

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

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

**STATEMENT OF  
NEED AND  
REASONABLENESS**

**INTRODUCTION**

Minn. Rules ch. 9800 (1984) presently regulates practice before the Workers' Compensation Court of Appeals. These amendments eliminate ambiguities in the existing rules, incorporate statutory revisions and streamline procedures. They thus facilitate the administration of the Court's docket and promote the speedy and fair resolution of disputes. Minn. Stat. § 175A.07, subd. 4 (1984) authorizes the Court to adopt procedural rules.

**Part 9800.0100 - DEFINITIONS.**

This part adds many new definitions to the rules. It is intended to simplify the use of these rules. It also avoids unnecessary duplication of terms which frequently appear in the rules.

**Subpart 1 - Administrator.**

Minn. Stat. § 175A.02 (1984) directs the Court to appoint a member as administrator to coordinate the processing of the Court's caseload. It is thus reasonable to use the term "administrator" in these rules to refer to the judge who oversees

the administration of the Court. This subpart also informs litigants which judge they should contact about procedural questions and filing of documents.

**Subpart 2 - Appellant.**

Workers' compensation litigation typically includes more than two parties. In addition to multiple employers and insurers, health care providers, the Department of Economic Security and the Department of Labor and Industry often appear as intervenors. Accordingly, appeals may include appellants and cross-appellants. See Minn. Stat. § 176.421, subds. 4, 6 (1984). This definition clarifies that the same procedures apply to both appellants and cross-appellants.

**Subpart 3 - Court.**

These rules contain repeated references to the Workers' Compensation Court of Appeals. This definition permits references to the Workers' Compensation Court of Appeals by use of the term "Court". This is needed for clarity and for brevity in the rules.

**Subpart 4 - Division.**

The Workers' Compensation Division is also often mentioned in these rules. It is reasonable for clarity and brevity to refer to the Workers' Compensation Division as the "Division" in these rules.

**Subpart 5 - Filed.**

These rules establish several deadlines for filing documents. In some cases the filing deadlines may be jurisdictional. See Hibner v. Residential Alternatives, File No. 114-42-5252 (Filed February 11, 1985); Part 9800.1600. It is thus necessary for the rules to clearly define when filing is complete. This definition is consistent with procedural rules used elsewhere in the workers' compensation system. See e.g. Part 5222.0060.

**Subpart 6 - Office.**

As several references to the Office of Administrative Hearings appear in these rules, this definition is necessary for clarity and brevity.

**Part 9800.0200 - EXAMINATION OF FILES.**

The Division file is sent to the Court when a case is appealed. It contains the record of litigation below, documents received by the Division, medical reports and other relevant information. The Court sometimes receives requests from persons who wish to inspect the file. To protect confidential information, it is necessary to grant access to files only as permitted by Minn. Stat. §§ 176.138 and 176.231 (1984).

The procedure for examining the files is the same that is used elsewhere in the workers' compensation system. See Minn. Rules pt. 1415.0600 (1984). This is needed to minimize confusion

among parties who appear before various courts in the workers' compensation system.

**Part 9800.0300 - PREPARATION AND FORM OF LEGAL DOCUMENTS.**

This rule is not being amended.

**Part 9800.0400 - TEMPORARY ORDERS.**

Temporary orders permit speedy payments of benefits by the Special Compensation Fund to employees where multiple insurers dispute their liability for benefits. When liability is established, the liable insurer then reimburses the Fund for payments made pursuant to the temporary order. This rule is amended merely to add the citation to the specific rule governing temporary orders used by the Division and Office. The citation assists parties in using these rules.

**Part 9800.0500 - CONTINUANCES OF HEARINGS.**

The Court conducts hearings on all appeals unless the parties waive the hearing. While continuances are sometimes unavoidable, it is necessary to restrict their availability to prevent abuse. The rule thus requires parties to promptly submit their requests for continuances. It is reasonable to require sufficient notice of requests for continuances so the Court and parties can rearrange their schedules. Language regarding extensions of briefing periods was moved to Part 9800.0900.

**Part 9800.0600 - NOTICE OF SETTLEMENT.**

This provision is repealed. It is substantially incorporated into Part 9800.0700 governing settlements.

**Part 9800.0700 - STIPULATIONS FOR SETTLEMENT.**

Where parties enter into a stipulation for settlement while a matter is pending before the Court, it must be approved by the Court pursuant to Minn. Stat. § 176.521 (1984). It is thus reasonable to specify the approval procedure.

A citation to the specific rule of the Office and Division governing approval of stipulations is added to this part. This helps litigants use these rules.

Further, this amendment underscores that parties, not the Court, have the duty to ensure that documents are correctly filed with the Court. Parties sometimes mistakenly file their stipulations at the Office or Division, rather than with the Court. This delays the Court's disposition of the matter. It is reasonable to put the burden on parties to properly file stipulations.

Finally, the appellant is required to promptly notify the Court where a settlement is reached. This is needed so that the Court avoids deciding a case which the parties have already settled.

