STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

IN THE MATTER OF THE ADOPTION OF RULES RELATING TO THE PROCEDURAL REQUIREMENTS OF WORKERS' COMPENSATION HEARINGS.

STATEMENT OF NEED AND REASONABLENESS

Laws of Minnesota 1975, Ch. 380, § 16, created the Minnesota Office of Administrative Hearings (then called Office of Hearing Examiners) and, in subd. 4, authorized the Chief Hearing Examiner to adopt rules governing the procedural conduct of all hearings, relating to both rule adoption, amendment, suspension or repeal hearings, and contested case hearings. Laws of Minnesota 1981, Ch. 346, § 5, amended Minn. Stat. § 15.052, subd. 4, to read as follows:

> Subd. 4. The chief hearing examiner shall adopt rules to govern the procedural conduct of all hearings, relating to both rule adoption, amendment, suspension or repeal hearings, contested case hearings, and workers' compensation hearings....

The rules proposed herein contain a complete set of procedures for the conduct of hearings to be held under the provisions of Minn. Stat. Ch. 176, the workers' compensation law. Generally, that law provides that if an injured employee has his claim for injury denied by the employer, he may initiate a contested proceeding by the service and filing of a petition which results, if not settled, in a contested hearing which is conducted by a compensation judge from the Office of Administrative Hearings. The rules being proposed by the office govern the procedures to be followed in these contested workers' compensation matters.

Pursuant to Rule 9 MCAR § 2.104, this document will contain the verbatim affirmative presentation of facts necessary to establish the need for and reasonableness of the proposed rules.

Statutory Authority.

The statutory authority for the office to adopt these rules is contained in Laws of Minnesota 1981, Ch. 346, § 5, amending Minn. Stat. § 15.052, subd. 4 (1980), as previously quoted herein. Discussions relating to the authority to adopt specific rules are contained in the rule by rule analysis contained herein, as deemed appropriate.

Minnesota Laws 1981, Chapter 253, § 35, amended Minn. Stat. Ch. 645 by adding the following: "The provisions of chapter 645, unless specifically provided to the contrary by law or rule, govern all rules becoming effective after June 30, 1981."

Minn. Stat. § 645.16 states: "The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature. Every law shall be construed, if possible, to give effect to all its provisions." Minn. Stat. § 645.17 provides certain presumptions to guide in ascertaining legislative intent. One of those presumptions is: "The legislature does not intend a result that is absurd, impossible of execution, or unreasonable." While seemingly irreconcilable provisions exist as between general and special provisions, Minn. Stat. § 645.26 provides, in part: "If the conflict between the two provisions be irreconcilable, the special provision shall prevail and shall be construed as an exception to the general provision, unless the general provision shall be enacted at a later session

and it shall be the manifest intention of the legislature that such provision shall apply."

When reviewing the provisions of Laws of Minnesota 1981, Ch. 346, in conjunction with those portions of Minn. Stat. Ch. 176 (1980) which were not amended, it is clear that the intent of the legislature must be first ascertained and then applied to these proposed rules. The intent, as applied herein, was to transfer the responsibility for the conduct of contested workers' compensation proceedings from the Department of Labor and Industry to the Office of Administrative Hearings. Therefore, any special provisions which would conflict or be irreconcilable with the manifest intention of the 1981 legislation must yield to the general provisions contained in Minn. Laws 1981, § 5. Having more than one agency adopt rules relating to the conduct of contested workers' compensation proceedings would not be reasonable in that it would result in a burden on the public, would double the cost to the taxpayers by having doulbe the expense associated with rulemaking and would otherwise be an absurd result.

Need and Reasonableness. Generally.

The rules are needed to provide the procedural framework within which all parties will be able to fairly and expeditiously present contested workers' compensation matters and through which the participants will be assured of due process of law. The rules contain a complete set of procedures governing the entire hearing process starting with the requirements for the contents of all petitions which intiate the proceedings which are required to be conducted under Chapter 176, through issuance of the compensation judge's final decision.

Rule by Rule Analysis.

Rule 9 MCAR § 2.301 (hereinafter rules will be referred to by only the last three digits of the full citation; this rule would be proposed rule 301) deals with the scope and purpose of the rules. The rule is needed to inform people that hearings under the workers' compensation law, Minn. Stat. Ch. 176, will be governed by a different set of procedures that other contested cases conducted by the office.

Rule 302. Section A of this rule is needed as a result of the provisions of Laws of Minnesota 1981, Ch. 346, § 108, which amended Minn. Stat. 1980, § 176.311, relating to the assignment of cases to compensation judges. This rule, while not repeating verbatim the statutory provisions, does paraphrase the statutory language and is crucial to the public's overall understanding of the rules as a whole in that numerous cases are remanded to the office from the workers' compensation Court of Appeals. This section of the rule will assist persons in reviewing the rule in knowing exactly who has responsibility for the assignment of compensation judges both initially and upon remand. It is reasonable in that it is a paraphrase of statutory language. Section B of the rule is needed in order to assure the public of the finality of the decisions of the compensation judges during the pendancy of a trial and clarifies any misconception over the independence of the compensation judge. Section C of this rule, containing definitions, is needed to supply the definition of terms which are not defined specifically in the law, and are further needed as short terms for the longer terms which would otherwise be required to be used. The term "petition" needs definition in order that the term can be used throughout the rules and so that persons reading the rules

will know that the term relates to the claim filed which initiates the proceeding. Likewise, when the term "petitioner" is used in the rules, the parties will know exactly to whom the rule refers. The terms indicate that they not only apply to the employee, but also to the employer or insurer when filing documents which will initiate a contested proceeding.

Rule 303. Joinder of Parties. This rule is necessary to provide a vehicle for parties to request the compensation judge to order all necessary persons to become parties to the proceeding. It is necessary to have all parties present during a case in order that the final determination by the compensation judge will in fact be a full and final determination of the rights of all parties who have an interest therein. It is further necessary and reasonable that when one party seeks to join another party, that the party to be joined be served with copies of all pleadings. This will allow the party to be joined the opportunity to prepare to participate in the proceedings. It is reasonable that the party initiating the request for joinder be responsible for serving these papers at his own expense rather than at the expense of either the taxpayers or the other parties. It is necessary that the original of the petition be filed with the settlement or calendar judge so that the official record of the case, which is maintained by the judge, will contain the originals. The requirement that the documents be served and filed no later than ten days prior to the pretrial or settlement conference is necessary in order to give the party to be joined sufficient notice of the pretrial or settlement conference and an opportunity to prepare for attending the conference. It is necessary to provide a vehicle for a judge to allow a shorter time for the service of a motion for joinder when the party is a necessary party. There may be occasions when, even with and through the exercise of due diligence, the party seeking the joinder may not have been aware of the existence of the other party in time to make the service as required herein. As indicated previously, it is necessary to allow joinder at any time, within reasonable parameters, so that all parties having an interest will be included in the final determination of the case. The affidavit which is required when service is made less than ten days is necessary in order to provide a record of sworn testimony on the question that the party requesting joinder has exercised due diligence previous to the request. It is necessary to provide that the case will not be continued or otherwise delayed because of one party's failure to comply with the ten-day rule as the purpose and intent of the workers' compensation law is to provide benefits to injured employees in a cost-efficient and expeditious manner. The injured employee is the party who has the right to the expeditious hearing and is the only party who could allow the matter to be stricken, continued or otherwise delayed in the event a party fails to meet the ten-day time requirement. Section E of the rule is necessary to inform all persons intending to file a motion for joinder of the requirements needed to properly file a motion. Obviously, the name of the party to be joined and its insurer are necessary so that all other parties and the compensation judge will know who is to be brought into the case. It is necessary that the motion contain the date and nature of the claim of personal injury or impairment so that the party to be joined will have sufficient notice. It is necessary to establish the reasons why the party must be joined so that the compensation judge may

make a determination without the necessity of an oral hearing on the motion. Again, in order to give the party to be joined sufficient notice and an opportunity to review and to prepare to defend, the supporting medical opinions are to be attached. Lastly, where the party to be joined is the Special Compensation Fund, because the statute relating to that fund is very specific, the specific details are to be presented, in affidavit form, in order that all parties may have an opportunity to review and, if appropriate, object, and to allow the parties defending the Special Compensation Fund the opportunity to properly prepare for the hearing. Further, by requiring an affidavit, the compensation judge has sworn testimony on which to base a decision without the necessity of an oral hearing. The final section of this rule is necessary to provide a vehicle for any party to contest the joinder. It is also necessary so that unless a party objects, the compensation judge may deem the objections waived and issue an order granting or denying the consolidation without an oral hearing. It is reasonable to provide a limited time frame for persons to object in order that the hearing may continue to be conducted in an expeditious manner to protect the rights of the injured employee.

Rule 304. This rule is a comprehensive rule relating to the initiation of the proceedings. In general, it is needed to establish the contents of all documents, to establish the responsibilities of the attorneys representing the parties, and to provide a vehicle where third parties will be notified of the proceedings, where appropriate. As the compensation judge is ultimately responsible for the conduct of the trial at which the rights of the parties are determined and is further responsible for issuing a full and final determination, it is necessary that these rules contain the requirements for the contents of the documents which lead to the trial and decision. As used in the statute, the term "hearing" is a generic term which must be read to apply to all elements of the process, including the initiation by the service and filing of the petition. It is reasonable that these requirements be contained in these rules for the same reasons. Precedent for the legality of including rules relating to the initiation documents can be seen in the previously-adopted rules of the Office of Administrative Hearings relating to the conduct of rulemaking hearings (wherein requirements on the Notice of Hearing are included) and the rules adopted for the conduct of contested cases, the routing of high voltage transmission lines and siting of large electric generating plants, and recently-adopted rules relating to hearings conducted under the Minnesota Revenue Recapture Act. Further precedential support can be seen in the Rules of Civil Procedure for the courts in the state. The courts are authorized to adopt procedural rules. They have done so and have included rules relating to the content of the initiation documents.

