upon a showing of ~~just~~ cause. ~~Failure to make timely request to the court for a continuance is grounds for denial of the continuance~~ A request for a continuance must be made within five days of the filing of notice of hearing. The court shall consider later requests only upon a showing that an earlier request could not have been made.

Subp. 2. [See Repealer.]

9800.0700 ~~STIPULATION~~ STIPULATIONS FOR SETTLEMENT.

Stipulations for settlement submitted to the court ~~shall comply with~~ must meet the requirements of Minnesota Statutes, section 176.521 and ~~the rules of the Workers' Compensation Division and the state Office of Administrative Hearings regarding stipulations of settlement unless otherwise ordered by the court~~ part 1415.2000.

To be considered for approval, stipulations must be promptly filed with the court by a party. Where a case is settled prior to the filing of the court's decision, the appellant must immediately notify the court that a settlement has been reached.

9800.0800 APPEAL OF ATTORNEY FEES BY AN EMPLOYEE.

An employee dissatisfied with his attorney fees may make application for review of the fees by completing an application form provided by the court pursuant to Minnesota Statutes, section 176.081, subdivision 3.

9800.0900 BRIEFS ON APPEAL.

Subpart 1. Filing of brief of appellant where a transcript is required. ~~The Office of Administrative Hearings shall file a certification with this court showing the date of service of the transcript of hearing upon the parties or their attorneys.~~ The appellant~~, within 30 days from the date of said service,~~ shall file a written brief ~~with the court together with~~, which shall address only issues raised in the notice of appeal, within 30 days after the court receives the transcript. The brief shall be accompanied by an affidavit stating that service of a copy of the brief has been made by the appellant upon ~~each adverse party~~ all other parties to the action. ~~Five~~ The original brief and four copies ~~of the brief~~ shall be filed with the court in cases where ~~oral argument~~ a hearing is to be ~~made~~ held. Only the original shall be filed where the hearing is waived by all parties.

Subp. 2. ~~Response to~~ Filing of brief of appellant where no transcript of the proceedings is required. ~~Any response to any brief shall be filed with the court within 20 days of the date of service of the brief to which the response is being made. The response must be accompanied by an affidavit stating that service has been made upon all opposing parties~~ Where no transcript of the proceedings is required, the appellant shall file a written brief, which shall address only issues raised in the notice of appeal, within 30 days after the filing of the notice of appeal. The brief shall be accompanied by an affidavit stating that service of a copy of the brief has been made by the appellant upon all other parties to the action. The original and four copies shall be filed with the court in cases where a hearing is to be held. Only the original shall be filed where the hearing is waived by all parties.

Subp. 3. ~~Filing where no certification of filing of transcript required~~ Filing of brief of respondent. ~~Upon appeal to this court where no certification of filing of transcript is required, the appellant shall have 30 days from the date of filing the notice of appeal to~~

~~file a written brief.~~ ~~Response briefs shall be filed in accordance with subpart 2~~ The brief of respondent shall be filed with the court within 20 days after the filing of the appellant's brief. The respondent's brief shall address only issues raised in the brief of the appellant and must be accompanied by an affidavit stating that service has been made upon all other parties to the action. The original and four copies shall be filed with the court in cases where a hearing is to be held. Only the original brief shall be filed where a hearing is waived by all parties.

Subp. 4. Filing of respondent's brief where no appellant brief is filed. If no appellant brief is filed, briefs of respondents shall be filed within 50 days after the date that the court received the transcript of the proceedings. If no transcript of the proceedings is required and no appellant brief is filed, all other parties shall file briefs within 50 days after the date of filing of the notice of appeal. The briefs shall address only issues raised in the notice of appeal and shall be accompanied by proof of service upon all parties. The original and four copies shall be filed with the court in cases where a hearing is to be held. Only the original brief shall be filed where a hearing is waived by all parties.

Subp. 5. Reply briefs. Reply briefs shall be filed within ten days after the filing of the respondent's brief. They shall address only issues addressed in the respondent's brief. The original and four copies shall be filed with proof of service upon all other parties when a hearing is to be held. Only the original brief shall be filed when a hearing is waived by all parties.

