



STATE OF MINNESOTA
WORKERS' COMPENSATION COURT OF APPEALS
775 LANDMARK TOWERS
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June 3, 1994

Ms. Maryanne V. Hruby, Executive Director
Legislative Commission to Review Administrative Rules
55 State Office Building
100 Constitution Avenue
St. Paul, Minnesota 55155

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

Dear Ms. Hruby:

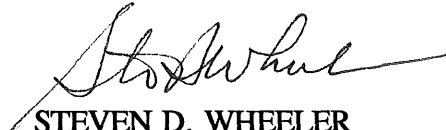
The Minnesota Workers' Compensation Court of Appeals intends to adopt rules related to its Rules of Procedure, as contained in Minnesota Rules chapter 9800. We plan to publish a Notice of Intent to Adopt Rules Without Public Hearing in the June 20, 1994, issue of the State Register.

As required by Minnesota Statutes, sections 14.131 and 14.23, the court has prepared a Statement of Need and Reasonableness which is now available to the public. Also, as required, a copy of this Statement is enclosed with this letter.

For your information, we are also enclosing a copy of the Notice of Intent to Adopt Rules Without Public Hearing and a copy of the proposed rules in this matter.

If you have any questions regarding these rules, please contact Randolph J. Hartnett, Staff Attorney, at 296-6526.

Sincerely,


STEVEN D. WHEELER
Chief Judge



SDW:mh

Enclosures: Statement of Need and Reasonableness
Notice of Intent to Adopt Rules Without Public Hearing
Rules

STATE OF MINNESOTA
WORKERS' COMPENSATION COURT OF APPEALS

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

**AFFIDAVIT OF MAILING THE
STATEMENT OF NEED AND
REASONABLENESS TO THE
LEGISLATIVE COMMISSION TO
REVIEW ADMINISTRATIVE RULES**

STATE OF MINNESOTA)
) ss
COUNTY OF RAMSEY)

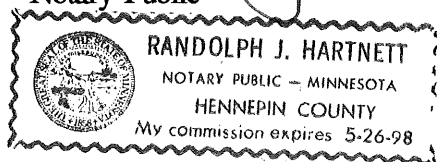
MARY J. HERBST, being sworn says:

That on the 3rd day of June, 1994, I mailed the Statement of Need and Reasonableness for the above-captioned Rules to the Legislative Commission to Review Administrative Rules in compliance with Minnesota Statutes, sections 14.131 and 14.23. The mailing was done through the United States mail.

Mary J. Herbst

Subscribed and sworn to before me
this 3rd day of June, 1994.

Randolph J. Hartnett
Notary Public



**STATE OF MINNESOTA
WORKERS' COMPENSATION COURT OF APPEALS**

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

**STATEMENT OF
NEED AND
REASONABLENESS**

General Statement

The Workers' Compensation Court of Appeals is an independent agency of the executive branch that was established by the legislature as the exclusive statewide authority to hear and determine all questions of law and fact within the court's authority as provided in Minnesota Statutes, Chapters 175A and 176.

Practice before the Workers' Compensation Court of Appeals is regulated by Minnesota Rules, Chapter 9800. The proposed amendments are intended to improve the clarity of the current rules, to eliminate certain ambiguities, and to address concerns regarding practice before the court. The object of the proposed changes is to reduce procedural error, to facilitate the administration of the court's docket, and to promote the speedy and fair resolution of disputes.

Included in the proposed amendments are certain housekeeping changes such as revised sentence structure and the removal of the word "shall" from some of the provisions, as recommended by the Office of the Revisor of Statutes. See Office of the Revisor of Statutes, Minnesota Rules Drafting Manual 27-29 (1990). These housekeeping changes are intended to improve the clarity of the rules and are not intended to have substantive effect.

Statutory Authority

The adoption of procedural rules of practice before the Workers' Compensation Court of Appeals is authorized by Minnesota Statutes, section 175A.07, subdivision 4.

Small Business Considerations

The court has considered the impact of the proposed amendments to these rules on small business, as required by Minnesota Statutes, section 14.115 and has concluded that they accommodate the needs of small business. Generally, insurers and self-insured employers do not fit the definition of small business contained in Minnesota Statutes, section 14.115, subdivision 1. Health care providers are exempt as regulated businesses under Minnesota Statutes, section 14.115, subdivision 7(3). Where small businesses

might be effected, the amendments will serve to clarify procedure for them, as well as for all litigants. Creation of special exemptions or procedures for small businesses would detract from fairness, lead to procedural error, and jeopardize the court's integrity.

Fiscal Impact on Local Public Bodies

Minnesota Statutes, section 14.11, subdivision 1, does not apply because adoption of these rules will not result in additional spending by local public bodies in excess of \$100,000 per year for the first two years following adoption of the rules.

Agricultural Land Impact

Minnesota Statutes, section 14.11, subdivision 2, does not apply because the adoption of these rules will not have an impact on agricultural land.

Departmental Charges Imposed by the Rules

Minnesota Statutes, section 16A.1285 does not apply because the proposed amendments do not establish or adjust charges for goods or services, licenses or regulation.

Rule-by-Rule Analysis

9800.0100. DEFINITIONS.

Subpart 1. Application.

This subpart is amended solely to reflect the fact that an additional part was added to the chapter.

Subp. 2. Administrator.

Correspondence from the court to parties generally refers to the person defined in this subpart as the "administrative judge." The change in this provision is intended to clarify and update the definition of administrative judge in accord with current court practice.

Subp. 6. Filed.

The court has frequently been asked why it does not have a so-called "mailbox rule," pursuant to which a document is considered "filed" when deposited in the mail. Language was added to the definition of the term "filed" to underscore the fact that the requirements for the filing of documents with the court are dictated

by the statute. The proposed language is a reasonable way to alert those filing documents to the statutory requirements.