Section A of this rule is a paraphrase of statutory requirements, for the most part. It is crucial to the individual's understanding of the rules as a whole to have the statutory requirements contained, in limited fashion, within the rules, together with a citation to the specific statutory provision so that the reader of the rule will be able to check specific statutory language. The last sentence of this section, requiring that medical reports be attached, is necessary in order to provide the parties being served with information on which to base their answer to the petition. It is reasonable

in that a claim should not be filed unless there has been an opinion rendered by a qualified medical person that an injury exists and is a result of an employee's job. It is also reasonable to require a certification that the statutory notice to the employer has been given. In this way, the compensation judge receiving the file will have a sworn statement as part of the record. The requirement of prior notice is statutory and, absent such notice, the petition would be improperly served and filed, which would be jurisdictional.

The second section of this rule is necessary to provide a discretionary vehicle for parties to agree to combine or consolidate the hearing process if a number of injuries to several employees were the result of a single incident. Such a procedure will provide efficiency in the hearing process and will aid in expediting benefits to employees who are able to show that their injuries are compensable under the law. This allows the consolidation by the consent of all parties. The discretion in the rule is with those regulated by the rule rather than the regulator. Such discretion is thus permissible. However, the rule also provides that, upon proper motion, the compensation judge may order a consolidation. Thus, absent consent of all parties, the matter may still be consolidated. By requiring a motion, all parties would have an opportunity to object. At the same time, if only one party objects to the consolidation, and all other parties agree, it would provide a vehicle for the consolidation to achieve the goal of expeditious proceedings.

Section C relates to the contents of claim petitions. The general need for such a rule was discussed in the foregoing paragraph. This rule does not prescribe that a specific form be utilized but, rather, allows the parties filing the petition the opportunity to utilize their own format provided that the petition contains the information in the sequence listed and provided that a form is not prescribed by the Commissioner pursuant to Minn. Stat. § 176.271, subd. 1. It is necessary that the sequence be followed in order to allow parties familiarity with the various sections of petitions which will expedite their review and preparation to defend. It will also allow settlement, prehearing or compensation judges the ability to quickly go to specific points in the petition when preparing for the hearing. At the same time, should one of the legal form printing companies desire to print a form, the rule will provide the specificity necessary to determine how to prepare the form. The rule as written will also allow the Commissioner to prescribe a form for use by parties if he deems appropriate.

It is necessary that the title of the case include sufficient information so as to allow all parties an opportunity to know exactly who is filing the petition, and, likewise, who the specific employer against whom the claim is being made is and their address as well as the name of the insurance carrier, if appropriate. It is also necessary, for proper filing and record-keeping purposes, that the file number previously assigned to the case when the intial claim had been filed with the Workers' Compensation Division of the Department of Labor and Industry be attached. This is referred to as "the division's record number". Under the present system, all files are assigned a record number as well as containing the employee's Social Security number for proper reference. At the time of the preparation of these rules, the Commissioner of Insurance is preparing a program for the computerization of workers'

compensation matters. It will more than likely include a recommendation for a more proper numbering system which may or may not include a Social Security number. It is also necessary that the petitioner's address be included so as to provide proper and adequate identification of the petitioner. It is necessary that the date of the injury or onset of the occupational disease be included so as to provide information on which the respondents may properly prepare an answer and prepare their defense. The place of employment is needed to be stated to establish that the employee was in fact working for the named respondent at the time of the alleged injury or disease. This becomes more necessary when a number of employers or insurer are named as respondents when injuries are continuing in nature. The employee's weekly wage at the time of the injury is necessary in order to establish the rate which will be determined for compensation benefits in the event a determination is made that the injury or disease is compensable. The statement that the injury or disease arose out of and in the course of employment is necessary to establish the jurisdiction and the ultimate compensability of the injury. This provision is carried forward from the previously-existing rules of the division. It is both necessary and reasonable that the petition contain a statement specifying the nature and extent of the injury, including percentages of disability if appropriate, and to attach copies of all medical reports. This allows the respondents the opportunity to prepare to accept portions of the liability or to defend as appropriate. It also then provides a vehicle for the settlement judge to be able to review the filing to determine whether a settlement conference is appropriate. It is reasonable that medical reports be attached in that such medical reports are available, or should be available, to the petitioner prior to the time the claim is filed. Absence of a written medical report would indicate that the claim petition may be prematurely filed. It is necessary and reasonable to state the specific date on which the employer was first given notice of the injury or disease as the statute requires actual notice that an injury or disease has occurred. It further presents evidence in the case which, if agreed to by the respondents, need not be further presented at the time of the hearing which will expedite the hearing process.

The requirement that the employer's insurers name and address be included is needed in order to provide the settlement, calendar or compensation judge with the proper addresses for purposes of serving notices. A detailed listing of the dates of the disability is necessary in order to provide a specific claim against which the employer or insurer might defend. It is also necessary to provide immediate information to the settlement or compensation judge to determine whether a settlement conference would be appropriate. It is reasonable to require this information because it is known to the petitioner at the time of the filing of the claim petition. If it is not known, the claim petition is prematurely filed. It is further reasonable because the petitioner should know the nature and extent of all of the injuries and disabilities prior to the filing of the petition. The same can be said for the list of the medical benefits which includes all medical bills. Again, this information should be known prior to the filing of the claim petition. It will provide the quick vehicle for review by the compensation or settlement judges.

Item 12, relating to the names of third parties who may have paid previously benefits, is necessary in order that there might be proper notice given to these parties as required in subsequent sections of the rule and, likewise, to provide a vehicle for the division and the office to have full knowledge of the amounts paid and the addresses of these persons so that proper notices can be sent. As indicated, a later portion of the rule establishes further requirements as they relate to third party payors. It is reasonable to require a listing of third party payors as the employee will have records of all payments which have been made prior to the initiation of the proceeding by the filing of the claim petition. A statement that attorney's fees are or are not requested is important in order that the petitioner, who will have to sign the petition, will be making a statement requesting said fees. It also gives notice to the respondents that the fees will be requested and to the settlement or compensation judge who may ultimately be responsible for the apportionment of the attorney's fees. Minn. Stat. § 176.271, subd. 2, requires prior notification that a claim would be filed be given to the employer and insurer. Item 14 of the requirements of the petition requires a statement that the notification was accomplished. This is needed to provide a vehicle for the settlement or compensation judge to know that the notice was given, which notice is jurisdictional. At the same time, it serves as a reminder to the petitioner that a claim petition cannot be initiated until this notice has been given. The signature and attestation by the employee is needed to insure that the employee has read all of the items in the petition and swears to their truth and veracity. This will avoid speculation. It can also the be subsequently used by the respondents at the hearing in the event testimony changes from what has been stated in the petition. The name, address and telephone number of the employee's attorney is necessary in order to provide a vehicle for the division and the office to have the proper name and address for purposes of serving all notices. It is also necessary to provide this information to the respondents who will have to serve the employee's attorney with all documents. A statement that a prehearing conference is requested or not requested is needed to permit the settlement judge to quickly determine whether to review the file further or to call for an immediate settlement conference. It will also serve as notice to the respondents that such a conference has been requested. Items 18, 19 and 21 are procedural requirements necessary to allow the division and the office the opportunity to plan in advance for the timing of the hearing. It will assist in setting the matters at locations throughout the state. Likewise, it will give the respondents early advice of the issues deemed necessary to be resolved. Item 20 of the petition is needed to provide a vehicle to the division and the office to determine whether or not the party is presently receiving benefits and, if so, from whom. This will be additional notice to the settlement or compensation judge that another party is necessary to be included in the case, if that party is other than the respondents named in the petition. It is reasonable to be provided in that if benefits are being paid, the employee should know from whom the benefits are being received. The amounts which have been paid are necessary to have a listing, as early as possible, of potential liabilities of the respondents.

It is necessary that all requests for action contain the title and appropriate identification numbers of the cases. With 60,000 or so claims filed and with 6,000 or so contested claim petitions filed, in order to assist the agency and all parties in proper identification, the numbering system is necessary. Further, with the great number of cases filed and the varying types of action requested, it is necessary that the documents contain the type of action requested.

Section E of this rule relates to responsibilities of attorneys and notices to third parties. In order that a full and final determination of all rights of all parties are involved, it is necessary that the attorneys representing parties make full and adequate inquiry of their clients to determine the names and addresses of all parties to the proceedings. Therefore, this rule requires such an inquiry and further requires that notice be given to these third parties. One of the significant factors resulting in delay in processing workers' compensation claims is a requirement that third parties be given notice of the institution of a workers' compensation proceeding and notice of their right to petition for intervention and reimbursement. Frequently the attorneys have not been inquiring of their clients whether third party payments have been made. Sometimes this inquiry is not timely. When inquiry does disclose such payments, frequently there is no notice given to the third party, or the notice given is inadequate. Also, even when inquiry is timely and adequate and timely notice is given, the third party often does not respond in a timely manner, or fails to respond by providing all of the information necessary and required by the previous rules on intervention. Another problem is the frequent total lack of response from parties to the proceeding upon receipt of a petition for intervention which includes a proposed stipulation that all of the payments for which reimbursement is claimed are related to the injury or condition in dispute in the proceeding, and that if the petitioner is successful in proving the compensability of the claim, it would be agreed that the intervenor is entitled to reimbursement of the sums claimed by the intervenor. In some instances, these petitioners never put in an appearance. Likewise, petitions for intervention sometimes are not readable and include expenses paid which are obviously unrelated to the workers' compensation proceeding. These are several factors which have contributed to the problem of dealing with third parties. In some cases, the process of resolution of who paid what portion of what bills to whom becomes very complex and time consuming. The present necessity to give recognition to the rights of third parties represents somewhat of a departure from the prior practice. As will be seen in the rule, the onus is on the attorneys under these rules. The amount of the fee of the petitioner's attorney is not usually computed on the medical expense aspect. These factors, and perhaps others, have combined to make dealing with third parties troublesome. This rule is designed to improve the ability of the workers' compensation system to balance the rights of third parties with the rights of the other parties. Thus, attorneys are required to inquire of their clients of the existence of third party payments and if such a payment has occurred, to give proper notice. The rule requires that the notice contain a copy of the office's rule on intervention as well as copies of all pleadings in the case so that the third party will be able to immediately ascertain what

steps must be taken to protect their interests and will be fully advised of what has transpired to date in the proceeding. The four elements listed are necessary for the same reasons, that is notice to the third party of what has transpired, who the parties are, how to perfect their rights, and what will occur if they fail to comply. The rule provides that if an employee's attorney fails to comply with the rule, that factor will be taken into consideration as an additional signficant factor in determining attorney's fees under the statute. It should be pointed out that this does not mandate that fees be reduced but rather that it is an element which will be taken into consideration in determining fees. Thus, this puts "teeth" in the rule which is necessary to insure compliance by the attorneys. Likewise, failure of attorneys on the other side to comply with the rule will be used to determine whether unreasonable or vexatious delay has occurred. This is the "teeth" in the enforcement of this section. Finally, the rule will not allow a claim petition to be filed unless a proof of service of written notice upon the third party is enclosed with the petition. Again, this will aid in expediting the overall procedures.