Subp. 6. Extensions. Extensions of time for the filing of briefs shall be granted only for cause and if requested within the time for the filing of the brief. Briefs not timely filed shall not be considered by the court unless an extension of time for filing has been granted. ~~No extension shall be granted except as provided in parts 9800.0100 to 9800.1400.~~

9800.1000 HEARINGS ON APPEAL.

Subpart 1. Time limits. ~~All arguments on appeal before the court shall be limited to~~ A hearing shall be scheduled unless it is waived by all parties as prescribed by part 9800.1600, subpart 2. Each party shall be allotted 15 minutes ~~by each party~~ unless otherwise authorized by the court. ~~A party desiring to waive oral argument before the court shall notify the court within the time limitations for the filing of a brief.~~

Subp. 2. Motion pictures. Any party desiring to show motion pictures at the hearing must so inform the court in writing within 30 days after the transcript is received by the court. This notice shall indicate the length of time necessary for viewing. The party shall furnish the necessary projection equipment on the day of the hearing. The court shall on its own motion require the showing of motion pictures when necessary for a full and fair adjudication of a case. The party in possession of the motion pictures or the party who offered them into evidence shall provide projection equipment.

9800.1100 APPLICATION TO SET ~~THE~~ AWARD ASIDE ~~OR~~ AND GRANT A NEW HEARING.

~~Applications~~ An application to set an award aside ~~or~~ and grant a new hearing shall be verified and accompanied by supporting affidavits or medical reports. ~~Sufficient copies~~ The application shall be filed with the court ~~for service upon the other parties~~ and accompanied by proof of service on all parties to any award to which the application applies. ~~The application shall state in detail the grounds that constitute the cause for granting the relief requested.~~

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

The court ~~may, in its discretion, act on the application without hearing or may require a hearing and further proof~~ shall grant the application if it determines that cause exists pursuant to Minnesota Statutes, section 176.461. Applications shall be scheduled for hearing.

9800.1400 APPLICATIONS, PETITIONS, AND MOTIONS.

Subpart 1. ~~Procedures~~ Scope. All applications, petitions, and motions for relief or consideration by the court, not otherwise provided for in parts 9800.0100 to ~~9800.1400 with respect to appeals~~ 9800.1800, shall be ~~made~~ filed in the following manner and within the following times~~, unless otherwise directed by the court~~.

Subp. 2. ~~Motions~~ Procedures for filing. Motions shall be in writing, verified, accompanied by appropriate documentation, state the relief sought, the basis therefor, and be accompanied by an affidavit of service upon all other parties ~~affected thereby~~ to the action. No motions shall be considered if filed within five working days of the time set for hearing.

Subp. 3. Responses. All other parties shall have ~~a period of~~ five working days ~~from~~ after the ~~date of~~ filing ~~of service~~ of a motion within which to file a response in writing.

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. 4. Replies. A reply ~~may~~ shall be filed within ~~two~~ five working days ~~thereafter~~ after the filing of a response. ~~No motions shall be considered if filed within five days of the time set for hearing on an appeal.~~

Subp. ~~4.~~ 5. ~~Oral argument~~ Hearings not permitted. ~~Oral argument~~ Hearings on applications, petitions, or motions shall not be permitted except upon order of the court.

Rules as Proposed (all new material)

9800.1500 PETITION FOR INTERVENTION.

Subpart 1. Scope. Persons shall be permitted to intervene in accordance with the requirements of Minnesota Statutes, section 176.361, subdivision 1. After a petition to intervene is granted, the intervenor must appear at all scheduled hearings of the court relating to the claim unless a written stipulation signed by all parties has been filed with the court which settles all issues relating to the intervention.

Subp. 2. Notice to potential intervenors. Any person who may have an interest in a case must be placed on written notice of the right to petition to intervene as prescribed by part 1415.1100. A petition to intervene must be filed by the potential intervenor within 30 days of receiving notice.

Subp. 3. Contents of petition. The contents and format of the petition to intervene shall conform to part 1415.1200. Responses to the petition shall be filed in accordance with part 9800.1400, subpart 3.

9800.1600 COMMENCEMENT OF APPEALS.

Subpart 1. Filing notice of appeal. An appeal is initiated by filing a notice of appeal containing the information required by Minnesota Statutes, section 176.421, subdivision 3.

A. When an appeal from a decision of a compensation judge is authorized by Minnesota Statutes, section 176.421, subdivision 4, the notice must be filed with the office within 30 days of the filing of the decision being appealed.

