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DEPARTMENT OF LABOR AND INDUSTRY

Workers' Compensation Division

and

OFFICE OF ADMINISTRATIVE HEARINGS

STATEMENT OF NEED AND REASONABLENESS

In the matter of the proposed adoption of Joint Rules of Practice of the Workers' Compensation Division and the Office of Administrative Hearings.

In 1983, the legislature enacted Minn. Stat. 176.83, Subdivision (i), allowing the promulgation of joint rules of the Workers' Compensation Division and either or both of the Office of Administrative Hearings and the Workers' Compensation Court of Appeals.

These proposed rules are a consolidation and revision of the Rules of Practice for the Workers' Compensation Division and the Workers' Compensation Rules of the Office of Administrative Hearings. Nine of the Rules of Practice for the Workers' Compensation Division will remain in effect. They are currently under revision.

This statement will address the need for and reasonableness of the changes to the existing rules and will not attempt to justify the unchanged portions of the existing rules. Since that has already been done in earlier proceedings, it is not an appropriate consideration at this time.

Throughout these rules, archaic language and male pronouns have been stricken and replaced with simple English and gender neutral terms. "Shall" has been replaced with "must" or "will" where the "shall" did not refer to an action by a person.

Input into these rules has included suggestions of compensation judges, the chief hearing examiner, petitioner's attorneys, defense attorneys, intervenors, and the Workers' Compensation Division staff.

Part 1415.0100/Scope and Purpose.

Part 1415.0100, formerly 9 MCAR 2.310, describes the scope of the joint rules, indicating the situations in which these rules are applicable.

a. The rules are intended to apply to formal litigation which is filed with the Department but for which the hearing is held at the office. The rules are not intended to apply to informal proceedings, such as administrative conferences conducted solely by the Department and which may be formally litigated thereafter.

b. The rules are being adopted as joint rules of the two agencies because both agencies have jurisdiction over formal litigation and joint rules will assure uniform policies and procedures with respect to the litigation. Confusion over inconsistencies in handling litigation between the two agencies will then be eliminated.

c. Policies and procedures that are solely within the jurisdiction of the Department are not covered by these joint rules and will be the subject of separate rules promulgated solely by the Department. Reference to the Administrative Procedure Act is deleted to avoid the misleading impression that all the provisions of the APA apply. Workers' Compensation hearings are specifically exempted from the contested case procedures of the APA in Minn. Stat. § 14.03, Subd. 2 (e).

Part 1415.0200/General Authority.

Part 1415.0200 repeats the language of 9 MCAR 2.302 A and B with a couple of minor changes. Male pronouns are changed to neutral terms and language is added to clarify that compensation judges are prohibited by the act from deciding those issues reserved to the commissioner and appellate bodies, such as resolving medical and rehabilitation issues.

Part 1415.0300/Definitions.

The definitions include those previously found in 9 MCAR 2.302 with some additions. Definitions of "Board", "Court of Appeals", "Fund Director", and "Panel" were added because of the use of these terms in the Rules of Practice. "Act" is defined to avoid the repetitious use of "Workers' Compensation Act". "DVR" has been added due to several references in the rules to DVR. The references in these rules to DVR are necessary to implement Minn. Stat. 176.104 which provides for referral to DVR when the

employee is eligible for rehabilitation and primary liability is being denied. "Judge" is defined to avoid the repetitious listing of the three types of judges when the reference is to any one of the three judges. It is reasonable to delete these references to maximize readability and comprehension. "Calendar judge" is further defined to differentiate between a calendar and compensation judge. Previously, the definitions were identical. A distinction is needed to avoid confusion.

The Special Compensation Fund is added to the list of persons who may be petitioners in subpart 16. The fund is sometimes a petitioner seeking a temporary order or contribution from another party.

Part 1415.0400/Medical Authorization.

Part 1415.0400 is a revision of WC 7. The basic rule that medical authorizations must be furnished within 15 days of receipt of a written request remains the same. An addition is that the request must advise the employee of the 15 day requirement. Part 1415.0400 allows the employer or insurer to bring a motion to strike the case from the active calendar if authorizations are not furnished as requested. The addition gives the employer or insurer a remedy for failing to furnish authorizations. Notice to the employer of the time limitation is intended to encourage compliance through fair warning of the existence of the rule.