Rule 305. This rule is necessary to detail, within these rules, a paraphrase of the statutory mandate. Minnesota Laws 1981, Ch. 346, allows the Department of Labor and Industry to maintain three settlement judges. Other provisions in the law relate specifically to these settlement judges. The settlement process is but one part of the "hearing" as that generic term has been used in the law. In fact, in Section C, the retention of jurisdiction section was requested to be placed in the temporary rules of the office by the Department of Labor and Industry. A rule on this subject is necessary, even though it may paraphrase much of the statutory language, in order to place within one set of procedural rules all of the processes which a party attempting to prepare a client's case must be concerned with. While the rule primarily discusses settlement conferences to be conducted by the department, it also allows settlement conferences to be conducted by the compensation judges of the Office of Administrative Hearings. With only three settlement judges, the department's Chief Settlement Judge, Mahlon Hanson, has informed the Chief Hearing Examiner that it is their opinion that the three settlement judges will only be able to look at approximately 2,500 cases out of the approximately 6,000 claim petitions filed annually. Thus, since settlement conferences have proven in the past to be an effective manner of expediting proceedings, provisions must be made for settlement conferences to be conducted in both the department and the Office of Administrative Hearings.

A provision is included in this section to allow parties to request settlement conferences when they have not otherwise been set by the division or the office. It is necessary to have a rule which requires all parties to attend settlement conferences and that when attending they be authorized to enter into a full settlement of the case. The purpose of the workers' compensation law and the procedures to be established are to expedite the payment of claims to injured employees who are entitled to benefits. In the past, when parties have attended settlement conferences, and have not been authorized to enter into settlements, time is wasted by all parties which adds costs to the system. It is also necessary that if parties have agreed on issues, even though they have not reached a full and final settlement of all

issues, that the particular judge conducting the settlement conference be authorized to issue an order which will be binding on the compensation judge subsequently assigned to try the case. This will prevent cases from being tried and retried on the same issues. It will assist in expediting the actual trial of the case if issues have been permanently settled at an earlier date. However, the "newly discovered evidence" rule will be applied to allow persons to reopen issues subsequent to the prehearing or settlement conference.

It is reasonable that these rules contain the provisions described in the preceding paragraphs to carry forth the legislative intent of having one agency adopt rules of procedure for contested workers' compensation matters and for the reasons discussed in this statement in the comments relating to statutory authority and elsewhere.

Rule 306 involves the procedures when, pursuant to Minn. Stat. § 176.241, an employer notifies the employee that they intend to discontinue compensation benefits presently being paid. The rule also encompasses situations where an employer or insurer does not automatically discontinue payments pursuant to law, but petitions for an order allowing discontinuance. In order that an injured employee will not be unreasonably deprived of benefits, yet providing a vehicle for the employers to reduce costs, an expedited hearing is established.

It is reasonable that the rules of this office contain provisions for such notices as they are the initiating documents for the termination of benefits. The number of hearings required in these circumstances has grown dramatically. Thus, a compensation judge will be called upon to render a decision on the issues. Again, having one set of rules for all contested matters carries forth legislative intent and is statutorily authorized.

Section A of the rule pertains to the contents which are required to be in the notice of intention to discontinue compensation. Most of the items contained are self-explanatory. It is necessary to identify with particularity the name and address of the person, the file numbers assigned to the file, the attorney who represented the employee during previous proceedings, any prior orders under which payments have previously been made, and, obviously, the date the compensation is proposed to be discontinued. Then, the rule requires a list of facts which support the discontinuance. This is needed so that the employee, the employee's attorney, if any, and the Commissioner or compensation judge will be able to make a preliminary determination as to whether or not a discontinuance is justified. Subsection 6 of Section A of the rule requires that this statement be prepared with sufficient specificity to allow the employee to prepare an objection. Thus, the need for the rule is expressed within the rule itself. Likewise, if the discontinuance is based on medical evidence, the employer will have medical reports available which then can be attached to the notice of intention to discontinue. This is necessary in order to give the employee and the employee's attorney all necessary information to prepare a defense to the discontinuance and to be able to determine whether an objection should be filed. It is also necessary that a specific notice be given to the employee of his right to object to the notice of intention to discontinue, the place where the objection may be filed, and what will occur if no objection is filed. On many occasions, the attorney may no longer be representing the

employee and the employee must be able to read and understand this notice. It is necessary to require a uniform notice so that all elements are contained in every notice rather than allowing each employer to come up with their own notice. It is necessary that the name and address of the employer and insurer be given so that questions can be directed to the proper persons and so that the employee will know, especially in cases where there are several employers who have been involved in a prior determination, exactly who can be contacted and who is responsible for the discontinuance.

Section B of the rule provides a procedure for an employee to file an objection to the notice of discontinuance. It is necessary because unless an objection is filed, the Commissioner may allow payments to be discontinued without a hearing. It is necessary that objections be in writing so that all parties may be able to read them accurately. It is necessary that they be filed with the Commissioner because the law requires that the Commissioner make an initial determination. The information required by Subsection 1 is necessary so that the Commissioner may properly identify the file previously active in the agency in an expeditious fashion.

Subsection 2 of Section B is necessary to spell out the procedures for the expediting of the hearing process. While there may be instances where hearings might be set sooner than 30 days from receipt of the file, it will take the employee at least 30 days to prepare for the hearing. Such preparation will generally require the employee to return to his own doctor and for the attorney to obtain a medical report from that doctor to counter the medical evidence already in the possession of the employer. However, to delay the hearing more than 75 days could be prejudicial to the employee who should be receiving the benefits. The rule provides for expedited hearings but only if an objection is filed less than 120 days after service of the notice to discontinue. The 120-day figure was picked on the basis that it is anticipated that all hearings will be set within 90 days to 120 days of receipt of a file from the Commissioner. In fact, they may be set even sooner. Thus, there will be no need to treat matters as an expedited matter if a timely objection is not filed.

Finally, the rule allows an employer to file a petition for discontinuance without actually terminating payments. In such instances, it is necessary to allow the employer the expedited hearing process to encourage employers to use this process rather than those allowed by law where the employee would automatically be "cut off" from receiving compensation benefits. This rule is needed to provide the necessary incentive for employers to continue making payments pending the determination of their petition for discontinuance.

Rule 307. Answers. Section A of the rule is a paraphrase of the statute which is necessary so that persons reading the rule will be given a citation to the specific statutory language, yet have a basic understanding of the content of that statute without referring to it further. It is necessary that an answer be accompanied by proof of service in case parties allege that they have not received the answer. It will then be a matter of record as to how the service was made and by whom and on what date.

The rule contains a section relating to the contents of the answer. A specific form is not provided for the same reasons as in the case of original claim petitions. Specific responses to the allegations of the petition are

needed to assist the settlement and compensation judges in a narrowing of the issues based on the pleadings. It is also necessary to allow the settlement judges an opportunity to review the file to determine whether to automatically set a settlement conference or to forward the file automatically to the Office of Administrative Hearings. A general denial would leave the settlement judge, let alone the petitioner, unaware of which issues were actually contested. Again, the need for expeditious treatment of all proceedings for workers' compensation has been stated previously. Again, the main purpose is to deliver benefits to eligible employees as soon as possible. Thus, this rule as well as others, has been drafted to meet that need. It will prevent attorneys from "game playing" by making general denials when, in fact, many of the allegations contained in the petition can be admitted without further proof. Admitting certain contents of the petition will assist in expediting the hearing itself and will greatly aid the compensation judge in the ultimate fact finding, since a summary finding on those facts admitted can be made rather than listing detailed and specific findings. If medical reports are available, as they are in most cases by the time a petition is filed, if an answer denies the existence of injury, medical reports on which this denial is based must be attached. Thus, the rule is reasonable as it creates no new burden on parties. In fact, providing that medical reports be attached to the answer will allow the petitioner to not have to use the discovery proceedings found elsewhere in this rule to obtain the copies. Those discovery rules would allow the obtaining of the copy of the report in any event.

Subsection 3 of Section C of the rule provides that if a medical examination has not already been completed, that the answer specifically detail the date on which the medical examination will be accomplished, which must be accomplished within 75 days from the date of service of the notice of intention to initiate proceedings. It is necessary to establish a deadline during which the medical examination will take place in order to avoid delay to the employee. It must be pointed out that prior to an employee serving an employer with a notice of intention to initiate proceedings, in the great majority of cases, the employer already has obtained a medical examination by a doctor of its choosing. This is especially true in cases wherein the employer has denied the employee's claim which has resulted in the employee filing the claim petition in the first place. Thus, it is only anticipated that in the rare instances where the employer is denying liability for an injury that the 75-day requirement may be too restrictive. The rule then provides a vehicle for the employer to obtain an extension. While it is recognized that in cases where specific medical specialists must be obtained that a period of 90 days to 100 days would be more appropriate, nevertheless, the ultimate goal of the workers' compensation proceedings is to deliver benefits to eligible employees as soon as possible. As indicated, in most instances a medical examination by the employer's doctor has already occurred which has been the basis for the denial which leads to the filing of the claim petition.

