

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

ATTORNEY GENERAL

October 4, 1988

KEN PETERSON
Deputy Commissioner
Minnesota Department of Labor and Industry

JULIE A. LEPPINK
Special Assistant
Attorney General

6-9422

In the Matter of the Adopted Rule Relating to Procedure

The above-refernced rule has been approved as to its legality by the Attorney General on October 4, 1988.

Enclosed is the agency's copy of the approved rule. This office has already filed two copies with the Secretary of State who will forward one copy to the Revisor of Statutes. The fourth 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 accoradance 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.

JAL:rer

Enclosures

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

Duane Harves
Chief Administrative Law Judge
Office of Administrative Hearings

File No. 1518

DATE RECEIVED 9/16/88

REVIEW DATE 9/25/88

DUE DATE 9/30/88

APPROVED 9/26 gw

DISAPPROVED _____

WITHDRAWN _____

Docket No. 25.0009.0614

ADOPTED W/O HEARING ✓

EMERGENCY RULE _____

REVISOR APPROVED _____

REVISOR DISAPPROVED _____

FILED W/SEC. OF STATE 10/3/88

RETURNED TO AGENCY 10/4/88

✓ Rule as adopted (4 copies)

✓ Notice to Solicit Outside Information/Opinion (if applicable)

12/21/87 Date published in State Register

yes Comments

~~Petition for Adoption of a Rule (if applicable)~~

✓ Board's Authorizing Resolution

9/6/88 Date adopted

✓ Proposed Rule

yes Revisor's Certificate

✓ Notice of Intent to Adopt Rule

175A.07 s 4 Statutory Authority

~~yes~~ Small Business Statement

No Expenditure of public money statement

yes Signature

✓ Statement of Need and Reasonableness (if applicable)

yes Small Business Statement

N/A Fees - § 16A.128

✓ Affidavit of No Mailing Notice of Intent to Adopt Rule

7/4/88 Date 30/25 days before adoption

_____ Notice attached

_____ Copy of rule or summary attached

✓ Publication in State Register

7/4/88 Date 30/25 days before adoption

_____ 180-day deadline from:

_____ end of comment period (§ 14.26) (rules without hearing)

_____ ~~effective date of statutory authority (§ 14.29) (emergency rules)~~

✓ Resolution Adopting

9/15/88 Date adopted

✓ Findings of Fact, Conclusions & Order Adopting

9/15/88 Date

_____ ~~Written requests, submissions or comments~~

✓ Declaration of attorney

Chuck Mott Name of SAAG representing agency

_____ ~~Notice of Submission to Atty. Gen. (if applicable)~~

_____ ~~Aff. of Mailing Notice to Atty. Gen. (if applicable)~~

AG Copy

Workers' Compensation Court of Appeals

Adopted Permanent Rules Relating to Procedure

Rules as Adopted

9800.0100 DEFINITIONS.

Subpart 1. and 2. [Unchanged.]

Subp. 3. **Appellant.** "Appellant" means the first party filing a notice of appeal.

Subp. 3a. **Cross appellant.** "Cross appellant" means any party filing a notice of appeal after the appellant.

Subp. 4. to 7. [Unchanged.]

Subp. 8. **Motion pictures.** "Motion pictures" includes video tapes.

9800.0300 PREPARATION AND FORM OF LEGAL DOCUMENTS.

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

9800.0400 TEMPORARY ORDERS.

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

9800.0500 CONTINUANCES OF ORAL ARGUMENTS.

Subpart 1. **Continuances.** A continuance of an oral argument shall be granted only upon a showing of good cause. A request for a continuance must be made within five days of the filing of notice of oral argument. The court shall consider later requests only upon a showing that an earlier request could not have been made.

9800.0510 NONAPPEARANCE OF COUNSEL.

If counsel for a party fails to appear to present argument, the court may hear argument on behalf of a party whose counsel

Approved by Revisor JCF

is present, and the case will be decided on the briefs and argument heard. If no counsel appear for any party, the case will be decided on the briefs unless the court shall otherwise order.

9800.0900 BRIEFS ON APPEAL.

Subpart 1. **Filing of brief of appellant where a transcript is required.** Appellants and cross appellants shall file a written brief, which shall address only issues raised in that party's notice of appeal, within 30 days after the court receives the transcript. Issues raised in the notice of appeal but not addressed in the brief shall be deemed waived and will not be decided by the court. The failure of any appellant or cross appellant to timely file a brief under this part may result in dismissal of that party's appeal under part 9800.1710.

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, appellants and cross appellants shall file a written brief, which shall address only issues raised in that party's notice of appeal, within 30 days after the filing of the notice of appeal. Issues raised in the notice of appeal but not addressed in the brief shall be deemed waived and will not be decided by the court. The failure of any appellant or cross appellant to timely file a brief under this part may result in dismissal of that party's appeal under part 9800.1710.

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 an oral argument is to be held. Only the original shall be filed where

Approved
by Revisor _____

the oral argument is waived by all parties.

Subp. 3. **Filing of brief of respondent.** All respondents' briefs shall be filed with the court within 25 days after the filing of the appellant's or cross appellant's brief. The respondent's brief shall address only issues raised in the brief of the appellant or cross 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 an oral ~~agrument~~ argument is to be held. Only the original brief shall be filed where an oral argument is waived by all parties.

Subp. 4. [See Repealer.]

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 an oral argument is to be held. Only the original brief shall be filed when an oral argument is waived by all parties.

Subp. 6. [Unchanged.]

9800.1000 ORAL ARGUMENTS ON APPEAL.

Subpart 1. **Criteria considered in granting oral argument.** The court, in its discretion, may grant the parties permission to participate in oral argument. Factors considered in determining whether to grant oral argument include:

A. whether the request for oral argument was timely under part 9800.1600, subpart ~~3~~ 2;

B. whether the resolution of the appealed issues would establish legal precedent; and

C. whether oral argument would significantly aid the court in deciding the issues on appeal.

Each party shall be allotted 15 minutes to make its presentation to the court, including the showing of motion pictures, unless otherwise authorized by the court.

Subp. 2. **Motion pictures.** Any party desiring to show

Approved
by Revisor _____

motion pictures at the oral argument must so inform the court and all other parties 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.

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 20 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. [Unchanged.]

Subp. 2. **Procedures for filing.** All requests for relief under this part 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. All requests for relief must be served and filed no later than five working days before the time set for oral argument, if any.

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

Subp. 4. [Unchanged.]

Subp. 5. **Oral argument not permitted.** Oral argument on applications, petitions, or motions shall not be permitted

Approved
by Revisor _____

except upon order of the court.

9800.1500 PETITION FOR INTERVENTION.

Subpart 1. **Scope.** ~~A petition to intervene may~~ Persons shall be ~~granted~~ 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. and 3. [Unchanged.]

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. The notice must be filed within 30 days of the filing of the decision being appealed. A respondent may cross appeal within the same 30-day period or within 15 days after service of the notice of appeal on that respondent, whichever is later.

Subp. 1a. **Preparation of transcript.** A written transcript of the record shall be prepared when required by Minnesota Statutes, section 176.421, subdivision 3, unless otherwise ordered by the court. An application for an order under this subpart shall conform to the requirements of part 9800.1400.

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 parties desire an oral argument and if so, whether parties prefer oral argument before the entire court or a three member panel.

Parties must file a response to the notification letter within ten days after the court files the notification. Failure to file a timely response shall be considered a waiver of oral argument.

Approved
by Revisor _____

9800.1710 DISMISSAL.

If any appellant or cross appellant fails to timely file a brief as required by part 9800.0900, any party may move this court for dismissal of the appeal. If the appellant or cross appellant is in default for more than 30 days and no party has moved for dismissal, the court shall summarily order the dismissal of the appeal or cross appeal without notice, subject to a motion to reinstate.

A motion to reinstate the appeal or cross appeal will be granted only if the appellant or cross appellant can show good cause for failing to timely file a brief, that the appeal or cross appeal is meritorious, and that reinstatement would not substantially prejudice the rights of any other party.

9800.1720 SUBMISSION WHEN A MEMBER OF THE COURT IS NOT PRESENT.

Except in exigent circumstances, the oral argument shall be heard before the full panel to which the case has been assigned or before the entire court if the matter is of exceptional importance. When any member of the court is not present at oral argument, the case shall be deemed submitted to that member on the record and briefs. When there is a change of court personnel or a recusal, cases shall be deemed submitted to the new member, or to any other member of the court, as necessary to complete a panel, on the record and briefs.

9800.1800 SUSPENSION OF RULES.

Upon a clear showing of extraordinary circumstances not contemplated by parts 9800.0100 to 9800.1720, 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 9800.1720. 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; 9800.0900, subpart 4; and 9800.1300, are repealed.

Approved
by Revisor _____

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

OCT 3 1988

Joan Anderson Growe

Secretary of State

2:05 PM

APPROVED AS TO FORM AND LEGALITY

September 26, 1988

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY

SPECIAL ASSISTANT ATTORNEY GENERAL

Workers' Compensation Court of Appeals

Notice of Solicitation of Outside Opinion Regarding Proposed Amendments to Procedural Rules

Notice is hereby given that the Minnesota Workers' Compensation Court of Appeals is seeking information or opinions from sources outside the court in preparing to propose amendments to its procedural rules. Adoption of amendments is authorized by *Minnesota Statutes*, § 175A.07, subd. 4 (1986).

The Minnesota Workers' Compensation Court of Appeals requests information or opinions concerning the subject matter of the amendments. Interested persons or groups may submit written or oral information or opinions. Written statements should be addressed to:

Leslie M. Altman, Administrator Judge
Workers' Compensation Court of Appeals
775 Amhoist Tower
345 St. Peter Street
St. Paul, Minnesota 55102

Any written material received by the Minnesota Workers' Compensation Court of Appeals shall become part of the rule-making record in the event that the amendments are adopted.

Oral statements will be accepted during regular business hours over the telephone at (612) 296-6526 and in person at the above address.

Information or opinions will be accepted until January 31, 1988.

Dated: 11 December 1987

Paul V. Rieke
Chief Judge

State Contracts and Advertised Bids

Pursuant to the provisions of Minn. Stat. § 14.10, an agency must make reasonable effort to publicize the availability of any services contract or professional and technical services contract which has an estimated cost of over $2,000.

Department of Administration procedures require that notice of any consultant services contract or professional and technical services contract which has an estimated cost of over $10,000 be printed in the *State Register*. These procedures also require that the following information be included in the notice: name of contact person, agency name and address, description of project and tasks, cost estimate, and final submission date of completed contract proposal. Certain quasi-state agencies are exempted from some of the provisions of this statute.

