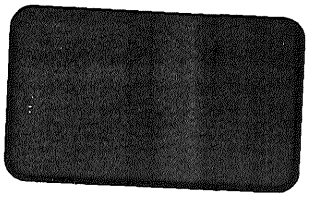

Proposed Amendments to the Joint Workers' Compensation Litigation Rules, Minn. R. 1415

STATEMENT OF NEED AND REASONABLENESS

I. INTRODUCTION

The Office of Administrative Hearings (OAH) and the Department of Labor and Industry (DLI) conduct proceedings to determine whether employees are entitled to workers' compensation benefits and who is responsible for payment. To maintain efficient and fair conferences and hearings, joint procedural rules have been adopted by both agencies. Chapter 1415 was last amended in 1984 (9 State Register, page 333). The Minnesota legislature has made a number of changes to Minnesota Statutes, chapter 176 since the rules were last amended. These changes have rendered some of the joint procedural rules in conflict with the statute. The agencies have also taken this opportunity to review the entire chapter of procedural rules in light of the legislative mandate to expedite workers' compensation hearings. 1992 Minn. Laws, chapter 510, article 2, section 15. The proposed joint rules delete conflicting or repetitive material and add provisions to further clarify issues of procedure in workers' compensation hearings and informal administrative conferences.

At the time the rules were last amended, the workers' compensation litigation process was initiated at the Department of Labor and Industry, referred to a unit of settlement judges, and continued at the Office of Administrative Hearings with a unit of hearing judges. The joint litigation rules were internally revised by the two agencies in the 1990s and an advisory committee assisted in drafting possible rule revisions. The process was halted in 1998 when a statutory change merged the settlement judge unit at DLI with the hearing judge unit at OAH. 1998 Minn. Laws, chapter 366, Section 80, effective April 7, 1998. As a result of the transfer and the related transfer of statutory duties and powers, the majority of the rule provisions address matters now within the authority of the Office of Administrative Hearings.

Regarding the workers' compensation litigation process, the Department of Labor and Industry remains responsible for matters such as maintenance of workers' compensation injury files, computer imaging and filing of documents, and informal administrative conferences. Additionally, DLI has authority to prescribe various forms

used in litigation and authority to enforce compliance with the Workers' Compensation Act. OAH is responsible for the remainder of the litigation process, conducting hearings and other pre-hearing matters as well as informal administrative conferences. These proposed rules seek to separate matters relating only to OAH into one set of procedural rules, and revise the procedural matters relating to both agencies in joint rules. The revisions are needed to update the organization of the rules to better reflect the responsibilities of OAH and DLI following the merger legislation in 1998, and to update the rules based upon changes in statutes and procedures in the 20 years since the rules were last revised.

Rules relating to both agencies are retained in chapter 1415. Rules relating only to litigation at OAH are repealed in chapter 1415, moved to chapter 1420, and revised. Some unnecessary rules are simply repealed. A few rules from chapter 5220 (DLI Rules of Practice) are also moved into either chapter 1415 or 1420. These rules address either informal administrative conferences conducted by DLI and/or OAH, or other litigation matters.

An emphasis of the amendments is on eliminating unnecessary rules that state the obvious or restate the statute. The agencies have attempted to streamline the rules so that they provide needed detail but avoid providing step-by-step instruction on every aspect of the litigation process. Many situations call for a case-by-case analysis based upon the governing statute, case law, and the facts. Attempts to cover all possible fact patterns by rule is cumbersome and ineffective and has, therefore, been avoided.

Should the rules go to hearing, witnesses on behalf of the agencies will include persons within the agencies or individuals practicing in the workers' compensation field with expertise in the area at issue. Their testimony will pertain to the problem being addressed in the rules, the need for the rule at issue, and the reasonableness of the given proposed solution.

II. ALTERNATIVE FORMAT

Upon request, this Statement of Need and Reasonableness (SONAR) may be made available in an alternative format, such as large print, Braille, or cassette tape. To

make a request, contact Sandra Haven at the Office of Administrative Hearings, 100 Washington Avenue South, Suite 1700, 612-341-7642 or fax number 612-349-2665. TTY users may call OAH at 612-341-7346.

III. STATUTORY AUTHORITY

All sources of statutory authority were adopted and effective prior to January 1, 1996, and so Minnesota Statutes, section 14.125 regarding time limits to adopt, amend, or repeal rules does not apply. See 1995 Minn. Laws, chapter 233, article 2, section 58.

OAH has general rulemaking authority to adopt procedural rules relating to matters within its jurisdiction, including workers' compensation matters. The authority is contained in Minn. Stat. § 14.51 (rules governing the procedural conduct of workers' compensation hearings) and 176.83, subd. 12 (rules relating to matters pending before a compensation judge). OAH has authority pursuant to Minn. Stat. § 176.312 to establish rules regarding procedures to request a judge reassignment, and under section 176.155, subd. 5 to prescribe the format for submission of medical reports into evidence. Additionally, there is authority to adopt joint rules with DLI and also with the Workers' Compensation Court of Appeals for the orderly processing of claims or petitions. Minn. Stat. § 176.83, subd. 10. Both OAH and DLI have authority to adopt rules regarding the service of documents in workers' compensation claims. Minn. Stat. § 176.285. There is joint authority for OAH and DLI to adopt rules affecting obligations regarding attorney fees in workers' compensation cases and to establish sanctions for a party's failure to appear, prepare for, or participate in a conference or hearing. Minn. Stat. § 176.081, subd. 6 and 12.

DLI has general rulemaking authority relating to matters within its jurisdiction, including workers' compensation matters. This includes workers' compensation rules of practice regarding matters not before compensation judges (Minn. Stat. § 175.17(2)), rules governing its proceedings and the mode and manner of all investigations and hearings relative to the exercise of its powers and duties (Minn. Stat. § 175.171(2)), and rules to implement chapter 176 (176.83, subd. 1). In addition to the statutory authority previously mentioned, DLI has authority to prescribe forms and other reporting procedures that are required under chapter 176 (Minn. Stat. § 176.231, subd. 5 and

176.83, subd. 15), to adopt rules governing the intervention of other parties into workers' compensation claims (Minn. Stat. § 176.361, subd. 1 and Minn. Stat. § 176.83, subd. 9), and to adopt rules necessary to implement the law regarding the discontinuance of benefits.

IV. ISSUES OF NEED AND REASONABLENESS

The question of whether a rule is reasonable focuses on whether it has a rational basis. A rule is reasonable if it is rationally related to the end sought to be achieved by the statute. Broen Memorial Home v. Minnesota Department of Human Services, 364, N.W.2d 436, 440 (Minn. App. 1985); Blocker Outdoor Advertising Company v. Minnesota Department of Transportation, 347 N.W.2d 88, 91 (Minn. App. 1984). An agency must "explain on what evidence it is relying and how the evidence connects rationally with the agency's choice of action to be taken." Manufactured Housing Institute v. Pettersen, 347 N.W.2d 244 (Minn. 1984). Need is established by identifying a problem requiring administrative attention.

The amendments to the proposed rules are intended to take advantage of the experiences of the Office of Administrative Hearings and the Department of Labor and Industry, Workers' Compensation Division, in presiding over the thousands of hearings and other proceedings held since the procedural rules for workers' compensation litigation were adopted. The amendments delete portions of the existing rules that are outmoded or already contained in the workers' compensation statute, Minnesota Statutes, chapter 176. Other amendments are made to conform the rules to the current language of that statute. The rules are needed to ensure that fair and efficient access to the workers' compensation system is available for litigants and their representatives.

The determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule and alternative methods seriously considered and why they were rejected will be found in the discussion of the specific rule in instances in which the rule generated considerable discussion or controversy.

V. COSTS OF COMPLIANCE AND ENFORCEMENT

Minn. Stat. § 14.131(2) and (5) require an assessment of the probable costs to the government and other affected parties of implementation and enforcement and the probable costs of complying with proposed rules. Section 14.131(6) requires an analysis of the costs or consequences of not adopting the rules. Minnesota Statutes § 14.131(2) requires an estimate of the expenditure of public funds by agencies. The proposed rule amendments will not require the expenditure of public money by agencies or units of local government. The changes affect only the procedures by which disputed claims are litigated and are intended to streamline, not complicate, the existing rules. The proposed changes will not increase the costs incurred by agencies or units of local government or of other parties in litigating workers' compensation cases. If the changes have their intended effect, litigation costs for all parties will decrease by providing clear procedures and timely resolution of claims. If the rules are not adopted but remain outdated, the parties will not have an accurate source containing the current litigation procedures. As a result, if the rules were not adopted, the parties would spend extra time and effort to determine the appropriate procedure and take necessary action. The rules are updated to conform to current practice in most instances and make minor procedural changes without any significant fiscal impact.

No performance standards are set by the proposed rules, so no relaxation of such requirements is possible. Similarly, reporting requirements are not generally established. Few schedules or deadlines for compliance or reporting standards exist under these rules. The proposed rules establish timelines for completion of specific components of litigation in workers' compensation cases. These timelines are needed to expedite all types of hearings and obtain compliance with Minn. Laws, 1992, Ch. 510, Art. 2, Sec. 15, which seeks completion of 50 percent of hearings within two hours, 75 percent within four hours, and nearly all within one day. Exemptions for these timelines are available for good cause on a case-by-case basis. Only through the uniform application of the rule requirements can the workers' compensation case system meet its goals for timely and efficient hearings. Exceptions may be made in individual fact situations as allowed by the governing statute and the rules, based upon the facts of a particular case as presented to the judge. Through the proposed changes, OAH and DLI have attempted to reduce the overall volume and complexity of these rules.

There are no existing federal regulations governing Minnesota workers' compensation litigation procedures. Therefore, there is no analysis provided of differences between these rules and federal rules.

VI. PERSONS AFFECTED, ADDITIONAL NOTICE GIVEN

Classes of persons who probably will be affected by the rule amendments include attorneys who litigate workers' compensation matters and the judges who preside over them. Their clients, the employees and insurers, and employers will be less directly affected. Intervenors, who are not required to be represented by attorneys, should be helped by the provision requiring notice to them of time limits for submitting claims and instructions regarding how to obtain the rules, statutes, and forms relating to the intervention process. Clearer requirements are provided regarding notice to potential intervening parties. Procedures regarding the need for appearances by intervenors are required by the governing statute. Intervenors include health care and rehabilitation service providers as well as entities that have paid wage loss or other benefits in lieu of workers' compensation payments. As explained in more detail elsewhere, because the rules are procedural, it is anticipated that any change in costs will be a decrease due to more efficient procedures. The rules eliminate unnecessary, overly detailed, and arguably burdensome requirements.