Part 1415.0500/Legal Documents.

WC 12 has been replaced with Part 1415.0500 and is consistent with the recent changes to letter size paper by all Minnesota Courts. The change to standard size paper reduces overall cost.

The information required on requests for action enables the division to efficiently and accurately identify the file.

The Supreme Court license number which is now required on legal documents, is an addition to aid the Office of Administrative Hearings in the computerization of their records. Time and money can be saved through the use of a five-digit number in place of the attorney's name, address, and phone number. The district courts are requiring the license number as well. The license

number is also included in Parts 1415.0800, 1415.1000, 1415.1200 and 1415.1400 of these rules; the rationale for its inclusion is the same as that given in this rule.

Part 1415.0600/Examination of Workers' Compensation Files.

Part 1415.0600 leaves WC 10 intact, but adds a requirement that the authorization must be dated and specify the person to whom access is given. This protects the employee by prohibiting unlimited access to his or her file through one general authorization which was not intended to give open access.

The last sentence has also been added to prevent invasions of the employee's right to privacy.

Part 1415.0700/Service.

The service rule is a revision of 9 MCAR 2.307. Minor changes in wording have been made to simplify and clarify the rule. A party now must serve a party's attorney as well as the party; previously service on the attorney was merely permissible. Service on the attorney is a reasonable requirement to ensure that the attorney has ample time and opportunity to take appropriate action on behalf of the employee.

The first sentence of the old section C is deleted as redundant.

Part 1415.0800/Notice of Representation.

Part 1415.0800 expands WC 9 to include the information that must be contained in the Notice of Representation, the persons who must receive a copy, the procedures necessary to change attorneys, and where and what must be filed. The information required in the notice is needed to properly match the notice with the claim petition. The parties need to be informed of the representation to redirect communications about the case to the attorney. Likewise, the state file must contain current information regarding representation. The attached retainer agreement is useful in determining attorney fees. The last sentence of WC 9 requiring the presiding official to assist an

unrepresented party in the questioning of witnesses has been deleted. The mandate is unnecessary given a judge's duty to conduct hearings in an equitable manner.

Part 1415.0900/Notice of Claim for Workers' Compensation Benefits.

This new rule describes what to include on a Notice of Claim for workers' compensation benefits, who must be served, what supporting documentation is required, and a warning to claimants that defective notices are not considered filed until the deficiency is corrected. The purpose of the rule is to require the claimant to specify in as precise terms as possible, the nature of the potential claim. The intent is to encourage settlement through early identification of issues as well as to enable the employer and insurer to prepare their defenses.

Part 1415.1000/Commencement of Proceedings.

Part 1415.1000 combines and revises 9 MCAR 2.304 and WC 14. Subpart 1 sets forth the items which must be included on a petition in order to adequately inform the adverse parties of the nature of the claim and to identify potential intervenors. The old section B, governing consolidation, is now a separate rule, Part 1415.2500. Subpart 2 incorporates provisions of WC 14. The items formerly listed in C have been moved to subpart 1. Section D of 9 MCAR 2.304 is now Part 1415.1100.

Subparts 3 and 4 are new. Consistent with Part 1415.0900, parties are again required to correct defects before further processing of the claim. As in Part 1415.0900, the intent is to facilitate a clear definition of issues and promote settlement, thereby avoiding unnecessary discovery and litigation. Amended petitions are allowed so long as adequate notice is given to the parties before the hearing or other proceeding at the Workers' Compensation Division or Office of Administrative Hearings. It is reasonable to allow parties to revise claims when to do so does not prejudice the other parties.

Part 1415.1100/Notice to Potential Intervenors.

This rule is 9 MCAR 2.304D with a few modifications. Attorneys are required in subpart 3 to notify potential intervenors within 30 days after the filing of an answer or within 60 days of

receipt of a petition if no answer is required. Potential intervenors whose interest arises after the claim petition or answer is filed, must be promptly notified. The language requiring inquiry regarding potential intervenors within five days of receipt of a notice of a pretrial order or pretrial conference is deleted. The purpose of the change is to protect the interests of intervenors by early notice of the claim. The revision serves this purpose.