9800.0200. EXAMINATION OF FILES.

This part is not being amended.

9800.0300. PREPARATION AND FORM OF LEGAL DOCUMENTS.

The word "shall" has been changed to "must" in this part, as well as in others. The Office of the Revisor of Statutes recommends limited use of the word "shall" in the drafting of rules because its meaning in legal writing is often archaic and differs from conventional modern English usage. See Office of the Revisor of Statutes, Minnesota Rules Drafting Manual 27-29 (1990). As used in the current rules, "shall" means alternately "must," "will" or "may." The word has been removed from certain parts of the rules and another term substituted that clarifies and updates the language. The analysis of the reason for this change given in this part applies to all other occurrences of this same change in these proposed amendments, except where otherwise stated. This change is not intended to have substantive effect.

9800.0310. SERVICE.

This new provision requires that service of documents on a party represented by counsel be made on that party's attorney. Cases have arisen before the court where a party has moved to dismiss an action because the opposing party served a copy of a document on the first party's attorney, but failed to serve that party. In Meissner v. Southview Acres Healthcare Center, 45 W.C.D. 524 (1991), for example, the employee served a copy of the Notice of Appeal on the attorneys for the employer and insurer, but not on the employer itself or the insurance company. This court held that service of the Notice of Appeal by the employee on the attorneys for the opposing parties was effective.

Requiring service on a represented party's attorney helps ensure that documents are brought to the attention of a party's attorney in a timely fashion so that the legal significance of the document may be gauged and appropriate action taken. This proposed change is also consistent with the procedural rules of other courts. See Minn. R. Civ. P. 5.02; Minn. R. Civ. App. P. 125.02; Fed. R. Civ. P. 5(b); Fed. R. App. P. 25(b). It is reasonable because it codifies the caselaw on this subject and promotes uniform procedure.

The new language also provides for those cases where service on the party, as well as that party's attorney, is required by statute. For example, pursuant to Minn. Stat. § 176.101, subd. 3e, a maximum medical improvement report must be served upon the employee.

9800.0320. FACSIMILE TRANSMISSION.

This entirely new provision provides procedural direction for those parties wishing to use facsimile (fax) transmission to file documents with the court. With the proliferation of fax machines in law offices, and the ease and convenience of their use, a number of people have inquired whether the court accepts filing by fax. This provision allows fax transmission of certain documents, which may include, but are not limited to, motions to dismiss, petitions for extension of the briefing period, or requests for oral argument. Because of the nature of such documents, there is often only a limited time in which to file them with the court. Permitting fax transmission eases the procedure for members of the workers' compensation bar. The provision also requires later filing of the signed original to help ensure the authenticity of documents.

The convenience of fax filing must be balanced, however, against the added administrative requirements of handling faxed documents. Consequently, the provision specifically excludes filing of certain lengthy documents such as briefs or petitions to set aside awards. Any document greater than three pages in length, not including the cover sheet, is also excluded. The object of these exclusions is to minimize the monetary and time cost of handling faxed documents. Further, notices of appeal, which establish the jurisdiction of the Workers' Compensation Court of Appeals over a case, are excluded. As they do with briefs and petitions to set aside an award, parties generally have a longer period of time within which to prepare and file notices of appeal, and the need to draft and file these documents within a short period of time does not exist to the extent it may with certain motions, such as petitions for extension of the briefing period.

Subpart 1. Accepted.

This subpart sets out those documents that will be accepted by fax and the requirements for effecting such a filing. The rationale is described above.

Subp. 2. Not accepted.

This subpart sets out those documents that will not be accepted by fax. The rationale is described above.

9800.0400. TEMPORARY ORDERS.

This part is not being amended.

9800.0500. CONTINUANCES OF ORAL ARGUMENTS.

This part is not being amended.

Subp. 2. [Repealed 10 SR 698; 13 SR 981]

This part was previously repealed. See State Register as cited above.

9800.0510. NONAPPEARANCE OF COUNSEL.

This part is amended only to reflect housekeeping changes to clarify and update the language.

9800.0600. [Repealed, 10 SR 698; 13 SR 981]

This part was previously repealed. See State Register as cited above.

9800.0700. STIPULATIONS FOR SETTLEMENT.

This part is not being amended.

9800.0800. APPEAL OF ATTORNEY FEES.

This part is being amended to reflect changes in the language of Minnesota Statutes, section 176.081, subdivision 3. This statutory provision, which formerly limited requests for review of attorney fees to employees, now states that a party dissatisfied with an award of fees may request review. The proposed change to this part is reasonable because it results in consistency with the related statutory provision. The heading of this part is also changed accordingly.

9800.0900. BRIEFS ON APPEAL.

There are two types of proposed changes in this part. The first type of proposed changes are housekeeping changes to improve the flow of the language and to clarify that all briefs submitted to the court are subject to the same requirements. The only substantive change in the requirements proposed here is to require the filing of four copies with original briefs in all cases, including cases where no oral argument is held. In practice, many parties file four copies of submitted briefs as a matter of course. Further, the parties may not always know if oral argument will be granted at the time they submit their briefs. This requirement is a reasonable method of ensuring that copies of the parties' briefs are available for review by all members of the assigned panel and other court personnel.

The second change deals with sanctions for the untimely filing of briefs. Part 9800.0900 sets out requirements for the briefing of appeals to the court, including time limits for filing of briefs. As this part is currently written, the court is required to impose a sanction for the untimely submission of briefs in the form of striking the untimely brief from consideration by the court. Additionally, the court may dismiss an appeal, subject to a motion for reinstatement, if the brief is late.