B. When an appeal is taken from a decision of the rehabilitation review panel under Minnesota Statutes, section 176.102 or from a decision of the medical services review board under Minnesota Statutes, section 176.103, the notice must be filed with the Office of Public Affairs at the Department of Labor and Industry within 30 days of the filing of the decision being appealed.

C. When an appeal from the decision of the commissioner is authorized by Minnesota Statutes, section 176.442, the notice must be filed with the division within 30 days of the filing of the decision being appealed.

Subp. 2. Notification of receipt of transcript. The court shall notify the parties of the date that the transcript was received. This notification letter shall also inquire whether the:

A. Parties desire a hearing. If so, whether parties prefer a hearing before the entire court or a three member panel.

B. Issues in the matter on appeal are also pending before the workers' compensation court, medical services review board, or rehabilitation review panel to enable the court to consolidate the entire case.

Parties must file a response to the notification letter within ten days after the court files the notification.

9800.1700 TAXATION OF COSTS AND DISBURSEMENTS.

The court shall tax actual and necessary costs and disbursements as prescribed by Minnesota Statutes, section 176.511. Parties shall comply with the procedure in part 9800.1400 except that petitions under this part must be filed within 45 days of the filing of the final appellate decision in the main action.

9800.1800 SUSPENSION OF RULES.

Upon a clear showing of extraordinary circumstances not contemplated by parts 9800.0100 to 9800.1700, the court may, upon petition of a party or upon its own petition five days after serving notice on the parties, suspend any requirements of parts 9800.0100 to 9800.1700. Rules implementing requirements imposed by law shall not be suspended even upon a clear showing of extraordinary circumstances.

REPEALER. Minnesota Rules, parts 9800.0500, subpart 2; 9800.0600; and 9800.1300, are repealed.

STATE OF MINNESOTA

WORKERS' COMPENSATION COURT OF APPEALS

In the Matter of the Proposed Adoption of Amendments to Rules of Procedure by the Workers' Compensation Court of Appeals

FINDINGS OF FACT AND CONCLUSIONS

The above-captioned amendments were published in the State Register, together with a Notice of Intent to Adopt Amendments Without a Public Hearing, on July 15, 1985. Proper notice was served upon all interested persons and groups on the list used by the Workers' Compensation Court of Appeals for that purpose as required by Minn. Stat. § 14.22 (1984).

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, I make the following:

FINDINGS OF FACT

1. Two comments were submitted to the Court during the 30 day comment period following publication of the proposed amendments.

2. The Court declined to adopt either proposed modification for the following reasons:

9800.0500 CONTINUANCES ~~AND EXTENSIONS~~ OF HEARINGS.

~~Subpart 1. Continuances.~~ A continuance of any hearing ~~may~~ shall be granted only upon a showing of ~~just~~ cause. ~~Failure~~

~~to make timely request to the court for a continuance is grounds for denial of the continuance~~ A request for a continuance must be made within five days of the filing of notice of hearing. The court shall consider alter requests only upon a showing that an earlier request could not have been made.

The amendment as proposed provides that requests for continuances must be made within five days of the filing of the notice of hearing. The rule previously required requests to be "timely", but did not specify any deadline. As described in the Statement of Need and Reasonableness, the purpose of the amendment as proposed is to ensure that parties request continuances sufficiently early to permit the Court to make substitutions on its calendar.

The Court received a comment letter from Robert J. Mabel suggesting the extension of the period for requesting continuances from five to ten days. He stated that five days was too short because mail is not delivered on weekends and holidays.

The Court has determined not to accept Mr. Mabel's recommendation because it is unnecessary. Under Minn. Stat. § 645.15 (1984) where the last day of the five day time period falls on a weekend or holiday, the due date is deemed to be the next working day. Minn. Rule Civ. P. 6.01 further provides that a time period of les than 7 days is construed to include only working days.

The Court thus intends to entertain requests for continuances that are made within 5 working days of the filing of

the notice of hearing. This compensates adequately for the mail delays noted by the comment letter. It would contravene the purpose of the new amendment to extend the time period beyond the 5 day limit presently prescribed. Mr. Mabel suggested this as an alternate solution.