Additions to subparts 1 and 2 require that the attorney inquire about services provided by DVR and, if services have been provided, to notify DVR of the pending claim. This is reasonable in light of the increased role of DVR in workers' compensation cases due to Minn. Stat. § 176.104. Other changes are merely simplifications of the original language.

The last two sentences of 9 MCAR 2.304D has been deleted as unnecessary. Not only do other sufficient sanctions exist to assure that an attorney notifies potential intervenors, but also the deleted sanctions could still be applied under other provisions.

Part 1415.1200/Intervention.

Part 1415.1200 combines 9 MCAR 2.310 and WC 19. Changes in subpart 1 clarify which judge will hear the motion for intervention. The time to serve the motion for intervention is enlarged from 30 days following receipt of notice under Part 1415.1100 to 60 days. This is to allow potential intervenors a more realistic time period within which to receive notice, forward the notice to the appropriate person, determine the proper course of action, and file a motion for intervention, if appropriate.

Subpart 1.B has been revised to simplify the language: "legal rights, duties, or privileges" is now "interests" and "grounds and purposes" is now "reasons". An addition to subpart 1.B allows the commissioner to intervene upon the showing of an interest in administering, enforcing, or defending a challenged rule or law. The provision codifies a recent court decision allowing intervention.

Subpart 1.B.(2) adds "rehabilitation services provided by DVR" for the same reason discussed in Parts 1415.0300 and 1415.1100.

In subpart 2, the proposed stipulation and objections to payments by the intervenor must be filed with the division or office, depending upon which office has jurisdiction, rather than at the division as previously required.

Section G of 9 MCAR 2.310 has been deleted as unnecessary because other sufficient sanctions exist. Moreover, the deleted sanctions could still be imposed under other provisions, that is, attorneys fees under Part 1415.3200 and penalties under a rule soon to be promulgated.

Part 1415.1300/Joinder of Parties.

The previous joinder rules are 9 MCAR 2.303 and WC 16. The last sentence of 9 MCAR 2.303A is stricken as redundant of subpart 2. In subpart 2, the confusing language regarding when the motion must be filed is deleted and replaced with a clear deadline. This resolves the conflicting time limits of WC 16 and 9 MCAR 2.303B. The remaining language deleted from subpart 2 is now contained in subpart 3.

The first sentence of subpart 4 has been added to enable the parties to adequately prepare for the hearing after a late joinder.

The option for a hearing on joinder is eliminated in subpart 6 to reduce unnecessary appearances by attorneys and the parties. Arguments regarding joinder may be presented in writing. Moreover, joinder may be addressed at the regular hearing and on appeal.

Part 1415.1400/Answer.

The addition of subpart 1 to WC 15 is necessary to implement Minn. Stat. § 176.321, Subd. 1 providing that answeres <u>must</u> be filed.

The deadline for scheduling an adverse medical examination is moved to Part 1415.1800 on pretrial procedures. It is reasonable to assume that the provision will be more easily found in Rule 18.

Subparts 3 and 4 are new. Subpart 3 warns the answering party of a potential default award under Part 1415.1500 for failure to answer, thus encouraging prompt compliance. Subpart 4 requires the division to reject defective answers. The petitioner is entitled to a prompt and specific response to the petition.

Part 1415.1500/Default Award.

Part 1415.1500 is a new rule to implement Minn. Stat. § 176.331. Subpart 2 protects the late-answering party from a default award where no prejudice has been caused by the delay. This is consistent with court decisions which have set aside default orders and remanded the cases for hearing where no prejudice is shown.

Subpart 3 provides for a hearing on the motion if a judge determines that proof of alleged facts is needed. A hearing must be provided in appropriate cases to satisfy the requirements of due process.

Part 1415.1600/Award on the Pleadings.

This new rule creates an opportunity for an early decision based upon the pleadings, thus avoiding lengthy discovery, other pretrial proceedings, and a hearing in cases which arguably are clear-cut. If a party presents matters beyond the pleadings, the case will be assigned to a judge for hearing if testimony is necessary. This protects the parties from a quick hearing without adequate preparation and discourages the use of a motion to bypass the usual procedure in the average case.