Commodities contracts with an estimated value of $15,000 or more are listed under the Procurement Division, Department of Administration. All bids are open for 7-10 days before bidding deadline. For bid specifics, time lines, and other general information, contact the appropriate buyers whose initials appear in parentheses next to the commodity for bid, by calling (612) 296-6152.

Department of Administration: Materials Management Division

Contracts and Requisitions Open for Bid

Call 296-2600 for information on a specific bid, or to request a specific bid. Buyer's initials are listed next to each commodity.

Commodity for Bid (and Buyer)	Bid Closing Date at 2 pm	Department or Division	Delivery Point	Requisition #
Central processing unit (BV)	December 23	Dpt. of Jobs & Training	St. Paul	21200 17070
Chromatograph system (JG)	December 23	Dpt. of Agriculture	St. Paul	04661 81953
Printers (BV)	December 28	Inventory Management	St. Paul	02410 80108
PC. compatible computers (BV)	December 28	Transportation	Various	79000 82362
Modular office system and accessories (LP)	December 28	Transportation	St. Paul	79000 74614
Software for personnel computers (DO)	December 29	Various	Various	Price Contract
Irrigation equipment (BT)	December 29	Natural Resources	Willow River	29003 04574
Dump box covers for asphalt—rebid (DM)	December 29	Transportation	St. Paul	79990 00091

STATE OF MINNESOTA
WORKERS' COMPENSATION COURT OF APPEALS

In the Matter of the Proposed Adoption of Amendments to Rules of Procedure for the Workers' Compensation Court of Appeals	CERTIFICATE OF THE WORKERS' COMPENSATION COURT OF APPEALS' AUTHORIZING RESOLUTION

I, MANUEL J. CERVANTES, do hereby certify that I am a Judge and the Administrator of the Workers' Compensation Court of Appeals, an agency duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Workers' Compensation Court of Appeals duly and properly called and held on the 6th day of September, 1988, that a quorum was present, and that a majority of those present voted for the resolution which has not been rescinded or modified.

> "RESOLVED, that Paul V. Rieke, Chief Judge of the Workers' Compensation Court of Appeals, is hereby granted the authority and directed to sign and to give the Notice of the Workers' Compensation Court of Appeal's Intent to Adopt a rule without a public hearing governing the Rules of Procedure for the Workers' Compensation Court of Appeals to all persons who have registered their names with the Workers' Compensation Court of Appeals for that purpose and publish the Notice and rule in the State Register, and to perform any and all acts incidental thereto. All previous actions taken by Paul V. Rieke, Chief Judge, Workers' Compensation Court of Appeals, consistent with this resolution and in furtherance of the adoption of the proposed amendments to Minn. Rules pt. 9800.0100-9800.1800, as published in the State Register on July 4, 1988 (13 S.R. 34-37) are hereby ratified."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 6th day of September, 1988.

Judge and Administrator

Attest by one other member,
Workers' Compensation Court of Appeals

Workers' Compensation Court of Appeals

Proposed Permanent Rules Relating to Procedure

Rules as Proposed

9800.0100 DEFINITIONS.

Subpart 1. and 2. [Unchanged.]

Subp. 3. **Appellant.** "Appellant" means ~~all parties~~ the first party filing ~~notices~~ a notice of appeal~~, including cross-appellants~~.

Subp. 3a. **Cross appellant.** "Cross appellant" means any party filing a notice of appeal after the appellant.

Subp. 4. to 7. [Unchanged.]

Subp. 8. **Motion pictures.** "Motion pictures" includes video tapes.

9800.0300 PREPARATION AND FORM OF LEGAL DOCUMENTS.

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

9800.0400 TEMPORARY ORDERS.

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

9800.0500 CONTINUANCES OF ~~HEARINGS~~ ORAL ARGUMENTS.

Subpart 1. **Continuances.** A continuance of ~~any hearing~~ an oral argument shall be granted only upon a showing of good cause. A request for a continuance must be made within five days of the filing of notice of ~~hearing~~ oral argument. The court shall consider later requests only upon a showing that an earlier request could not have been made.

9800.0510 NONAPPEARANCE OF COUNSEL.

If counsel for a party fails to appear to present argument,

Approved by Revisor JCF

the court may hear argument on behalf of a party whose counsel is present, and the case will be decided on the briefs and argument heard. If no counsel appear for any party, the case will be decided on the briefs unless the court shall otherwise order.

9800.0900 BRIEFS ON APPEAL.

Subpart 1. **Filing of brief of appellant where a transcript is required.** ~~The appellant~~ Appellants and cross appellants shall file a written brief, which shall address only issues raised in ~~the~~ that party's notice of appeal, within 30 days after the court receives the transcript. Issues raised in the notice of appeal but not addressed in the brief shall be deemed waived and will not be decided by the court. The failure of any appellant or cross appellant to timely file a brief under this part may result in dismissal of that party's appeal under part 9800.1710.

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~~ appellants and cross appellants shall file a written brief, which shall address only issues raised in ~~the~~ that party's notice of appeal, within 30 days after the filing of the notice of appeal. Issues raised in the notice of appeal but not addressed in the brief shall be deemed waived and will not be decided by the court. The failure of any appellant or cross appellant to timely file a brief under this part may result in dismissal of that party's appeal under part 9800.1710.

The brief shall be accompanied by an affidavit stating that service of a copy of the brief has been made by the appellant

Approved by Revisor _____

upon all other parties to the action. The original and four copies shall be filed with the court in cases where ~~a hearing~~ an oral argument is to be held. Only the original shall be filed where the ~~hearing~~ oral argument is waived by all parties.

Subp. 3. **Filing of brief of respondent.** ~~The brief of respondent~~ All respondents' briefs shall be filed with the court within ~~20~~ 25 days after the filing of the appellant's or cross appellant's brief. The respondent's brief shall address only issues raised in the brief of the appellant or cross 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~~ an oral agrument is to be held. Only the original brief shall be filed where ~~a hearing~~ an oral argument is waived by all parties.

Subp. 4. [See Repealer.]

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~~ an oral argument is to be held. Only the original brief shall be filed when ~~a hearing~~ an oral argument is waived by all parties.

Subp. 6. [Unchanged.]

9800.1000 ~~HEARINGS~~ ORAL ARGUMENTS ON APPEAL.

Subpart 1. ~~Time limits~~ Criteria considered in granting oral argument. ~~A hearing shall be scheduled unless it is waived by all parties as prescribed by part 9800.1600, subpart 2.~~ The court, in its discretion, may grant the parties permission to participate in oral argument. Factors considered in determining whether to grant oral argument include:

A. whether the request for oral argument was timely under part 9800.1600, subpart 3;

B. whether the resolution of the appealed issues would establish legal precedent; and

Approved by Revisor _____

C. whether oral argument would significantly aid the court in deciding the issues on appeal.

Each party shall be allotted 15 minutes to make its presentation to the court, including the showing of motion pictures, unless otherwise authorized by the court.

Subp. 2. **Motion pictures.** Any party desiring to show motion pictures at the ~~hearing~~ oral argument must so inform the court and all other parties 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~~ 20 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. [Unchanged.]

Subp. 2. **Procedures for filing.** ~~Motions~~ All requests for relief under this part 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~~

Approved by Revisor _____

~~shall~~ All requests for relief must be ~~considered if~~ served and filed ~~within~~ no later than five working days ~~of~~ before the time set for ~~hearing~~ oral argument, if any.

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

Subp. 4. [Unchanged.]

Subp. 5. **~~Hearings~~ Oral argument not permitted.** ~~Hearings~~ Oral argument 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~~ A petition to intervene may be ~~permitted to intervene~~ granted 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. and 3. [Unchanged.]

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. The notice must be filed within 30 days of the filing of the decision being appealed. A respondent may cross appeal within the same 30-day period or within 15 days after service of the notice of appeal on that respondent, whichever is later.

~~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~~

Approved by Revisor _____

~~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. 1a. **Preparation of transcript.** A written transcript of the record shall be prepared when required by Minnesota Statutes, section 176.421, subdivision 3, unless otherwise ordered by the court. An application for an order under this subpart shall conform to the requirements of part 9800.1400.

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.~~ an oral argument and if so, whether parties prefer ~~a hearing~~ oral argument 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. Failure to file a timely response shall be considered a waiver of oral argument.

9800.1710 DISMISSAL.

If any appellant or cross appellant fails to timely file a brief as required by part 9800.0900, any party may move this court for dismissal of the appeal. If the appellant or cross appellant is in default for more than 30 days and no party has moved for dismissal, the court shall summarily order the

Approved by Revisor _____

dismissal of the appeal or cross appeal without notice, subject to a motion to reinstate.

A motion to reinstate the appeal or cross appeal will be granted only if the appellant or cross appellant can show good cause for failing to timely file a brief, that the appeal or cross appeal is meritorious, and that reinstatement would not substantially prejudice the rights of any other party.

9800.1720 SUBMISSION WHEN A MEMBER OF THE COURT IS NOT PRESENT.

Except in exigent circumstances, the oral argument shall be heard before the full panel to which the case has been assigned or before the entire court if the matter is of exceptional importance. When any member of the court is not present at oral argument, the case shall be deemed submitted to that member on the record and briefs. When there is a change of court personnel or a recusal, cases shall be deemed submitted to the new member, or to any other member of the court, as necessary to complete a panel, on the record and briefs.

9800.1800 SUSPENSION OF RULES.

Upon a clear showing of extraordinary circumstances not contemplated by parts 9800.0100 to ~~9800.1700~~ 9800.1720, 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~~ 9800.1720. 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; 9800.0900, subpart 4; and 9800.1300, are repealed.

Approved
by Revisor _____

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Procedure

AGENCY: Workers' Compensation Court of Appeals

MINNESOTA RULES: Chapter 9800

The attached rules are approved for publication
in the State Register

John C. Fuller
Assistant Deputy Revisor

Workers' Compensation Court of Appeals

Adopted Permanent Rules Relating to Procedure

Rules as Adopted

9800.0100 DEFINITIONS.

Subpart 1. and 2. [Unchanged.]

Subp. 3. **Appellant.** "Appellant" means the first party filing a notice of appeal.

Subp. 3a. **Cross appellant.** "Cross appellant" means any party filing a notice of appeal after the appellant.

Subp. 4. to 7. [Unchanged.]

Subp. 8. **Motion pictures.** "Motion pictures" includes video tapes.

9800.0300 PREPARATION AND FORM OF LEGAL DOCUMENTS.

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

9800.0400 TEMPORARY ORDERS.

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

9800.0500 CONTINUANCES OF ORAL ARGUMENTS.

Subpart 1. **Continuances.** A continuance of an oral argument shall be granted only upon a showing of good cause. A request for a continuance must be made within five days of the filing of notice of oral argument. The court shall consider later requests only upon a showing that an earlier request could not have been made.