The Request for Comments and the Notice of Intent to Adopt Rules Without a Public Hearing (NIARWPH), in addition to being published in the State Register, were placed on the OAH web site, mailed to attorney trade organizations (the Minnesota Trial Lawyers Association and the Minnesota Defense Lawyers Association), the Workers' Compensation Court of Appeals, and to legislative committee chairs and ranking minority members of the policy and budget committees having jurisdiction over the subject matter of the rules.

The Request for Comments and NIARWPH were also given or mailed to the members of the Workers' Compensation Insurers' Task Force; the members of the Workers' Compensation Advisory Council comprised of employer and employee representatives; members of the Rehabilitation Review Panel comprised of rehabilitation, medical, employer, and labor representatives; members of the Medical

Services Review Board; medical and other associations interested in workers' compensation regulation, and to individuals or firms who receive workers' compensation litigation notices in batches from OAH because OAH sends a high volume of notices to these persons and firms. The batch notice list includes attorneys, insurers, and representatives of entities intervening as a party in workers' compensation proceedings. The NIARWPH was also sent to all persons who commented on the rules.

In addition to all of the above additional notice, the Request for Comments was published in CompAct, the workers' compensation electronic newsletter published on the Department of Labor and Industry's website, and the NIARWPH was e-mailed to the CompAct e-mail list, which consists of 371 people who wish to be notified when CompAct is published. The DLI web site also included links to the OAH web site, which contains the preliminary drafts of the rules, the Request for Comments, the NIARWPH, the proposed rules, and the Statement of Need and Reasonableness. These documents were also sent by mail at the request of constituents.

As a result of the above additional notice, (and in addition to website "hits" and the more than 850 persons on the official agency rule mailing lists) the Request for Comments and NIARWPH were distributed to over 500 individuals and organizations representing all of the primary groups of persons affected by the proposed rules: injured employees, employers, workers' compensation insurers, workers' compensation attorneys, health care providers, and entities paying for workers' compensation medical care or lost wages.[1]

VII. OTHER CONSIDERATIONS

Because the rules implement Minnesota Statutes, there are no existing federal regulations in the area. Analysis under Minn. Stat. § 14.131(6), therefore, is not applicable. Minnesota Statutes § 14.11 imposes additional requirements where the proposed rules affect farming operations. The proposed rules will affect only workers' compensation litigation. These proposed rules will not have any significant impact on farming operations. Therefore, the additional requirements do not apply.

[1] Because all of the lists consist of persons interested in workers' compensation matters, some of the names and organizations appear on more than one list.)

VIII. SPECIFIC RULE PROVISIONS (Please note that subparts not addressed in this SONAR are unchanged from the existing rule language.)

1415.0100 Scope and purpose.

The changes to this part broaden the scope of the rules to include both formal and informal proceedings within the current authority of DLI and OAH. The settlement judges from DLI and their former workload were transferred to OAH by legislation in 1998. Therefore, the scope section need only currently refer to litigation before compensation judges. All of the workers' compensation judges at OAH are compensation judges who generally are assigned to both settlement and hearing work. Therefore, there is no need to use the term "settlement judge" here or elsewhere throughout the rules. The current rules limit the scope of chapter 1415 to formal litigation only. The proposed rules transfer the DLI rules regarding informal administrative conferences into chapter 1415. Therefore, the scope and purpose section is revised to indicate that this chapter covers both informal and formal litigation procedures. The rule amendments propose that some of the current parts of chapter 1415 (those that relate to OAH only) be moved to a new chapter in part 1420. The scope and purpose section is modified to refer the reader to chapter 1420 as well as chapter 1415 for the complete set of litigation procedural rules. Appellate litigation rules of the Workers' Compensation Court of Appeals are also cross-referenced to assist the reader is locating appellate procedural rules.

Additionally, statutory citations are updated to reflect the correct citations for the statutory sections governing informal administrative conferences.

1415.0200 General authority.

This part is deleted as unnecessary. The authority of the judges and assignment of cases to judges is sufficiently covered in the governing statutes and general principles of administrative law.

1415.0300 Definitions.

Subpart 1. Scope. To avoid the need to change subpart 1 every time a new rule is added to the beginning or the end of the rules, the first sentence refers to "this chapter" instead of listing the specific parts.

Subpart 3. Board. The "Board" definition concerning the Medical Services Review Board is not needed. The rules no longer refer to the Board.

Subpart 4. Calendar judge. The "calendar judge" definition is deleted as unnecessary. The proposed rules simply refer to the "judge" instead. Functions of the judge currently assigned to calendar duties change from time to time and often overlap somewhat with the role of the judge assigned to the case. For example, some issues are handled by the calendar judge when the assigned judge is unavailable or when there is no assigned judge. Other issues on cases not assigned to a particular judge are randomly assigned to a judge who may or may not be the calendar judge. The current definition creates confusion rather than clarity and is, therefore, deleted.

Subpart 5. Chief judge. "Administrative law" is deleted from the title "chief administrative law judge" for ease of use and brevity.

Subpart 7. Compensation judge. The definition of "compensation judge" is already contained in the statute and is, therefore, unnecessary.

Subpart 8a. Days. A definition of "days" is added to clarify that its use in the rules generally refers to calendar days, and also to refer the reader to the general statute concerning how to calculate time periods. No substantive change is intended.

Subpart 10. DVR. This subpart is repealed because the Division of Vocational Rehabilitation (DVR) at the Department of Economic Security no longer exists. DVR was moved to the Department of Labor and Industry and its name changed to Vocational Rehabilitation Unit. Additionally, the rules no longer refer to this unit and, therefore, the definition is not needed.

Subpart 10a. Imaging. A definition of "imaging" is added. The rules and Statement of Need and Reasonableness refer to the computer imaging system that displays most workers' compensation files. The new definition briefly describes the imaging process that converts images on a paper document to a computer screen and places that image into a computer file related to a particular employee and injury. Subsequent to the imaging process, the image is available to DLI and OAH electronically and the paper is confidentially recycled. The computer image is also sent to an agency staff member as appropriate based upon the type of document filed. The definition

provides a brief explanation regarding use of the term "imaging" in the rules and in the workers' compensation system generally.

Subpart 10b. Insurer. A definition of "insurer" is added for clarity. It is generally understood in the workers' compensation system that use of the term "insurer" refers to the entity responsible for paying workers' compensation benefits on behalf of the employer. When the employer is self-insured, the employer is also the insurer. When the employer is uninsured, the Special Compensation Fund acts as the insurer under Minn. Stat. § 176.183 with a right of recovery from the employer. As used in these rules, "insurer" refers to all three entities: the workers' compensation insurer of an employer, a self-insured employer, and the Special Compensation Fund in uninsured cases.

Subpart 11. Fund director. The definition of "Fund director" is deleted as unnecessary. The proposed rules do not refer to the Fund director.

Subpart 11a. Intervenor. A definition of "intervenor" is added. The term "intervenor" is used in the statutes and rules and needs to be defined for uniform usage. An "intervenor" is "a party who has an interest in a workers' compensation proceeding such that the person or entity may gain or lose by an order or decision in the case" and that has filed a motion to intervene pursuant to Minn. Stat. § 176.361. The definition is added for clarity and to simplify rule language by using one term rather than repeating the statutory phrase defining an intervenor. It is not intended as a substantive change.

Subpart 12. Judge. The "judge" definition is updated to reflect the current statute and agency organization. The designation of a judge as a "calendar judge" or "settlement judge" is removed as unnecessary and redundant. A calendar judge or settlement judge is a workers' compensation judge.

Subpart 14. Panel. The definition of "panel" has been repealed. The proposed rules do not refer to the Rehabilitation Review Panel.

Subparts 15 and 16. Petition; Petitioner. The definitions of "petition" and "petitioner" are slightly modified by adding a phrase to clarify that a petition is sometimes filed by or on behalf of a party other than an injured or deceased employee, employer, insurer, or special compensation fund. For example, a medical provider, the DLI, or a rehabilitation provider may file a claim in limited circumstances. The expanded definition reflects current practice.

Subpart 17. Settlement judge. The definition of "settlement judge" is deleted as unnecessary for the reason expressed under subpart 12 above and part 1415.0100 above.

Subpart 18. Potential intervenor. A definition of "potential intervenor" is added for clarity. The term was occasionally used in the rules before these amendments and is more frequently used in the rules as amended. The definition describes a person or entity who has the right to file a motion to intervene as a party under the applicable statute and rule, but who has not filed a motion to intervene as a party. The definition assists the rule reader in understanding the application of the rules regarding intervenors and potential intervenors.

1415.0400 Medical authorizations.

This rule is deleted as unnecessary. Requirements regarding medical authorizations and procedures for failure to do so are contained in Minn. Stat. § 176.291.

1415.0500 Legal documents.

The filing requirements for documents are set by part 1415.0500. A requirement that documents must be filed on white paper is added. Documents on colored paper are not as suitable for imaging into the state computerized file system; they are more difficult to read and are sometimes not readable. A cross-reference to Minn. Stat. § 176.275, a section requiring basic identifying information on all documents, is added. A 1995 amendment to section 176.275, subd. 1 allows documents that do not contain the basic case identifying information to be returned to the sender. The cross-reference alerts the rule user to this requirement. Section 176.275 requires the employee's name, social security number, and date of injury as well as the name of the employer and insurer. The partial list in the rule of identifying information required by section 176.275 is deleted and replaced with a statement that all of the case identifying information under 176.275 must be provided. The rule is also updated to indicate that only pleadings and motions must include the case caption listing the parties to the claim. Other documents must contain the case identifying information required by section 176.275, but not necessarily in the form of the case caption. For example, a medical report pertaining to a workers' compensation claim must include the employee's name and social security number, the injury date, and the name of the employer and insurer, however, that information may be contained in the body of the document rather than in the form of a caption used on legal pleadings. The rule as amended conforms with current practice.

1415.0600 Examination of Workers' Compensation Files.

This part is slightly modified to clarify that, generally, review of workers' compensation files by the public takes place at DLI. Most files are now available on a computer imaging system so that files pending at OAH may be reviewed at DLI using the computer system. DLI provides a file review area for appropriate parties to review either a paper or computer imaged file. If the file is only available in paper format and the file is currently located at OAH, the review process must necessarily occur at OAH. The rule change directs the party to the preferred agency for review.

1415.0700 Service and filing.

Subparts 1 and 2 both eliminate "authorized agents" because only attorneys represent parties in workers' compensation litigation proceedings. Minn. Stat. § 481.02 and Op. Atty. Gen. 523a-29, 3-17-70.