Answers will be filed, more likely than not, while the file is in the possession of the settlement judges at the department. It is reasonable that these rules contain the answer requirements in order to carry forth the legislative intent as discussed previously. Answers to petitions play an

important part in the hearing process by further defining the issues to be ultimately determined by the compensation judge who hears the case.

Rule 308. A rule relating to service of documents is necessary to establish a uniform procedure for such service. First class mail or personal service is appropriate to provide adequate notice and service. Certified mail would be inappropriate in that experience has shown it to be the least effective way of giving notice to parties. Affidavits of service are required in order that it may be established who served the document, in what fashion and on what date should it become an issue in the proceeding. Finally, the rule provides that computation of time for service shall be in accordance with Minn. Stat. § 645.15 which is needed to provide uniformity with the service requirements with which attorneys and parties are familiar.

It is reasonable that the procedural rules for the conduct of hearings, as adopted by this office, contain a rule relating to service so that persons will not have to review the department's rules to determine how to serve documents within the jurisdiction of the compensation judge. It is clear that the intent of the legislature was to transfer jurisdiction over contested matters from the department to the office. However, not all sections of Minn. Stat. Ch. 176 were amended by the 1981 legislation. We are faced with just such a situation in this instance. Minn. Stat. § 176.285 was not amended in 1981. That section provides for service by mail "or by such other means as the commissioner...directs." Thus, earlier discussions relating to construction of laws must be applied in this instance (see Statutory Authority discussion above).

Rule 309. Hearings. As previously indicated, the statute has utilized the generic term "hearing" to refer to all stages of contested workers' compensation proceedings. Therefore, it is necessary that the three types of hearings contemplated be specifically defined as a settlement conference, a prehearing conference and regular hearing. A general statement of the primary purpose for which each of the hearings is conducted is included and is necessary so that persons generally unfamiliar with workers' compensation proceedings will be able to know with some certainty what is expected at each of the various types of hearings. Of more important note is the requirment that where a settlement or prehearing conference is to be conducted in a location which would require a party to travel more than 50 miles to attend, that the conference must be conducted by telephone unless all parties agree otherwise. This is needed in order to save time and money for all parties and to avoid the expenditure of energy at a time when our energy resources are either in short supply or very expensive. At least 20-days notice is necessary for parties to prepare to attend these hearings because, as subsequent comments will show, certain documents must be exchanged or filed ten days before the pretrial. Therefore, parties should be given at least ten days to prepare these documents before they must serve them. While it is anticipated that more than 20-days notice will be given in most instances, nevertheless, in order to prevent unnecessary delay in the workers' compensation proceedings as a whole, it is believed that 20 days is sufficient and any more would add to delay in the process.

Section B of the rule provides for the notice of the time and place for hearings. It provides that the notice shall be in writing and served by mail

or personal service unless an oral or written notification has been given to the parties by the settlement, calendar or compensation judge at the time of the settlement or prehearing conference. As more than 6,000 cases are filed each year, if notices of hearings had to be mailed in each instance, this could result in a great cost for postage and paper. Thus, this vehicle of optional service is provided so that a date certain for trial can be established at the time of a settlement or prehearing conference and notification given to all parties, at that stage, of the regular hearing. It is further necessary that the rule contain provisions requiring attorneys to notify all of their witnesses of the date for the hearing as soon as possible so as to avoid unnecessary requests for continuances because of the unavailability of witnesses. Many requests for continuances are received just because of that problem. With respect to the timing for the notice of hearing, the rule provides at least five-days notice prior to the hearing. This is identical to the language of the statute. It is anticipated that a much greater notice period will be common but to provide more time, by rule, than is contained in the statute, may result in an illegal rule. However, the rule does provide a vehicle for an alternative time frame or less than the five days when waived by all parties, agreed to by all parties, or when notice is governed by contrary law or rule.

The section relating to continuances is necessary in order to avoid unreasonable and vexatious delay. The purpose of the workers' compensation law is to expedite payment of benefits to eligible injured employees. Continuances are inconsistent with that requirement and, thus, the rule provides for continuance only upon a showing of good cause. However, Subsection 2 of the rule provides for automatic continuances when the party requesting the continuance has obtained the consent of all other parties. This vehicle is needed because there are many times when one or more parties may agree that a continuance will be to the benefit of all parties in order to effectuate settlements, to obtain additional discovery, or for other good and valid reasons such as death in the family or serious injury or illness. This could include any of the parties or the attorneys. It removes discretion from the compensation judge which is necessary in order to provide the parties a vehicle to agree among themselves without the necessity of going to the compensation judge. However, the parties must still obtain a new hearing date which is agreeable to all parties and the compensation judge. In some instances, all parties may not agree to a continuance. Therefore, a procedure is needed to still allow a party to make a motion to the compensation judge for such continuance. Finally, while the phrase "good cause" is difficult to define with specificity, it is necessary to indicate, by rule, that certain reasons do not constitute good cause. All of these reasons are brought forward from the previous rules. They have been modified somewhat from previously-existing rules but basically contain the same or similar requirements. They are also found in the temporary rules. Written comments received based on the temporary rules also spoke to this issue.

Rule 310. Intervention. In order to insure that a final decision is in fact a "full and final" determination of the rights of all parties, it is necessary to provide a means, such as intervention, to allow for all parties who have a pecuniary or other interest in the proceeding to be part of the

proceedings. In the field of workers' compensation law, this is even more important in that injured employees generally receive benefits from numerous other sources while their workers' compensation claim is pending. These sources may include automobile insurance policies, personal health insurance policies, payments from the Special Compensation Fund, or even payments from county or state welfare agencies.

Comments previously made when discussing rule 304 are equally applicable here and are incorporated herein by reference. In addition to those comments, in response to a Notice of Intent to Solicit Outside Opinion, correspondence was received by the Chief Hearing Examiner from P. Kenneth Kohnstamm, Special Assistant Attorney General assigned to the Minnesota Department of Welfare, and from Indru S. Advani, Staff Counsel for Blue Cross/Blue Shield of Minnesota. Both of the above-referenced letters will be relied upon as support for the need and reasonableness of the rule on intervention as proposed. As detailed in those letters, in Peters v. Independent School District No. 281, 297 N.W.2d 289 (Minn. 1980) the Minnesota Supreme Court spoke to the question of intervention in workers' compensation matters. In that case, as pointed out by Mr. Kohnstamm, the Minnesota Supreme Court has recognized the peculiar role of intervenors in workers' compensation cases and has indicated that intervention interests should not be defeated by unnecessary procedural requirements. As drafted, the proposed rule on intervention copies, nearly verbatim, the recommendation of the Minnesota Supreme Court as found in the Peters decision. The Supreme Court's language in recommending a specific intervention procedure is adopted as the agency's need and reasonableness presentation on the intervention rule.

There have been prior discussions on the question of statutory authority and legislative intent which will not be repeated here but are incorporated by reference. In this instance, Minn. Stat. § 176.361 entitled "Intervention" was not amended by the 1981 Legislature. The second paragraph of the section states: "The commissioner of the department of labor and industry and workers' compensation court of appeals shall adopt rules to govern the procedure for intervention." Nothing contained therein restricts the Chief Hearing Examiner from adopting a rule on intervention. Further, as the Court of Appeals no longer has jurisdiction over anything but appellate matters, any rule they adopt would have to relate solely to procedures for intervention on the appellate level. Again, legislative oversight in failing to amend this portion of the law is as obvious as their intent which has been discussed previously.

In addition to the Peters decision, it is necessary that petitions to intervene be served on all parties so that all parties will have notice of the claims of the third party payor. Service must be allowed in the same manner as all other petitions and documents. It is necessary that motions for intervention include an itemization of all payments and copies of all bills on which payments have been made in order that parties receiving the notice of intervention have sufficient information to determine whether or not they should sign the stipulation which is enclosed with the motion to intervene or to object as is allowed by the rule. The data required by Subsections 1 through 8 of Section A of the rule is procedural information and other data required to give adequate notice to other parties of the interests of the

intervenor. These requirements are reasonable in that the intervenor has the information in its possession as it has made the payments and, if it wants to protect its interests, it is reasonable to require them to include all documentation. Section B is the stipulation as discussed by the Peters case. The provisions for returning the stipulation are in response to the suggestion of the Supreme Court. The time limit for the signing and return of such stipulations is necessary to secure the rights of the intervenor where delay would otherwise be occasioned by the neglect or forgetfulness of other attorneys or parties. In response to the Peters decision which indicates that intervenors should not necessarily have to attend, once a stipulation has been agreed to or deemed to be accepted, intervenors are not required to attend. The rule is phrased on the basis that the intervenor shall attend unless the stipulation has been signed or the right to reimbursement otherwise established. They shall be required to attend the regular hearing only if ordered to do so by the compensation judge. It is necessary to have some finality to an order for intervention. Thus, once the calendar judge has issued an order on intervention, it is binding on the compensation judge to whom the case is assigned for a regular hearing. Thus, it will not be necessary for intervenors to appear once established. It is necessary to provide a specific time during which intervenors will present their evidence in order to allow the intervenor to plan attendance at the hearing at the appropriate time and so that they need not be present during the entire hearing. Obviously, this will only be necessary where stipulations have not been signed or the intervenor's right to reimbursement otherwise established prior to the hearing. Sections F and G of the rule are necessary to give the intervention rule "teeth". Without enforecment mechanisms, past practice indicates that rules will not be specifically followed. As pointed out by Mr. Kohnstamm in his memorandum, the Department of Public Welfare has been sending stipulations to parties since issuance of the Peters decision. However, parties consistently fail to submit the signed stipulation. Other parties who have petitioned for intervention have also been utilizing the stipulation process and have met with the same or similar results as have been met by Mr. Kohnstamm. The enforcement mechanisms are as previously discussed in rule 304 and the reasons given therein are incorporated herein.