9800.0510 NONAPPEARANCE OF COUNSEL.

If counsel for a party fails to appear to present argument, the court may hear argument on behalf of a party whose counsel

Approved by Revisor JCF

is present, and the case will be decided on the briefs and argument heard. If no counsel appear for any party, the case will be decided on the briefs unless the court shall otherwise order.

9800.0900 BRIEFS ON APPEAL.

Subpart 1. **Filing of brief of appellant where a transcript is required.** Appellants and cross appellants shall file a written brief, which shall address only issues raised in that party's notice of appeal, within 30 days after the court receives the transcript. Issues raised in the notice of appeal but not addressed in the brief shall be deemed waived and will not be decided by the court. The failure of any appellant or cross appellant to timely file a brief under this part may result in dismissal of that party's appeal under part 9800.1710.

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, appellants and cross appellants shall file a written brief, which shall address only issues raised in that party's notice of appeal, within 30 days after the filing of the notice of appeal. Issues raised in the notice of appeal but not addressed in the brief shall be deemed waived and will not be decided by the court. The failure of any appellant or cross appellant to timely file a brief under this part may result in dismissal of that party's appeal under part 9800.1710.

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 an oral argument is to be held. Only the original shall be filed where

Approved
by Revisor _____

the oral argument is waived by all parties.

Subp. 3. **Filing of brief of respondent.** All respondents' briefs shall be filed with the court within 25 days after the filing of the appellant's or cross appellant's brief. The respondent's brief shall address only issues raised in the brief of the appellant or cross 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 an oral ~~agrument~~ argument is to be held. Only the original brief shall be filed where an oral argument is waived by all parties.

Subp. 4. [See Repealer.]

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 an oral argument is to be held. Only the original brief shall be filed when an oral argument is waived by all parties.

Subp. 6. [Unchanged.]

9800.1000 ORAL ARGUMENTS ON APPEAL.

Subpart 1. **Criteria considered in granting oral argument.** The court, in its discretion, may grant the parties permission to participate in oral argument. Factors considered in determining whether to grant oral argument include:

A. whether the request for oral argument was timely under part 9800.1600, subpart ~~3~~ 2;

B. whether the resolution of the appealed issues would establish legal precedent; and

C. whether oral argument would significantly aid the court in deciding the issues on appeal.

Each party shall be allotted 15 minutes to make its presentation to the court, including the showing of motion pictures, unless otherwise authorized by the court.

Subp. 2. **Motion pictures.** Any party desiring to show

Approved
by Revisor _____

motion pictures at the oral argument must so inform the court and all other parties 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.

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 20 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. [Unchanged.]

Subp. 2. **Procedures for filing.** All requests for relief under this part 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. All requests for relief must be served and filed no later than five working days before the time set for oral argument, if any.

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

Subp. 4. [Unchanged.]

Subp. 5. **Oral argument not permitted.** Oral argument on applications, petitions, or motions shall not be permitted

Approved
by Revisor _____

except upon order of the court.

9800.1500 PETITION FOR INTERVENTION.

Subpart 1. **Scope.** A petition to intervene may be granted 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. and 3. [Unchanged.]

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. The notice must be filed within 30 days of the filing of the decision being appealed. A respondent may cross appeal within the same 30-day period or within 15 days after service of the notice of appeal on that respondent, whichever is later.

Subp. 1a. **Preparation of transcript.** A written transcript of the record shall be prepared when required by Minnesota Statutes, section 176.421, subdivision 3, unless otherwise ordered by the court. An application for an order under this subpart shall conform to the requirements of part 9800.1400.

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 parties desire an oral argument and if so, whether parties prefer oral argument before the entire court or a three member panel.

Parties must file a response to the notification letter within ten days after the court files the notification. Failure to file a timely response shall be considered a waiver of oral argument.

Approved
by Revisor _____

9800.1710 DISMISSAL.

If any appellant or cross appellant fails to timely file a brief as required by part 9800.0900, any party may move this court for dismissal of the appeal. If the appellant or cross appellant is in default for more than 30 days and no party has moved for dismissal, the court shall summarily order the dismissal of the appeal or cross appeal without notice, subject to a motion to reinstate.

A motion to reinstate the appeal or cross appeal will be granted only if the appellant or cross appellant can show good cause for failing to timely file a brief, that the appeal or cross appeal is meritorious, and that reinstatement would not substantially prejudice the rights of any other party.

9800.1720 SUBMISSION WHEN A MEMBER OF THE COURT IS NOT PRESENT.

Except in exigent circumstances, the oral argument shall be heard before the full panel to which the case has been assigned or before the entire court if the matter is of exceptional importance. When any member of the court is not present at oral argument, the case shall be deemed submitted to that member on the record and briefs. When there is a change of court personnel or a recusal, cases shall be deemed submitted to the new member, or to any other member of the court, as necessary to complete a panel, on the record and briefs.

9800.1800 SUSPENSION OF RULES.

Upon a clear showing of extraordinary circumstances not contemplated by parts 9800.0100 to 9800.1720, 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 9800.1720. 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; 9800.0900, subpart 4; and 9800.1300, are repealed.

Approved
by Revisor _____

Office of the Revisor of Statutes

Administrative Rules

TITLE: Adopted Permanent Rules Relating to Procedure

AGENCY: Workers' Compensation Court of Appeals

MINNESOTA RULES: Chapter 9800

The attached rules are approved for
filing with the Secretary of State

John C. Fuller
Assistant Deputy Revisor

STATE OF MINNESOTA

WORKERS' COMPENSATION COURT OF APPEALS

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

STATEMENT OF
NEED AND
REASONABLENESS

INTRODUCTION

Practice before the Workers' Compensation Court of Appeals is regulated by Minn. Rules ch. 9800 (1988). The proposed amendments incorporate recent statutory revisions and eliminate ambiguities and inconsistencies in the present rules. These amendments also help to insure fair and prompt dispute resolution by promoting adequate preparation for and presentation of cases brought before this court.

Some of the proposed amendments have been adopted in whole or in part from the Minnesota Rules of Civil Appellate Procedure, which are applicable to proceedings before the Minnesota Court of Appeals and the Supreme Court. Uniformity of procedure in the various appellate-level courts is desirable to

reduce the burden on the members of the bar and to avoid procedural errors which adversely affect the interests of the parties.

The adoption of procedural rules of practice is authorized by Minn. Stat. § 175A.07, subd. 4 (1986).

Part 9800.0100 - DEFINITIONS.

Subpart 3 - Appellant.

This subpart is amended to specify that the term "appellant" is applicable only to the first party filing a notice of appeal. While the present rules and the rules as amended generally impose the same requirements on appellants and cross-appellants, this change is necessary to emphasize the responsibilities of cross-appellants. Under the present rules, there was some confusion, for example, about the briefing period applicable to cross-appellants pursuant to part 9800.0900. It is thus reasonable to distinguish between appellants and cross-appellants in the definition subpart of these rules.

Subpart 3a - Cross Appellant.

This subpart is added to provide a definition for cross-appellant so as to distinguish it from the term appellant. The need for this change is discussed under part 9800.0100, subp. 3, above.

Subpart 8 - Motion Pictures.

This subpart is added to clarify the definition of motion pictures to include video tapes.

Part 9800.0200 - EXAMINATION OF FILES.

This rules is not being amended.

Part 9800.0300 - PREPARATION AND FORM OF LEGAL DOCUMENTS.

Ease of review of documents promotes prompt and efficient resolution of appeals. It is thus reasonable to require that all legal documents filed with the court be double-spaced. Double-spaced is required for briefs and motions prepared for proceedings before the Minnesota Court of Appeals and Supreme Court. Minn. R. Civ. App. P. 132.01 and 132.02. This amendment thus also serves the interests of uniformity.

Part 9800.0400 - TEMPORARY ORDERS.

This amendment is necessary to clarify that petitions for temporary orders, rather than temporary orders, must conform to Minn. Stat. § 176.191, and part 1415.2300. It is not intended as a substantive change.

Part 9800.0500 - CONTINUANCES OF ORAL ARGUMENTS.

Hearings before this court generally consist of oral argument. It is thus more precise to use the term "oral argument" rather than the more general expression "hearing."

This rule is amended to provide that continuances will be granted only upon a showing of good cause. This change incorporates language contained in part 1415.2800 and thus serves the goal of uniformity. It also places a heavier burden on the party seeking a continuance than does the current rule, and therefore promotes speedy resolution of workers' compensation matters.

Part 9800.0510 - NONAPPEARANCE OF COUNSEL.

On occasion, counsel for a party fails to appear at oral arguments without notifying the court. It is not reasonable to penalize or inconvenience the other parties by delaying or continuing the hearing in these circumstances. This part is therefore added to notify parties of the procedure that will be followed in these cases. This rule is identical to Minn. R. Civ. App. P. 134.05.

Part 9800.0600 - NOTICE OF SETTLEMENT.

This rule was repealed previously.

Part 9800.0700 - STIPULATION FOR SETTLEMENT.

This rule is not being amended.

Part 9800.0800 - APPEAL OF ATTORNEY FEES BY EMPLOYEE.

This rule is not being amended.

Part 9800.0900 - BRIEFS ON APPEAL.

The timely submission of adequately prepared briefs is an essential part of the appellate process. This part is amended to clarify the responsibilities of the parties and to put parties on notice that failure to carry out these responsibilities may have adverse consequences, including dismissal of their appeals.

Subpart 1 - Filing of Brief of Appellant and Cross-Appellant Where a Transcript is Required.

This amendment specifies that both appellants and cross-appellants must serve and file a brief within the time provided, and that that brief may address only those issues contained in that party's notice of appeal.

In the past, some cross-appellants have combined their brief on cross-appeal with their respondent's brief, and served and filed that combined brief pursuant to the time requirement applicable to respondent's briefs. That

practice unfairly allowed the cross-appellant additional time to prepare the brief on cross-appeal, and delayed the appellant's response to the cross-appeal. With this amendment, all parties who appeal are on equal footing, which was the original intent of the present rule.

This amendment also notifies the parties that issues which are raised in the notice of appeal but are not addressed in the brief will be considered waived. Because of the relatively short period within which a party must file an appeal, parties frequently specify more issues in the notice of appeal than they eventually decide to pursue in their brief. However, the court has no way of knowing whether or not the parties have made a conscious decision to waive these issues. Additionally, the court often has no basis to understand a party's position if the issue raised by an appealed-from finding is not explained.

It is not reasonable for the parties to expect the court to develop and make their arguments for them. Cases which are not adequately briefed may also require more time to decide. To facilitate expeditious and well-considered disposition of appeals, it is thus reasonable and necessary to require the parties to brief all issues they wish the court to consider. The Minnesota Supreme Court also imposes this requirement. See Balder v. Haley, 399 N.W.2d 77 (Minn. 1987); Melina v. Chaplin, 327 N.W.2d 19 (Minn. 1983).