Part 1415.1700/Dismissal.

Part 1415.1700, a new rule, allows a judge to dismiss some voluntarily resolved matters without prejudice, thus clearing the calendar of settled claims.

Subpart 2 allows the judge to sanction parties for substantial violations of these procedural rules, other existing rules, the workers' compensation act, or a judge's order, by dismissing the claim. The goals of order and fairness are served by sanctions which encourage compliance with an existing law or order.

Part 1415.1800/Settlement Conference by Division.

The current settlement conference rules are 9 MCAR 2.305 and WC 21. Part 1415.1800 does not closely resemble either rule. but is rather a mesh of those rules, 9 MCAR 2.313, and Part 1415.1900. The modifications are necessary for consistency and clarification. To avoid confusion, prehearing conferences by the division are referred to as settlement conferences and those conducted by the Office of Administrative Hearings are referred to as pretrial conferences. The function is essentially the same, with greater emphasis placed on hearing preparation at a pretrial conference.

Subpart 2.B. sets a reasonable limit on the time a settlement judge may retain jurisdiction over a pending settlement. If progress is being made, there is no need to refer the matter to the office. If progress is not being made, a motion to certify the matter to the office is appropriate and now specifically allowed.

The remainder of Part 1415.1800 corresponds to Part 1415.1900; many of the requirements for pretrial conferences are also required for settlement conferences due to the similar function.

Part 1415.1900/Pretrial Procedures.

Part 1415.1900 is taken from 9 MCAR 2.313. The first sentence of Part 1415.1900 formerly was part of WC 15 on answers. The previous requirement that the adverse medical examination must take place within 75 days from the filing of a claim petition was difficult to achieve due to long waiting lists to see specialists. The proposed "schedule within 30 days and complete within 120 days" is more realistic and reasonable.

Language is added to subpart 2 to allow the judge to set a pretrial conference on the judge's motion, even if a party does not request it. Pretrial conferences often result in settlement or narrowing of the issues and save judicial time. The goal is to shorten the waiting period for hearings.

Supart 3 has been added to allow telephone conferences for those parties who would otherwise be required to travel more than 50 miles to attend a conference. This is consistent with Part 1415.1800 on settlement conferences.

The last sentence of subpart 4 has been expanded to facilitate settlement, thus avoiding lengthy and costly litigation.

Subpart 6.A. follows the current rule with minor stylistic changes. In addition, the rule now states that the pretrial statement must be served on the other parties.

Subpart 6.B. codifies the current procedure for filing pretrial statements when an objection to discontinuance has been filed.

The temporary order portion of 9 MCAR 2.313 is now Part 1415.2300. The rule is more easily found as a separate rule.

An amendment to subpart 7 states that evidence or witnesses not disclosed through discovery may, nevertheless, be used as impeachment evidence or rebuttal witnesses. This is an exception to the rule that evidence must be disclosed prior to the hearing to be used at the hearing. It is unrealistic to expect the parties to anticipate every shred of evidence which they will use at the hearing. The addition makes the rule more reasonable and thus encourages compliance with the rule.

The order described in subpart 8 is necessary to preserve the validity of partial settlements. Without this provision, anything less than a complete settlement would be useless because of unenforceability in light of Minn. Stat. § 176.521. The language is taken from 9 MCAR 2.305 on settlement conferences.

Subpart 9 contains a cross-reference to a provision governing procedures for the treatment of medical issues under the 1983 statutory changes. It also provides that the non-medical portion of a claim will be determined before the medical portion. The reason for this is that based on experience, the vast majority of medical issues will be settled by the time the non-medical issues have been determined.

Part 1415.2000/Settlements.

Part 1415.2000 is 9 MCAR 2.320 with a few changes. The last sentence of subpart 2 is added to explain where a stipulation for settlement is filed.

Subpart 3 is amended to conform to a change in Minn. Stat. 176.521, Subdivision 2, requiring a judge's approval of settlements which close out future medical or rehabilitation benefits.

The second paragraph of subpart 3 is reworded to clarify that the division or office issues an award under Minn. Stat. § 176.081, Subd. 7a, rather than the chief hearing examiner. The chief hearing examiner lacks the authority to issue awards. If a judge's approval is not required, a compensation or settlement judge immediately signs the award, as provided in Minn. Stat. § 176.081, Subdivision 1b.