9800.1100 APPLICATION TO SET AWARD ASIDE ~~OR~~ AND GRANT A NEW HEARING.

~~Applications~~ An application to set an award aside ~~or~~ and grant a new hearing shall be verified and accompanied by supporting affidavits or medical reports. ~~Sufficient copies~~ The application shall be filed with the court ~~for service upon the other parties~~ and accompanied by proof of service on all parties to any award to which the application applies. ~~The application shall state in detail the grounds that constitute the cause for granting the relief requested.~~

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

The court ~~may, in its discretion, act on the application without hearing or may require a hearing and further proof~~ shall grant the application if it determines that cause exists pursuant to Minnesota Statutes, section 176.461. Applications shall be scheduled for hearing.

The amendment as proposed requires that responses to applications to set an award aside must be filed within five days

after the application is filed. The five day response period is consistent with Minn. Stat. § 176.461 (1984) which governs the setting aside of awards. The general motion rule also directs the filing of responses to motions within 5 days. See Minn. Rules pt. 9800.1400, subp 3. As noted above, 5 days is construed as 5 working days.

Raymond W. Fitch suggested that the response period be lengthened to 30 days or more. He explained that insurers require additional time to reopen files. Mr. Mabel suggested that 10 days, or even 5 working days would be adequate.

The Court has declined to extend the time period. The amendment as proposed does not alter the response period prescribed by the existing rules. The Court has experienced no difficulty in administering the 5 day time limit for responses. Mr. Mabel also suggests that 5 working days is workable for employers and insurers. In the absence of evidence of a compelling need to extend time periods, the Court desires to speed, not delay, the disposition of cases.

Based upon these Findings of Fact, I make the following:

CONCLUSIONS

1. That the Court gave proper notice of the rulemaking proceeding.

2. That the Court fully complied with all procedural requirements of law or rule in adopting the proposed amendments.

3. That the Court acted within its statutory authority in adopting these proposed amendments.

4. That the amendments as proposed are needed and reasonable and fully comply with substantive requirements imposed by law or rule.

STATE OF MINNESOTA

Paul V. Rieke

PAUL V. RIEKE
Chief Judge

Dated: August 26, 1985

STATE OF MINNESOTA

WORKERS' COMPENSATION COURT OF APPEALS

In the Matter of the Proposed Adoption of Amendments to Rules of Procedure by the Workers' Compensation Court of Appeals

STATEMENT OF NEED AND REASONABLENESS

INTRODUCTION

Minn. Rules ch. 9800 (1984) presently regulates practice before the Workers' Compensation Court of Appeals. These amendments eliminate ambiguities in the existing rules, incorporate statutory revisions and streamline procedures. They thus facilitate the administration of the Court's docket and promote the speedy and fair resolution of disputes. Minn. Stat. § 175A.07, subd. 4 (1984) authorizes the Court to adopt procedural rules.

Part 9800.0100 - DEFINITIONS.

This part adds many new definitions to the rules. It is intended to simplify the use of these rules. It also avoids unnecessary duplication of terms which frequently appear in the rules.

Subpart 1 - Administrator.

Minn. Stat. § 175A.02 (1984) directs the Court to appoint a member as administrator to coordinate the processing of the Court's caseload. It is thus reasonable to use the term "administrator" in these rules to refer to the judge who oversees

the administration of the Court. This subpart also informs litigants which judge they should contact about procedural questions and filing of documents.

Subpart 2 - Appellant.

Workers' compensation litigation typically includes more than two parties. In addition to multiple employers and insurers, health care providers, the Department of Economic Security and the Department of Labor and Industry often appear as intervenors. Accordingly, appeals may include appellants and cross-appellants. See Minn. Stat. § 176.421, subds. 4, 6 (1984). This definition clarifies that the same procedures apply to both appellants and cross-appellants.

Subpart 3 - Court.

These rules contain repeated references to the Workers' Compensation Court of Appeals. This definition permits references to the Workers' Compensation Court of Appeals by use of the term "Court". This is needed for clarity and for brevity in the rules.

Subpart 4 - Division.

The Workers' Compensation Division is also often mentioned in these rules. It is reasonable for clarity and brevity to refer to the Workers' Compensation Division as the "Division" in these rules.

Subpart 5 - Filed.