For the same reason, this rule as amended notifies the parties that failure to submit a brief on appeal or cross-appeal may result in dismissal of the appeal pursuant to part 9800.1710.

Subpart 2 - Filing of Brief of Appellant Where No Transcript of the Proceedings is Required.

The amendment to this subpart effects changes identical to those discussed under part 9800.0900, subp. 1, above. The word "hearing" is changed to "oral argument" to promote consistency throughout the Rules.

Subpart 3 - Filing of Brief of Respondent.

This subpart as amended is intended to clarify that all respondents' briefs, including the respondent's brief of any cross-appellant, must be filed within the time provided. The filing deadline for respondents' briefs has been extended by 5 days from 20 to 25 days because of comments from the practicing bar which underscore the fact that respondents' briefs are often as detailed and difficult to prepare as appellants' briefs.

Further expansion of the time allowed for respondents' briefs was considered but rejected in the interests of an expeditious resolution of appeals. Delays are particularly disfavored in workers' compensation proceedings. The five-day extension granted by this amendment represents a reasonable compromise between respondents' legitimate desire for additional time and the interests of efficiency.

The word "hearing" is changed to "oral argument" to promote consistency throughout the Rules.

Subpart 4 - Filing of Respondent's Brief Where No Appellant's Brief is Filed.

This subpart has been deleted because these rules as amended provide that issues not briefed are waived, and the failure of an appellant to file a brief may result in dismissal. See part 9800.0900, subp. 1 and 2; part 9800.1710. It is thus unnecessary to provide a deadline for the filing of a respondent's brief where no appellant's brief has been filed.

Subpart 5 - Reply Briefs.

The word "hearing" is changed to "oral argument" to promote consistency throughout the Rules.

Part 9800.1000 - ORAL ARGUMENTS ON APPEAL.

Oral argument is not of value to the court in all cases. The interests of judicial economy require that criteria be established to aid the court in determining whether or not to allow oral argument in a given case. This part has been extensively amended to delineate the circumstances in which oral argument will be scheduled.

This part also provides that only parties who timely file a request for argument will be allowed to participate in oral argument.

Subpart 1 - Criteria Considered in Granting Oral Argument.

Minnesota Statute § 176.421, subd. 6(1) (1986) provides that the court may grant oral argument on appeal. Formerly, an oral argument was required in all cases. For efficient administration of the court's docket and prompt disposition of the large volume of cases appealed to this court, this amendment provides criteria for deciding which cases will be decided without oral argument.

Subpart 1A continues the court's present practice of considering cases without oral argument where the parties have waived it. Subpart 1A has been modified, however, to provide that oral arguments will not be held if the parties fail to request an oral argument pursuant to part 9800.1600, subp. 2. Therefore, an affirmative waiver of argument is not required. Rather, a failure to timely file a request for oral argument is now given the same effect as a waiver under these rules.

Subparts 1B and 1C allow the court to make its own determination as to whether the matter merits oral argument. This amendment reflects legislative intent as expressed in Minn. Stat. § 176.421, subd. 6(1) (1986). The criteria set out in this subpart are substantially similar to those contained in Minn. R. Civ. App. P. 134.01 d(1) and (2).

Cases which are not factually or legally complicated do not necessarily benefit from oral argument. Such appeals are often more efficiently disposed of without the delay attendant to setting a matter for argument. It is therefore reasonable for the court to base its decision of whether or not to grant argument on whether the resolution of appealed issues would establish legal precedent and whether argument would be desirable to clarify the facts or law. Control of the court's docket and speedy dispute resolution are thus reasonably served by this amendment.

Subpart 2 - Motion Pictures.

The word "hearing" is changed to "oral argument" to promote consistency throughout the Rules. Notice to all parties is required to avoid surprise and to enable them to adequately prepare their arguments. This amendment also deletes duplicative language and serves to clarify that the party who desires to show a motion picture is responsible for providing the projection equipment.

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

Comments from the bar indicate that five days is not an adequate time period in which to respond to an application under this rule. An application to set aside an award is often similar to other petitions filed in the workers' compensation system, and responding to such applications require more preparation than the current rule contemplates. It is therefore necessary and

reasonable to expand the response time to give the responding party a fair opportunity to prepare, thereby aiding the court with its decision on the merits. The amendment thus extends response time from 5 to 20 days.

Part 9800.1200 - WRIT OF CERTIORARI.

This part is not being amended.

Part 9800.1300 - SECOND INJURY LAW.

This part was repealed previously.

Part 9800.1400 - APPLICATIONS, PETITIONS, AND MOTIONS.

Subpart 2 - Procedures for Filing.

This subpart is amended to clarify that all requests for relief under this part are subject to the requirements of this subpart. The present subpart is on its face arguably applicable only to motions. This amendment is therefore reasonable and necessary to resolve confusion engendered by the current language. It also clarifies that the timing requirements for filing apply only to matters which have been scheduled for oral argument.

This amendment is not intended as a substantive change.

Subpart 3 - Responses.

The word "motion" is changed to "request for relief" to reflect the change in part 9800.1400, subp. 2, as amended.

Subpart 5 - Oral Argument Not Permitted.

The word "hearings" is changed to "oral argument" to promote consistency throughout the Rules.

Part 9800.1500 - PETITION FOR INTERVENTION.

This rule is not being amended.

Part 9800.1600 - COMMENCEMENT OF APPEALS.

Subpart 1 - Filing Notice of Appeal.

This subpart is amended to reflect the 1987 amendment to Minn. Stat. § 176.421, which specifies the filing requirements for a cross-appeal. Minn. Stat. § 176.421, subd. 3a (1987). Including this information in this subpart is reasonable to avoid confusion about the time deadlines for cross-appeals.

Subpart 1A, 1B and 1C have been deleted. The Medical Services Review Board and the Rehabilitation Review Panel now have limited jurisdiction. See Minn. Stat. §§ 176.102 and 176.103 (1987). Specific references to appeals from these bodies is no longer desirable and may in fact be misleading. In addition, all appeals to this court must be taken within 30 days of whatever decision is being appealed. It is thus unnecessary to specify the time requirements particular to various decisions.

Subpart 1a - Preparation of Transcript.

This subpart has been added to emphasize that transcripts must be prepared unless the court orders otherwise. This is presently required by statute. Minn. Stat. § 176.421, subd. 3 (1986). However, in practice, the parties sometime agree that a transcript is unnecessary and no transcript is ordered as required by Minn. Stat. § 176.421, subd. 5 (1986). On some occasions this prevents the court from fully considering issues raised in the appeal. Requiring preparation of a transcript unless otherwise ordered by the court after application of a party is a reasonable way to avoid this potential problem.

Subp. 2 - Notification of Receipt of Transcript.

The word "hearing" is changed to "oral argument" to promote consistency throughout the Rules. In addition, this subpart also deletes the requirement that parties notify the court of issues pending before the workers' compensation court, Medical Services Review Board, or Rehabilitation Review Panel. As previously noted, the jurisdiction of the Medical Services Review Board and the Rehabilitation Review Panel has been substantially limited. Reference to these bodies is no longer necessary and may be misleading. In addition, in practice, consolidation is seldom ordered because the benefits of consolidation are often outweighed by the disadvantage of delaying disposition of the matter on appeal. Despite this revision, the parties remain free to notify the court of other pending matters and to ask for consolidation, in appropriate cases, pursuant to the procedures set out in part 9800.1400.

This subpart further specifies that the failure of a party to file a timely response will be deemed a waiver of oral argument. This is reasonable and necessary to insure compliance with this rule and to avoid delay in disposing of the appeal. This subpart codifies the current practice of this court.

Part 9800.1700 - TAXATION OF COSTS AND DISBURSEMENTS.

This part is not being amended.

Part 9800.1710 - DISMISSAL.

This part has been added to provide that an appeal or cross-appeal may be dismissed if an appellant or cross-appellant fails to file a brief.

As previously explained, timely filing of adequately prepared briefs is an essential part of the review process. When an appellant fails to file a brief, it is often impossible for the court to identify that party's position on appeal. The court is then left in the position of making the party's arguments for it, which is not fair to the other parties in the case. It is therefore reasonable to require the filing of an appellant's or cross-appellant's brief in all instances.

This rule also provides that an appeal may be reinstated after dismissal if the appellant or cross-appellant can show good cause for failing to timely file a brief, that the appeal or cross appeal is meritorious, and that reinstatement would not substantially prejudice the rights of any other party. The addition of this provision avoids the likelihood that an appellant or cross-appellant will be unduly penalized for a technical error or an excusable failure to file a brief. It is reasonable to allow reinstatement under these circumstances to facilitate disposition of appeals on the merits, thereby protecting the substantive rights of the parties.

This part is substantially similar to Minn. R. Civ. App. P. 142.02, and is desirable to promote uniformity of appellate procedure.

Part 9800.1720 - SUBMISSION WHEN A MEMBER OF THE COURT IS NOT PRESENT.

This part has been added to allow any member of the court to consider a case on the record and the briefs, whether or not that judge was present at oral argument. This procedure is necessary and reasonable to promote prompt determination of appeals by avoiding the delay which now occurs when a judge assigned to a particular case cannot take part in a decision for one reason or another. This provision also avoids the necessity of rehearing oral argument, which is presently allowed at the request of the parties when there is a change in court personnel. The rule also provides further incentives to the parties to adequately address all the issues in their written briefs.

This part is substantially similar to Minn. R. Civ. App. P. 134.08, which is desirable to promote uniformity of appellate procedure.

Part 9800.1800 - SUSPENSION OF RULES.

This part is amended to reflect the addition of other parts.

FISCAL IMPACT ON LOCAL PUBLIC BODIES.

As required by Minn. Stat. § 14.11, subd. 1 (1986), 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 BUSINESSES.

The court has considered the impact of these rules on small business as required by Minn. Stat. § 14.115 (1986). 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 (1986). Health care providers are exempt by Minn. Stat. § 14.115, subd. 7(c) (1986) as regulated service businesses. Further, these amendments eliminate ambiguities and simplify existing procedures for 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 the
Rules of Procedure
by the Workers' Compensation
Court of Appeals

STATEMENT OF
NEED AND
REASONABLENESS

INTRODUCTION

Practice before the Workers' Compensation Court of Appeals is regulated by Minn. Rules ch. 9800 (1988). The proposed amendments incorporate recent statutory revisions and eliminate ambiguities and inconsistencies in the present rules. These amendments also help to insure fair and prompt dispute resolution by promoting adequate preparation for and presentation of cases brought before this court.