Subpart 1. Service by state. The language added to the first paragraph of subpart 1 and to subpart 2 updates workers' compensation practice by allowing service either by the state or by a party by fax or by electronic mail, where authorized by the recipient. The transmission of documents by facsimile has generally become accepted since the issuance of the Minnesota Supreme Court's Order on Facsimile Transmission dated November 21, 1988. The recipient retains the right, however, to elect not to receive fax or electronic mail. A recipient may be burdened by lengthy faxes, for example, and agree to receive only those of a reasonable length, or a business lacking appropriate internal procedures to routinely receive electronic mail may decline to do so. Electronic mail is rapidly becoming commonplace and efficient, however, so it is included in the allowed means of service under the specified circumstances.

The second paragraph of subpart 1 clarifies document service requirements by the state on a party represented by an attorney. The various statutory provisions on service and who is required to be served are summarized by the clarification that, generally, service on the attorney constitutes service on the party. In those instances in which the statute also requires service on the represented party such as awards and notices of hearing, however, the rule gives that detail. Minn. Stat. §§ 176.281, 176.106, subd. 3; 176.239, subd. 7; 176.305, subd. 1, etc. The documents also served directly on

the party even when the party is represented by an attorney are those documents that are particularly significant in the case, those that decide substantive issues and provide notice of scheduled or cancelled proceedings.

Subpart 1a. Digitized signatures. Subpart 1a sets out procedures for digitized signatures as allowed by Minn. Stat. § 176.281. The digitized signature, to ensure authenticity, must be either personally affixed by the signatory or that individual must instruct another employee to do so. The digitized signature must be accompanied by a typed name and issuance date. Anyone desiring to confirm the authenticity of the digitized signature may contact the issuing agency to verify that it was properly affixed; DLI or OAH will check its electronic records to confirm or deny the electronic issuance. The digitized signature certificate (in lieu of an original signature) must indicate how the reader may verify the authenticity of the signature. This procedure is very similar to current procedures with handwritten signatures. The agency internal record of issuance will either confirm or deny that a document was authorized and sent. The OAH internal agency record is contained in a computer record called the record book.

Subpart 2. Service by parties. Subpart 2 governs service by the parties. The existing language permits a party to serve documents on another party by first class mail or personal service. There has been confusion over whether in workers' compensation proceedings, service on the attorney is sufficient or whether every document must also be served on every party. There has also been uncertainty regarding whether service on the party is sufficient in absence of service on the attorney. The proposed changes in subp. 2 resolve these questions by providing that generally only the attorney must be served. This eliminates confusion and follows existing practice in district courts. The exception to the general rule is where the governing statute provides otherwise. For example, a report of maximum medical improvement must be served on the employee and the employee's attorney pursuant to Minn. Stat. § 176.101, subd. 1(j). "Proof of service" is modified to read "affidavit of service" to clarify that an affidavit is needed to prove that the appropriate service was made. The rules used "proof of service" and "affidavit of service" interchangeably. Here and in other places in the rules, "affidavit of service" is used to more accurately describe the required procedure. The rule is consistent with current practice.

Subpart 4. Filing with state. A new subpart is added to this rule to instruct the parties concerning when to file documents with DLI and when to file them with OAH. The rule also addresses filing originals versus copies of original documents.

Item A. Filing a document in a workers' compensation case is generally accomplished by sending the document to the Department of Labor and Industry. DLI then produces a computer image of most documents (except for some documents in older files that are kept in paper form) and places the computer image into the appropriate computer file for use by both DLI and OAH. The general mailing address for both DLI and OAH concerning litigated workers' compensation claims is the DLI address in St. Paul. This subpart permits filing by mail, in person, or through facsimile transmission during regular office hours. Mail and facsimile transmissions received by 4:30 p.m. on a business day are deemed filed on the date received. Mail and faxes received after 4:30 are filed as of the next state business day. This is the current longstanding practice.

Item B. For the limited situations requiring immediate attention by OAH within two business days, the document is filed at OAH. DLI places the documents into the computer imaged file within two business days; therefore, it is generally only the documents that need to be immediately viewed by someone at OAH in less than two business days that would warrant filing the document directly with OAH. Stipulations for Settlement are handled within two business days; they are frequently approved by the judge within two days and at a minimum would be assigned to a staff member or judge for review within two days. Therefore, the rule indicates that Stipulations for Settlement are filed directly with OAH. Other exceptions to the usual rule that documents are filed with DLI include exhibits filed at the time of hearing at OAH, pre-filed exhibits for a video proceeding at OAH, and notices of appeal under Minn. Stat. § 176.421. The notice of appeal is specifically required to be filed at OAH by section 176.421, subd. 4.

Exhibits are an exception to the usual rule that documents relating to workers' compensation cases are filed with DLI. The exhibit exception to filing everything at DLI is noted in this filing rule so that the parties are clearly advised concerning the proper handling or submission of exhibits. Exhibits are generally handed to the judge at hearing with the exception of exhibits for hearings to be conducted by video technology that must be pre-filed so that all parties and the judge have access to them, and exhibits allowed to be filed after the hearing. Exhibits are all filed at OAH, whether given to the judge or delivered for a video hearing or post-hearing review. These are documents that are needed immediately by the judge to render a decision and are typically lengthy so that it is not practical for them to be imaged, for the paper to be destroyed, and then for the exhibits to be reprinted for use by the judge in rendering a decision.

Item C. Item C addresses whether the party should file an original document or a copy with the state. Copies should generally be filed rather than originals, but originals may be required where the quality or authenticity of a document is at issue. In such cases, DLI would notify the party that an original is needed to resolve the authenticity or readability problem. The parties retain the original document and file a copy because the computer imaging process includes destruction of the submitted documents after the document is imaged. Therefore, the parties are instructed to retain the original document so that it is not destroyed, except where the statute or rule requires an original document such as a notice of appeal as described above. In the case of Stipulations for Settlement, the parties will typically file an original directly with OAH so that action may be immediately taken, and also retain an original for their own records. Even if an original Stipulation for Settlement is sent to DLI for imaging and destroyed, the party's retention of another original is helpful in the event of any question about authenticity.

Item C prohibits the filing of the original notice of appeal to the Workers' Compensation Court of Appeals by facsimile. Minnesota Statutes § 176.421, subd. 4, requires appellants to file the "original notice" when taking appeals to the Workers' Compensation Court of Appeals. The prohibition against facsimile filing of the notice of appeal is meant only to provide notice to litigants and practitioners that such a filing would be ineffective under Minn. Stat. § 176.421, subd. 4, which requires the filing of the "original notice."

Subpart 5. Electronic or fax filing. A new subpart 5 sets out the acceptable methods of filing for easy reference. Subpart 5 is needed and reasonable to integrate facsimile filing into the methods available to litigants for filing. This additional method of filing will ease the pressure on litigants and practitioners imposed by filing deadlines. The original signed documents need not be filed in addition to the facsimile; this will avoid a great deal of duplicative work by judges and support staff.

Documents may be faxed or electronically submitted, but only as authorized by the recipient, DLI or OAH. Facsimile filings are acceptable if they are 15 pages or less in length. Longer faxes tie up the fax machine, thereby preventing the machine from being used by other parties or by the agency for outgoing documents. Electronically received documents other than facsimile present all kinds of receipt and handling problems if electronic receipt is not expected or approved. For example, a document may be sent to a recipient who is not available, or to an address that is no longer used, or the recipient may not have the knowledge or ability to act on the received document or to redirect the

document to the appropriate place, or the format may be unreadable by the recipient. Therefore, electronic transmission must be approved by DLI or OAH prior to submission in that manner.

Faxed and electronically submitted documents are generally treated in the same way as originals so long as the authenticity of a document is not disputed and the quality of the transmission is acceptable. Obviously, if authenticity or readability is an issue, originals may be needed in place of copies until any discrepancy or readability issue is resolved. The rules allow the parties and the agencies to use copies and electronic transmissions in the way that ordinary citizens use such documents in their day-to-day lives. The procedures allow multiple filing methods as appropriate to the situation. The rule reasonably balances the need for efficient procedures with the need for verified and accurate information.

1415.0800 Notice of representation.

Subpart 1. Filing. Notices of representation are required of attorneys to provide DLI or OAH with an accurate identification and address for each party's attorney. By statute, signed retainer agreements are only required of attorneys representing employees and this exception is now noted in the first sentence of item A. The rule is expanded to require a notice of attorney representation from all attorneys. A notice of representation is not needed, however, where the attorney has signed a pleading as the attorney for a party or filed a retainer agreement. In such cases, the pleading or retainer agreement serves as a notice of representation by providing the same information. The rule is amended to reflect current practice. Language is added to the rule to indicate that the attorney for the employee need not file both a notice of representation and a retainer agreement, thereby lessening the burden on attorneys for employees. The employee's social security number and injury date is required on all documents by Minn. Stat. § 176.275 and also by part 1415.0500; language requiring its use is therefore deleted from the rule as unnecessary.

The language of item B concerning service of the notice of representation is modified to contain a cross-reference to the service rule. These rule amendments generally delete references regarding service from individual rules. Service is required as provided in part 1415.0700 unless otherwise stated. Paragraph C is deleted as unnecessary. The cited subdivision was repealed in 1995.

Subpart 2. Substitution of attorney. Changes in subp. 2 reflect the expansion of the rule to all attorneys, as noted above. This subpart is also modified to remove the requirement that a substitution of attorney form must be filed when a party changes attorneys. The attorney substitution form required signatures of both the former attorney and the new attorney. This procedure is simplified, requiring the filing of only a new notice of representation and a copy of the retainer agreement (for employee representation). Instead of requiring the signature of the former attorney, the rule requires service of the new notice of representation and retainer agreement on the parties, including the former attorney. It is not necessary for the attorney no longer representing the party to agree to the substitution; the party has the right to make that choice. The former attorney and the state must be notified, however, of the change in representation. This is the procedure that is currently accepted by OAH as sufficient notice of a change in representation. The rule does not seek to discourage communication among attorneys during a change in representation, but to simplify the procedure for documenting a change in attorney representation.

Subpart 3. Appearance without attorney. Subpart 3 is deleted as unnecessary. The judge has a duty to conduct a fair and impartial hearing and will appropriately provide information to an unrepresented party about the proceedings as needed under the individual circumstances.

1415.0900 Notice of claim for workers' compensation benefits.

Part 1415.0900 is repealed because the applicable statutory provision on which the rule part was based, Minn. Stat. § 176.271, subd. 2, was repealed in 1987.