Subpart 4.E. specifically mentions DVR in order to require the parties and the judge to consider DVR as a potential intervenor in appropriate cases.

Subpart 4.I. is added to assist the judge in determining whether the close out of future medical and/or rehabilitation benefits is just. To promote the legislative purpose of safeguarding an injured employee's rights, the employer or insurer should be able to affirmatively justify the action.

Part 1415.2100/Objections to Discontinuance and Petitions to Discontinue Compensation Payments.

Part 1415.2100, formerly 9 MCAR 2.306, contains procedures for formal hearings involving discontinuance of compensation. Informal adminstrative procedures at the division will be addressed in the Rules of Practice for the Workers' Compensation Division. The Rules of Practice are currently under revision.

The phrase "whichever is latest" is added to subpart 2 to eliminate confusion about the beginning and end of the 120 day period during which an objection to discontinuance must be filed to be heard on a priority basis. The first sentence of 9 MCAR 2.306C is stricken as repetitious of subpart 1. The remainder of 9 MCAR 2.306 is retained.

Part 1415.2200/Discovery.

Part 1415.2200 was formerly 9 MCAR 2.314. In addition to disclosure of the names and addresses of medical witnesses who will testify in person, subpart 1.A now requires the disclosure of the names and addresses of doctors who will testify by deposition, report, or cross-examination. Recent statutory changes encourage the parties to present testimony in written form. It is fair and reasonable to require the disclosure of the names and addresses of these witnesses in addition to the

in-person witnesses. A time limit of 15 days for disclosure of new medical witnesses and to provide medical authorizations is inserted in subparts 1.A and 1.C. Disclosing all medical witnesses and providing medical authorizations early in the process encourages settlement based on full knowledge of the facts. The phrase "upon demand" is deleted in subpart 1.C as repetitious of subpart 1.

Subpart 2.B is rewritten for clarity; there is no change in meaning.

Subpart 2.E requiring the party taking a deposition to pay the costs associated with the deposition, is a statement of the current practice. It is stated in this rule to ensure uniform application in all cases and to discourage the taking of unnecessary depositions.

Subpart 4 simply cross-references this rule with part 1415.2900, subpart 3.A which contains additional procedures relating to medical testimony.

Subpart 7 is a new section allowing employers and insurers to obtain the services of an employment expert and requires the employee to submit to the expert's examination. This allows insurers to adequately defend against arguments regarding the inability to obtain work because of the current economy and labor market. The employee is protected from intrusive examination through the availability of a protective order.

Part 1415.2300/Temporary Orders.

Part 1414.2300 is a revision of WC 17 and 9 MCAR 2.313 F. Subpart 1.A.4 is inserted to insure that the rights of potential intervenors are considered before a temporary order is issued. Subpart 1.B requires service of the petition on intervenors and potential intervenors to protect their rights as necessary parties.

Subpart 1.C provides for the withholding of attorney fees under temporary orders unless the attorney waives the right to have them withheld. Temporary orders, by definition, are issued in cases in which there is a dispute about which party is liable. Therefore, a portion of the claim is disputed and the withholding of attorneys fees is allowed by the act. The rationale for withholding attorney fees in other contested cases applies here as well.

The substance of the petition for a temporary order in subpart 1.D has not been altered except to change the annual interest rate to 12 percent a year in accordance with a statutory change; the "legalese" has been omitted or rewritten to facilitate readability and comprehension by the general public.

The first sentence of subpart 2 now includes the special compensation fund as a potential petitioner for a temporary order. The fund is the appropriate petitioner if the employer is uninsured or the employee is unrepresented and the insurers have not reached an agreement as to which insurer will make the preliminary payments.

Subpart 2.A(1) is included to eliminate temporary orders in cases in which primary liability has been denied. If there is a dispute about whether benefits are payable at all, a temporary order is not appropriate for the following reason. If primary liability is ultimately not found, the insurer paying under a temporary order would be unable to recover the benefits paid unless the employee's claim was not made in good faith. Therefore, without this provision, insurers would risk losing substantial amounts of money.