Some of the proposed amendments have been adopted in whole or in part from the Minnesota Rules of Civil Appellate Procedure, which are applicable to proceedings before the Minnesota Court of Appeals and the Supreme Court. Uniformity of procedure in the various appellate-level courts is desirable to

reduce the burden on the members of the bar and to avoid procedural errors which adversely affect the interests of the parties.

The adoption of procedural rules of practice is authorized by Minn. Stat. § 175A.07, subd. 4 (1986).

Part 9800.0100 - DEFINITIONS.

Subpart 3 - Appellant.

This subpart is amended to specify that the term "appellant" is applicable only to the first party filing a notice of appeal. While the present rules and the rules as amended generally impose the same requirements on appellants and cross-appellants, this change is necessary to emphasize the responsibilities of cross-appellants. Under the present rules, there was some confusion, for example, about the briefing period applicable to cross-appellants pursuant to part 9800.0900. It is thus reasonable to distinguish between appellants and cross-appellants in the definition subpart of these rules.

Subpart 3a - Cross Appellant.

This subpart is added to provide a definition for cross-appellant so as to distinguish it from the term appellant. The need for this change is discussed under part 9800.0100, subp. 3, above.

Subpart 8 - Motion Pictures.

This subpart is added to clarify the definition of motion pictures to include video tapes.

Part 9800.0200 - EXAMINATION OF FILES.

This rules is not being amended.

Part 9800.0300 - PREPARATION AND FORM OF LEGAL DOCUMENTS.

Ease of review of documents promotes prompt and efficient resolution of appeals. It is thus reasonable to require that all legal documents filed with the court be double-spaced. Double-spaced is required for briefs and motions prepared for proceedings before the Minnesota Court of Appeals and Supreme Court. Minn. R. Civ. App. P. 132.01 and 132.02. This amendment thus also serves the interests of uniformity.

Part 9800.0400 - TEMPORARY ORDERS.

This amendment is necessary to clarify that petitions for temporary orders, rather than temporary orders, must conform to Minn. Stat. § 176.191, and part 1415.2300. It is not intended as a substantive change.

Part 9800.0500 - CONTINUANCES OF ORAL ARGUMENTS.

Hearings before this court generally consist of oral argument. It is thus more precise to use the term "oral argument" rather than the more general expression "hearing."

This rule is amended to provide that continuances will be granted only upon a showing of good cause. This change incorporates language contained in part 1415.2800 and thus serves the goal of uniformity. It also places a heavier burden on the party seeking a continuance than does the current rule, and therefore promotes speedy resolution of workers' compensation matters.

Part 9800.0510 - NONAPPEARANCE OF COUNSEL.

On occasion, counsel for a party fails to appear at oral arguments without notifying the court. It is not reasonable to penalize or inconvenience the other parties by delaying or continuing the hearing in these circumstances. This part is therefore added to notify parties of the procedure that will be followed in these cases. This rule is identical to Minn. R. Civ. App. P. 134.05.

Part 9800.0600 - NOTICE OF SETTLEMENT.

This rule was repealed previously.

Part 9800.0700 - STIPULATION FOR SETTLEMENT.

This rule is not being amended.

Part 9800.0800 - APPEAL OF ATTORNEY FEES BY EMPLOYEE.

This rule is not being amended.

Part 9800.0900 - BRIEFS ON APPEAL.

The timely submission of adequately prepared briefs is an essential part of the appellate process. This part is amended to clarify the responsibilities of the parties and to put parties on notice that failure to carry out these responsibilities may have adverse consequences, including dismissal of their appeals.

Subpart 1 - Filing of Brief of Appellant and Cross-Appellant Where a Transcript is Required.

This amendment specifies that both appellants and cross-appellants must serve and file a brief within the time provided, and that that brief may address only those issues contained in that party's notice of appeal.

In the past, some cross-appellants have combined their brief on cross-appeal with their respondent's brief, and served and filed that combined brief pursuant to the time requirement applicable to respondent's briefs. That

practice unfairly allowed the cross-appellant additional time to prepare the brief on cross-appeal, and delayed the appellant's response to the cross-appeal. With this amendment, all parties who appeal are on equal footing, which was the original intent of the present rule.

This amendment also notifies the parties that issues which are raised in the notice of appeal but are not addressed in the brief will be considered waived. Because of the relatively short period within which a party must file an appeal, parties frequently specify more issues in the notice of appeal than they eventually decide to pursue in their brief. However, the court has no way of knowing whether or not the parties have made a conscious decision to waive these issues. Additionally, the court often has no basis to understand a party's position if the issue raised by an appealed-from finding is not explained.

It is not reasonable for the parties to expect the court to develop and make their arguments for them. Cases which are not adequately briefed may also require more time to decide. To facilitate expeditious and well-considered disposition of appeals, it is thus reasonable and necessary to require the parties to brief all issues they wish the court to consider. The Minnesota Supreme Court also imposes this requirement. See Balder v. Haley, 399 N.W.2d 77 (Minn. 1987); Melina v. Chaplin, 327 N.W.2d 19 (Minn. 1983).

For the same reason, this rule as amended notifies the parties that failure to submit a brief on appeal or cross-appeal may result in dismissal of the appeal pursuant to part 9800.1710.

Subpart 2 - Filing of Brief of Appellant Where No Transcript of the Proceedings is Required.

The amendment to this subpart effects changes identical to those discussed under part 9800.0900, subp. 1, above. The word "hearing" is changed to "oral argument" to promote consistency throughout the Rules.

Subpart 3 - Filing of Brief of Respondent.

This subpart as amended is intended to clarify that all respondents' briefs, including the respondent's brief of any cross-appellant, must be filed within the time provided. The filing deadline for respondents' briefs has been extended by 5 days from 20 to 25 days because of comments from the practicing bar which underscore the fact that respondents' briefs are often as detailed and difficult to prepare as appellants' briefs.

Further expansion of the time allowed for respondents' briefs was considered but rejected in the interests of an expeditious resolution of appeals. Delays are particularly disfavored in workers' compensation proceedings. The five-day extension granted by this amendment represents a reasonable compromise between respondents' legitimate desire for additional time and the interests of efficiency.

The word "hearing" is changed to "oral argument" to promote consistency throughout the Rules.

Subpart 4 - Filing of Respondent's Brief Where No Appellant's Brief is Filed.

This subpart has been deleted because these rules as amended provide that issues not briefed are waived, and the failure of an appellant to file a brief may result in dismissal. See part 9800.0900, subp. 1 and 2; part 9800.1710. It is thus unnecessary to provide a deadline for the filing of a respondent's brief where no appellant's brief has been filed.

Subpart 5 - Reply Briefs.

The word "hearing" is changed to "oral argument" to promote consistency throughout the Rules.

Part 9800.1000 - ORAL ARGUMENTS ON APPEAL.

Oral argument is not of value to the court in all cases. The interests of judicial economy require that criteria be established to aid the court in determining whether or not to allow oral argument in a given case. This part has been extensively amended to delineate the circumstances in which oral argument will be scheduled.

This part also provides that only parties who timely file a request for argument will be allowed to participate in oral argument.

Subpart 1 - Criteria Considered in Granting Oral Argument.

Minnesota Statute § 176.421, subd. 6(1) (1986) provides that the court may grant oral argument on appeal. Formerly, an oral argument was required in all cases. For efficient administration of the court's docket and prompt disposition of the large volume of cases appealed to this court, this amendment provides criteria for deciding which cases will be decided without oral argument.

Subpart 1A continues the court's present practice of considering cases without oral argument where the parties have waived it. Subpart 1A has been modified, however, to provide that oral arguments will not be held if the parties fail to request an oral argument pursuant to part 9800.1600, subp. 2. Therefore, an affirmative waiver of argument is not required. Rather, a failure to timely file a request for oral argument is now given the same effect as a waiver under these rules.

Subparts 1B and 1C allow the court to make its own determination as to whether the matter merits oral argument. This amendment reflects legislative intent as expressed in Minn. Stat. § 176.421, subd. 6(1) (1986). The criteria set out in this subpart are substantially similar to those contained in Minn. R. Civ. App. P. 134.01 d(1) and (2).

Cases which are not factually or legally complicated do not necessarily benefit from oral argument. Such appeals are often more efficiently disposed of without the delay attendant to setting a matter for argument. It is therefore reasonable for the court to base its decision of whether or not to grant argument on whether the resolution of appealed issues would establish legal precedent and whether argument would be desirable to clarify the facts or law. Control of the court's docket and speedy dispute resolution are thus reasonably served by this amendment.

Subpart 2 - Motion Pictures.

The word "hearing" is changed to "oral argument" to promote consistency throughout the Rules. Notice to all parties is required to avoid surprise and to enable them to adequately prepare their arguments. This amendment also deletes duplicative language and serves to clarify that the party who desires to show a motion picture is responsible for providing the projection equipment.

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

Comments from the bar indicate that five days is not an adequate time period in which to respond to an application under this rule. An application to set aside an award is often similar to other petitions filed in the workers' compensation system, and responding to such applications require more preparation than the current rule contemplates. It is therefore necessary and

reasonable to expand the response time to give the responding party a fair opportunity to prepare, thereby aiding the court with its decision on the merits. The amendment thus extends response time from 5 to 20 days.

Part 9800.1200 - WRIT OF CERTIORARI.

This part is not being amended.

Part 9800.1300 - SECOND INJURY LAW.

This part was repealed previously.

Part 9800.1400 - APPLICATIONS, PETITIONS, AND MOTIONS.

Subpart 2 - Procedures for Filing.

This subpart is amended to clarify that all requests for relief under this part are subject to the requirements of this subpart. The present subpart is on its face arguably applicable only to motions. This amendment is therefore reasonable and necessary to resolve confusion engendered by the current language. It also clarifies that the timing requirements for filing apply only to matters which have been scheduled for oral argument.

This amendment is not intended as a substantive change.

Subpart 3 - Responses.

The word "motion" is changed to "request for relief" to reflect the change in part 9800.1400, subp. 2, as amended.

Subpart 5 - Oral Argument Not Permitted.

The word "hearings" is changed to "oral argument" to promote consistency throughout the Rules.

Part 9800.1500 - PETITION FOR INTERVENTION.

Subpart 1 - Scope.

This subpart is amended to conform to Minn. Stat. § 176.361 by providing that a petition to intervene may, rather than shall, be granted.

Part 9800.1600 - COMMENCEMENT OF APPEALS.

Subpart 1 - Filing Notice of Appeal.

This subpart is amended to reflect the 1987 amendment to Minn. Stat. § 176.421, which specifies the filing requirements for a cross-appeal. Minn. Stat. § 176.421, subd. 3a (1987). Including this information in this subpart is reasonable to avoid confusion about the time deadlines for cross-appeals.