These rules establish several deadlines for filing documents. In some cases the filing deadlines may be jurisdictional. See Hibner v. Residential Alternatives, File No. 114-42-5252 (Filed February 11, 1985); Part 9800.1600. It is thus necessary for the rules to clearly define when filing is complete. This definition is consistent with procedural rules used elsewhere in the workers' compensation system. See e.g. Part 5222.0060.

Subpart 6 - Office.

As several references to the Office of Administrative Hearings appear in these rules, this definition is necessary for clarity and brevity.

Part 9800.0200 - EXAMINATION OF FILES.

The Division file is sent to the Court when a case is appealed. It contains the record of litigation below, documents received by the Division, medical reports and other relevant information. The Court sometimes receives requests from persons who wish to inspect the file. To protect confidential information, it is necessary to grant access to files only as permitted by Minn. Stat. §§ 176.138 and 176.231 (1984).

The procedure for examining the files is the same that is used elsewhere in the workers' compensation system. See Minn. Rules pt. 1415.0600 (1984). This is needed to minimize confusion

among parties who appear before various courts in the workers' compensation system.

Part 9800.0300 - PREPARATION AND FORM OF LEGAL DOCUMENTS.

This rule is not being amended.

Part 9800.0400 - TEMPORARY ORDERS.

Temporary orders permit speedy payments of benefits by the Special Compensation Fund to employees where multiple insurers dispute their liability for benefits. When liability is established, the liable insurer then reimburses the Fund for payments made pursuant to the temporary order. This rule is amended merely to add the citation to the specific rule governing temporary orders used by the Division and Office. The citation assists parties in using these rules.

Part 9800.0500 - CONTINUANCES OF HEARINGS.

The Court conducts hearings on all appeals unless the parties waive the hearing. While continuances are sometimes unavoidable, it is necessary to restrict their availability to prevent abuse. The rule thus requires parties to promptly submit their requests for continuances. It is reasonable to require sufficient notice of requests for continuances so the Court and parties can rearrange their schedules. Language regarding extensions of briefing periods was moved to Part 9800.0900.

Part 9800.0600 - NOTICE OF SETTLEMENT.

This provision is repealed. It is substantially incorporated into Part 9800.0700 governing settlements.

Part 9800.0700 - STIPULATIONS FOR SETTLEMENT.

Where parties enter into a stipulation for settlement while a matter is pending before the Court, it must be approved by the Court pursuant to Minn. Stat. § 176.521 (1984). It is thus reasonable to specify the approval procedure.

A citation to the specific rule of the Office and Division governing approval of stipulations is added to this part. This helps litigants use these rules.

Further, this amendment underscores that parties, not the Court, have the duty to ensure that documents are correctly filed with the Court. Parties sometimes mistakenly file their stipulations at the Office or Division, rather than with the Court. This delays the Court's disposition of the matter. It is reasonable to put the burden on parties to properly file stipulations.

Finally, the appellant is required to promptly notify the Court where a settlement is reached. This is needed so that the Court avoids deciding a case which the parties have already settled.

Part 9800.0800 - APPEAL OF ATTORNEY FEES BY AN EMPLOYEE.

This part is amended to include a citation to the statute governing employee appeals of attorney fees. As the statute describes the procedure for appeals, the citation facilitates use of the rules by employees.

Part 9800.0900 - BRIEFS ON APPEAL.

Briefs contain an organized presentation of facts and legal arguments which are essential to the Court's analysis of a case and preparation for hearing. This part is extensively amended for clarity and for more efficient administration of the briefing schedule.

Subpart 1 - Filing of brief of appellant where a transcript is required.

As amended this subpart provides that where a transcript is required, the appellant's briefing period will begin upon receipt of the transcript by the Court. Under Part 9800.1600, subp. 2, the Court will notify parties of the date it received the transcript. Formerly, the briefing period began when the Office certified the transcript to the Court. To allow the Court to better control its docket it is reasonable for the Court to initiate briefing periods, rather than the Office.

This subpart is also amended to provide that the appellant's brief may address only issues raised in the Notice of Appeal. Minn. Stat. § 176.421, subd. 6 (1984) limits the Court's jurisdiction to issues listed in the notice. This was intended to preclude parties from attempting to litigate issues without

proper notice to opposing parties. It is reasonable to permit parties to brief only those issues which come within the Court's jurisdiction.