1415.1000 Commencement of proceedings.

Subpart 1. Commencement of proceedings. In subpart 1, the rule is changed to require that all petitions by any party (except for intervenor claims or where otherwise provided by law) must contain the information specified in this subpart. Previously, only petitions filed by the employee were covered by the rule. The applicable information is just as vital when the petition is from the employer or insurer; e.g. in petitions to discontinue benefits or a claim for contribution from one insurer to another. This rule only applies to formal litigation, therefore, administrative conference requests (initiating

informal litigation) are excluded from the requirements of this part. This exclusion is necessary given the broadened scope of the rules in part 1420.0100 to otherwise include administrative conferences. A change is also made to require petitions to be in the format prescribed by the Division, rather than on the exact form. This is reasonable because it allows parties to use computer-generated forms provided all information is kept in the same location on the form. This balances the state's need to easily find the information needed with the party's need to easily provide the required information.

Item E of subpart 1 is deleted because the position that the employee held at the time of injury is not needed on the claim petition. This is information that is frequently only marginally relevant to the dispute. In item K (renumbered at J), the broader term "potential intervenor" is substituted for the deleted language that lists only some of the potential parties who may stand to gain or lose by a decision in the case as provided in Minn. Stat. § 176.361. This is consistent with current practice and section 176.361 requiring notice to all potential intervenors. Item L regarding any need for an interpreter or reasonable accommodation of disability is added to assist OAH and DLI in compliance with federal and state laws such as the federal Americans with Disabilities Act and state Human Rights Act and Minn. Stat. § 546.43.

Subpart 2. Service of petition, filing. Subpart 2 eliminates redundancy in service requirements. The definition of adverse party is eliminated as unnecessary. Also, this definition applied only to employee petitions. Part 1415.1000 has been expanded to include petitions by any party as explained above. The rule is simplified to indicate that the petition must be served on all other named parties. This is consistent with current practice. The notice of claim requirements in Minn. Stat. § 176.271, subd. 2 were repealed as explained above in part 1415.0900; therefore, reference to the notice of claim is removed. Obviously, all other parties are entitled to a copy of all attachments to the petition to satisfy basic due process notice requirements and allow an informed response. The word "original" is deleted to conform to the change in 1415.0700, subpart 4 providing that the party retain the original and file a copy to prevent destruction of the original after computer imaging. Some claims require vocational support as well as medical support; therefore, "vocational" is added to the list of supporting documents that may be required in a particular claim. "Proof of service" is modified to read "affidavit of service" to clarify that an affidavit is needed to prove that the appropriate service was made. The rules used "proof of service" and "affidavit of service" interchangeably. Here

and in other places in the rules, "affidavit of service" is used to more accurately describe the required procedure.

Subpart 3. Defects in petition. This subpart is deleted as unnecessary. Procedures for defects in petitions previously contained in subpart 3 are covered by Minn. Stat. § 176.305, subd. 4. No further details are needed beyond the statutory provisions.

Subparts 4 and 5. Amended petitions and requests; letter amendment to petition and request. The former subpart 4 regarding amended petitions is revised and further clarified. Service of amended pleadings is already covered by the general service rule in part 1415.0700, subp. 2, therefore, general language regarding service is deleted. A cross-reference to rule 1420.1300 is added to direct the reader to special service requirements regarding amended petitions. Part 1420.1300 contains important service requirements concerning the information that must be provided to the new party and who is responsible for doing so. New language added to subpart 4 clarifies when a party must file an Amended Claim Petition or Amended Medical or Rehabilitation Request (when changing a party to a claim or injury date) as opposed to the less cumbersome procedure of amending a petition by changing a benefit claim by letter (addressed in subpart 5). When a party or injury date changes, the filing party must file an Amended Petition or Amended Request, clearly setting out the named parties and injury dates in the dispute. This avoids confusion regarding party identification, communicating what parties are in or out of the dispute as well as what injuries are being addressed in the litigation. If the petitioner seeks to join a new party less than 120 days before a hearing, a motion requesting joinder of another party is required. It cannot be assumed that a new party may be joined by the petitioner late in the litigation process. After a motion for joinder is filed, the responding party has an opportunity to object to joinder or to seek a continuance of the proceeding if there is insufficient time for the new party to be prepared for the hearing. An employer and insurer has 120 days to obtain an independent medical examination, therefore, 120 days is generally a minimum time period required to prepare for hearing.

If a party seeks to change the benefits claimed or to change other issues to be addressed by the same parties, amendment of the claim by letter is sufficient as provided in subpart 5. Subparts 4 and 5 are consistent with current practice, incorporating the current procedure into the rule language. Generally, amended pleadings and amendments to pleadings are allowed. However, a late amendment that

does not allow sufficient time for hearing or conference preparation will not be allowed, or a continuance will be ordered to allow additional preparation time. The rule promotes consolidation of issues into one proceeding when reasonable to do so, but prohibits late amendments that would prejudice the right of a party to present its case.

1415.1100 Notice to potential intervenors.

Subpart 1. Responsibilities of attorneys. The current language only requires inquiry about third parties who have paid benefits, either monetary benefits or treatment expense. Because the controlling statute is broader, allowing anyone to intervene who stands to gain or lose by a decision in the workers' compensation dispute, the rule language is broadened to require inquiry about all potential intervenors. For example, a health care provider has provided services, not paid benefits. The parties have an obligation to notify all potential parties of the right to request to participate as a party. This includes entities that have paid or provided benefits or services in connection with the workers' compensation claim. The rule generally avoids listing some of the potential parties at the expense of omitting others. Where there is an outstanding order for the withholding of child support or maintenance, the entity to whom support payments are made has not provided benefits or services to the employee in the workers' compensation matter, but nevertheless stands to gain or lose by a decision in the case because of income withholding rights under Minnesota Statutes, chapter 518.6111. Therefore, this potential intervenor is specifically mentioned. The specific reference to DVR is obsolete and is omitted.

Subpart 2. Notice to potential intervenors. Similar changes are made in subpart 2. The title of this subpart is changed from "notice to third parties" to "notice to potential intervenors" to differentiate between potential parties seeking to intervene under Minn. Stat. § 176.361 and third party defendants in a civil action as described in section 176.061. The designation "third party" in a workers' compensation case usually refers to a party who may be liable for damages in a civil action. The change in title is to avoid confusion.

The rule now also provides that notice to a potential intervenor under the statute must be given promptly, but not before a proceeding is commenced. Subpart 3 provides specific timelines for this notice. Therefore, a cross-reference to subpart 3 is added. Section 176.361 provides time limits for a potential intervenor to respond and then

allows the potential intervenor's rights to participate in a proceeding to be extinguished if the potential intervenor fails to respond in a timely manner. If a party gives notice to a potential intervenor before a proceeding is commenced, the potential intervenor may file a motion to intervene that is denied due to a lack of pending litigation in which to intervene. The notice of the right to participate in a proceeding is only meaningful when a proceeding is actually pending in which to participate. The rule seeks to protect the right of a potential intervenor to participate by coordinating the notice to the potential intervenor with a pending case.

The rule seeks to discourage the unnecessary filing of notices to potential intervenors except as needed by indicating they need not be filed except as required in part 1420.1850, and then without the attached copies of pleadings. This relieves a burden to the state of receiving thousands of unnecessary documents yearly that must be handled and placed in computer files. When notices to potential intervenors are filed, it is burdensome to the state to re-file copies of attached pleadings that are already in the file. The lengthy duplicate pleadings must be reviewed by DLI to determine if they are new pleadings or copies of already filed pleadings. Generally, they are not needed in the state file and should not be filed unless directly relevant to a dispute. This eliminates unnecessary filings by the parties and their handling costs for the state.

The requirement to send the potential intervenor a copy of the rule regarding intervention is deleted. The remaining portions of the rule in items A through F require notice to the potential intervenor of the relevant portions of the statute and rule and also advise the potential intervenor how to obtain additional information, including a copy of the statute, rule, and sample forms. It is unnecessary and unduly burdensome and costly for the parties to repeatedly send out copies of the statute and rules to potential parties. The cases frequently involve many of the same potential intervenors; they may be fully informed of the procedures and requirements and have no need to receive multiple copies of the same information. If that is not the case, the potential intervenor will be informed regarding how to obtain any needed information (see item F).

In item A, the rule number relating to intervention is updated and the word "vocational" inserted before "rehabilitation" to indicate that the reference is to vocational and not physical rehabilitation services.

In item C, the changes are explained under subpart 1 above.

Items D and E. The standard for denial of an intervenor or potential intervenor's claim for reimbursement is set out in Minn. Stat. § 176.361. This section of the statute

was amended in 2002. The changes in items D and E require that the parties giving notice to potential intervenors inform the potential intervenor of the consequences of failing to respond and the time allowed for a response. The time to respond is generally 60 days, however, it is 30 days when an administrative conference is scheduled. The 2002 statutory change added strict requirements for intervenors to make appearances at scheduled proceedings to maintain their interest and any right to reimbursement. Item E clarifies how an intervenor may make an appearance, either personally or by an alternate method approved by the presiding agency, the Commissioner at DLI or the judge at OAH. The rule balances the need for participation by all parties to resolve claims either by agreement or litigation, and the difficulties of personal appearances where distance or a minor interest in the claim may suggest that another alternative method of appearance may be sufficient in a particular situation.

Item F. The reason for this change is described above. The rule no longer requires that the party send a copy of the intervention rule and statute, but instead identify how the potential intervenor may obtain a copy of the law and sample forms.

Subpart 3. Time to notify. Subpart 3 provides a time period for the attorney for the party to notify potential intervenors, generally within 30 days after an answer to a petition is served. If no answer is filed, notice to potential intervenors is nevertheless required within 60 days of service of the petition. Where knowledge of the existence of potential intervenors arises subsequent to the filing of the petition or answer, notice to such parties must be promptly given. This early notice to potential parties assists in avoiding the need to reschedule proceedings due to the late involvement of a new party. It also assists the parties in resolving the claim by early identification of the claims of all potential parties. The rule also requires notice to potential intervenors at the time a rehabilitation or medical request or response is filed. The rights of the potential intervenor would be affected by a determination regarding the Medical Request or Rehabilitation Request. For example, if a determination were made concerning payment to a medical provider after a Medical Request is filed, that determination may affect the ability of the medical provider to collect its charges. If the medical provider is not placed on notice of the right to intervene in the proceeding, its interest may be affected without the health care provider's participation. Given the current language of Minn. Stat. § 176.361 concerning motions to intervene in connection with administrative conferences, requiring notice at the time the request for an administrative conference is filed (on a Medical Request or Rehabilitation Request) is reasonable.