In practice, the difficulties resulting from the striking of untimely briefs may outweigh the value of this sanction in preventing untimely filing. Oral argument is frequently allowed in cases where the brief has been stricken, and the party who filed the untimely brief is thus able to present the case, however inadequately. As a result, the panel of judges reviewing the appeal often must rely on the brief of the opponent party to present enough information to justly decide the case. At best, the striking of briefs may present difficulties for those reviewing the appeal and, at worst, the party with the late brief is unable to present an argument adequate to ensure the just handling of the case.

The proposed change is reasonable because it makes both the sanction of striking a brief and the sanction of dismissal of the appeal discretionary. This adequately provides the needed incentive to file briefs in a timely manner, because it permits the court to impose sanctions for untimely filing, while at the same time allowing the court to review each case on an individual basis and decline to impose a sanction where to do so would unduly hinder the court in its resolution of the case or result in an injustice. A party not filing a timely brief runs the risk of having that party's brief stricken from consideration or the risk of ultimate dismissal of the appeal, should that party be unable to present a sufficient case for reinstatement under part 9800.1710.

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

The changes in this subpart are intended to clarify the language of the subpart. The sentence on untimely briefs has been moved to subpart 6, the subpart relating to the time limit for briefs, to emphasize that the sanction contained therein relates to all types of briefs. The second paragraph of this subpart, relating to filing and service requirements, has been moved to a new subpart (subpart 5a) to clarify that the filing and service requirements apply to all types of briefs.

Subp. 2. Filing of brief of appellant where no transcript of the proceedings is required.

The rationale for the changes in this subpart is the same as that for subpart 1.

Subp. 3. Filing of brief of respondent.

The changes in this subpart are housekeeping changes intended to clarify the language and to clarify that the filing and service requirements are the same for all types of briefs.

Subp. 4. [Repealed, 13 SR 981]

This subpart was previously repealed. See State Register as cited.

Subp. 5. Reply briefs.

The rationale for the changes in this subpart is the same as that for subpart 3.

Subp. 5a. Requirements for briefs.

This is a new subpart, containing essentially the same wording on service and filing requirements as was originally contained in subparts 1, 2, 3 and 5. The term "hearing" was originally used in subpart 1 to indicate oral argument and, for consistency, was not retained. The purpose of adding this subpart is to shorten the text of part 9800.0900 by consolidating similar language and to clarify that these requirements are the same for all types of briefs.

Subp. 6. Time limits for briefs.

The headnote for this part was changed to better describe the material contained within the subpart. The one substantive change proposed is to make the sanction of striking untimely briefs discretionary. The rationale for this change is noted above.

9800.0910. PREVIOUS DECISIONS.

This new part codifies the court's practice of allowing citations to all previous decisions, published or unpublished, in briefs and at oral argument. The court's unpublished decisions are available by subscription service from the state, and the court provides members of the bar with copies of individual unpublished cases upon request. The provision also requires parties who cite to unpublished decisions, either in briefs or at oral argument, to provide copies of the decisions relied upon to opposing counsel. The rule is reasonable because it highlights the potential probative value of unpublished decisions. It also imposes a minimal duty on parties who presumably already possess copies of unpublished decisions and it enables opposing counsel to effectively respond to the rules of law contained within the decisions cited.

9800.0920. BRIEF OF AN AMICUS CURIAE.

This new provision sets out procedures for the submission of amicus curiae briefs to the court. It requires leave of the court as well as service on all parties. It also sets out time limits and requires court permission for amici curiae to participate in oral argument.

The Workers' Compensation Court of Appeals frequently makes decisions on legal issues which have limited impact on the parties

arguing the particular case, but which may have far-reaching implications for the larger community of employees, employers and insurers. The provision provides a mechanism for parties who are not involved in the particular appeal, but who have an interest in the general outcome, to have input into the decision-making process. The provision is reasonable because it allows amici curiae to submit briefs to the court, while at the same time controlling the timing of submissions and maintaining due focus on the appealing parties. The provision is based substantially on Rule 129 of the Minnesota Rules of Civil Appellate Procedure, and thus serves the goal of uniformity of procedure.

Subpart 1. Filing.

This subpart sets out the requirements for filing, including required leave of the court; timing of a request to file a brief; and identification of the interest of the amicus curiae in the case.

Subp. 2. Time Limit.

This subpart sets out the timing, filing and service requirements for amicus curiae briefs.

Subp. 3. Oral Argument.

This subpart prohibits participation of an amicus curiae in oral argument without leave of the court.

9800.1000. ORAL ARGUMENTS ON APPEAL.

The proposed changes in this part are housekeeping changes, intended to update and improve the sentence structure of the part, as well as to highlight the rule relating to the time allowed for oral argument by assigning that rule its own subpart number.

Subp. 1a. Time allotted for oral argument.

The rule in this new subpart was previously contained in subpart 1. The wording was changed to clarify the language and the rule was given its own subpart number to highlight the requirement. There was no substantive change.

Subp. 2. Motion Pictures.

The proposed change in this part is a housekeeping change, intended to update and improve the clarity of the language.

9800.1050. REFERENCES OF QUESTIONS OF FACT.

This new provision alerts parties to various provisions in Chapter 176 which permit the court to refer matters to the Office of Administrative Hearings for a factual determination in cases where

this will further the efficient and just resolution of cases on appeal. It is reasonable because it codifies, in the court's rules of procedure, powers already contained in the statute.