This amendment also specifies that only an original brief should be filed where there is no oral argument. Extra copies are needed only for cases that are heard so that members of the hearing panel can prepare for hearing. This rule is reasonable to eliminate unnecessary filing of documents.

Subpart 2 - Filing of brief of appellant where no transcript of the proceeding is required.

This amendment establishes that the briefing period begins upon the filing of the Notice of Appeal where there is no record of the proceedings below. Otherwise, appellant briefs submitted pursuant to this subpart must meet the same requirements as appellant briefs submitted pursuant to subpart 1. Only issues properly noticed may be briefed. An original brief is adequate where oral argument is waived.

Subpart 3 - Filing of brief of respondent.

Under this amendment the respondent's brief is distinguished from the reply brief. Previously this provision applied to all "responses", including replies. It now governs only briefs of respondents.

This amendment provides that the respondent's brief is limited to issues contained in the appellant's brief. This is needed for consistency with the Court's jurisdictional limits. See Minn. Stat. § 176.421, subd. 6 (1984).

Finally, respondents are now expressly required to serve opposing parties. It is reasonable to require that all parties are served with pleadings. As with other briefs, multiple copies are required only where oral argument is to be held. This is reasonable to avoid the filing of unnecessary documents.

Subpart 4 - Filing of respondent's brief where no appellant brief is filed.

Because briefs provide the Court with relevant facts and legal arguments necessary for its determination of a case, respondents' briefs are accepted even where no appellant brief is filed. The briefing schedule begins upon the receipt of the transcript or the notice of appeal as appropriate. Under this subpart the respondent's briefing time begins when the appellant brief would have been due. The briefing schedule is thus the same whether or not an appellant brief is filed.

Respondents' briefs submitted under this amendment are subject to the same requirements as other briefs. It is limited to issues raised in the notice of appeal. The amendment requires service upon opposing parties and the filing only of the original brief where no oral argument is scheduled.

Subpart 5 - Reply briefs.

Reply briefs permit the appellant to respond to unexpected arguments raised in the respondent's brief. This ensures that the Court has the full benefit of all of the legal arguments in a case before hearing oral argument and issuing its decision.

As noted earlier, the Court's present rules provide for reply briefs, but treat them as respondents' briefs. The amendments impose several restrictions on reply briefs that do not apply to respondents' briefs. This is necessary for clarity and efficiency in administering the Court's docket.

Reply briefs are now due in 10 days, not 20 days. In the reply brief, the appellant may only respond to arguments contained in the respondent's brief. It is reasonable to exclude new issues as the appellant has ample opportunity in its initial brief to present its main arguments. Reply briefs also need not be used for repetition of arguments presented in the appellant's brief.

Because of the limited scope of the reply brief, the short briefing period is adequate. It encourages the appellant to confine its main arguments to its appellant brief and to avoid lengthy repetitious discussion. The resulting reduction in the briefing schedule also assists the Court in managing its caseload.

It is reasonable to apply the same service and filing requirements to all briefs filed with the Court.

Subpart 6 - Extensions.

This subpart, which formerly appeared in Part 9800.0500, subp. 2, is virtually unchanged by this amendment. It regulates the availability of extensions of briefing periods.

While extensions must occasionally be granted, restrictions are necessary for fairness to other parties and to permit the speedy disposition of cases by the Court.

Part 9800.1000 - HEARINGS ON APPEAL.

Hearings permit the parties to highlight salient aspects of the arguments which they present in their briefs. At the same time, hearings give the Court the opportunity to ask questions about a pending case.

Subpart 1 - Time limits.

This provision is essentially unchanged except that the rule now specifies that all parties must waive their right to a hearing. To ensure that all parties have an opportunity to orally address the Court, it is reasonable to hold the hearing unless none of the parties wish to do so. This is also consistent with the Court's past practice.

Subpart 2 - Motion pictures.

Recently the Court has received increasing requests to view motion pictures during the hearing. As motion pictures are part of the record on review, it is appropriate for the Court to consider these requests.

Adequate preparation must be made for the showing so that the hearing may proceed smoothly and efficiently. It is thus reasonable for the Court to require advance notice of the expected showing, the time required, and to assign responsibility for bringing projection equipment.