Subpart 1A, 1B and 1C have been deleted. The Medical Services Review Board and the Rehabilitation Review Panel now have limited jurisdiction. See Minn. Stat. §§ 176.102 and 176.103 (1987). Specific references to appeals from these bodies is no longer desirable and may in fact be misleading. In addition, all appeals to this court must be taken within 30 days of whatever decision is being appealed. It is thus unnecessary to specify the time requirements particular to various decisions.

Subpart 1a - Preparation of Transcript.

This subpart has been added to emphasize that transcripts must be prepared unless the court orders otherwise. This is presently required by statute. Minn. Stat. § 176.421, subd. 3 (1986). However, in practice, the parties sometime agree that a transcript is unnecessary and no transcript is ordered as required by Minn. Stat. § 176.421, subd. 5 (1986). On some occasions this prevents the court from fully considering issues raised in the appeal. Requiring preparation of a transcript unless otherwise ordered by the court after application of a party is a reasonable way to avoid this potential problem.

Subp. 2 - Notification of Receipt of Transcript.

The word "hearing" is changed to "oral argument" to promote consistency throughout the Rules. In addition, this subpart also deletes the requirement that parties notify the court of issues pending before the workers' compensation court, Medical Services Review Board, or Rehabilitation Review Panel. As previously noted, the jurisdiction of the Medical Services Review Board and the Rehabilitation Review Panel has been substantially limited. Reference to these bodies is no longer necessary and may be misleading. In addition, in practice, consolidation is seldom ordered because the benefits of consolidation are often outweighed by the disadvantage of delaying disposition of the matter on appeal. Despite this revision, the parties remain free to notify the court of other pending matters and to ask for consolidation, in appropriate cases, pursuant to the procedures set out in part 9800.1400.

This subpart further specifies that the failure of a party to file a timely response will be deemed a waiver of oral argument. This is reasonable and necessary to insure compliance with this rule and to avoid delay in disposing of the appeal. This subpart codifies the current practice of this court.

Part 9800.1700 - TAXATION OF COSTS AND DISBURSEMENTS.

This part is not being amended.

Part 9800.1710 - DISMISSAL.

This part has been added to provide that an appeal or cross-appeal may be dismissed if an appellant or cross-appellant fails to file a brief.

As previously explained, timely filing of adequately prepared briefs is an essential part of the review process. When an appellant fails to file a brief, it is often impossible for the court to identify that party's position on appeal. The court is then left in the position of making the party's arguments for it, which is not fair to the other parties in the case. It is therefore reasonable to require the filing of an appellant's or cross-appellant's brief in all instances.

This rule also provides that an appeal may be reinstated after dismissal if the appellant or cross-appellant can show good cause for failing to timely file a brief, that the appeal or cross appeal is meritorious, and that reinstatement would not substantially prejudice the rights of any other party. The addition of this provision avoids the likelihood that an appellant or cross-appellant will be unduly penalized for a technical error or an excusable failure to file a brief. It is reasonable to allow reinstatement under these circumstances to facilitate disposition of appeals on the merits, thereby protecting the substantive rights of the parties.

This part is substantially similar to Minn. R. Civ. App. P. 142.02, and is desirable to promote uniformity of appellate procedure.

Part 9800.1720 - SUBMISSION WHEN A MEMBER OF THE COURT IS NOT PRESENT.

This part has been added to allow any member of the court to consider a case on the record and the briefs, whether or not that judge was present at oral argument. This procedure is necessary and reasonable to promote prompt determination of appeals by avoiding the delay which now occurs when a judge assigned to a particular case cannot take part in a decision for one reason or another. This provision also avoids the necessity of rehearing oral argument, which is presently allowed at the request of the parties when there is a change in court personnel. The rule also provides further incentives to the parties to adequately address all the issues in their written briefs.

This part is substantially similar to Minn. R. Civ. App. P. 134.08, which is desirable to promote uniformity of appellate procedure.

Part 9800.1800 - SUSPENSION OF RULES.

This part is amended to reflect the addition of other parts.

FISCAL IMPACT ON LOCAL PUBLIC BODIES.

As required by Minn. Stat. § 14.11, subd. 1 (1986), 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 BUSINESSES.

The court has considered the impact of these rules on small business as required by Minn. Stat. § 14.115 (1986). 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 (1986). Health care providers are exempt by Minn. Stat. § 14.115, subd. 7(c) (1986) as regulated service businesses. Further, these amendments eliminate ambiguities and simplify existing procedures for 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 of Procedure for the Workers' Compensation Court of Appeals

AFFIDAVIT AND CERTIFICATION OF NO MAILING LIST

STATE OF MINNESOTA)
) ss.
COUNTY OF Ramsey)

Paul V. Rieke, being sworn says:

I hereby certify that no persons or associations have registered with the Workers' Compensation Court of Appeals, pursuant to Minnesota Statutes, section 14.14, subdivision 1a and 14.22 or 14.30 for the purpose of having their names placed on the Workers' Compensation Court of Appeals rulemaking mailing list as of July 4, 1988, the date of publication in the State Register of the Notice of Intent to Adopt Amendments to Rules Without a Public Hearing in the above-entitled matter.

Paul V. Rieke
Name
Title

Subscribed and sworn to before me
this 15th day of September, 1988

Elizabeth A. Miller
Notary Public

ELIZABETH A. MILLER
NOTARY PUBLIC-MINNESOTA
DAKOTA COUNTY
MY COMMISSION EXPIRES JUNE 18, 1993

Workers' Compensation Court of Appeals

Proposed Permanent Rules Relating to Procedure

Notice of Intent to Adopt Amendments without a Public Hearing

Notice is hereby given that the Workers' Compensation Court of Appeals intends to adopt the above captioned amendments without a public hearing pursuant to the authority of *Minnesota Statutes* § 175A.07, subd. 4 (1986). The Court has determined that the proposed adoption of these amendments will be noncontroversial in nature and has elected to follow the procedures for adopting rules without a public hearing set forth in *Minnesota Statutes* §§ 14.21-14.28 (1986).

Persons or groups interested in these amendments shall have 30 days to submit comments in support of or in opposition to the proposed amendments or any part or subpart of the proposed amendments. Comments 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, unless a sufficient number withdraw their request in writing. If a public hearing is required, the Court will proceed according to the provisions of *Minnesota Statutes* §§ 14.131-14.20 (1986). 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:

Patricia J. Arnold
Workers' Compensation Court of Appeals
775 Amhoist Tower
345 St. Peter Street
St. Paul, Minnesota 55102
Telephone (612) 297-1618

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 upon request at the above address.

Upon adoption of the final amendments without a public hearing, the final amendments as adopted and all required supporting documents 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 the above address.

A copy of the proposed amendments follows this notice. One free copy of the proposed amendments may be obtained at the above address or by calling (612) 296-6526.

Dated: 21 June 1988

Paul V. Rieke, Chief Judge
Workers' Compensation Court of Appeals

Rules as Proposed

9800.0100 DEFINITIONS.

Subpart 1. and 2. [Unchanged.]

Subp. 3. **Appellant.** "Appellant" means ~~all parties~~ the first party filing ~~notices~~ a notice of appeal~~, including cross-appellants~~.

Subp. 3a. **Cross appellant.** "Cross appellant" means any party filing a notice of appeal after the appellant.

Subp. 4. to 7. [Unchanged.]

Subp. 8. **Motion pictures.** "Motion pictures" includes video tapes.

9800.0300 PREPARATION AND FORM OF LEGAL DOCUMENTS.

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

9800.0400 TEMPORARY ORDERS.

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

9800.0500 CONTINUANCES OF ~~HEARINGS~~ ORAL ARGUMENTS.

Subpart 1. **Continuances.** A continuance of ~~any hearing~~ an oral argument shall be granted only upon a showing of good cause. A request for a continuance must be made within five days of the filing of notice of ~~hearing~~ oral argument. The court shall consider later requests only upon a showing that an earlier request could not have been made.

9800.0510 NONAPPEARANCE OF COUNSEL.

If counsel for a party fails to appear to present argument, the court may hear argument on behalf of a party whose counsel is present, and the case will be decided on the briefs and argument heard. If no counsel appear for any party, the case will be decided on the briefs unless the court shall otherwise order.

9800.0900 BRIEFS ON APPEAL.

Subpart 1. **Filing of brief of appellant where a transcript is required.** ~~The appellant~~ Appellants and cross appellants shall file a written brief, which shall address only issues raised in ~~the~~ that party's notice of appeal, within 30 days after the court receives the transcript. Issues raised in the notice of appeal but not addressed in the brief shall be deemed waived and will not be decided by the court. The failure of any appellant or cross appellant to timely file a brief under this part may result in dismissal of that party's appeal under part 9800.1710.

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~~ appellants and cross appellants shall file a written brief, which shall address only issues raised in ~~the~~ that party's notice of appeal, within 30 days after the filing of the notice of appeal. Issues raised in the notice of appeal but not addressed in the brief shall be deemed waived and will not be decided by the court. The failure of any appellant or cross appellant to timely file a brief under this part may result in dismissal of that party's appeal under part 9800.1710.

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~~ an oral argument is to be held. Only the original shall be filed where the ~~hearing~~ oral argument is waived by all parties.

Subp. 3. **Filing of brief of respondent.** ~~The brief of respondent~~ All respondents' briefs shall be filed with the court within ~~20~~ 25 days after the filing of the appellant's or cross appellant's brief. The respondent's brief shall address only issues raised in the brief of the appellant or cross 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~~ an oral agrument is to be held. Only the original brief shall be filed where ~~a hearing~~ an oral argument is waived by all parties.

Subp. 4. [See Repealer.]

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~~ an oral argument is to be held. Only the original brief shall be filed when ~~a hearing~~ an oral argument is waived by all parties.

Subp. 6. [Unchanged.]

9800.1000 ~~HEARINGS~~ ORAL ARGUMENTS ON APPEAL.

Subpart 1. ~~Time limits~~ **Criteria considered in granting oral argument.** ~~A hearing shall be scheduled unless it is waived by all parties as prescribed by part 9800.1600, subpart 2.~~ The court, in its discretion, may grant the parties permission to participate in oral argument. Factors considered in determining whether to grant oral argument include:

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. whether the request for oral argument was timely under part 9800.1600, subpart 3;

B. whether the resolution of the appealed issues would establish legal precedent; and

C. whether oral argument would significantly aid the court in deciding the issues on appeal.

Each party shall be allotted 15 minutes to make its presentation to the court, including the showing of motion pictures, unless otherwise authorized by the court.

Subp. 2. **Motion pictures.** Any party desiring to show motion pictures at the ~~hearing~~ oral argument must so inform the court and all other parties 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~~ 20 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. [Unchanged.]