Subpart 2.A(7) and 2.C are the same provisions as in subparts 1.A(4) and 1.C. above. Therefore, the rationale given above applies here as well. Changes in the form of the order in subpart 2.D. are the same as in subpart 1.D. above.

Intervenors and potential intervenors are now listed as necessary parties in subpart 3.E for purposes of service of temporary orders. As discussed above, the purpose of this provision is to notify these parties and potential parties before action is taken which prejudices their rights.

The last six words of subpart 4 have been added to direct the answering parties to specify objections to the proposed order. An answer containing specific objections gives notice of the party's position, thereby promoting communication between the parties and a clear statement of disputed issues.

The last clause of subpart 5 prohibiting approval of temporary orders which prejudice an intervenor's claim for reimbursement is new. If the rights of all potential parties are protected at an early stage of the proceedings, a full resolution of the issues is encouraged.

Part 1415.2400/Petitions for Contribution or Reimbursement.

Part 1415.2400 revises 9 MCAR 2.315 and WC 18. The last two sentences of subpart 1, requiring joinder or consolidation if a current claim is pending, are added to avoid multiple proceedings in one case. Where a claim petition is pending, a reimbursement or contribution issue involving the same employee and injury must be joined or consolidated with the original action.

In subpart 3, "may file a verified answer" is changed to "shall file a verified answer" to conform to the statutory change.

9 MCAR 2.315 D which required notice to the employee of proceedings for contribution or reimbursement is deleted. Contribution and reimbursement issues do not affect the employee's right to benefits or the amount of the benefits. It is therefore, not necessary to involve the employee in this aspect of the process; it confuses and concerns the employee needlessly. In addition, attorney fees may also be incurred unncessarily if the employee is notified.

Part 1415.2500/Consolidation.

Part 1415.2500 is the former 9 MCAR 2.311. In subpart 3, service of the order on the commissioner is omitted as unnecessary and serving no useful purpose.

In subpart 4.B., the standard to be applied to a motion for severance is changed to when "justice will be best served" rather than when "consolidation would prejudice the rights of the party". There may be situations in which rights are not prejudiced by consolidation, but a party would be greatly inconvenienced or otherwise adversely affected. It is reasonable to allow serverance in such cases.

Part 1415.2600/Disqualification.

Nothing substantial has been changed from the former rule, 9 MCAR 2.312. However, organization of the provisions, sentence structure, and terminology have been altered to simplify the rule and clarify the intended meaning of its provisions.

Part 1415.2700/Subpoenas.

Part 1415.2700 is a revision of 9 MCAR 2.316. "Or the division" is added to the first sentence to make it clear that the Division may also issue subpoenas. The second paragraph is reworded, but no substantive changes are made.

Part 1415.2800/Continuances.

Part 1415.2800 leaves 9 MCAR 2.309 intact with minor language revisions to promote readability.

Part 1415.2900/The Hearing.

Part 1415.2900 revises 9 MCAR 2.317. Exceptions to the 30 day notice of hearing requirement in subpart 1 are transferred from 9 MCAR 2.308. An addition to subpart 1 is that oral or written notice at a settlement or pretrial conference is sufficient notice. In such cases, a subsequent notice would merely be duplicative.

In subpart 3.A, language is added to require that the affidavit supporting a motion to take oral testimony contain sufficient facts for the judge to make a determination of cruciality. The judge decides the issue without a hearing and cannot fulfill his or her obligation to make a determination based upon facts, if a bare legal conclusion is substituted in place of needed facts. The time limit for filing a motion to take oral testimony is reduced to 25 days before the hearing due to the fact that the notice of hearing need not be given until 30 days before the hearing. The prior 30 day period in which to file a motion is unreasonable; it required the motion to be filed the same day the party must be notified of the hearing date, leaving no time for preparation or decision.

The addition to subpart 3.C of "on a party or the judge's motion", allows the judge to rule on the cruciality of oral medical testimony, even when the parties have not requested medical testimony. The words "or within 25 days before the hearing" are added to leave no room for doubt that the judge may decide that medical testimony is crucial at any time before the end of the hearing. Subparts 3.B and 3.C together confer this authority.