Part 9800.1100 - APPLICATION TO SET THE AWARD ASIDE AND GRANT A NEW HEARING.

Minn. Stat. § 176.461 (1984) entitles parties to apply to the Court for an order setting aside an award and granting a new hearing. It is thus reasonable to specify the procedure for obtaining this relief in this part.

Minn. Stat. § 176.461 (1984) prescribes many of the procedural requirements which appear in this part. While hearings were previously discretionary, the amendment now requires the Court to conduct hearings on petitions for an order to set aside an award. Mandatory hearings are reasonable due to the complexity of the issues and the significance of the relief requested.

Part 9800.1200 - WRIT OF CERTIORARI.

This part is not being amended.

Part 9800.1300 - SECOND INJURY LAW.

This rule is repealed. Under amendments to Minn. Stat. § 176.131, the commissioner of the Department of Labor and Industry now performs the functions described in this rule, not the Court.

Part 9800.1400 - APPLICATIONS, PETITIONS AND MOTIONS.

Subpart 1 - Scope.

This part prescribes the procedure to be followed where the specific type of relief requested is not contemplated elsewhere in these rules. This amendment modifies a similar general motion rule that appears in the existing rules.

Subpart 2 - Procedure for filing.

The procedure for filing motions is unchanged from the present rules. The requirement that motions be filed no later than five days prior to hearing formerly appeared in subpart 3. This provision is necessary to avoid unfair surprise at the hearing.

Subpart 3 - Responses.

This subpart, which is the same as the existing rule, sets forth the period for responding to motions. It provides ample time for opposing parties to respond to motions.

Subpart 4 - Replies.

Under this subpart the moving party now has five working days to reply to an objection of opposing counsel. This expansion of the time allotted in the present rule is necessary to give the moving party sufficient time to form a reply. As the entire pleading period is still only two weeks, the Court can still rapidly dispose of motions.

Subpart 5 - Hearings not permitted.

Hearings will not ordinarily be scheduled on motions. This is reasonable as parties' pleadings generally provide sufficient information to the Court. Where the Court is unable to reach a

decision on the basis of these documents, a hearing can be conducted. The scheduling of all motions for hearing would unnecessarily increase the Court's backlog and result in slower disposition of cases.

Part 9800.1500 - PETITIONS FOR INTERVENTION.

This is a new part authorized specifically by Minn. Stat. § 176.361, subd. 1 (1984). It is necessary to specify the procedure for intervening before the Court to ensure that all interested persons have an opportunity to participate. This eliminates piecemeal litigation and speeds the resolution of the Court's caseload.

Subpart 1 - Scope.

This provision refers parties to Minn. Stat. § 176.361, subd. 1 for a recitation of the substantive prerequisites for intervention. It also advises intervenors, who are often absent, that they must appear at all hearings. This is necessary to avoid continuances of hearings where intervenors fail to attend. It thus promotes efficient administration of the Court's caseload.

Subpart 2 - Notice to potential intervenors.

This subpart requires that parties notify interested persons of the pending proceeding. It is reasonable to put the burden on the parties to notify potential intervenors as they are in the best position to know whether persons who are not presently

parties may have an interest in a case. Potential intervenors typically include health care providers, the Department of Economic Security and the Department of Human Services. The 30 day time limit is adequate to permit parties to satisfy the notice requirement. To facilitate use of these rules, the Court has adopted the same procedure used by the Division and Office.

Subpart 3 - Contents of petition.

Petitions filed with the Court are subject to the same requirements used by the Office and Division. This ensures that petitions contain essential information while minimizing confusion of parties who litigate elsewhere in the workers' compensation system. It is reasonable to apply the same procedural requirements to all responses to petitions filed with the Court.

Part 9800.1600 - COMMENCEMENT OF APPEALS.

This new part is necessitated by the 1983 revisions to the Workers' Compensation Act under which workers' compensation litigation proceeds in two different forums. Disability benefit issues are decided by compensation judges at the Office and appealable to the Court. Disputes concerning the rehabilitation or medical treatment of injured workers are decided by rehabilitation and medical specialists at the Division. They are appealable first to the Rehabilitation Review Panel and the Medical Services Review Board respectively, and then to the

Court. It is thus necessary to add a part which prescribes the procedure for appealing decisions from each forum to the Court.