Subp. 2. **Procedures for filing.** ~~Motions~~ All requests for relief under this part 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~~ All requests for relief must be ~~considered if~~ served and filed ~~within~~ no later than five working days ~~of~~ before the time set for ~~hearing~~ oral argument, if any.

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

Subp. 4. [Unchanged.]

Subp. 5. **~~Hearings~~ Oral argument not permitted.** ~~Hearings~~ Oral argument 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~~ A petition to intervene may be ~~permitted to intervene~~ granted 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. and 3. [Unchanged.]

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. The notice must be filed within 30 days of the filing of the decision being appealed. A respondent may cross appeal within the same 30-day period or within 15 days after service of the notice of appeal on that respondent, whichever is later.

~~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. 1a. **Preparation of transcript.** A written transcript of the record shall be prepared when required by Minnesota Statutes, section 176.421, subdivision 3, unless otherwise ordered by the court. An application for an order under this subpart shall conform to the requirements of part 9800.1400.

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.~~ an oral argument and if so, whether parties prefer ~~a hearing~~ oral argument 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. Failure to file a timely response shall be considered a waiver of oral argument.

9800.1710 DISMISSAL.

If any appellant or cross appellant fails to timely file a brief as required by part 9800.0900, any party may move this court for dismissal of the appeal. If the appellant or cross appellant is in default for more than 30 days and no party has moved for dismissal, the court shall summarily order the dismissal of the appeal or cross appeal without notice, subject to a motion to reinstate.

A motion to reinstate the appeal or cross appeal will be granted only if the appellant or cross appellant can show good cause for failing to timely file a brief, that the appeal or cross appeal is meritorious, and that reinstatement would not substantially prejudice the rights of any other party.

9800.1720 SUBMISSION WHEN A MEMBER OF THE COURT IS NOT PRESENT.

Except in exigent circumstances, the oral argument shall be heard before the full panel to which the case has been assigned or before the entire court if the matter is of exceptional importance. When any member of the court is not present at oral argument, the case shall be deemed submitted to that member on the record and briefs. When there is a change of court personnel or a recusal, cases shall be deemed submitted to the new member, or to any other member of the court, as necessary to complete a panel, on the record and briefs.

9800.1800 SUSPENSION OF RULES.

Upon a clear showing of extraordinary circumstances not contemplated by parts 9800.0100 to ~~9800.1700~~ 9800.1720, 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~~ 9800.1720. 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; 9800.0900, subpart 4; and 9800.1300, are repealed.

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
WORKERS' COMPENSATION COURT OF APPEALS

In the Matter of the Proposed Adoption of Amendments to Rules of Procedure for the Workers' Compensation Court of Appeals	CERTIFICATE OF THE WORKERS' COMPENSATION COURT OF APPEAL'S RESOLUTION ADOPTING THE RULE

I, MANUEL J. CERVANTES, do hereby certify that I am a Judge and the Administrator of the Workers' Compensation Court of Appeals, an agency duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Workers' Compensation Court of Appeals duly and properly called and held on the 15th day of September, 1988, that a quorum was present, and that a majority of those present voted for the resolution which has not been rescinded or modified.

> "RESOLVED, that the rule relating to the Rules of Procedure for the Workers' Compensation Court of Appeals is approved and adopted, pursuant to authority vested in the Workers' Compensation Court of Appeals by Minnesota Statutes section 175A.07, subdivision 4 (1986). Paul V. Rieke, the Chief Judge of the Workers' Compensation Court of Appeals, is authorized to sign the findings of fact, conclusions, and order adopting the rule and further is authorized to modify the rule if necessary to obtain the approval of the rule by the attorney general and to perform the necessary acts to provide that the rule shall have the force and effect of law."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 15th day of September, 1988.

Judge and Administrator

Edward Toussaint Jr.
Attest by one other member,
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 for the Workers' Compensation Court of Appeals	FINDINGS OF FACT CONCLUSIONS AND ORDER ADOPTING AMENDMENTS WITHOUT PUBLIC HEARING

The above-entitled matter came on for decision before the Workers' Compensation Court of Appeals (WCCA) on the 15th day of September, 1988. After affording all interested persons the opportunity to present written and oral data, statements and arguments to the WCCA, in accordance with statutory requirements regarding the adoption of noncontroversial rules, after considering all of the evidence adduced upon the records, files and proceedings herein, the WCCA, being fully advised in the premises, hereby adopts the following Findings of Fact, Conclusions and Order.

FINDINGS OF FACT

1. On December 21, 1987, the Workers' Compensation Court of Appeals published its Notice of Solicitation of Outside Opinion in the State Register (12 S.R. 1267). Comments and submissions received in response to the Notice of Solicitation were considered in preparing the rule as proposed.

2. Notice of the Workers' Compensation Court of Appeal's intent to adopt the above-entitled rule without a public hearing was published in the State Register on July 4, 1988.

3. No persons or organizations have registered with the WCCA, pursuant to Minnesota Statutes sections 14.14, subdivision 1a and 14.22 or 14.30 for the purpose of having their names placed

on the Workers' Compensation Court of Appeals rulemaking list as of June 21, 1988 or thereafter through and including the date of these findings.

4. The Statement of Need and Reasonableness was prepared before the notice of intent to adopt a rule without a public hearing was published in the State Register and was available to the public.

5. All persons were given the opportunity to submit comments on the rule for 30 days after notice of proposed rulemaking. The 30-day comment period, as set out in the notice, expired on August 3, 1988.

6. No requests for public hearing were received during the comment period.

7. No requests for notice of submission to the Attorney General were received by the WCCA.

8. During the comment period the WCCA received no written comments.

9. The WCCA finds that certain modifications to the proposed rules are justified by the record in this proceeding, as follows:

a. The rule, as proposed, contained two typographical errors. The word "argument" was misspelled and there was a misnumbered subpart reference. These corrections are clerical in nature and do not constitute a substantial change.

b. The proposed amendment to Minn. Rule pt. 9800.1500, subp. 1, does not reflect the intent of the WCCA in

that it can be read as stating that the WCCA has discretion to deny a petition to intervene even if the applicant meets all of the statutory requirements. Upon review, the WCCA finds that Minn. Rule pt. 9800.1500, subp. 1 (1987) without the proposed amendment accurately reflects the Court's intent and practice. The WCCA does not adopt the proposed amendments to Minn. Rule pt. 9800.1500, subp. 1. The non-adoption of the proposed amendment does not adversely affect the rights available to parties or applicants to intervene in proceedings before the WCCA and does not constitute a substantial change.

10. Except with regard to Minn. Rules pt. 9800.1500, subp. 1, the WCCA adopts the Statement of Need and Reasonableness, in its entirety, as the factual basis for the proposed rules. The Board hereby incorporates the Statement of Need and Reasonableness into these findings, except as modified in Finding No. 9 above.

11. The above-captioned amendments to the rules are needed and reasonable.

CONCLUSIONS

1. The Workers' Compensation Court of Appeals duly acquired and has jurisdiction over this proceeding.

2. The WCCA published due, timely and adequate notice of the intent to adopt the rules without a public hearing.

3. All relevant legal and procedural requirements of statute and rule have been complied with.

4. The modifications to the proposed rules are supported by the record and do not result in a substantial change in the proposed rules.

ORDER

NOW, THEREFORE, IT IS ORDERED that the attached Minn. Rules pts. 9800.0100-9800.1800 governing the Rules of Procedure for the Workers' Compensation Court of Appeals are adopted pursuant to the authority vested in the Workers' Compensation Court of Appeals by Minn. Stat. § 175A.07, subd. 4 (1986).

WORKERS' COMPENSATION COURT OF APPEALS

Paul V. Knight

Chief Judge

STATE OF MINNESOTA
WORKERS' COMPENSATION COURT OF APPEALS

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

DECLARATION OF COUNSEL

I, Charles T. Mottl, Assistant Attorney General, do hereby declare that I have examined the above-captioned rule, and the supporting rulemaking record, and that, based on my examination, the Administrative Procedure Act and Minnesota Rules, chapter 2010 have been followed. Any exceptions are listed below. For Attorney General billing purposes, the four-digit docket client code is 0614.

Dated: September 16, 1988.

CHARLES T. MOTTL
Assistant Attorney General

MINNESOTA DEPARTMENT OF LABOR AND INDUSTRY
444 Lafayette Road
Saint Paul
Minnesota 55101
Telephone:
612/296-6107

January 11, 1987

The Honorable Leslie Altman
Workers' Compensation Court of Appeals
775 Amhoist Tower
345 St. Peter Street
St. Paul, Minnesota 55102

Dear Judge Altman:

In response to your question last week of lawyers whom this Department would recommend contacting in regard to new rules of the Workers' Compensation Court of Appeals, we would recommend the following individuals. On the petitioners side, Tim McCoy, Bob Johnson, John Bryan, Tom Longfellow, and David Cody. On the defense side, we recommend getting in touch with Barbara Heck, Mike Aafedt, Peter Pustorino, Larry Koll, and Tom Kieselbach.

If you have any questions on these individuals, please contact me.

Best wishes.

Sincerely,

Ken Peterson
Deputy Commissioner

KP/jk

GILMORE, deLAMBERT, AAFEDT & FORDE, P. A.

ATTORNEYS AT LAW

440 PILLSBURY CENTER

200 SOUTH SIXTH STREET

MINNEAPOLIS, MINNESOTA 55402-1463

(612) 339-8965

CURTIS C. GILMORE
JOHN R. deLAMBERT (retired)
MICHAEL D. AAFEDT
MICHAEL FORDE
DONALD W. ANDERSON •
JAMES R. GRAY •
JAY T. HARTMAN

ANDREW W. LYNN
RODERICK C. COSGRIFF
JANET MONSON
STEVEN C. GILMORE
MARY J. MARVIN
PETER M. BANOVETZ
ROBIN D. SIMPSON
MIRIAM P. RYKKEN
TIMOTHY P. JUNG
DOUGLAS D. RENTERIA

• ADMITTED IN MINNESOTA AND WISCONSIN

January 27, 1986

Hon. Leslie M. Altman
Administrator Judge
Workers' Compensation
Court of Appeals
775 Amhoist Tower
345 St. Peter Street
St. Paul, Minnesota 55102

Dear Judge Altman:

This letter is in response to the Notice soliciting comments regarding the Workers' Compensation Rules of Procedure.

I propose that Rule 9800.0900, Subpart 3 be changed. This subpart refers to the filing of the Brief of the Respondent. The proposed rule grants the Respondent only 20 days to file his or her brief. The brief of the respondent is by no means any less complicated or less difficult to prepare. Indeed, I note that the Rules of Civil Appellate Procedure provide the responding party with the same amount of time as the appealing party--30 days. See MRCAP 131.01.