Rule 311. Consolidation. A rule on consolidation is necessary in order to expedite the hearing process, where appropriate. Consolidation under this rule is discretionary with the compensation judge. The discretion must be in the compensation judge in that as a trier of fact the compensation judge is the person in the best position to determine whether consolidation would be effective. In order to guide the exercise of discretion, specific standards for consolidation are listed in Subsections 1, 2 and 3 of Section A of the rule. The rule also provides for voluntary consolidation through stipulation of all parties without the necessity of any order of the compensation judge. This is needed for in many instances the parties may be in the best position to determine whether a case should be consolidated. It is not anticipated that consolidation will occur very often. If consolidation is accomplished, rules for the procedure to be followed in the hearings are necessary. Thus, Section B provides for the receipt of evidence in consolidated cases. Section C of the rule is needed to provide specific notice requirements when an order

for consolidation has been granted and specific requirements on what the order must contain. The requirements of what the order must contain will thus be uniform from one judge to another. In those instances where one party may believe that cases should be consolidated, it is necessary to provide a vehicle for other parties who may not agree to object and have their opportunity to be heard. Thus, Section D provides the procedures to be followed with the necessary notice requirements. Then the section establishes standards by which the appropriate judge will determine whether to grant consolidation or not. Finally, in order that the records of each employee's claim will be separated, it is necessary to provide that separate pleadings and orders be filed in each case as if not consolidated.

Rule 312. One of the purposes of creating a judicial system for the trial of contested matters is to provide for fair and impartial hearings of all contested matters. Part of this inherent fairness is the requirement that the judge hearing the case be free from any actual or even perceived bias or prejudice. In the same vein, even though a judge may not possess any bias or prejudice toward one or more of the parties in a case, if any one of the parties feels that they will not get a fair trial before the judge assigned to the case, for any reason, the perception of unfairness will prevail. Thus, as in the County and District Courts for the state, a compensation judge may be disqualified upon the same grounds as a District or County judge may be disqualified. However, under the section relating to disqualification, it is necessary that parties actually show the grounds for the disqualification. Where a party feels a judge may be biased or prejudiced, the section allows for an automatic removal of an assigned judge upon the filing of an affidavit for reassignment. The format for the affidavit for reassignment is necessary to provide a form for automatic reassignment when utilized. However, in order to eliminate all regularly appointed compensation judges from having affidavits filed on them in each case, it is necessary to limit the number of automatic reassignments in each case to two. Thus, the petitioner may file an affidavit and one of the parties on the other side may file, but not all. On the other hand, the section would also allow a party responding to a petition to be the first party to file an affidavit for reassignment. The section, as drafted, is identical to the provision presently in effect for workers' compensation in the state of California. The practice in California has not resulted in difficulties in scheduling as long as a case is immediately assigned to a compensation judge upon receipt in the office and scheduled for hearing. It is further necessary that continuances not be automatically granted upon reassignment unless absolutely necessary due to the unavailability of another compensation judge, in order to carry out the purposes of the workers' compensation law which is to secure benefits to qualified employees.

Rule 313. Prehearing Procedures. In keeping with the general purpose of the workers' compensation law, providing benefits to eligible employees as soon as possible, prehearing procedures can be a vehicle to expedite the entire process by allowing parties an opportunity to review their case and, if possible, to settle all differences without the necessity of going to a full trial before a compensation judge, which will result in additional costs and delays in time. Thus, it is believed that the need for prehearing procedures,

in general, cannot be disputed. Likewise, the reasonableness of prehearing procedures, in general, would follow from the same statement. The question to be arrived at remains the need and reasonablenss of the particular prehearing procedures as they will apply to workers' compensation. It is recognized that every effort must be made to expedite workers' compensation hearings at the least possible cost to all parties concerned. On the one hand, attorneys representing petitioners have limited fees allowed by statute. On the other hand, costs of legal fees paid by employers or insurance companies on behalf of the employers go into the overall costs of workers' compensation which results in the raising of rates to be paid for the insurance.

Once more the issue of authority to adopt procedural rules for a settlement conference conducted by a settlement judge from the department presents itself. Rather than repeating the same discussions again, those portions of this document relating to statutory authority, legislative intent and statutory construction are incorporated herein by reference.

It is necessary that the rule for prehearing or settlement conferences provide that all parties must attend. Obviously, this is a general rule which would, pursuant to the rules of construction found in Minn. Stat. Ch. 645, be overruled by the more specific rule relating to intervention which would allow intervenors, in certain cases, not to have to attend such conferences. As indicated in prior cases, it is absolutely necessary that the parties attending meaningful prehearing or settlement conferences have authority to settle their cases. Otherwise, a meaningful conference cannot be accomplished. On the other hand, if a pretrial conference is nothing more than a time for exchange of witnesses and setting of a case for trial, the same can be accomplished by mail or telephone and the requirement that all parties attend would not be necessary. In order to effectuate the purposes of the prehearing, it is important that parties discuss settlement prior to the prehearing which again, if agreement can be reached, can expedite not only the prehearing but potentially result in a settlement of the entire case.

Section C of the rule establishes certain elements relating to prehearing conferences which shall be binding on all parties. This section also includes specific items which the parties are to have exchanged prior to the prehearing conference. In the event they have failed to exchange them, Section D permits the settlement or calendar judge to require the filing of a prehearing statement. These items are needed in order to give the settlement or pretrial judge an opportunity to review the case prior to the conference so that the judge can be effective in securing a settlement, at the time of the conference. There should be no room in workers' compensation for "game playing" or the hiding of evidence. The purpose of the Minnesota workers' compensation law is defeated if procedures are established which allow delay in any stage of the proceeding.

The various items found in Section C are reasonable as they all relate to the claims in the case and should be available to all parties at this stage of the proceeding.

Section E is in response to a recent decision of the Court of Appeals which remanded a case to a compensation judge to allow the presentation of video tapes which had been taken of the employee subsequent to the prehearing but prior to the trial. In response to rules and practice in existence at the

time, the video tape, having not been disclosed at the pretrial conference, was not allowed in testimony. Section E provides the same prohibition but recognizes that extenuating circumstances may exist or newly discovered evidence may come to light which should be allowed as long as there are certain safeguards. Thus, Section E is needed to provide this vehicle. It is reasonable in that it uses the familiar "newly discovered evidence" rule and in that it provides that other parties have been advised of the newly discovered evidence and have had an opportunity for review and preparation.

Minn. Stat. § 176.191 contains several subdivisions relating to the issuance of orders allowing compensation benefits to be paid to employees on an interim basis pending a final determination. These laws are aimed at providing benefits to injured employees rather than forcing these employees to obtain welfare benefits or to fall behind in bills while unable to work. There may be other good and valid reasons for these sections. Thus, Sections F, G, H, I, J and K are recognition of the provisions of Minn. Stat. § 176.191. These sections are carried forward, nearly verbatim, from the previously-existing rules of the Workers' Compensation Division of the Department of Labor and Industry. All persons who have discussed this section of the rules with the Chief Hearing Examiner have indicated that the rules under the former jurisdiction worked and should be carried forward without much change. Thus, the need for these rules is established by past practice as well as the statutory requirement of providing temporary payments.

Rule 314. Discovery. A rule on discovery is necessary in order that the hearing, if necessary, may be expedited. It is a well-known fact, at least to all attorneys, that discovery practice allows them to better prepare their case and to save time at the hearing itself. The rule does not incorporate, as a rule, all of the Rules of Civil Procedure for the courts in the state of Minnesota. From experience in the conduct of constested cases under the Administrative Procedure Act, we have found that all cases do not warrant extensive discovery which can be extremely expensive to the parties. The current rule is modeled, to a certain extent, on the existing rule of the Office of Administrative Hearings which applies to contested cases under the APA. However, some discovery is needed in order to simplify, shorten and perhaps even avoid the actual hearing. Discovery leads to stipulations as to facts, foundation for evidence, agreement as to the nature and scope of the issues involved and settlement of cases. With nearly 6,000 contested workers' compensation petitions filed annually, with the number rising each year, it is necessary that a way be found to handle as many cases as possible with the limited staff available. Thus, parties are encouraged to settle their cases where appropriate. In the case of workers' compensation, because of the great number of cases and limited staff, it is even more important that these settlements occur prior to the regular hearings or prehearings, if possible.

Originally, when the temporary rules were proposed, much more liberal discovery rules were proposed. Those rules were modified substantially to the form which presently exists in the temporary rules which has been carried forward into these proposed permanent rules. Comments on the discovery rules were received from both the Minnesota Trial Lawyers Association and the Minnesota Defense Lawyers Association, to name but two.

Under workers' compensation, attorneys representing petitioners are limited in the amount of fees which they may collect for representation of the client. On the other hand, attorneys representing employers and insurers are not so limited. Thus, in establishing a discovery rule for workers' compensation, it is necessary to devise a rule which will allow for the discovery of pertinent information which will be an aid in expediting the hearings and securing settlements, while at the same time not creating a rule which is or could be oppressive in terms of time spent to the parties. In a similar vein, costs of defense of workers' compensation cases are paid by the insurers and become a part of the overall costs associated with workers' compensation. These costs are then passed along to the employers in the form of rate increases. With that thought in mind, a rule aimed at expediting the process, yet at the least possible cost to all parties, becomes even more imperative.

For the most part, the rule as proposed represents a compromise between the positions expressed by the Minnesota Trial Lawyers Association representing petitioners' attorneys and the Minnesota Defense Lawyers Association representing those attorneys defending for employers and insurers. The Trial Lawyers Association would prefer no discovery. The defense lawyers association would prefer unlimited discovery. The rule as proposed represents, at least from what was told to the Chief Hearing Examiner from lawyers representing both sides on the issue, a recognition of present practice. The Trial Lawyers Association has expressed the fact that they do provide the defense lawyers with information as they receive it for they too believe that the best method of operation is full disclosure which will facilitate settlement and save costs. Therefore, those items which are listed in the rule as mandatory items for discovery are those which they attorneys on both sides have indicated are regularly furnished. Thus, they should provide no hardship on any party or that party's attorney.