Subpart 4. Failure to notify potential intervenors. The new subpart 4 sets out the sanctions that may result from improper notification of potential intervenors. Under this new rule provision, the case may be stricken from the hearing or conference calendar or another sanction in part 1420.3700 may be applied if the failure to notify the potential party materially prejudices the rights of a party or potential party. Further proceedings may be undertaken as provided in part 1420.1850 to determine whether or not an intervenor or potential intervenor was effectively excluded from participation in the case. Subpart 4 is needed to clarify sanctions for failing to protect intervenors or potential intervenors who were not timely notified or given a meaningful opportunity to participate. A supplemental proceeding as a sanction is established by the holding in Parker/Lindberg v. Friendship Village, 395 N.W.2d 713 (1986). Procedures for such hearings are provided in part 1420.1850; therefore, the rule provides a cross-reference to the hearing procedures. The provisions of subpart 4 are consistent with case law regarding the rights of potential parties and the obligations of the primary parties to provide timely and sufficient notice of the right of potential parties to participate. The proposed rules provide uniform procedures and consequences for failing to follow the established procedures concerning proper notice to potential parties of the right to participate in the proceeding. This rule sets out the general framework established by case law and refers the rule user to the rule concerning hearings in such disputes.

1415.1200 Intervention.

Part 1415.1200 is repealed because most of the language was duplicative of Minn. Stat. § 176.361. A new part 1415.1250 contains the procedural requirements for intervention not covered by statute.

1415.1250 Intervention.

Subpart 1. Motion. This subpart sets out the filing deadlines for intervention motions, distinguishing between regular calendar cases with a 60-day notice period, and expedited calendar cases with a 30-day notice period. The statute generally allows a 60-day notice period, however, some cases such as administrative conferences under Minn. Stat. § 176.106 and expedited hearings under section 176.238, subd. 6 must be scheduled for hearing within 60 days of filing. In these fast track cases, it is necessary

to establish shortened deadlines to accomplish the statutory mandate. The rule reasonably balances the need to meet hearing and conference scheduling deadlines and to protect the rights of potential parties to participate in proceedings.

Subpart 2. Personal appearance by intervenor. The 2002 amendments to Minn. Stat. § 176.361 require an appearance by the intervenor if the intervenor's claim has not otherwise been resolved. Subpart 2 allows the intervenor to request approval for an alternative to personal appearance from the judge or Commissioner (depending upon where the case is pending). Given the serious consequences for failing to make an appearance (claim preclusion), it is reasonable to allow the intervenor to make arrangements to appear in some other manner in appropriate cases. It may not be reasonable, for example, for an intervenor located in another state, to make a personal appearance at a settlement conference when the intervenor's claim is very small compared to the remainder of the claim and the intervenor has provided detailed and updated information about its claim. The rule allows some flexibility so that the rights of all parties are protected while also requiring the necessary involvement of the parties to allow resolution of the claim by settlement or decision.

1415.1300 Joinder of parties.

This rule is repealed in chapter 1415. It is moved and revised in a new proposed chapter 1420, in part 1420.1300. Each of the rules moved to chapter 1420 are rules governing procedures at OAH. They are removed from Joint Rules because they do not address procedures concerning litigation at both DLI and OAH, but at OAH only.

1415.1400 Answer.

This rule is repealed as unnecessary or contrary to the statute and case law. The rule does not add significantly to the statute; it basically repeats the requirements of Minn. Stat. § 176.321. Subpart 3 is contrary to Green v. Whirlpool Corporation, 389 N.W.2d 504 (Minn. 1986) and statutory changes to Minn. Stat. §§ 176.321 and 176.331. Subpart 4 is contrary to Minn. Stat. § 176.175 requiring acceptance of documents except those missing identifying information.

1415.1500 Default Award.

This rule is repealed as contrary to the statute and case law. This rule was overturned in Green. Some cases are advanced on the hearing calendar if the insurer fails to file an Answer in a timely manner pursuant to Minn. Stat. § 176.331, however, the matter does not proceed as a default. The default rule is now obsolete and contrary to law and is, therefore, deleted.

1415.1600 Award on the Pleadings.

Part 1415.1600 is repealed as obsolete. In 1987, the legislature enacted Minn. Stat. § 176.305, subd. 1a, providing for a summary decision in appropriate cases. The summary decision procedures replaced the award on the pleadings procedures. Summary decisions may be made based upon arguments and documents submitted, subject to a request for formal hearing thereafter. If no contested facts remain, a decision based upon stipulated facts under Minn. Stat. § 176.322 is appropriate. Part 1415.1600 is inconsistent with the current statute and procedures and is, therefore, repealed. No further rules regarding summary decisions or decisions based upon stipulated facts are necessary at this time.

1415.1700 Dismissal.

Part 1415.1700 is repealed as unnecessary. Claims may be dismissed in response to a motion. Procedures for motions are contained in proposed rule 1420.2250. Claims may also be dismissed as a sanction as provided in proposed part 1420.3700, or by agreement of the parties, or after resolution of the issues in a findings and order. Whether the dismissal will be with or without prejudice will depend upon the facts and procedures of the case. White v. Independent School District No. 197, W.C.C.A., May 27, 1993. The court in Michaelson v. Hamline Twin City Real Estate Company, 42 W.C.D. 964 (1990) required notice and opportunity to object before an involuntary dismissal was effective. The existing and proposed rules in the sections cited, as well as case law, provide guidance in this area of the law.

1415.1800 Settlement Conference by Division.

This part is repealed in the joint rules and moved to the OAH rules, part 1420.1800.

1415.1900 Pretrial Procedures.

This part is repealed in the joint rules and moved to the OAH rules, part 1420.1900.

1415.2000 Settlements.

This part is repealed in the joint rules and moved to the OAH rules, part 1420.2050 Settlement agreements.

1415.2100 Objections to Discontinuance and Petitions to Discontinue Compensation Payments.

Part 1415.2100 is deleted as unnecessary. The deadlines for obtaining an expedited hearing date and the timeline for scheduling the hearing are contained in Minn. Stat. § 176.238, subd. 6; this rule does not significantly add to the statutory procedures. Proposed part 1420.2150 is a new rule containing expedited hearing procedures beyond those contained in the statute.

1415.2200 Discovery.

Part 1415.2200 is repealed in the joint rules and moved to the OAH rules, part 1420.2200.

1415.2300 Temporary Orders.

Part 1415.2300 is repealed in the joint rules and moved to the OAH rules, part 1420.2350.

1415.2400 Petitions for contribution and reimbursement.

Part 1415.2400 is repealed in the joint rules and moved to the OAH rules, part 1420.2400.

1415.2500 Consolidation.

Part 1415.2500 is repealed in the joint rules and moved to the OAH rules, part 1420.2500.

1415.2600 Disqualification.

Part 1415.2600 is repealed in the joint rules and moved to the OAH rules, part 1420.2600.

1415.2700 Subpoenas.

Part 1415.2700 is repealed in the joint rules and moved to the OAH rules, part 1420.2700.

1415.2800 Continuances.

Part 1415.2800 is repealed in the joint rules and moved to the OAH rules, part 1420.2800.

1415.2900 The Hearing.

Part 1415.2900 is repealed in the joint rules and moved to the OAH rules, part 1420.2900.

1415.3000 The Compensation Judge's decision.

Part 1415.3000 is repealed as unnecessary. Subpart 1 repeats statutory language in Minn. Stat. § 176.341, subd. 5. Subpart 2 repeats a portion of the statute regarding time deadlines for decisions and omits other provisions. The list of components and style of a decision in subparts 2 and 3, while reasonable and sensible,

provide unnecessary detail. These components and characteristics of decisions will continue whether or not a formal rule so stating exists. Proposed decisions are disfavored and their use has been discouraged by the Workers' Compensation Court of Appeals. The judge must make an independent review of all of the evidence and come to his or her own decision for the reasons expressed. Therefore, subpart 4 is repealed. Subpart 5 is also unnecessary, allowing extension of the time for issuance of a decision by consent of the parties. Only the chief administrative law judge may do so; consent of the parties is irrelevant. The rule does not significantly affect the procedures for decisions and is, therefore, repealed.

1415.3100 Rehearing.

This rule is inconsistent with current practice and case law. The judge's decision does not become final until the appeal period expires. Therefore, the judge retains jurisdiction over the case and may amend the findings or even allow additional evidence or testimony until either the case is appealed to the Workers' Compensation Court of Appeals or the 30-day appeal period expires, whichever occurs first. Consequently, this rule is repealed.

1415.3200 Attorney fees.

Subparts 1 and 2. Controlling statute; withholding of attorney fees. There are no changes proposed to subparts 1 and 2, except to clarify in subpart 1 that fees for legal services may also be awarded under Minn. Stat. § 176.191 in a dispute between employers or insurers. The rule as amended more accurately lists the governing statutes that apply to attorney fee determinations.

Subpart 3. Statement of fees. Beginning in subpart 3, part 1415.3200 revises the joint attorney fee rule, incorporating portions of the DLI rule on attorney fees (subparts 7 and 8), and repealing obsolete and unnecessary portions of the rule. Rather than require separate forms depending upon whether the amount claimed is more or less than the percentage of benefits set by statute, the proposed rule eliminates the excess fee petition in favor of requiring additional information attached to the Statement of Attorney Fees when the fee claimed exceeds the amount provided under the statutory formula. The result is that a Statement of Attorney Fees is filed for all attorney fee

requests. Requests exceeding the usual statutory formula require an extra attachment with the additional information contained in item B.

Item A of subpart 3 clarifies that the Statement of Attorney Fees must be served on the employee and the insurer as provided by Minn. Stat. § 176.081, subd. 1(d). Subitems (1) through (3) are deleted as duplicative. All pleadings must contain this identifying information as provided by Minn. Stat. § 176.275 and part 1415.0500. It is not necessary to repeat the requirement here.

Subitem A (4) (renumbered as (1)) is amended to require that where the statute requires a certificate of dispute from DLI before claiming fees regarding medical and rehabilitation benefits, the certification of dispute (or document indicating non-certification of the dispute) must be attached to the fee statement. This requirement was added by a 1995 amendment to Minn. Stat. § 176.081, subd. 1(c).

Subitem A (5) of subpart 3 (renumbered as (4)) requiring the amount of retainer received is deleted. Minnesota Statutes, section 176.081, subd. 11 provides that the fee shall not be due or paid until the issue for which the fee was incurred has been resolved. Therefore, there should be no retainer fee paid by the employee. Requesting retainer fee is, therefore, confusing; the attorney usually instead includes the amount previously paid in fees on the case. Given the fee limitations contained in Minn. Stat. § 176.081 (the $13,000 per injury after the 1992 amendment), information concerning the previous fee paid is needed to help determine whether additional fees are due and if so, how much.[2] Therefore, the fee previously paid for the same injury is requested instead of the retainer fee paid.