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

Substantial changes were made in this part to clarify and refine the procedure for applications to set awards aside and grant a new hearing, also called petitions to vacate an award, as well as to improve readability. Proposed changes of a substantive nature include increasing the time limit for a responsive pleading from 20 to 45 days, allowing reply memoranda, and adopting a procedure for making determinations on petitions to vacate on the pleadings alone, without oral argument. The requirement that applications be verified was also deleted. Additionally, provisions were added to highlight the statutory basis for granting vacation of awards. The rationale behind these changes is to assure that the parties present a record that is adequate to ensure just and speedy resolution of the petitions. The part was also divided into subparts to highlight the various requirements.

Subpart 1. Applications.

The scope of documents that must be submitted in support of a petition to vacate was broadened to include "other documentary evidence" in addition to "medical reports," and to add the additional requirement of filing "a memorandum of law." The term "other documentary evidence" relates to submission of evidence that is not medical in nature, but which may affect a petition to vacate, such as, for example, rehabilitation reports or depositions. Further, a memorandum of law is required to advise the court of the specific basis of the petition and the arguments for granting it. These changes are reasonable because they help limit the filing of specious claims and help ensure that the court will be provided with a record adequate to permit proper review of the petition. Additionally, the requirement that applications be verified is being deleted. The rules contain no definition of the term "verified." The deletion is reasonable because it removes an ambiguity from the procedure, thus aiding in efficient practice. This part also contains a housekeeping change of the word "shall."

Subp. 2. Cause.

This new subpart highlights for potential petitioners that petitions to vacate must be based on statutorily-defined good cause. This is a reasonable addition because it points out the specific statutory limits of "cause" and helps to prevent claims that cannot be granted because they are not properly based.

Subp. 3. Responsive pleadings.

This subpart, containing some old language, is proposed to highlight the requirements contained within the subpart and to allow for an increase in the time limit for responsive pleadings from 20 to 45 days. Twenty days has been shown to be an inadequate time in which to prepare a proper response in many cases. This proposed change allows additional time. Although this change may serve to lengthen the time for determination of petitions in some cases, it is reasonable because it permits more time to prepare a response, which will help ensure a just determination of the matter. To this same end, the rule also requires that responsive pleadings include sworn affidavits, supportive evidence and memoranda of law. The rationale for these requirements is the same as that for the petitions themselves.

Subp. 4. Reply memoranda.

This new subpart permits reply memoranda within 15 days of any responsive pleadings. This is reasonable because it permits the petitioner to respond to assertions or evidence contained within the responsive pleadings, but of which the petitioner had no previous notice. As with reply briefs, as noted in part 9800.0900, subp. 5, the petitioner is limited to issues raised in the responsive pleadings.

Subp. 5. Hearing.

Not all petitions to vacate require oral argument. This new subpart allows the parties to agree to a determination on the pleadings alone to expedite the matter. Parties are, however, allowed oral argument if they so request.

Subp. 6. Determination.

This subpart contains language from the current version of part 9800.1100. It is placed in its own subpart to highlight the provision. The sentence related to hearings was deleted in light of the proposed rule in subpart 5.

9800.1200. WRIT OF CERTIORARI.

This part is being repealed to reflect the supreme court's current practice of returning original transcripts to this court after review on certiorari. The current practice maintains a complete workers' compensation file while making the requirement of filing an additional copy of the transcript unnecessary. The change in this part is reasonable because it saves the parties the expense of preparing an additional transcript.

9800.1300. [Repealed 10 SR 698; 13 SR 891]

This part was previously repealed. See State Register as cited above.

9800.1400. APPLICATIONS, PETITIONS, AND MOTIONS.

The proposed changes in this part are housekeeping changes, intended to update and improve the clarity of the language, as well as changes to streamline procedure and allow a more certain date for the filing of miscellaneous requests and motions.

Subpart 1. Scope.

The changes in this subpart include a housekeeping change intended to clarify the language and a change to reflect the addition of a part to the chapter.

Subp. 2. Procedures for filing.

The changes in this subpart are intended to update and clarify the language and to remove the requirement that requests for relief be verified. The rationale for the deletion of the verification requirement is the same as that noted for a similar change in part 9800.1100, subpart 1. Additionally, the deadline date for filing of requests was changed to clarify the requirement. Not all cases are heard in oral argument, and the filing deadline for such cases was previously ambiguous. The change is reasonable because it sets a consistent and easily determined filing deadline for all cases, while permitting adequate time for the parties to determine the need for requests and, if needed, to file such requests.

Subp. 3. Responses.

The changes in this subpart were intended to clarify the language. There is no substantive change.

Subp. 4. Replies.

The changes in this subpart were meant to update the language and to point out that reply briefs may be filed within five days after the filing of a response brief, but are not required. This is not intended to be a substantive change.

Subp. 5. Oral argument not permitted.

This subpart is not being amended.

9800.1500. PETITION FOR INTERVENTION.

The changes in this part include housekeeping changes to update and clarify the language, as well as the deletion of the requirement that intervenors appear at oral argument.

Subpart 1. Scope.

The proposed change in this subpart deletes the requirement that intervenors appear at oral argument. In many cases, an intervenor's interests relate to the interests of a party and the intervenor does not offer oral argument or simply indicates an agreement with that party. While intervenors are not required to appear at oral argument, they may, as parties to the litigation, participate in oral argument when it is granted pursuant to part 9800.100. This subpart also contains a nonsubstantive language change.

Subp. 2. Notice to potential intervenors.

This subpart is not being amended.

Subp. 3. Contents of petition.

The change in this subpart was a housekeeping change only, intended to clarify the language.

9800.1600. COMMENCEMENT OF APPEALS.

Subpart 1. Filing notice of appeal.

This subpart is not being amended.

Subp. 1a. Preparation of transcript.

The proposed changes in this subpart are housekeeping changes, intended to update and improve the clarity of the language.

Subp. 2. Notification of receipt of transcript.