Section A of the rule represents that portion of the rule relating to the furnishing of pertinent information. Thirty days is allowed for the furnishing of certain documents, following demand. From nearly six years of experience with the contested case rules of procedure, it has been found that 30 days is a reasonable time to furnish the materials. In those instances where, for some unforeseen reason, 30 days is not enough, practice has shown that attorneys have generally allowed for extensions and, where they have not, that they hearing examiners have allowed such extensions for good cause shown. The same practice is anticipated under this rule. The names and addresses of all witnesses to be called should not be a burden, especially since this information is also required to be provided in the prehearing documents. It is reasonable to assume that prior to filing a claim petition, parties will know who the witnesses they intend to call are and where they are located. The rule provides for subsequent disclosure if additional witnesses become known, which is necessary in order that the other side may be fully apprised, at all times, of witnesses to be called. Likewise, if a party has a statement from a witness, it is necessary to allow the other side to review and copy it in order to assist in expediting the procedure. Subsection 2 of Section A provides a penalty for failure to disclose the written or recorded statements by foreclosing testimony of the witness whose statement was sought

to be obtained. It is necessary to have a penalty in order to encourage persons to comply with the rule. The question of medical privilege is carried forth from previous rules. This rule provides limited waiver of medical privilege only as to those injuries or conditions previously sustained by the employee which are similar to those alleged in the petition. Certain persons have requested a totally unlimited waiver of medical privilege. However, no supporting documentation of either the need for or reasonableness of such a proposal was furnished to the Chief Hearing Examiner and, thus, the rule remains limited to those alleged in the petition. A waiver of medical privilege is necessary in order to allow the parties defending against the injury claim to complete an investigation to ascertain whether or not the injuries are as alleged and, further, whether they are causally connected to the employment. This carries forth the general concept of discovery that there should be no surprises in order to expedite the process. Without the waiver of medical privilege, a concept which has been present in the civil courts for many years, it is unknown as to how the employers or insurers would ever properly prepare for a case and, further, how the compensation judge would have sufficient information on which to base decisions.

Section B of the rule, as it relates to depositions, is probably the most controversial section of the rules. It is a discovery deposition which is time consuming and thus costly to all parties in litigation. Minn. Stat. § 176.411 is paraphrased in the rule and is crucial to the reader's understanding in that they must know that the statute provides as it does. As drafted, the rule allows any attorney to request the deposition of another party. If the party whose deposition to be taken objects, the party seeking the deposition must seek an order of the compensation judge. The standard by which the compensation judge will make a determination is enumerated in the third sentence of the section of the rule and is generally a good cause type of standard. This sentence is needed to give certainty and specificity to the discretion given to the compensation judge both by the statute and carried forth in the rule. The legislature has created the law giving discretion. It is necessary for an administrative agency to establish the standards and criteria by which the discretion will be exercised. The rule, as proposed, is reasonable in that it carries forth the legislative intent to allow depositions but provides a vehicle for objection to those depositions which are deemed unnecessary or inappropriate after a showing of cause to the compensation judge.

On the other hand, depositions to preserve testimony must be allowed as in approximately 50% of the cases medical witnesses are unable to testify. While the rule would address testimony from any witness, the reason for the rule is due to the problem of doctors being unavailable to testify at the regular hearing. It is necessary to allow such depositions to be taken without the necessity of an order from the compensation judge. It is common knowledge that all parties would prefer to have their medical witnesses, or any other witnesses for that matter, testify in person. Therefore, such an order from the compensation judge is unnecessary in this case. Further, the parties will know that the deposition will be introduced as evidence and thus will not use this type of deposition for the proverbial "fishing expedition". The rule differs from previous practice in workers' compensation by providing that the

depositions are to be taken sufficiently in advance of the hearing so that the deposition can be transcribed and part of the record on the date of the hearing. Past practice has shown that substantial delay has occurred because of the failure of the parties to depose their witnesses who cannot be present at the hearing sufficiently in advance of the hearing to complete the testimony. This causes difficulty for the employee because it delays the start of payment of benefits by delaying the entire proceeding, in those cases where benefits are determined to be owing. Likewise, transcripts are seldom, if ever, prepared from a hearing until an appeal is taken. Therefore, the compensation judge must prepare the final findings and determination from notes. If the compensation judge must wait several weeks or months for all of the testimony to be completed, it causes more problems in that the compensation judge will have difficulty in reconstructing evidence at a later date as opposed to preparing findings immediately following the testimony.

Section C of the rule provides for additional discovery. This is a further carry-over from the existing rules of procedure for contested cases under the APA. The rule allows the parties to request discovery from each other without requesting assistance from the compensation judge. However, if one party objects to such additional discovery, the party requesting the discovery must bring a motion before the compensation judge to allow such additional discovery. A standard is established in the last sentence of the section by which the compensation judge will exercise his discretion in ordering further discovery. The rule grants the authority to the compensation judge to allow discovery or not and, thus, in order for the rule to be adopted, it must establish standards against which the exercise of the discretion can be judged.

Section D of the rule is necessary to provide penalties for failure to comply with the rule. A penalty section is necessary in order to insure compliance with the rules. Absent such a rule, no party would have to comply with the rules which would, of course, lead to delay and disorder. This rule is taken, for the most part, from the contested case rules of the office. The office has had nearly six years of experience with the rule and has found the rule to be effective. The rule is reasonable in that it forecloses testimony from those persons not disclosed as witnesses or forecloses the presentation of testimony not disclosed upon proper order.

Section E protects information referred to as proprietary information. This is confidential information or trade secrets. If such testimony is necessary for the full development of a record, the compensation judge may issue a protective order so that the portion of the testimony relating to such information will be taken outside of public scrutiny. Such a rule is necessary in order to compel parties to provide that testimony which the compensation judge deems necessary to the full development of all issues in the case and which otherwise they might not be required to disclose.

Rule 315. Petitions for Contribution or Reimbursement. This rule is necessary to provide a vehicle for a party to a proceeding to petition for, in effect, a joinder of another party who may have financial responsibility for payment of the claim. There may be instances where the petitioner did not name all previous employers, where, at least in the opinion of the employers named in the action, the injury or condition may have started. The rule is

reasonable in that it provides that all pleadings shall be served upon the party from whom contribution is being sought and that medical evidence be attached. The rule provides that the petition must be served no later than ten days prior to a settlement or prehearing conference. This is necessary so that the person from whom contribution is sought may attend the prehearing or settlement conference. It also then gives notice to the settlement or prehearing judge that another party may be responsible for all or a portion of the benefits due the employee. The rule also provides a vehicle for the party from whom contibution is sought to supply an answer but allows that party the discretion of filing the answer. As the matter may be pending before a settlement judge or may be set for a prehearing, there may not be time for the completion of an answer and thus the discretion is left with the new party.

Rule 316. Subpoenas. Subpoenas are authorized by statute to be issued by a compensation judge or the Commissioner of Labor and Industry. It is necessary to have a rule relating to subpoenas in order that parties may know how to obtain the subpoenas. It is necessary that the name, address and telephone number of the party or attorney requesting service of the subpoena be included on the subpoena in order that the party being served will know who to contact should any questions arise or if situations might arise wherein they cannot comply with the subpoena on the date requested. It is necessary to provide a procedure for the quashing of subpoenas in the event the party subpoenaed believes attendance to be inappropriate. The "unreasonable or oppressive" standard by which the judge will exercise the discretion in compeling attendance or quashing a subpoena is necessary to give the rule specificity. The standard is one which has been in use by the courts and by the Office of Administrative Hearings in the past is found to be workable and reasonable.

Rule 317. The Hearing. In general, this comprehensive rule is necessary to give parties reading the rules and opportunity to know what will be transpiring at the hearing and what will be expected of them at the hearing.

Section A relating to notice is necessary to provide a rule by which notice will be given. Absent such a rule, only the statute would be applied. The statute gives no procedures for the notice and provides only that it will be given at least five days before the hearing. This rule requires that all parties be given sufficient information in the notice so that they can properly plan. It is necessary that a case be set for a single location, in order to complete the hearing in one place and time. The rule allows the petitioner to select the place for the hearing. This is necessary in that, under normal circumstances, most of the witnesses in a case are those called by the petitioner. Thus, the rule gives the petitioner the opportunity to select the place for hearing through the prehearing practice. It is necessary to provide a standard for additional days of hearing in the event the hearing cannot be concluded as set. If all parties agree to the date, which includes the compensation judge, that date will be agreed upon. It is necessary that the compensation judge have the final determination on the date as the compensation judge has a limited number of calendar dates available.

Section B is necessary to provide for notice to all medical witnesses immediately upon receipt of the Notice of Hearing by the parties. In the past, medical witnesses have indicated that they have received inadequate

notice of the hearing and thus cannot appear, which creates a delay in the hearing process. This rule requires immediate notification of the witnesses by the parties.

Section C encourages production of medical evidence in the form of written reports. While, as stated previously, all parties would desire that medical witnesses appear in person, the actual time for hearing can be shortened in the event medical reports are received. It is not anticipated that this section of the rule will be utilized to any great extent. However, as there may be situations where medical testimony is undisputed and the issues relate to causal connection, it is necessary to have a rule to allow for the submission of medical testimony by reports which will save time as well as costs to the parties in paying fees to the doctors to testify. While the rule allows such submission, the rule must also provide items which must be included in the medical report. It is necessary to provide the information detailed in this section so that the compensation judge will have sufficient information on which to base a decision.

Section D of the rule is necessary to insure the right to all parties to present testimony, cross-examine witnesses and to present rebuttal testimony if appropriate. The rule thus insures due process to all parties and forecloses anyone from being able to deprive them of those rights.