I should further note that the Workers' Compensation Court of Appeals does not use the "mailbox" rule, wherein three days are added to the period in which to act by virtue of a document being served by mail. I refer you to Rule 6.05 of the Rules of Civil Procedure. This rule adds three days to the time in which to proceed.

An appealing party may file his or her brief personally with the WCCA and serve the brief by mail, effectively depriving the responding party of two or three days of time in which to prepare the responsive brief.

For the reasons advanced above, I think the rules would be more fair if they provided the respondent with 30 days in which to file his or her brief.

I would also propose a change to Rule 9800.1100, which refers to applications to set aside awards. This provision requires that an application be accompanied by supporting affidavits or medical reports. It may take quite some time to put together the necessary documentation to support an application to set aside an award. However, the responding party is only given five days in which to serve his or her response. Frequently, the prior award (whether a prior decision or a prior Award on Settlement) will have been issued several years prior to the application to set aside the award. Indeed, it may be very difficult for the responding party to even find a closed file within five days, much less forward the file to counsel for the preparation of the appropriate response.

In short, an Application to Set Aside an Award is very much like Petitions that are filed in other workers' compensation contexts. The Compensation Act grants the responding party 20 days after the service of such petitions (Claim Petition, Petition for Contribution, etc.). See MS 176.321.

I propose that Rule 9800.1100 be changed to grant the responding party 20 days, instead of 5 days, to serve and file the appropriate response.

Your thoughtful consideration of these requests will be greatly appreciated.

Yours very truly,

GILMORE, de LAMBERT,
AAFEDT & FORDE, P.A.

Kirk C. Thompson

KCT/jl

STATE FUND MUTUAL INSURANCE COMPANY

January 29, 1988

ANDREW C. MEUWISSEN, (CPCU, CLU)
PRESIDENT AND CHIEF EXECUTIVE OFFICER

Leslie M. Altman
Administrator Judge
Workers' Compensation Court
of Appeals
775 Amhoist Tower
345 St. Peter Street
St. Paul, MN 55102

Re: Proposed Amendments to Procedural Rules of Workers' Compensation Court of Appeals

Dear Judge Altman:

In response to the Notice of Solicitation of Outside Opinion regarding proposed amendments to the procedural rules of the Workers' Compensation Court of Appeals, I would like to offer a suggestion for a proposed rule.

The current rules do not now provide for disqualification of an appeals judge from consideration of a particular case. A procedure for disqualification by the particular judge himself or herself, or by a party to the appeal, or the party's attorney, like that in Rule 1415.2600 with respect to compensation judges, seems appropriate.

It would be important that the disqualification process not be misused for "judge shopping," but there may be clear cases of prejudice for which the disqualification procedure would be necessary and appropriate to preserve the integrity of the court.

I appreciate any consideration you might give to this suggestion, and I appreciate the opportunity to make it.

Very truly yours,

Andrew C. Meuwissen

Andrew C. Meuwissen, CPCU, CLU
President

ACW:jms

SOUTHDALE OFFICE CENTRE - SUITE 562
6600 FRANCE AVENUE SOUTH, MINNEAPOLIS, MN 55435 • 612/925-3850

S-[illegible]-75

LAW OFFICES

SIEBEN ▪ GROSE ▪ VON HOLTUM ▪ MCCOY ▪ CAREY ▪ LTD.

900 MIDWEST PLAZA EAST, EIGHTH AND MARQUETTE ▪ MINNEAPOLIS, MINNESOTA 55402 ▪ TELEPHONE (612) 333-4500

Harry A. Sieben, Jr.
Clint Grose (1923-1987)
John E. Von Holtum
Timothy J. McCoy
John W. Carey
Douglas E. Schmidt
David A. Stofferahn
Mark G. Olive
Wilbur W. Fluegel
Mark R. Kosieradzki
David W. H. Jorstad
Raymond R. Peterson
Willard L. Wentzel, Jr.
William O. Bongard
Steven D. Emmings
James P. Carey
David R. Vail
Veronica Casey

Of Counsel
Miles W. Lord

February 3, 1988

The Hon. Leslie M. Altman
State of Minnesota
Workers' Compensation Court of Appeals
775 Amhoist Tower
345 St. Peter Street
Saint Paul, Minnesota 55102

Dear Judge Altman:

You had indicated that there would be a revision of the Workers' Compensation Court of Appeals Appellate Rules. The Minnesota Trial Lawyers Association, Workers' Compensation Section did discuss the appellate rules and we did not reach a consensus as to any specific rule changes. We would be interested in commenting on any proposed revisions.

We have total agreement in regard to some general principles concerning workers' compensation appeals.

First, there was a belief that the rules should be simplified, and in fact, the whole appellate process for workers' compensation should be simplified. This may not be possible from what I know of the Court's intention to decide cases without oral arguments and also possibly issue opinions that would be more like summary affirmances. No doubt, there will be some type of procedure initiated so the Court can determine what cases should be argued and which do not merit arguments. I am assuming that will require something along the line of a Statement of the Case.

It was also the concern of every member who practices workers' compensation on behalf of injured employees that the attorney's fees on appeal for petitioners' attorneys are inadequate and do not compensate the employee's attorney for the time and effort spent on appeal. The employer and insurer can take an appeal to the Workers' Compensation Court of Appeals which costs very little. Many appeals by employers and insurers are done automatically and only serve to allow the employer and insurer to withhold funds from the injured employee for an extended period of time.

Sometimes this is done to attempt to force a distressed employee into settlement and on other occasions it is done simply because the employer and insurer can make more money on the proceeds of the award the longer they hold the sums.

The fees for the petitioners' attorneys have not been changed since sometime in approximately the mid-1970s. I would request that the Court take a serious look at setting forth in the rules, fair and reasonable fees for petitioners' attorneys on appeal.

In addition, I think the rules should reflect the longstanding case law that if the petitioners' attorney prevails on any part of the employee's appeal or is successful in overcoming any part of the employer and insurer's appeal that costs and attorney's fees should be awarded.

Very truly yours,

Timothy J. McCoy

FOR THE FIRM

TJM:mjb

cc: John G. Brian, III, Esq.

SF-00006-05 (4/86)

DEPARTMENT : LABOR AND INDUSTRY

STATE OF MINNESOTA

Office Memorandum

DATE : February 1, 1988

TO : The Honorable Leslie M. Altman
Administrator Judge
Workers' Compensation Court of Appeals

FROM : Gary Mesna GM
General Counsel

PHONE : 296-2492

SUBJECT : WCCA RULES

Attached is a memo from Shawn Kerns with some suggestions for amendments to your procedural rules. I do not agree with the first suggestion for extending the time for submitting a brief. The Department has been working to reduce time periods and speed up the resolution of cases. Extending the time for filing briefs would not be consistent with that.

GPM/cb

cc: Ann Clayton
Ken Peterson

DEPARTMENT : LABOR AND INDU

TATE OF MINNESOTA

Office Memorandum

DATE : January 29, 1988

TO : Gary Mesna

FROM : Shawn Kerns

PHONE : 7-4792

SUBJECT : **Outside opinions regarding amendments to WCCA rules**

1. Extension of time for submission of brief where a transcript is being prepared.

   Criticism has been directed toward the 30 day requirement in this instance, as it imposes a rather difficult burden where reference to the transcript is necessary and/or desired and notice of filing the transcript with the court or providing copies as requested is delayed or even where not delayed falls at an inopportune time cutting short the time for preparation of the brief.

   Extending the period by 15 days would not interfere with the scheduling or hearing of the appeal and would possibly allow more thought-out, cohesive, and concise briefings by the parties.

2. Requirement that one copy of Appellant's and Respondent's brief be filed with the Commissioner of Labor and Industry, whenever an issue is raised as to the constitutionality of Chapter 176 or rules promulgated thereunder.

   Although the Court lacks jurisdiction to address these issues, where raised they are frequently briefed and it is critical that the Commissioner be informed as to arguments which may be presented to the Supreme Court concerning these issues.

3. Provide for notice to all parties of intent to show motion pictures at the hearing.

4. Eliminate duplicate language in 9800.1000, subp. 2 regarding which party shall provide projection equipment.

5. Restate 9800.1400, subp. 2 to read more clearly.

6. Amend 9800.1600, subp. 1 A to reflect parties' ability to request an extension.

   Typically language of this nature (recitation of statute) is not duplicated in the rules, however, for ease of reference this may be appropriate.

7. 1987 language extending period of time for cross appeal should perhaps be added.

8. Delete reference to Office of Public Affairs in 9800.1600, subp. 1 B. As decisions continue to be made by the Board and Panel, a notice of appeal, therefore, should be filed with the Department. M. S. § 176.421 needs to be amended to avoid confusion as an Administrative Law Judge will be and conducting contested case hearings, but only making recommendations in these matters.

9. Add "Office" to 9800.1600, subp. 2 B as this appears to have been intended by reference to "Workers' Compensation Court" which following definitional clause would seem to more properly refer to the Court. Reference to the Court should be retained to facilitate consolidation.

10. Reference to issues pending before the MSRB or RRP may not be needed for purposes of consolidation in light of their new limited authority.

11. As the Court appears to be quite concerned that all parties are afforded due process in the issuance of temporary orders, perhaps a provision providing for a hearing (similar to that envisioned before a settlement judge) would be appropriate.

SK/cb

The Board signed the Authorizing Resolution on 9/6/88. They authorize the mailing of the Notice of Intent + authorize the publication of the Notice. However, The Notice was published on 7/4/88.

Rule - Not All New Material Changes on Adopted

OK ratified by action

Workers' Compensation Court of Appeals

Proposed Amendments to Rules of Procedure; 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 intends to adopt the above captioned amendments without a public hearing pursuant to the authority of Minn. Stat. § 175A.07, subd. 4 (1986). The Court has determined that the proposed adoption of these amendments will be noncontroversial in nature and has elected to follow the procedures for adopting rules without a public hearing set forth in Minn. Stat. §§ 14.21-14.28 (1986).

Persons or groups interested in these amendments shall have 30 days to submit comments in support of or in opposition to the proposed amendments or any part or subpart of the proposed amendments. Comments 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, unless a sufficient number withdraw their request in writing. If a public hearing is required, the Court will proceed according to the provisions of Minn. Stat. §§ 14.131-14.20 (1986). 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:

Patricia J. Arnold
Workers' Compensation Court of Appeals
775 Amhoist Tower
345 St. Peter Street
St. Paul, Minnesota 55102
Telephone (612) 297-1618

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 upon request at the above address.

Upon adoption of the final amendments without a public hearing, the final amendments as adopted and all required supporting documents 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 the above address.

A copy of the proposed amendments follows this notice. One free copy of the proposed amendments may be obtained at the above address or by calling (612)296-6526.

June 21, 1988

Paul V. Rieke
Chief Judge
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.