Subpart 3.D(13) requiring that health care providers verify that, where applicable, the new permanent partial disability rules have been applied, reduces the chance for error and a resulting delay in payment or other resolution of the issue.

Subpart 3.E no longer mandates that medical reports must be filed 60 days before the hearing. The new standard is "sufficiently in advance of the hearing to allow opportunity for cross-examination." The last sentence, allowing cross-examination subsequent to the hearing, is necessary so that parties may respond to late-filed reports. The deletion of the 60 day deadline also eliminates the possibility that notice of the hearing might be received after the deadline to file reports has passed. The rights of all parties are thus protected while allowing the parties more flexibility in hearing preparation.

Subpart 3.F outlines the procedures for handling medical issues which accompany contested cases. This new procedure results from the adoption of Minnesota Statutes § 176.103 and legislative changes in Minnesota Statutes § 176.135 and § 176.136. A compensation judge may approve or disapprove settlements involving medical treatment or supply issues, but may not resolve a contested issue involving medical treatment or supplies. Hence, the compensation judge must refer the contested health care issues to the Workers' Compensation Division if they are not settled by agreement. To save time and expense, a party may present medical evidence at the hearing and simply submit a transcript to the division for later disposition on the health care issues.

The last sentence of subpart 3.F gives intervenors the right to petition the division for resolution of medical treatment or supply issues, thereby granting these interested parties access to an informal administrative process in addition to the right to intervene in a litigated matter.

A change in subpart 6.A clarifies that judges are bound by these rules and Chapter 176 but no other technical or formal rules. The rule was misleading as previously written.

The addition of "from books, documents, or records" in subpart 6.C is intended to explain "excerpts" and is not meant to limit any prior interpretation of the provision. The meaning of "excerpts", when used alone, is unclear.

New language in subpart 6.D, taken from Minnesota Statutes § 14.60, subd. 4, sets out the types of facts which parties have not introduced into evidence, but which judges may nevertheless consider before making a decision, so long as the facts are entered into the record and the parties allowed to respond to them. The phrase "general, technical, or scientific facts within the judges specialized knowledge" is more descriptive and therefore, directive, than "judicially cognizable facts".

Subpart 6.E is rewritten in a more coherent manner. In addition, members of the panel or board, mediators, and other employees of the division designated to conduct conferences or hearings are included in the list of persons who may not be called as adverse witnesses in a hearing before a compensation judge. These individuals are acting in a quasi-judicial capacity. It is not appropriate to require neutral decision-makers to advocate for a particular party, thus compromising the integrity of the division or appellate body.

Subpart 7.B(6) is revised to include only memoranda and data "accepted by the judge" as part of the record. Memoranda and data not accepted by the judge are returned to the parties and do not become a part of the record.

"With the consent of all parties" is deleted from subpart 8, thus allowing the judge to unilaterally continue a case if the judge believes that further testimony should be received in the interest of justice. It is unlikely that a conflict will exist, but the judge should have the right to compel a continuance if all or some of the parties want to cut the hearing short for their own convenience and justice requires that additional testimony be received.

A change in subpart 9.A now requires that final arguments be recorded. Objections during arguments are sometimes made requiring a ruling by the judge. An incorrect ruling might be grounds for reversal and therefore, a record is needed for review by the appellate court. The last two sentences of subpart 9.A have been added to require the judge to control the testimony so that an audible recording is made. A complete, accurate record enables the reviewing court to make a reasonable decision based on all the evidence presented.

The reference to omitting final arguments from the record in subpart 9.A(6) is deleted for the reason discussed in the preceeding paragraph.

Subpart 9.B(7) provides for written notice of a continuance if the date is not determined at the hearing. An addition to this subitem requires notice to parties joined at the hearing to provide equitable treatment of the parties and to avoid further continuances due to inadvertent omission of new parties.

Subpart 9.C, a new section on decorum, is intended to instill respect for the administrative process and persons involved in it, by maintaining a degree of formality and order in the hearing room. Suparts 9.C(1), (2), and (3) save court time by restricting unnecessary arguments and testimony. Subpart 9.C(4), requiring advance notice of the need for an interpreter, also saves court time. These small bits of time saved are rather insignificant individually, but accumulate to produce a smaller backlog. Subpart 9.C(3) requires attorneys to instruct witnesses to wait until a ruling is made on an objection before answering. If the witness blurts out an answer which should not be considered, the excluded testimony is difficult to ignore. This procedure discourages the introduction of prejudicial testimony.