Subpart 1 - Filing notice of appeal.

This subpart underscores that the notice tolls the appeal period as set forth in Minn. Stat. § 176.421, subd. 2 (1984). It also tells parties who wish to appeal where to file their notices of appeal. This is necessary to minimize confusion for litigants.

Subpart 2 - Notification of receipt of transcript.

Under this provision the Court will notify the parties when the transcript is received. This notice is necessary as the appellant's briefing period begins when the transcript is received. See Part 9800.0900, subp. 1. As this notification also asks two questions which aid in the Court's administration of its docket, it will also be sent where there is no record below and the briefing period begins upon the filing of the notice. See Part 9800.0900, subp. 2.

First, the notification inquires whether the parties wish a hearing. This information is necessary to help the Court plan its calendar. Further, parties file only an original brief all parties waive oral argument. See Part 9800.0900.

The notice also asks parties whether other aspects of the case are pending in other workers' compensation forums. This is important because the Division disposes of rehabilitation and medical disputes in fewer than three months. The Office takes

over a year to decide disability benefit issues. Some cases contain both disability benefit issues as well as rehabilitation and medical issues. In those instances, the rehabilitation or medical portion of the case is likely to reach the Court before the Office has issued its decision.

Where a matter has been split, the Court will delay its consideration until the entire matter can be consolidated before the Court. It is most efficient for the Court to consider all aspects of a matter simultaneously. The Court also avoids inconsistent decisions by consolidating all segments of a case. The Court must thus determine whether parts are pending below to permit consolidation.

Part 9800.1700 - TAXATION OF COSTS AND DISBURSEMENTS.

This new part prescribes the procedure for petitioning for taxation of costs and disbursements. It is consistent with Minn. Stat. § 176.511 (1984) which governs taxation of costs. To simplify this process, parties use the petition procedure contained in Part 9800.1400 to petition for taxation of costs.

In addition to the requirements of Part 9800.1400, petitions under this part must be filed within 45 days after the filing of the Court's decision in the main action. In the past parties have sometimes waited years before filing for taxation of costs. Because of this long hiatus, the Court must completely relearn facts and issues in the case to rule on the petition. The Court

can more quickly and efficiently handle petitions which are promptly filed. At the same time 45 days is ample time for the losing party to decide whether to appeal and, if not, for the prevailing party to file its petition for taxation.

Part 9800.1800 - SUSPENSION OF RULES.

This part permits the Court to suspend the rules in the rare case where conformity to the rules would work an extremely grave injustice. Parts containing requirements imposed by law can under no circumstances be suspended. The petition procedure prescribed by Part 9800.1400 must be followed under this part.

FISCAL IMPACT ON LOCAL PUBLIC BODIES.

As required by Minn. Stat. § 14.11, subd. 1 (1984), the Court has considered the fiscal impact of these amendments on local public bodies. These rules will not require the expenditure of public moneys by local public bodies.

IMPACT ON SMALL BUSINESS.

The Court has considered the impact of these rules on small business as required by Minn. Stat. § 14.115 (1984). It has concluded that the rules accommodate the needs of small business. Insurers and self-insured employers do not qualify as small businesses under Minn. Stat. § 14.115, subd. 1 (1984). Health care providers are exempt by Minn. Stat. § 14.115, subd. 7 (c)

(1984) as regulated service businesses. Further, these amendments, which eliminate ambiguities and simplify existing procedures, actually reduce the burdens on all litigants. To create special exceptions for small businesses would detract from the fairness of these rules and jeopardize the integrity of the Court.

STATE OF MINNESOTA

WORKERS' COMPENSATION COURT OF APPEALS

In the Matter of the Proposed Adoption of Amendments to Rules by the Workers' Compensation Court of Appeals.

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.

Leslie M. Altman

LESLIE M. ALTMAN
Special Assistant
Attorney General

Dated: August 26, 1985

STATE OF MINNESOTA

WORKERS' COMPENSATION COURT OF APPEALS

In the Matter of the Proposed Adoption of Amendments to Rules of Procedure by the Workers' Compensation Court of Appeals

CERTIFICATE

I hereby certify that no persons or groups have requested to be notified of the submission of these rules to the Attorney General.

Paul V. Rieke

PAUL V. RIEKE
Chief Judge

Dated: August 26, 1985