The proposed change in this subpart is a housekeeping change, intended to update and improve the clarity of the language.

9800.1700. TAXATION OF COSTS AND DISBURSEMENTS.

This part is being amended to more accurately reflect the wording of Minnesota Statutes, section 176.511, subpart 2, which allows the court, within its discretion, to award reimbursement for actual and necessary costs and disbursements. As the part is currently written, awarding of taxable costs is mandatory. The proposed change is reasonable because it brings this part into conformity with the statutory language, thereby helping to eliminate confusion.

9800.1710. DISMISSAL.

The proposed change in this part is a housekeeping change, intended to improve the clarity of the language. Language was also added to reflect the fact that all dismissals under this part, whether granted upon motion of a party or ordered on the court's own

motion, are subject to a motion to reinstate. Untimely filing of a brief is not a jurisdictional defect.

9800.1720. SUBMISSION WHEN MEMBER OF THE COURT NOT PRESENT.

The proposed change in this part is a housekeeping change, intended to improve the clarity of the language. Additionally, the headnote is changed to simplify the wording.

9800.1800. SUSPENSION OF RULES.

This part is not being amended.

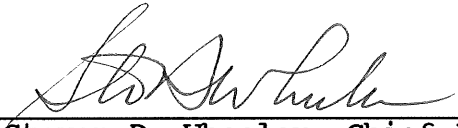
9800.1900. ATTORNEY FEES.

This new provision is intended to alert the bar to the fact that attorney fees on appeal are available in certain cases, within the court's discretion, and to clarify the statutory limits to such awards, as contained in Minnesota Statutes, section 176.511, subdivision 3. The provision also alerts the bar to the existence of guidelines for fee awards and to the place where notice of any change in these guidelines will be available. The provision is reasonable because it sets out the court's current practice and the requirements of the statute.

Conclusion

Based on the foregoing, the proposed amendments to the rules of procedure of the Workers' Compensation Court of Appeals are both necessary and reasonable.

6/2/94
Date


Steven D. Wheeler, Chief Judge

**State of Minnesota
Workers' Compensation Court of Appeals**

Proposed Permanent Rules of Procedure

Notice of Intent to Adopt Rules Without Public Hearing

Introduction. The Workers' Compensation Court of Appeals intends to adopt permanent rules without a public hearing following the procedures set forth in the Administrative Procedure Act, Minnesota Statutes, sections 14.22 to 14.28. You have 30 days to submit written comments on the proposed rules and you may also submit a written request that a hearing be held on the rules.

Agency Contact Person. Comments or questions on the rules and written requests for a public hearing on the rules must be submitted to: Randolph J. Hartnett, Staff Attorney, Workers' Compensation Court of Appeals, 775 Landmark Towers, 345 St. Peter Street, St. Paul, MN 55102, (612) 296-6526, and fax (612) 297-2520.

Subject of Rules and Statutory Authority. The proposed rules relate to the Rules of Procedure for practice before the Workers' Compensation Court of Appeals. The statutory authority to adopt the rules is contained in Minnesota Statutes, section 175A.07, subdivision 4. A copy of the proposed rules is published in the State Register and attached to this Notice as mailed. A free copy of the rules is available upon request from Randolph J. Hartnett, Staff Attorney.

Comments. You have until 4:30 p.m., Wednesday July 20, 1994, to submit written comment in support of or in opposition to the proposed rules or any part or subpart of the rules. Your comment must be in writing and received by the agency contact person by the due date. Comment is encouraged. Your comment should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed.

Request for a Hearing. In addition to submitting comments you may also request that a hearing be held on the rules. Your request for a public hearing must be in writing and must be received by the agency contact person by 4:30 p.m. on July 20, 1994. Your written request for a public hearing must include your name and address. You are encouraged to identify the portion of the proposed rules which caused your request, the reason for the request, and any changes you want made to the proposed rules. If 25 or more persons submit a written request for a hearing, a public hearing will be held unless a sufficient number withdraw their requests in writing. If a public hearing is required, the Workers' Compensation Court of Appeals will follow the procedures in Minnesota Statutes, sections 14.131 to 14.20.

Modifications. The proposed rules may be modified as a result of public comment. The modifications must be supported by data

and views submitted to the Workers' Compensation Court of Appeals and may not result in a substantial change in the proposed rules as attached and printed in the State Register. If the proposed rules affect you in any way, you are encouraged to participate in the rulemaking process.

Statement of Need and Reasonableness. A Statement of Need and Reasonableness is now available. This Statement describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules. A free copy of the Statement may be obtained from Randolph J. Hartnett, Staff Attorney, at the address and telephone number listed above.

Small Business Considerations. In preparing these rules, the Workers' Compensation Court of Appeals has considered the requirements of Minnesota Statutes, section 14.155, in regard to the impact of the proposed rules on small businesses and has concluded that the proposed rules accommodate the needs of small businesses. Generally, insurers and self-insured employers do not fit the definition of small business contained in Minnesota Statutes, section 14.115, subdivision 1. Health care providers are exempt as regulated businesses under Minnesota Statutes, section 14.115, subdivision 7(3). To the extent small businesses are effected, the amendments will serve to clarify procedure for them, as well as for all litigants. Any adverse effect of these proposed rules on small businesses would be minimal, and would be outweighed by the fact that creation of special exemptions or procedures for small businesses would detract from fairness, lead to procedural error, and jeopardize the court's integrity. The court's evaluation of small business considerations is addressed in the Statement of Need and Reasonableness.