Part 1415.3000/The Compensation Judge's Decision.

Part 1415.3000 revises 9 MCAR 2.318. Section A.2 of 9 MCAR 2.318 on adminstrative notice, is deleted as repetitious of part 1415.2900, subpart 6.D. Also, facts administratively noticed must be entered on the record and therefore are included in subpart 1.
The last sentence of 9 MCAR 2.318 B.1 which provides for the closing of the record, is stricken as repetitive of part 1415.2900, subpart 9.B(8).

Part 1415.3100/Rehearing.

Part 1415.3100, formerly 9 MCAR 2.319, contains no substantive changes.

Part 1415.3200/Attorney Fees

Part 1415.3200 is a revision of 9 MCAR 2.321 and WC 25. Subpart 2 is changed to provide for the permissive withholding of attorney fees on disputed claims and mandatory withholding only if the attorney so requests. Fees may not be withheld if benefits are not disputed and need not be withheld on disputed

portions of claims if the attorney would rather collect the fee in another way. This subpart balances the right of the attorney to be paid and the right of the employee to receive the full amount of benefits to which he or she is entitled.

Subpart 3 is divided into two sections to differentiate between a Statement of Attorney Fees to be used when the total fee is within the limits of Minn. Stat. 176.081, subd. 1(a), and a Petition for Disputed or Excess Attorney's Fees to be used when the fees exceed those limits, or are disputed by another party. Subparts 3.A and 3.B prescribe the items necessary to an informed calculation of appropriate fees. Subpart 3.A allows the attorney to present the required information orally if there is no objection by the other parties. The parties are thus saved the extra time and expense required to prepare a written statement. In addition, the judge's time and administrative costs are not wasted in a useless formality.

Subpart 6.A combines 9 MCAR 2.321 E.1 and 2.

Part 1415.3300/Taxation of Costs and Disbursements.

Part 1415.3300 revises 9 MCAR 2.322 and incorporates WC 26. Subpart 1 is added to eliminate requests for payment of costs not authorized by statute.

In subpart 4, the objection time allowed an opposing party is enlarged to ten days, rather than five. Ten days is a more reasonable time limit, eliminating forclosure of the opportunity to object simply because of the brief absence of an attorney from work.

Part 1415.3400/Other Hearings.

This part was formerly 9 MCAR 2.324. No substantive changes have been made.

Part 1415.3500/Exhibits: Removal and Return.

This part combines 9 MCAR 2.326 and WC 27. Subparts 1 and 3 are amended to include files at the division as well as at the office. The official file is sent from the division to the office when the matter is referred to a compensation judge, and returned

to the division upon conclusion of the litigation. Therefore, the party seeking return of exhibits might need to retrieve the exhibits from the file at the division.

Part 1415.3600/Severability.

Part 1415.3600 is a standard severability clause, added to preserve the enforceability of the remainder of these rules if any other part is invalidated.

Repealer.

The repealer lists the rules which these rules replace. The Rules of Practice for the Workers' Compensation Division which are not repealed are currently under revision and will be promulgated as additions to these joint rules or as amended Rules of Practice.

9 MCAR 2.308 is repealed and incorporated into other parts of these joint rules. Sections A.1 and A.2 are now incorporated into parts 1415.1800 and 1415.1900 on settlement conferences and pretrial conferences. References to "regular hearing" and the definition of "hearing" in section A of 9 MCAR § 2.308 have been deleted as confusing and unnecessary. Section B is now included in part 1415.2900, subpart 1.

The following rules have been repealed and not revised:

9 MCAR 2.323 addressing second injury law is repealed. Its only addition to the statute is an authorization for the chief hearing examiner to assign a compensation judge to a referred reimbursement case. A rule on second injuries will be added to these joint rules in the future which will also include the provisions of WC 20.

9 MCAR 2.325 is repealed because the statutory provision creating a Permanent Partial Disability Panel has been repealed.