Subitem (6), the amount the employee advanced for expenses, is also unnecessary. This is replaced by (11): "an itemization of costs incurred and by whom paid". The relevant information needed is who paid for various cost items so that the appropriate party may be reimbursed if payment for a cost is awarded. The employee's attorney typically pays the costs prior to resolution of the dispute and seeks reimbursement, however, the employee may also pay the necessary costs.

Subitem (10) (renumbered as (6)), removes a reference to Minn. Stat. § 176.081, subd. 8, repealed in 1995.

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[2] Additional fees may be requested beyond the fee limitations pursuant to Irwin v. Surdyk's Liquor, 599 N.W.2d 132 (Minn. 1999), however, in such cases additional information must be provided as set forth in item B.

Subitem (12) (renumbered as (8)) is slightly modified to provide a complete list of the parties who must be served with the fee request. The rule previously omitted the employee.

Subitem (10) is added due to a statutory amendment to Minn. Stat. § 176.081 in 1992, requiring disclosure of the number of hours the attorney spent on the case. Disclosure of the attorney's hourly rate assists the judge and the parties in evaluating whether or not a requested fee (particularly a fee request based upon hours expended) is reasonable.

Item A is also amended to delete the requirement to file a copy of the attorney's usual billing statement. Typically, the only billing statement would be the itemization of hours spent and services performed as provided in B (1) when the attorney is claiming fees in excess of the statutory formula (25% of the first $4,000 in benefits and 20% of the remainder, up to $13,000). The itemization of services and hours is only needed when the request exceeds the statutory formula. When the fee is simply a percentage of benefits obtained, a billing statement beyond the attorney fee statement is not needed.

Item A also provides that a party may object to the statement of attorney fees within 10 days of service of the statement. This is a reasonable period of time for the parties to review the request and make known any objection to the requested fee. A 10-day objection period was previously contained in Minn. Stat. § 176.081, but was deleted, perhaps due to an assumption that fee requests would become routine and not contested in light of the 1995 repeal of the statute allowing attorney to petition for fees in excess of $13,000. However, this provision was rules unconstitutional by the Minnesota Supreme Court (see footnote 1.) While most requests are undisputed, it is necessary to have a procedure for those cases in which the parties do not agree to the attorney's request.

Also in item A, the language requiring the judge to issue an appropriate order without waiting for an objection period when any objection has been waived, is changed to the permissive "may" issue an order without waiting for the 10-day objection period. The language was intended to be permissive and not a mandatory requirement that the attorney fee order be issued in less than 10 days. Where the judge has 30 days or 60 days to issue a decision, an order regarding the fees would not be issued in less than 10 days. The substitution of "may" permits the judge to issue a quick order where appropriate to do so such as in an Award on Stipulation, but also allows the attorney fee issue to be determined with other issues in the judge's decision.

Language is also added to the last paragraph in item A to recognize that an attorney fee agreement may also be found in a mediation agreement. This conforms to current practice.

The sentence allowing oral statements of attorney fees in a hearing is modified to include an exception for a request for fees in excess of the statutory formula. If the attorney is requesting fees in excess of the statutory formula, it is reasonable to allow the parties to first review the attorney's written documentation of the request and time to consider it before deciding whether or not to object to the request. Concerning attorney fees, the employee and the employee's attorney do not have the same interest; the employee should not be rushed into a decision regarding fees at a hearing where attorney fees are not the primary issue.

Item B lists the additional information that is required to be submitted with the Statement of Attorney Fees when the fee claimed exceeds the amounts listed in subd. 1 of section 176.081. As explained above, the rule requires a Statement of Attorney Fees for each request, eliminating the Petition for Excess Fees in item B. Instead, the party submits the additional information required by case law (as set forth in Irwin) in addition to the usual information required on a Statement of Atttorney Fees in item A. There is no standard form for supplying this additional information; the attorney simply attaches the information required by the rule as an extra page or more to the Statement of Attorney Fees. Therefore, the phrase "on a form prescribed by the commissioner" is deleted. The subitems in B that duplicate the information required in item A or repeat statutory language are deleted. The remaining subitems in B are revised to more accurately reflect the factors set forth in Irwin and the case law preceding it. The proposed rule conforms to current practice as well as to the governing statute and case law.

Subpart 4. Fees objection. Subpart 4 is deleted as obsolete. Subdivision 5 of section 176.081 was repealed after this rule was promulgated. Therefore, reference to the repealed statute is no longer reasonable.

Subpart 5. Filing. Subpart 5 is also obsolete. Statements of Attorney Fees are filed in the same manner as other legal documents. Therefore, part 1415.0700 applies and a separate filing procedure is not needed.

Subpart 6. Settlements. Subpart 6 is deleted as unnecessary. In the extremely rare instance that Minn. Stat. § 176.081, subd. 7a applies, the procedures set forth in the

statute suffice. These procedures are simply not used as a practical matter and are, therefore, removed from the rule.

Subparts 7 and 8. Genuinely disputed portions of claims; Determinations without a hearing. Subparts 7 and 8 contain portions of the rule formerly located in DLI rules at Minn. Rules, part 5220.2920, subparts 5 and 8. These subparts are transferred from chapter 5220 to chapter 1415. Part 5220.2920 is being repealed as a part of this proceeding to avoid the existence of two different attorney fee rules, one in joint rules of OAH and DLI, and one in DLI rules. Part 1415.3200, when adopted, will contain the updated and complete attorney fee rule of the two agencies, except that subpart 6 of part 5220.2920 regarding defense attorney fees remains in DLI rules. This avoids duplication of effort of the agencies and clarifies the appropriate procedures and standards. There is no change to items A-K.

Subpart 7. Genuinely disputed portions of claims. In subpart 7, item L, language concerning attorney fees regarding lump sum settlement is modified. The attorney fee statute, section 176.081, subd. 1, was amended after this existing rule (formerly located in part 5220.2920) was promulgated. The amendment to subpart 7.L updates the language accordingly, referring back to the statute and eliminating any potential conflict between the statute and the rule.

Subpart 8. Determinations without a hearing. A new first paragraph has been added to 5220.2920, subpart 8 to establish time limits for OAH to respond to a Statement of Attorney Fees. Attorney Fee Statements requiring action by a judge are first assigned to a judge. An example of an instance in which no action is required concerning the Statement of Attorney Fees is when the statement accompanies a Stipulation for Settlement that includes an agreement concerning attorney fees. In that situation, the fees are approved by action on the Stipulation for Settlement and do not require a separate order in response to the Statement of Attorney Fees. When action is needed, the judge must then issue an order within 30 days, advise the parties how the fee request will be addressed, or schedule the matter for a settlement conference or hearing. The new rule gives guidance to the parties and the judge concerning an appropriate time frame for acting upon the request. Just as the parties must respond to pleadings within a specified period of time, it is reasonable for the judge to do so as well. A 30-day response period is a reasonable time period for the judge to review the request and either issue a routine order or determine what other procedures are necessary.

Subpart 8 has also been slightly modified from the 5220.2920 language to clarify (in accordance with multiple decisions of the Workers' Compensation Court of Appeals) that decisions regarding disputed attorney fee requests must be issued after a hearing on the record if the parties have not waived the right to a hearing. An attorney fee determination may, therefore, be issued after a hearing on the record, or as a summary decision under Minn. Stat. § 176.305 (with the right to request a *de* novo hearing thereafter), or a decision based on stipulated facts under Minn. Stat. § 176.322 (where there are no disputed facts and the parties have the right to appeal the legal issues to the WCCA). Each of these methods preserves the right of the parties to a hearing regarding disputed facts and to appellate review of disputed legal conclusions.

Part 1415.3300 Taxation of costs and disbursements.

Subpart 1. When allowed. The first sentence of subpart 1 is revised to clarify that the cost rule applies to all disputed cases whether or not a hearing or other proceeding has occurred. This is consistent with current practice and Minn. Stat. § 176.511 allowing reimbursement to the prevailing party. The scope of these rules is expanded to include administrative conferences as provided in part 1415.0100 for the reasons explained in this Statement of Need and Reasonableness (SONAR) under part 1415.0100 by deletion of the phrase "which have been heard by a compensation judge".

Subpart 3. Service of formal request. The change to this sentence improves the sentence structure only.

Subpart 4. Service of objection. Minor non-substantive language changes are made and omission of language regarding proof of service. Service of documents and proof of service is contained in part 1415.0700 and need not be repeated here.

Subpart 5. Hearing. The language is simplified and slightly revised in this subpart to more accurately conform to current practice. The judge does not personally provide the notice of hearing.

Part 1415.3400 Other hearings.

This part is no longer needed. Expedited procedures are covered under proposed part 1420.2150. General hearing procedures are described under part 1420.2900.

Part 1415.3500 Exhibits.

The title of this rule is slightly changed to reflect the somewhat broader scope of the rule as amended. It covers more than removal and return of exhibits and, therefore, the title is simply "exhibits".

Subpart 1. Retention and retrieval of exhibits. This rule is revised to change the procedure for return or destruction of exhibits. First, the rule clarifies how the term "exhibit" is used in this rule; it refers to formal exhibits introduced, marked, and accepted as a part of a hearing record. The rule does not extend to documents submitted during an administrative conference, that is, informal exhibits. Documents submitted in connection with an administrative conference are addressed in part 1415.3700, subpart 9. Hearing exhibits become a temporary part of the file during the litigation and until the disputed matters are finally concluded. After the conclusion of the dispute, the exhibits are either returned or destroyed. The rule clarifies this established procedure to retain the exhibits temporarily. Next, the rule removes the requirement that the state notify a party prior to destruction of exhibits. Instead, the rule advises the parties that exhibits will routinely be destroyed after the prescribed time period if a party does not retrieve exhibits before that time. This removes a burden on the state to send out notices to parties in each case that goes to hearing. Generally, copies or the originals of the exhibits are also in the possession of the parties and return of the exhibits is not necessary. When return of an exhibit is desired, it may be easily accomplished by a simple request for its return. If the rule is adopted, OAH intends to inform the litigants of the change in procedure during the hearing. The time limit to request the return of exhibits occurs after appeal periods are exhausted and the findings and order are final. At this point, there is no further agency use for the exhibits and they are available to the submitting party if desired. The deadline for obtaining exhibits allows DLI and OAH to quickly and appropriately dispose of large volumes of paper no longer needed in the workers' compensation system while also protecting a party's right to obtain the documents or other evidence if desired. The rule is intended to save state costs without jeopardizing the rights of the parties.