Section E, relating to witnesses, also provides certain due process rights to witnesses and futher provides that the testimony shall be under oath or affirmation. It is necessary to allow the alternative of an affirmation as there may be persons who, because of personal or religious convictions, will not take an oath. The rule also provides for sequestration which is necessary to give parties the same rights as they might be allowed in District Courts but, futher, in the event testimony relating to injuries or conditions might prove embarrassing to the witness, others may be excluded from the hearing room while the testimony is being given. This is to insure that a witness will be able to testify without external pressures.

Section F relates to the rules of evidence. As indicated in the rule, Minn. Stat. § 176.411, subd. 1, establishes the evidentiary rules for workers' compensation hearings. It is necessary to cite and paraphrase that section of the law in order to give the reader of the rules an understanding, in one place, of the standard for presentation of evidence. This rule, with the exception of the first subsection, is similar to the rule which has existed for contested cases conducted under the APA for nearly six years. That rule has proven to be reasonable and workable. The rule establishes that the only items which can be taken into consideration are those which have been presented in the case. The rule thus would prohibit a compensation judge from taking into consideration those items which are not part of the evidence. Minn. Stat. § 176.391, subd. 1, allows an independent investigation by the compensation judge. In a discussion with the existing compensation judges, none have ever implemented the section. However, in the event any judge does exercise such discretion, it is necessary that it be part of the record and thus the rule is necessary in requiring the investigation to be part of the record. It is necessary to have a rule relating to documentary evidence to allow photostatic copies or excerpts of larger documents to be included in the record. This will prohibit the introduction of large books or studies out of

which only one or two pages or less may be pertinent to the case. Likewise, it will allow photostatic copies to be introduced so that the original documents need not be introduced and maintained in the record thus requiring their return to the appropriate source upon completion. It is necessary to put in rule form the common law method by which judicial notice is taken so that the judges will be bound by the rule and so that all parties will have knowledge of the manner in which such facts may be noticed and what will occur should be request such notice be taken. Subsection 5 carries forward the traditional concept that any party may cross-examine an adverse witness. It is necessary to establish a rule to provide a similar vehicle as is available in the courts and further to specifically indicate which parties are subject to such examination and the subject matters upon which examination can be conducted. Section G, relating to the record, is necessary to provide notice to all parties of what the record will contain and who will maintain the record. It is necessary that the judge maintain the record until the final decision has been made so that the judge will have the information available at the time the determinations are made. Under normal circumstances, a transcript of a hearing is not completed unless an appeal is taken. If a transcript is prepared, either prior to or subsequent to an appeal, this rule provides that the transcript will be part of the record. A verbatim transcript is the actual record of the testimony and, thus, it cannot reasonably be argued that it is not part of the record. The rule provides a means for any person, not only parties, to request that a transcript be prepared but that, if made, that person shall pay the cost of the transcriptions. It is necessary to provide that the payment for transcripts be paid to the office, if the transcript is made by the office, in that Minn. Stat. § 15.052 provides that all fees for services rendered by the office shall be payable to the Office of Administrative Hearings' account in the State Treasury. Likewise, as the office contracts with qualified court reporters throughout the state to provide a record at many hearings, it is necessary that it specifically be established, by rule, that when a person outside of the office prepares a transcript, that the person requesting shall be liable to that particular court reporter for the transcript charges. Subsection 3 b carries forth existing law and practice in that transcript charges are set by the Chief Hearing Examiner subject to the approval of the Minnesota Department of Finance and futher carries forth a statutory mandate that these fees be paid to the State Treasurer, Office of Administrative Hearings' account, as provided by Minn. Stat. § 15.052. Subsection 3 c carries forth the mandate of Minn. Stat. § 176.421, subd. 4, clause (3) which allows the Chief Hearing Examiner to allow a transcript to be prepared free of charge to any party who, due to lack of funds, could not otherwise perfect an appeal to the Court of Appeals. The law allows for the prepartion of transcripts in these cases but does not provide standards by which the decision of the Chief Hearing Examiner will be made. Therefore, it is necessary to provide a rule which provides a procedure for parties to apply for this free transcript. Thus, the rule spells out the information which must be supplied to the Chief Hearing Examiner when a party requests a free transcript. It is necessary to establish these items so that other information may not be arbitrarily taken into consideration by the Chief

Hearing Examiner. Since July 1, 1981, two requests for a transcript under this section of the statute have been made. In both instances, the Chief Hearing Examiner has requested the information detailed in the rule. In one instance, the appeal was subsequently withdrawn and thus the request for a transcript was withdrawn. In the other instance, the party furnished the information without delay and a transcript was ordered.

The section relating to continuances is necessary to establish a standard by which the compensation judge will exercise discretion in continuing a hearing. It is also necessary that oral notice be allowed in order to save costs and time. The oral notice, on the record, is reasonable in that the parties will be present at the time of the initial hearing, at which time the decision for the continuance will be made and thus will have the notice at that time. In the event a continuance cannot be granted at that time, the rule provides for the usual written notice.

Section I relating to the actual procedure to be followed at the hearing is necessary to give certainty to the procedures to followed at the hearing so that all parties will have notice, in advance, of how the hearing will be conducted. Subsection I 1 is necessary to specifically, by rule, prohibit ex parte communications. A rule prohibiting ex parte communications is necessary to preserve the integrity of the hearing record and to insure that all parties are present when any other party discusses the case with the compensation judge, at least on the issues of fact or law. The hearing procedures established need not be followed if the compensation judge determines that the substantial rights of the parties will be ascertained better in some other manner. Compensation judges are required, by law, to conduct the hearing in such a fashion so that these substantial rights of parties will be secure. It is necessary that the compensation judge review the procedures to be followed in the event a person is not represented by an attorney who would be familiar with the procedural rules. A hearing of this nature could be traumatic to such a person and thus having the judge review the procedures to be followed at the outset will insure this pro se litigant the opportunity to understand the procedures. The obvious time to enter any stipulations or agreements is at the inception of the hearing so that unnecessary testimony need not be given. It is necessary to establish, by rule, the sequence of presenting opening statements and testimony in order to prevent argument on the issue of who should begin the case. It is necessary to allow the compensation judge the opportunity to control the sequence in order to maintain order. Subsection I f allows the parties to present final argument only if the compensation judge believes that legal issues remain unresolved and that he needs argument by counsel. It must be remembered that while legal rights of parties are determined in these hearings, they are not identical to court trials and thus no absolute right to a final argument is provided. It has been found that final arguments are unnecessary in the majority of cases and only serve to increase costs and add to delay in the process. However, it is necesssary to provide a vehicle for the compensation judge to secure final arguments but only on legal issues rather than allowing a "rehash" of the facts of the case. The rule then provides for the continuation of the hearing if ordered by the compensation judge and provides the means for notice of the continued hearing. The 15 days written notice is reasonable as a compromise

before the usual 20 or 30 days notice and the minimum of 5 days notice required in most instances by the statute. The compensation judge must be able to control his/her own calendar. Thus, in the event a case can be reset when the judge has an opening in the calendar, the judge must have the opportunity to reset the case as appropirate. Finally, the rule provides a time when the record of the case will be closed. This is necessary to provide some finality so that the judge can commence the preparation and issuance of the findings of fact necessary.

Section J is carried forward, verbatim, from the rules of procedure for contested cases of the Office of Administrative Hearings. It is necessary to prohibit unnecessary disruption during the hearing process and to allow the compensation judge the authority to control the hearing room. Again, nearly six years of experience with this rule by the office has shown it to be reasonable. No persons have objected to the rule nor has the rule had to be enforced. Rather, in the event TV cameras or the like are present, the rule provides a vehicle for the judge to utilize, if necessary, to avoid the disruption. It remains up to the particular compensation judge to enforce the rule.

Rule 318. It is necessary to provide, by rule, a basis for the compensation judge's decision so that no information which is not part of the record will be utilized in the formulation of the findings and determination. To allow otherwise would be a violation of the rights of all parties to have knowledge of the information being utilized by the compensation judge and, in addition, deprives them of the basic right of cross-examination. The rule does provide that administrative notice may be taken but that it can only be taken after compliance with Minn. Stat. § 15.0419, subd. 4. It futher provides, by rule, the traditional common law right of notice to all parties and the right of those parties to rebut the facts.

Section B, Subsection 1, paraphrases Minn. Stat. § 176.281. At the time of the preparation of this report, a request has been made to the Governor by the Commissioner of Labor and Industry and the Chief Hearing Examiner for the Governor's approval to request a reorganization order under Minn. Stat. Ch. 16 from the Commissioner of Administration allowing the Office of Administrative Hearings to issue the orders. In the 1981 legislation, it is obviously an oversight that the Legislature required the compensation judge to forward the decision to the Commissioner for issuance. Appeals must be filed with the Office of Administrative Hearings. Thus, once the Commissioner issues the order, the file must still be maintained by the Office of Administrative Hearings. The law also requires the removal of the compensation judges from the same building wherein the Department is located. Thus, the statute and the rule as proposed would delay. However, in the event a reorganization order is not approved, it is necessary to paraphrase the statute, by rule, in order that persons reading the rule will have notice of the statute. Subsection 2 of Section B is necessary to provide uniformity in the issuance of compensation judge decisions. Certain information is necessary for the identification of all findings and determinations. It is necessary that the date and location of the hearing be included for those purposes. Likewise, the compensation judge's name should be included so that parties will have a recollection of the case and to provide them information which must be given

in the notice of appeal. It is necessary that the parties appearing have their addresses given at the outset so that those appealing may have the addresses of record available in order to serve the appeals. Because there has been much complaint over the length of time for completion of workers' compensation matters, it is necessary that the decision contain the date on which the record of the hearing closed. In many instances, medical depositions are not received until months following the hearing. Injured employees or employers then call the office, their legislators, or the Governor's office to complain about the length of time for decisions. This will allow the parties to know exactly the length of time taken to complete the issuance of the findings and determination once the record has been completed. Likewise, it is important that all parties know the exact date on which the record closed in order to know when their briefs were filed. It is important that a notice of the party's right to appeal appear in the order so that those persons, especially those not represented by attorneys, if they are aggrieved by the decision, will know how to proceed without having to hire an attorney or to seek out such information from others. Subsection 2 e of Section B begins by paraphrasing the law which requires that there be findings of fact, conclusions and determinations on all issues. It is necessary to allow the compensation judge discretion in organizing the final report in such a fashion that will accomplish the end result in the most expeditious fashion. The rule will buttress the requirements of law in requiring specific findings of fact, conclusions and a determination on each issue raised.