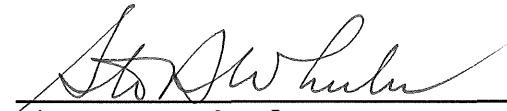
Expenditure of Public Money by Local Public Bodies. Minnesota Statutes, section 14.11, subdivision 1, does not apply because adoption of these rules will not result in additional spending by local public bodies in excess of \$100,000 per year for the first two years following adoption of the rules.

Impact on Agriculture Lands. Minnesota Statutes, section 14.11, subdivision 2, does not apply because adoption of these rules will not have an impact on agricultural land.

Departmental Charges. Minnesota Statutes, section 16A.1285, subdivisions 4 and 5, do not apply because the rules do not establish or adjust departmental charges.

Adoption and Review of Rules. If no hearing is required, after the end of the comment period the Workers' Compensation Court of Appeals may adopt the rules. The rules and supporting documents will then be submitted to the Attorney General for review as to legality and form to the extent form relates to legality. You may request to be

notified of the date the rules are submitted to the Attorney General or be notified of the Attorney Generals' decision on the rules. If you wish to be so notified, or you wish to receive a copy of the adopted rules, submit your request to the Randolph J. Hartnett, Staff Attorney, listed above.



Steven D. Wheeler
Workers' Compensation Court of Appeals
Date: June 2, 1994

1 Workers' Compensation Court of Appeals

2

3 Proposed Permanent Rules Relating to Workers' Compensation Court
4 of Appeals; Rules of Procedure

5

6 Rules as Proposed

7 9800.0100 DEFINITIONS.

8 Subpart 1. **Application.** For the purpose of parts
9 9800.0100 to ~~9800.1800~~ 9800.1900, the following terms have the
10 meanings given them.

11 Subp. 2. **Administrator Administrative judge.**

12 "Administrator Administrative judge" means the judge designated
13 by the chief judge of the court to receive documents and
14 consider motions, requests for extension, and other
15 miscellaneous matters filed with the court.

16 [For text of subps 3 to 5, see M.R.]

17 Subp. 6. **Filed.** "Filed" means the receipt and stamping of
18 a document by the court, division, or office, in conformity with
19 Minnesota Statutes, section 176.275.

20 [For text of subps 7 and 8, see M.R.]

21 9800.0300 PREPARATION AND FORM OF LEGAL DOCUMENTS.

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

26 9800.0310 SERVICE.

27 Copies of all notices, documents, and papers that any party
28 is required to file must be served by that party on all other
29 parties to the appeal or review. Service on a party represented
30 by an attorney must be made on that party's attorney of record.
31 If required by statute, service must be made on the party as
32 well as the attorney.

33 9800.0320 FACSIMILE TRANSMISSION.

34 Subpart 1. Accepted. The court shall accept facsimile

Approved MGW
by Revisor _____

1 transmission of any document not listed in subpart 2. Filing
 2 shall be deemed complete at the time that the facsimile
 3 transmission is received by the court, provided that
 4 transmissions received after the close of business at 4:30 p.m.
 5 shall be deemed received on the next day that the court is open
 6 for business. The filed facsimile will have the same force and
 7 effect as the original. Only facsimile transmission equipment
 8 that satisfies the published criteria of the Minnesota Supreme
 9 Court may be used for filing in accordance with this part.

10 Within five days after the court has received the
 11 transmission, the party filing the document must mail or deliver
 12 the original signed document to the court. Upon failure to do
 13 so, the court may make such orders as are just, including
 14 dismissal of the motion or application to which the document
 15 filed by facsimile transmission relates.

16 Subp. 2. Not accepted. The court shall not accept filing
 17 of any of the following documents by facsimile transmission:

- 18 A. notices of appeal or cross appeal;
 19 B. briefs or memoranda of law;
 20 C. applications to set aside award and grant new
 21 trial or responsive and reply pleadings thereto; or
 22 D. any other document exceeding three pages in
 23 length, not including the cover sheet.

24 9800.0510 NONAPPEARANCE OF COUNSEL.

25 If counsel for a party fails to appear to present oral
 26 argument, the court may hear argument on behalf of a party whose
 27 counsel is present, and the case will be decided on the briefs
 28 and argument heard. If no counsel appear for any party, the
 29 case will be decided on the briefs unless the court ~~shall~~
 30 otherwise ~~order~~ orders.

31 9800.0800 APPEAL OF ATTORNEY FEES BY-AN-EMPLOYEE.

32 ~~An-employee~~ A party dissatisfied with ~~the-employee's~~ an
 33 award of attorney fees may make application for review of the
 34 fees by completing an application form provided by the court
 35 pursuant to Minnesota Statutes, section 176.081, subdivision 3.

1 9800.0900 BRIEFS ON APPEAL.

2 Subpart 1. Filing of brief of appellant where a transcript
3 is required. Appellants and cross appellants shall file a
4 written brief, ~~which shall address only issues raised in that~~
5 ~~party's notice of appeal,~~ within 30 days after the court
6 receives the transcript. The brief may address only issues
7 raised in that party's notice of appeal. Issues raised in the
8 notice of appeal but not addressed in the brief shall be deemed
9 waived and will not be decided by the court. ~~The failure of any~~
10 ~~appellant or cross appellant to timely file a brief under this~~
11 ~~part may result in dismissal of that party's appeal under part~~
12 ~~9800.1710.~~

13 ~~The brief shall be accompanied by an affidavit stating that~~
14 ~~service of a copy of the brief has been made by the appellant~~
15 ~~upon all other parties to the action. The original brief and~~
16 ~~four copies shall be filed with the court in cases where a~~
17 ~~hearing is to be held. Only the original shall be filed where~~
18 ~~the hearing is waived by all parties.~~