Subparts 2 and 3. Return without consent or notice; Request for return. These subparts are repealed as inconsistent with the new procedures described under subpart 1 for the reasons expressed.

Part 1415.3600 Severability

Part 1415.3600 is repealed and renumbered as part 1415.4100. A small change is made as described in this SONAR under part 1415.4100.

Part 1415.3700 Administrative Conferences.

As described above under part 1415.0100 and in the introduction, informal administrative conferences are conducted by both DLI and OAH. Procedures related to informal conferences are now contained in this set of joint rules. Therefore, the general administrative conference rule at Minn. Rules, part 5220.2610, is moved from that location in the DLI rules, to this set of joint litigation rules. Changes here described are amendments to the DLI rule.

Subpart 1. Scope. This general administrative conference rule governs medical conferences and benefit discontinuance conferences. The rule governing rehabilitation conferences remains in the DLI rules along with other rules regarding rehabilitation matters. An addition to subpart 1 alerts the rule user where to find an additional rule regarding rehabilitation administrative conferences disputes.

Subpart 2. Notice. The DLI rule in part 5220.2610 is broadened to include notices sent by both DLI and OAH regarding administrative conferences. This is in response to the 1998 reorganization that moved the settlement judge unit from DLI to OAH and transferred the authority to conduct some administrative conferences under Minn. Stat. § 176.106 and conferences under § 176.239. DLI retained authority over the medical disputes of $1500 or less and rehabilitation disputes (with the option to refer some rehabilitation disputes to OAH). The required advance notice of an administrative conference in Minn. Stat. § 176.106, subd. 3 is 14 calendar days. Therefore, the rule is changed from 10 working days to 14 days to conform the rules to the statute. The provisions regarding notice to the Special Compensation Fund (SCF) are slightly revised. On an old injury claim in which the SCF is reimbursing the insurer under the second injury fund pursuant to Minn. Stat. § 176.131 (repealed in 1992), the SCF is an interested party and must be notified. This is consistent with current practice.

Subpart 3. Appearances. The changes to this subpart are needed to conform the rule to the statutory amendments to Minn. Stat. § 176.361 passed in 2002 requiring an

appearance by intervening parties at all proceedings. It is permissive for a potential intervenor to attend a conference, but mandatory for an intervenor (now a party to the case), to attend a conference. The rule provides a cross-reference to the applicable statute and rule. Language describing a potential intervenor is deleted as unnecessary. "Potential intervenor" is now defined in part 1415.0300, subp. 18. Therefore, the term "potential intervenor" is substituted for a description of a potential intervenor for consistency throughout the rules.

Subpart 4. Information considered. In this subpart concerning information considered in connection with an administrative conference, the term "exhibit" is deleted and replaced by "information". Documents submitted for an administrative conference are not technically exhibits. An exhibit is defined by part 1514.3500 as evidence marked, introduced, and accepted into the record in a hearing. The term "exhibit" is deleted from the administrative conference rule to avoid any confusion in the rules between conference and hearing documents.

Subpart 5. Concurrent litigation. The language of this subpart regarding similar issues pending in multiple forums is slightly modified. There has been some confusion about when disputes must be referred to OAH under this rule. The wording is clarified to reflect current practice of DLI. The change reflects the fact that sometimes Claim Petitions are filed with a request for an unspecified medical or rehabilitation benefit, along with wage loss benefits. If a medical or rehabilitation issue needs attention sooner than the hearing at OAH, attorneys sometimes file a medical or rehabilitation request for an administrative conference on the specific medical or rehabilitation issue. In such cases, DLI may hold the conference if its order will not result in an inconsistent determination. For example, there would be no risk of inconsistent determinations if he DLI order would be final by the time of the hearing, or a Request for Formal Hearing could be filed after the order and handled as appropriate by OAH.

Subpart 6. Continuance. The final sentence of subpart 7 of 5220.2610 (renumbered as 1415.3700, subpart 6) is outdated and is therefore deleted. DLI is not currently routinely issuing decisions without holding a conference. The rule modification does not eliminate the possibility of a decision based on written submissions as an alternative to a continuance, however, because a decision based on written submissions alone is not routinely considered at the time of a continuance request, the language is omitted.

Subpart 7. Intervenors. The language of part 5220.2610, subpart 8 (renumbered as 1415.3700, subpart 7) is slightly modified for clarity. The subpart addresses potential intervenors, not all potential parties, and so the phrase "potential party" is changed to "potential intervenor". The last sentence of 5220.2610, subpart 8 is deleted as unnecessary and duplicative following the addition in these rules of a definition of "potential intervenor".

Subpart 9 of 5220.2610. Subpart 9 of 5220.2610 (Decision) is deleted as unnecessary. It states the obvious, that a decision concerning the rights of the parties or potential parties is made following an administrative conference. The statute (Minn. Stat. § 176.106, subd. 5) requires a decision to include the right and method to request a formal hearing after the decision is issued. This is standard practice that will continue in compliance with the statute.

Subpart 9. Administrative conference documents. A new subpart 9, administrative conference documents, is added regarding documents submitted as a part of an administrative conference.

Item A. Parties often bring a number of document copies to administrative conferences at OAH for consideration as a part of the proceeding. These documents are reviewed by the judge, if appropriate, in making a decision, and are then recycled after the proceeding. Given the volume of documents submitted, it would be burdensome for OAH and DLI for OAH to send all of these document copies to DLI for imaging after the conference. Many of the conference documents are already a part of the computer file and have been copied by a party for the judge's use in connection with the conference and for reference in making a decision. If the party would like the documents to become a part of the permanent state file, the party is advised to submit the documents to DLI for that purpose. Additionally, the party may request filing of the documents into the permanent state file by delivering the documents to the front desk at OAH (for delivery to DLI). In this way, a party is able to create a permanent record if desired and unnecessary imaging and filing is avoided in other cases. The conference documents do not create an official record of the proceeding. A party disputing the decision issued after an administrative conference may request a formal hearing at which an official record is kept.

Item B provides procedures for documents submitted in connection with a conference to be held by video conference. To ensure that the judge and the other parties receive the documents in a timely manner so that they are available during the

conference, they must be pre-filed with OAH at least one day before the conference and they must be specially marked. Given the multiple locations of the parties for a video conference, it is not practical to simply bring documentation to the conference as would be the case in a conference with all parties present. The specially marked envelope or fax alerts the agency or party to the urgency of delivery in time for the conference. At OAH, it avoids referral of the documents to DLI to be placed in the computer file, a procedure that would delay receipt beyond the date of the conference.

Subpart 10. Resolution forum. This is a new subpart. The 1998 transfer of the settlement judges from DLI to OAH resulted in a division of responsibilities concerning administrative conferences between DLI and OAH. The act transferring the judges contained the division of responsibilities, however, the permanent workers' compensation statute does not specify the agency responsible for various disputes. Subpart 10 describes the resolution forum. As appropriate, an administrative conference issue may be referred for a hearing as provided by Minn. Stat. § 176.106, subd. 3; therefore, a cross-reference to the rule regarding hearings (part 1420.2900) is also included in the rule.

The last sentence of subpart 10 explains that a Claim Petition (usually handled by OAH) containing only medical and rehabilitation issues is treated as a Medical Request or Rehabilitation Request by DLI. Part 5220.2610, subp. 2 reflects this requirement for medical issues, and this rule extends that to rehabilitation issues as well. A medical or rehabilitation dispute is properly filed on a Claim Petition when primarily liability issues are disputed; the claim would proceed on the hearing track if the employee must establish that he or she sustained a compensable work-related injury. If primary liability is not disputed and the claim raises only rehabilitation and medical issues, it should be filed on a Medical or Rehabilitation Request form. If a party instead files the claim on a Claim Petition form, it is sent to DLI for processing as if it was filed as a Medical or Rehabilitation Request. The rule language states the current claim processing procedures.

Part 1415.3800 Medical Disputes

This rule is moved from DLI rules in part 5220.2620 to the joint rules and revised. Inclusion in the joint rules provides uniform procedures regardless of whether the case is scheduled at DLI or OAH.

Subpart 1. Definition. The definition of "medical issues" is changed to "medical disputes" to match the name of the rule and the subject matter of the rule. The list of statutory citations is updated to include all of the statutory sections regarding medical disputes. The definition is then simplified by referring to disputes arising under the applicable statutes without listing all the possible issues. The list provided in the current rule is outdated and not complete, including some issues not decided in administrative conferences and omitting others. It is not necessary to list all potential medical issues in the rule; therefore, the list is deleted.

Subpart 2. Medical claim, request. This subpart contains minor modifications to 5220.2620 to 1) simplify the rule by cross-referencing the service rule instead of listing parties to be served, 2) use the term "potential intervenors" instead of other phrases describing potential intervening parties, and 3) eliminate duplicative service directions already contained in the service rule. A sentence describing when health care providers may file medical requests is modified for clarity. There is no substantive change intended. Additionally, the last sentence of 5220.2620 concerning medical issues filed on Claim Petitions is deleted; this topic is now addressed in the last sentence of part 1415.3700, subp. 10 with minor modifications.

Subpart 3. Medical claims response. There are no changes to this subpart.

Subpart 4. Medical claim; denial of liability. The phrase "of the division" from 5220.2620, subpart 5 (renumbered as 1415.3800, subpart 4) is deleted in response to the 1998 reorganization that moved the settlement judges from DLI to OAH. A minor change to this subpart reflects that OAH, in addition to DLI, may direct the filing party that a petition must be filed instead of a Medical Request in certain circumstances. This task is performed by the agency reviewing the Medical Request, DLI for claims of $1500 or less, and OAH for claims over $1500.

Subpart 5. Penalties. This subpart on penalties is renumbered from 5220.2620, subpart 12 to 1415.3800, subpart 5.

Part 1415.3900 Discontinuance Conferences.

This part is moved from the DLI rules in part 5220.2640 to the joint rules in response to the 1998 reorganization that moved the settlement judges from DLI to OAH. References in the rule to "division" are changed to "judge" or "office" to reflect this change.

Subpart 1. Purpose. An unnecessary sentence is removed from this subpart in 5220.2640. It does not add anything of significance to the rule. The rule citation is updated to reflect the move from the DLI rules to these joint rules. The last sentence of subpart 1 is deleted and rewritten to more clearly state the current procedure regarding how other administrative conference disputes may be combined with the issues in a conference regarding the discontinuance of benefits. Disputes presented on a Medical Request or Rehabilitation Request may be heard along with the discontinuance dispute when the medical or rehabilitation issue has been referred to OAH and 1) OAH issues a notice of conference indicating that the additional issues will also be heard at the conference, or 2) where the parties agree that the issues may all be heard in one conference. The new language more clearly states the current practice. Issues would not be combined into one conference if the disputes were being addressed by two agencies, such as when a medical or rehabilitation dispute is scheduled at DLI, and OAH has the discontinuance dispute (unless DLI sent the dispute to OAH for consolidation as frequently occurs).