It is necessary that reports be readable. While this may seem to "go without saying", nevertheless having a rule specifically requiring readability of reports is necessary for purposes of evaluation of compensation judges. Pro se parties do not generally have the same education as the compensation judge.

Section D of the rule is necessary to provide authority for parties to file proposed findings of fact. In the past, as indicated by attorneys in discussions with the Chief Hearing Examiner, they have been foreclosed from preparing proposed findings for one reason or another. This rule specifically allows the preparation and filing of a proposed decision. There is no requirement that it must be provided, but, in the event it is provided, the rule requires that it be served on all other parties. This is necessary to give all other parties an opportunity to see exactly what is being proposed for decision by one party. The submission of a proposed decision in a manner which will allow the compensation judge merely to sign and issue will save all parties time and money. The time delay creates additional costs to the process.

Rule 319. Rehearings. Minn. Stat. Ch. 176 does not allow petitions for rehearing to be filed with the compensation judge. Rather, only the Court of Appeals may issue orders for rehearing. This rule is needed to further indicate that, except for clerical errors, the compensation judge's jurisdiction ends upon issuance of the findings, conclusions and decision, except for subsequent filing of requests for taxation of costs or awarding of attorneys fees. Obviously, this is subject to the requirement of rehearing if remanded by the Court of Appeals.

Rule 320. Settlements. Stipulations for settlement are encouraged and are needed in that the existing cadre of compensation judge cannot humanly handle the number of cases presently filed. Cases which are settled do solve the backlog problem. However, the law still requires, in most instances, that stipulations be reviewed by the compensation judge prior to approval. This rule provides a vehicle for stipulatons to be submitted which can be simply signed and issued by the compensation judge. This is necessary to speed up the process which again saves costs to the system. It is necessary to provide a rule for submission to either the Commissioner or the compensation judge in that once a petition has been filed, the case is in litigation and thus subject to these rules. It is necessary to provide, by rule, what the stipulations will contain in order that parties preparing them will know exactly what is expected. It will thus speed up the process again. The items listed are necessary for the compensation judge reviewing the file to have sufficient information on which to base a decision on approving or disapproving the settlement. All items listed are necessary as facts needed in this decision-making process. It is also necessary that attorneys fees be delineated at the time the stipulation for settlement is submitted so that the final award can include the attorneys fees. This will prevent the subsequent filing of attorney fee requests which add to the time a compensation judge must spend on the case and could add to further delay. Parties are required, by this rule, to submit a proposed award on stipulation to be signed by the judge. Again, this will save much time and effort in the event the applicable judge agrees with the stipulation and approves the settlement.

Rule 321. Attorneys Fees. Minn. Stat. § 176.081 allows attorneys fees but limits the amount of attorney fees. At the same time, provision is made within the statute for attorneys fees in excess of that allowed by the statute. Attorney fees are subject to approval by the compensation judge in litigated cases. The first sentence of Section A of the rule paraphrases the statutory requirement and is needed to insure that all persons reading the rule will be able to have an overall understanding of the statute and rules combined. Thus, it is deemed crucial to a person's overall understanding of the procedures. It is reasonable that the employee receive notice that attorney fees are being withheld in the event the employee has not been made aware that this will occur by his or her attorney. Section B provides that the simple filing of certain cases will be deemed to be an application for attorney fees. This removes the necessity of filing separate petitions or applications for attorney fees which takes time and is costly. It is necessary that a vehicle be provided for any party to a proceeding to apply for the determination and approval of claims for legal services in order that these persons might have some certainty even though they are not the party who may be receiving the legal fees. It is assumed that this provision will be used seldom. However, in the event of uncertainty, it is believed that this rule will allow persons to seek certainty in attorneys fees in order to bring the issue to conclusion. The information detailed in the rule is necessary for the compensation judge to make an ultimate decision. It is further allowed, by this rule, that separate applications are not necessary if they have been filed as part of the stipulation for settlement as provided in an earlier rule.

Rule 322. Taxation of Costs and Disbursements. Minnesota Statutes allows taxation of costs and disbursements under certain circumstances. This rule provides the means for a party to request taxation of costs. It is necessary that such requests be served upon all of the parties in order that they might have an opportunity to object for it is they who will be requested to pay these costs. It is reasonable to require any party opposing the taxation of these costs five working days to object in order that the matter may be brought to an ultimate decision as soon as possible. However, if they do object, the formal objection must be filed. This formal objection must also be served on the other parties which is necessary to given them notice that a potential hearing may be held to make a determination on the costs. Finally, the rule allows an oral hearing, if requested, before the same compensation judge who heard the case. It is necessary that the compensation judge who heard the case handle the particular hearing for taxation of costs for the trial compensation judge is most familiar with the case itself and the time required by all parties as well as the costs. If the hearing is conducted, the compensation judge must give notice to all parties.

Rule 323. Second Injury Law. This rule is taken, nearly verbatim, from the previously existing rules of the workers' compensation division of the Department of Labor and Industry. Because the law provides for such a fund, as well as the other provisions, this vehicle for the referral of the matter for hearing before a compensation judge is necessary. This rule merely provides procedures for the filing of the petitions and the referral as discussed previously.

Rule 324. This rule provides for expedited hearings where deemed necessary. Minn. Stat. § 15.052, subd. 3, requires all hearings required by Chapter 176 be conducted by a compensation judge of the Office of Administrative Hearings. Thus, it is necessary to have a general "catch-all" rule to provide a procedural vehicle for those hearings not specifically enumerated in these rules. Likewise, it is necessary to provide for expedited hearings in those instances wherein the employee may need such expedited treatment in order to continue to receive benefits for which he or she has been deemed eligible. Likewise, there may be instances where an employer/insurer should have a right to an expedited treatment in order to stop payments of benefits. This rule provides for this expedited treatment.

Rule 325. This rule is needed to satisfy the requirements of Minn. Stat. § 176.152, subd. 7. The permanent partial disability panel is a temporary or trial panel and includes only three counties, at the present time. These counties include the counties of St. Louis, Ramsey and Nobles. This rule provides the procedures to be followed when permanent partial disability is a significant issue in those three counties. It is the Chief Hearing Examiner's understanding that the workers' compensation Court of Appeals is establishing procedural rules for the permanent partial disability panel. Obviously, these rules must not conflict with those rules, but still must provide for procedures for the use of the panel. The questions to the panel are required by statute. It is necessary that the questions be served on all parties so that the parties will have an opportunity to review the questions while the panel is considering them. Then, when the panel's report is issued, they will already have the questions and will be able to refer to them when reviewing

the answers. As the law provides for disputes on the payment of panel members, it is necessary to have a vehicle by which these disputes can be resolved. Thus, Section D provides a procedure for persons to give notice that they are contesting or disputing the fees by giving notice to the compensation judge and to all parties. The judge will then determine the dispute as in all other cases.

Rule 326. Exhibits. This rule was requested to be included by Compensation Judge P. Nadine James on behalf of other compensation judges. In the past, exhibits have been removed from files without control being maintained and without the knowledge of the compensation judge. It is necessary that a procedure for the return of exhibits be established so that the office can maintain control of all records. It is also necessary to provide a vehicle for the return of exhibits so that the State will not have to maintain boxes of records and exhibits not otherwise necessary for the proper maintenance of the employee's records and the Division of Workers' Compensation at the Department of Labor and Industry. The rule provides for the automatic return of those exhibits deemed appropriate by the compensation judge or the return of other exhibits upon the request of a party, as long as all other parties are given notice of this request.

General Support From Other Sources. In addition to the foregoing statements, the Chief Hearing Examiner is relying, as support for the rules, on data and views submitted at the time of the publication of a Notice of Intent to Solicit Outside Information both for purposes of drafting temporary rules and permanent rules. Likewise, the Chief Hearing Examiner relies on data and views submitted by parties subsequent to the publication of temporary rules. The items relied upon include the following:

1. July 20, 1981, submission of Lawrence F. Koll on behalf of the Minnesota Defense Lawyers Association and the submission of that association received on that date;

2. July 17, 1981, submission on behalf of the Minnesota Trial Lawyers Association submitted by Timothy McCoy;

3. July 14, 1981, correspondence from Attorney John L. Levy;

4. July 9, 1981, correspondence from Attorney Samuel I. Sigal;

5. July 9, 1981, correspondence received from Attorney John T. (Jack) Anderson;

6. July 20, 1981, correspondence from the Department of Labor and Industry submitted by Arthur H. Anderson, Assistant Commissioner;

7. July 21, 1981, correspondence received from the law firm of Mahoney, Dougherty and Mahoney;

8. July 14, 1981, submission of Compensation Judge P. Nadine James;

9. June 22, 1981, comments submitted by Compensation Judge Thomas Walsh;

10. August 10, 1981, correspondence received from Dan Gustafson, Secretary-Treasurer of the Minnesota AFL-CIO;

11. September 4, 1981, letter on behalf of Blue Cross-Blue Shield submitted by Indru S. Advani;

12. September 4, 1981, memorandum and enclosures from P. Kenneth Kohnstamm, Special Assistant Attorney General on behalf of the Minnesota Department of Public Welfare;

13. September 4, 1981, comments received from Attorney Debra A. Wilson on behalf of the law firm of Fitch and Johnson;

14. September 9, 1981, correspondence received from Candice E. Hektner on behalf of the Minnesota Defense Lawyers Associations, Workers' Compensation Committee;

15. September 11, 1981, correspondence received from Michael J. Sauntry;

16. September 8, 1981, correspondence received from John G. Brian, III, on behalf of the Minnesota Trial Lawyers Association.

Dated this 9th day of October, 1981.

DUANE R. HARVES
Chief Hearing Examiner