19 Subp. 2. Filing of brief of appellant where no transcript
20 of the proceedings is required. Where no transcript of the
21 proceedings is required, appellants and cross appellants shall
22 file a written brief, ~~which shall address only issues raised in~~
23 ~~that party's notice of appeal,~~ within 30 days after the filing
24 of the notice of appeal. The brief may address only issues
25 raised in that party's notice of appeal. Issues raised in the
26 notice of appeal but not addressed in the brief shall be deemed
27 waived and will not be decided by the court. ~~The failure of any~~
28 ~~appellant or cross appellant to timely file a brief under this~~
29 ~~part may result in dismissal of that party's appeal under part~~
30 ~~9800.1710.~~

31 ~~The brief shall be accompanied by an affidavit stating that~~
32 ~~service of a copy of the brief has been made by the appellant~~
33 ~~upon all other parties to the action. The original and four~~
34 ~~copies shall be filed with the court in cases where an oral~~
35 ~~argument is to be held. Only the original shall be filed where~~

1 ~~the-oral-argument-is-waived-by-all-parties.~~

2 Subp. 3. Filing of brief of respondent. All respondents'
3 briefs ~~shall~~ must be filed with the court within 25 days after
4 ~~the-filing-of~~ the appellant's or cross appellant's brief is
5 filed. The respondent's brief ~~shall~~ may address only issues
6 raised in the brief of the appellant or cross appellant ~~and-must~~
7 ~~be-accompanied-by-an-affidavit-stating-that-service-has-been~~
8 ~~made-upon-all-other-parties-to-the-action.---The-original-and~~
9 ~~four-copies-shall-be-filed-with-the-court-in-cases-where-an-oral~~
10 ~~argument-is-to-be-held.---Only-the-original-brief-shall-be-filed~~
11 ~~where-an-oral-argument-is-waived-by-all-parties.~~

12 Subp. 5. Reply briefs. Reply briefs ~~shall~~ must be filed
13 within ten days after ~~the-filing-of~~ the respondent's brief is
14 filed. They ~~shall~~ may address only issues addressed in the
15 respondent's brief. ~~The-original-and-four-copies-shall-be-filed~~
16 ~~with-proof-of-service-upon-all-other-parties-when-an-oral~~
17 ~~argument-is-to-be-held.---Only-the-original-brief-shall-be-filed~~
18 ~~when-an-oral-argument-is-waived-by-all-parties.~~

19 Subp. 5a. Requirements for briefs. Any briefs filed under
20 this part must be accompanied by an affidavit stating that a
21 copy of the brief has been served upon all other parties to the
22 action, as provided in part 9800.0310. The original brief and
23 four copies must be filed with the court in all cases.

24 Subp. 6. Extensions Time limit for briefs. Extensions of
25 time for the filing of briefs shall be granted only for cause
26 and if requested within the time for the filing of the
27 brief. ~~Briefs-not-timely-filed-shall-not-be-considered-by-the~~
28 ~~court-unless-an-extension-of-time-for-filing-has-been~~
29 ~~granted.~~ The failure of any party to timely file a brief under
30 this part may result in the striking of that party's brief from
31 consideration, or if the untimely brief is that of an appellant
32 or cross appellant, in the dismissal of the appellant's or cross
33 appellant's appeal under part 9800.1710.

34 9800.0910 PREVIOUS DECISIONS.

35 All decisions of the court, published and unpublished, may

1 be cited in a brief or at oral argument. Where unpublished
2 decisions are cited in a brief, a copy of the decision cited
3 must be attached to the copies of that brief which are submitted
4 to all other parties. Where a party intends to cite, at oral
5 argument, an unpublished decision not noted in that party's
6 brief, copies of the decision must be provided to all other
7 parties at least ten days prior to the date of oral argument.

8 9800.0920 BRIEF OF AMICUS CURIAE.

9 Subpart 1. Filing. A brief of amicus curiae may be filed
10 with leave of the court. A request for leave to file an amicus
11 brief must be filed with the court and served upon all parties
12 prior to the time fixed for filing of the initial appellant or
13 cross appellant briefs. A request for leave must identify
14 whether the applicant's interest is public or private in nature
15 and must state the reasons why an amicus brief would be
16 beneficial to the court in resolving the issues.

17 Subp. 2. Time limit. An amicus brief must be filed within
18 the time limits applicable to the party or parties whose
19 position the amicus brief is intended to support, and must
20 conform with part 9800.0900, unless the court directs otherwise.

21 Subp. 3. Oral argument. An amicus curiae may not
22 participate in oral argument except with leave of the court.

23 9800.1000 ORAL ARGUMENTS ON APPEAL.

24 [For text of subpart 1, see M.R.]

25 Subp. 1a. Time allotted for oral argument. Unless
26 otherwise authorized by the court, each party shall be allotted
27 15 minutes to make its presentation to the court, including the
28 showing of motion pictures, ~~unless otherwise authorized by the~~
29 court.

30 Subp. 2. Motion pictures. Any party desiring to show
31 motion pictures at the oral argument must ~~so~~ inform the court
32 and all other parties in writing within 30 days after the
33 transcript is received by the court. This notice ~~shall~~ must
34 indicate the length of time necessary for viewing. The party
35 shall furnish the necessary projection equipment on the day of

1 the hearing. The court ~~shall~~ may on its own motion require the
2 showing of motion pictures when necessary for a full and fair
3 adjudication of a case.

4 9800.1050 REFERENCES OF QUESTIONS OF FACT.

5 The court may refer any question of fact to the chief
6 administrative law judge of the Office of Administrative
7 Hearings for assignment to a compensation judge to hear
8 evidence, make findings of fact, and report them to the court,
9 pursuant to Minnesota Statutes, chapter 176.

10 9800.1100 APPLICATION TO SET AWARD ASIDE AND GRANT A NEW HEARING.