Subpart 2. Request. A reference to a request for a discontinuance conference "received by the division" is changed to "filed". There is no substantive change intended. A document is filed when it is received. The change simply conforms the language to the general usage throughout the rules. A sentence is also added to clarify that written requests, like other filed documents, are directed to DLI, and telephone requests for a discontinuance conference are made to OAH. The phrase "or telephoned to" is removed from the second sentence to avoid confusion about which agency receives telephone requests for conferences. The added sentence better describes how telephone requests are made. This is consistent with current practice and serves to inform the rule user of the appropriate agency to contact. The last sentence is deleted as inconsistent with current practice. A request for a discontinuance conference may be made on the state form, but it is not necessary or required. The deleted language implies that use of the state form is required; deletion of the last sentence removes the ambiguity.

Subpart 3. Continuation of benefits. Subitem 3. A (2) of 5220.2640 is deleted as unnecessary. Technically, the statute allows a decision to be made allowing a discontinuance of benefits without a conference. As a practical matter, this does not occur. If there is jurisdiction under Minn. Stat. § 176.239 regarding a timely dispute concerning the discontinuance of benefits, a conference is scheduled before an order is

issued. After twenty years of failing to invoke this provision of the statute, it is removed from the rule as obsolete and unnecessary.

Subitem 3.A(13) is rewritten to more accurately state the basis for a discontinuance of benefits described in Kautz v. Setterlin Co., 40 W.C.D. 206, 410 N.W.2d 843 (Minn. 1987) and subsequent cases. The principle is the same: the insurer may discontinue benefits and is not required to pay benefits through the date of an administrative conference if the employee has completely recovered from the injury. Case law typically describes this situation as one in which the employee has been released without restrictions or permanent partial disability, or where the effects of the injury have totally resolved without residual disability or restrictions. Therefore, the rule is modified to conform more closely to the standard enunciated through many years of appellate cases.

The language of item B is slightly modified to remove a cross-reference to a repealed and renumbered part. No substantive effect is intended.

Subpart 4. Scheduling. This subpart contains a renumbering to update a reference to a rule that is moved from a DLI rule to these joint rules. Deletion of "division" and the addition of "office" updates the rule to properly identify the office handling the dispute after the 1998 reorganization.

Subpart 6 of 5220.2640. Standard and burden of proof. Subpart 6 of 5220.2640 is deleted as duplicative of statutory language concerning the standard and burden of proof contained in Minn. Stat. § 176.239, subd. 6 and 7.

Subpart 7of 5220.2640. The decision (renumbered as 1514.3800, subpart 5). Subpart 7 of 5220.2640 is renumbered as 1415.3800, subpart 5.

Subpart 9 of 5220.2640. Penalties (renumbered as 1415.3800, subpart 6). An additional sentence is added to this subpart of 5220.2640 to alert the rule user to the need for prior notice to the other parties before asserting a penalty claim in a conference regarding the discontinuance of benefits. Minnesota Statutes, section 176.225, subd. 1 requires reasonable notice and an opportunity to be heard before imposition of a penalty. Due process principles require that a party be informed regarding the nature of a claim before having to defend against it. The added rule language is consistent with current practice.

Part 1415.4000 Subrogation Interest in Third-Party Recovery.

This rule relating to proceeds in a district court personal injury action (the third party action) as it relates to a workers' compensation case is moved from DLI rules at 5220.2690 to the joint rules. The amendments to this part set forth current procedure concerning methods for determining the appropriate allocation of the third party recovery or settlement proceeds among the parties in the related workers' compensation claim.

Subpart 1 of 5220.2690. Duty to inform division. Subpart 1 of 5220.2690 is deleted as unnecessary. It is not necessary for DLI to be informed of any personal injury suit related to a workers' compensation claim except as it relates to a request for allocation of the proceeds of a settlement as otherwise provided in the portions of the remaining rule. The amendment removes an unnecessary burden on a party.

Subpart 2 of 5220.2690. Stipulated agreement. Subpart 2 is deleted as unnecessary. A reference to submission of a Stipulation for Settlement as one potential outcome concerning the procedure for allocating the proceeds of a third party action is moved to subpart 2 of 1415.4000.

Subpart 3 of 5220.2690 (renumbered as 1415.4000, subpart 1). Determination of subrogation interest by division. This subpart allows the parties to a workers' compensation claim to seek an order from DLI allocating the proceeds of a third party recovery to determine the amount of the insurer's subrogation interest (repayment for workers' compensation benefits paid and future credit for additional amounts paid or payable in the future), and the amount payable to the employee. Often the parties agree concerning the sums recovered in the third party action and the sums paid by the workers' compensation insurer, and would prefer that DLI calculate the proceeds of the district court action under the statutory formula in Minn. Stat. § 176.061. In such cases, the request is presented based on stipulated facts and an order issued by DLI. The amendment to the rule clarifies that DLI is responding in this situation to a request based on stipulated facts under Minn. Stat. § 176.322. Subitem A.(6) is amended to require the signature of the parties to the joint petition to indicate agreement to the facts.

Item B language of 5220.2690 regarding service of the petition is deleted as unnecessary. Service is covered by part 1415.0700. Language regarding service of the petition on the Special Compensation Fund is moved to item C. New language in item B provides that the parties may submit a proposed calculation of the insurer's subrogation interest, any credit to the insurer for benefits payable in the future, and the sum payable to the employee. The rule formerly provided that the petitioner must submit a proposed calculation and then the respondent would either agree or present alternative

calculations. The purpose of sending the request to DLI may be to obtain the agency's expert opinion concerning the appropriate calculations indicating how to distribute the proceeds of the third party recovery. If the parties prefer to agree to the basic figures to be used to calculate the allocation of the proceeds, they may simply provide the necessary numbers and leave the calculation to DLI. The revised rule language conforms to the current practice of not requiring allocation calculations from the parties.

Item C is modified to reflect the information needed by DLI to perform the allocation calculations and not to require information that is not necessary. Service language regarding the Special Compensation Fund is moved from item B to more appropriately locate service and filing requirements in the same rule item.

Item D, as previously discussed, no longer requires a responding party to agree or disagree with the petitioner's calculations. This rule contemplates agreement by the parties concerning the basic facts of the third party recovery. If disagreements are present or subsequently develop, or the parties prefer to have the matter determined by a judge, the petition is then referred to OAH for resolution. The phrase "sum payable to the employee" is changed to "sum payable to the parties". In addition to payment to the employee, a third party settlement may trigger payment by the employee of third party settlement sums to the insurer. The minor language modification more accurately reflects the range of possibilities of needed calculations following a settlement with a third party.

Item E is slightly modified to acknowledge that an order is issued by DLI allocating the third party proceeds except in cases that have been referred to OAH for resolution as provided in item D. The order need not identify the district court action so long as the order identifies the information upon which the subrogation order is based. Therefore, subitem (1) is deleted as unnecessary. Language is added to clarify that the right to appeal a decision would be under Minn. Stat. § 176.322, an appeal from a decision based on stipulated facts.

Item F is deleted as unnecessary. It adds nothing to the statute that already provides that unappealed decisions under Minn. Stat. § 176.322 are final after 30 days.

Subpart 4 of 5220.2690. Appeal of order. The outdated procedures formerly contained in 5220.2690, subpart 4 are deleted. As provided in 1415.4000, subpart 1, any determinations by DLI are made based upon stipulated facts under Minn. Stat. § 176.322. Section 176.322 contains the appeal procedures. No repetition of the procedures is needed in the rule.

Subpart 5 of 5220.2690 (renumbered as 1415.4000, subpart 2). This subpart provides an alternative procedure to submission of stipulated facts for an allocation of the proceeds of a third party recovery or settlement. The parties may agree to the allocation of the proceeds in a Stipulation for Settlement for submission to a judge for approval, or a petition may be filed for a determination of the subrogation interest and credit. As with other situations involving agreement of the parties on the issues, a Stipulation for Settlement may address how to allocate the proceeds of a third party recovery or settlement. Where the parties are unable to agree upon an allocation, as with other disputed issues, a petition seeking a determination of disputed issues under Minn. Stat. § 176.291 may be filed. The rule describes the current procedures used for determining allocation of the proceeds of a third party recovery.

Part 1415.4100 Severability.

This part is renumbered from 1415.3600 to 1415.4100. The first phrase regarding application of this rule is slightly modified to cite the entire chapter rather than listing all of the parts. This eliminates the need to modify the rule each time another rule is added to or deleted from the beginning or end of the chapter.

Repealers

The repeal of rules and portions of rules in chapter 1415 are explained in the body of this document above in the order they appear in chapter 1415.

The reasons for the repeal of rules in chapter 5220 are as follows:

Part 5220.2605 Disposition of Coverage. This rule is moved from the DLI rules to the OAH workers' compensation litigation rules in proposed rule 1420.2605. It is explained in the SONAR under 1420.2605 of the proposed OAH workers' compensation litigation rules.

Part 5220.2610 Administrative conferences. This repeal is explained under part 1415.3700 above.

Part 5220.2620 Medical disputes. This repeal is explained under part 1415.3800 above.

Part 5220.2640 Discontinuance conferences. This repeal is explained under part1415.3900 above.

Part 5220.2655 Small Claims Court Operations. This rule is repealed as unnecessary. Small claims court legislation was enacted in 1992 in Minn. Stat. § 176.2615. However, it is not used. Because decisions of the judge in small claims court cannot be appealed, the parties have not used the potential authority of Minn. Stat. § 176.2615. The procedures of part 5220.2655 are repealed as unnecessary.

Part 5220.2690 Subrogation interest in third party recovery. This repeal is explained under part 1415.4000 above.

Part 5220.2920 Attorney Fees. The majority of the DLI rule on attorney fees is repealed as duplicative of part 1415.3200. As described under part 1415.3200, subp. 7 and 8 above, the proposed rules simplify administrative rules by combining and revising parts 1415.3200 and 5220.2920. The additional language is deleted as unnecessary and duplicative of the other rule, or is obsolete. The portions that remain useful and not duplicative have been moved to part 1415.3200 as described above. The one subpart that remains as a DLI rule is subpart 6 concerning defense attorney fees. DLI has sole authority over the required annual defense attorney fee statement. This subpart is not duplicative of the joint rule and is, therefore, retained as a DLI rule.

This Statement of Need and Reasonableness was made available to the public on October 8, 2004.