11 Subpart 1. Applications. An application to set an award
12 aside and grant a new hearing ~~shall~~ must be ~~verified-and~~
13 accompanied by appropriate supporting affidavits ~~or,~~ medical
14 reports, and other documentary evidence, and by a memorandum of
15 law. The application ~~shall~~ must be filed with the court and
16 accompanied by proof of service on all parties to any award to
17 which the application applies.

18 Subp. 2. Cause. Each application must specifically state
19 the basis upon which cause to vacate the award may be found
20 pursuant to Minnesota Statutes, section 176.461, and the reasons
21 why that basis exists.

22 Subp. 3. Responsive pleadings. Responses and other
23 pleadings ~~shall~~ must be served upon all parties and filed with
24 the court within ~~20~~ 45 days after the filing of an application.
25 All responsive pleadings must be accompanied by appropriate
26 supporting affidavits, medical reports, and other documentary
27 evidence, and by a memorandum of law.

28 Subp. 4. Reply memoranda. Reply memoranda, if any, must
29 be served upon all parties and filed with the court within 15
30 days after the filing of responsive pleadings. They may address
31 only issues raised in any responsive pleadings.

32 Subp. 5. Hearing. Any party to a matter related to an
33 application under this part may be heard in oral argument. The
34 court shall inquire of the parties if they desire oral
35 argument. If no party requests oral argument, the court shall

1 make its determination on the pleadings and submitted evidence,
2 if such a determination can be made justly and expeditiously.

3 Subp. 6. Determination. The court shall grant the
4 application if it determines that cause exists pursuant to
5 Minnesota Statutes, section 176.461. ~~Applications shall be~~
6 ~~scheduled for hearing.~~

7 9800.1400 APPLICATIONS, PETITIONS, AND MOTIONS.

8 Subpart 1. Scope. All applications, petitions, and
9 motions for relief or consideration by the court, not otherwise
10 provided for in parts 9800.0100 to ~~9800.1800,~~ shall 9800.1900,
11 must be filed in the following manner and within the following
12 times accordance with this part.

13 Subp. 2. Procedures for filing. All requests for relief
14 under this part ~~shall~~ must be in writing, ~~verified,~~ and
15 accompanied by appropriate documentation. Requests must also
16 state the relief sought, and the basis therefor for the relief,
17 and be accompanied by an affidavit of service upon all other
18 parties to the action. All requests for relief must be served
19 and filed no later than ~~five working~~ ten days ~~before the time~~
20 ~~set for oral argument, if any~~ after the date on which the
21 respondent's brief or responsive pleading is due.

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

25 Subp. 4. Replies. A reply ~~shall~~ may be filed within five
26 working days after the ~~filing of a~~ response is filed.

27 Subp. 5. Oral argument not permitted. Oral argument on
28 applications, petitions, or motions shall not be permitted
29 except upon order of the court.

30 9800.1500 PETITION FOR INTERVENTION.

31 Subpart 1. Scope. Persons shall be permitted to intervene
32 ~~in accordance with the requirements of~~ according to Minnesota
33 Statutes, section 176.361, subdivision 1. ~~After a petition to~~
34 ~~intervene is granted, the intervenor must appear at all~~
35 ~~scheduled hearings of the court relating to the claim unless a~~

1 ~~written-stipulation-signed-by-all-parties-has-been-filed-with~~
2 ~~the-court-which-settles-all-issues-relating-to-the-intervention~~

3 [For text of subp 2, see M.R.]

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

8 9800.1600 COMMENCEMENT OF APPEALS.

9 [For text of subpart 1, see M.R.]

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

15 Subp. 2. Notification of receipt of transcript. The court
16 shall notify the parties of the date that the transcript was
17 received. This notification letter ~~shall~~ will also inquire
18 whether the parties desire an oral argument and if so, whether
19 parties prefer oral argument before the entire court or a three
20 member panel.

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

25 9800.1700 TAXATION OF COSTS AND DISBURSEMENTS.

26 The court ~~shall~~ may tax actual and necessary costs and
27 disbursements, as prescribed by Minnesota Statutes, section
28 176.511. Parties shall comply with the procedure in part
29 9800.1400 except that petitions under this part must be filed
30 within 45 days of the filing of the final appellate decision in
31 the main action.

32 9800.1710 DISMISSAL.

33 If any appellant or cross appellant fails to timely file a
34 brief as required by part 9800.0900, any party may move this

1 court for dismissal of the appeal. If the appellant or cross
2 appellant is in default for more than 30 days and no party has
3 moved for dismissal, the court ~~shall~~ may summarily order the
4 dismissal of the appeal or cross appeal without notice.

5 Dismissals granted or ordered under this part are subject to a
6 motion to reinstate.

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

12 9800.1720 SUBMISSION WHEN A MEMBER OF THE COURT IS NOT PRESENT.

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

22 9800.1900 ATTORNEY FEES.

23 The court may, in its discretion, make an award of
24 reasonable attorney's fees on appeal, as provided in Minnesota
25 Statutes, section 176.511, subdivision 3. The court shall
26 establish guidelines for the award of attorney's fees under this
27 part and shall periodically review these guidelines and place a
28 notice of any changes in the State Register.

29 REPEALER. Minnesota Rules, part 9800.1200, is repealed.

Office of the Revisor of Statutes

Administrative Rules



TITLE: Proposed Permanent Rules Relating to Workers' Compensation Court of Appeals; Rules of Procedure

AGENCY: Workers' Compensation Court of Appeals

MINNESOTA RULES: Chapter 9800

The attached rules are approved for
publication in the State Register

A handwritten signature in cursive script that reads "Marie O'Neill".

Marie E. O'Neill
Assistant Revisor