**Part 9800.0800 - APPEAL OF ATTORNEY FEES BY AN EMPLOYEE.**

This part is amended to include a citation to the statute governing employee appeals of attorney fees. As the statute describes the procedure for appeals, the citation facilitates use of the rules by employees.

**Part 9800.0900 - BRIEFS ON APPEAL.**

Briefs contain an organized presentation of facts and legal arguments which are essential to the Court's analysis of a case and preparation for hearing. This part is extensively amended for clarity and for more efficient administration of the briefing schedule.

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

As amended this subpart provides that where a transcript is required, the appellant's briefing period will begin upon receipt of the transcript by the Court. Under Part 9800.1600, subp. 2, the Court will notify parties of the date it received the transcript. Formerly, the briefing period began when the Office certified the transcript to the Court. To allow the Court to better control its docket it is reasonable for the Court to initiate briefing periods, rather than the Office.

This subpart is also amended to provide that the appellant's brief may address only issues raised in the Notice of Appeal. Minn. Stat. § 176.421, subd. 6 (1984) limits the Court's jurisdiction to issues listed in the notice. This was intended to preclude parties from attempting to litigate issues without

proper notice to opposing parties. It is reasonable to permit parties to brief only those issues which come within the Court's jurisdiction.

This amendment also specifies that only an original brief should be filed where there is no oral argument. Extra copies are needed only for cases that are heard so that members of the hearing panel can prepare for hearing. This rule is reasonable to eliminate unnecessary filing of documents.

**Subpart 2 - Filing of brief of appellant where no transcript of the proceeding is required.**

This amendment establishes that the briefing period begins upon the filing of the Notice of Appeal where there is no record of the proceedings below. Otherwise, appellant briefs submitted pursuant to this subpart must meet the same requirements as appellant briefs submitted pursuant to subpart 1. Only issues properly noticed may be briefed. An original brief is adequate where oral argument is waived.

**Subpart 3 - Filing of brief of respondent.**

Under this amendment the respondent's brief is distinguished from the reply brief. Previously this provision applied to all "responses", including replies. It now governs only briefs of respondents.

This amendment provides that the respondent's brief is limited to issues contained in the appellant's brief. This is needed for consistency with the Court's jurisdictional limits. See Minn. Stat. § 176.421, subd. 6 (1984).

Finally, respondents are now expressly required to serve opposing parties. It is reasonable to require that all parties are served with pleadings. As with other briefs, multiple copies are required only where oral argument is to be held. This is reasonable to avoid the filing of unnecessary documents.

**Subpart 4 - Filing of respondent's brief where no appellant brief is filed.**

Because briefs provide the Court with relevant facts and legal arguments necessary for its determination of a case, respondents' briefs are accepted even where no appellant brief is filed. The briefing schedule begins upon the receipt of the transcript or the notice of appeal as appropriate. Under this subpart the respondent's briefing time begins when the appellant brief would have been due. The briefing schedule is thus the same whether or not an appellant brief is filed.

Respondents' briefs submitted under this amendment are subject to the same requirements as other briefs. It is limited to issues raised in the notice of appeal. The amendment requires service upon opposing parties and the filing only of the original brief where no oral argument is scheduled.

**Subpart 5 - Reply briefs.**

Reply briefs permit the appellant to respond to unexpected arguments raised in the respondent's brief. This ensures that the Court has the full benefit of all of the legal arguments in a case before hearing oral argument and issuing its decision.

As noted earlier, the Court's present rules provide for reply briefs, but treat them as respondents' briefs. The amendments impose several restrictions on reply briefs that do not apply to respondents' briefs. This is necessary for clarity and efficiency in administering the Court's docket.

Reply briefs are now due in 10 days, not 20 days. In the reply brief, the appellant may only respond to arguments contained in the respondent's brief. It is reasonable to exclude new issues as the appellant has ample opportunity in its initial brief to present its main arguments. Reply briefs also need not be used for repetition of arguments presented in the appellant's brief.

Because of the limited scope of the reply brief, the short briefing period is adequate. It encourages the appellant to confine its main arguments to its appellant brief and to avoid lengthy repetitious discussion. The resulting reduction in the briefing schedule also assists the Court in managing its caseload.

It is reasonable to apply the same service and filing requirements to all briefs filed with the Court.

#### **Subpart 6 - Extensions.**

This subpart, which formerly appeared in Part 9800.0500, subp. 2, is virtually unchanged by this amendment. It regulates the availability of extensions of briefing periods.

While extensions must occasionally be granted, restrictions are necessary for fairness to other parties and to permit the speedy disposition of cases by the Court.

**Part 9800.1000 - HEARINGS ON APPEAL.**

Hearings permit the parties to highlight salient aspects of the arguments which they present in their briefs. At the same time, hearings give the Court the opportunity to ask questions about a pending case.

**Subpart 1 - Time limits.**

This provision is essentially unchanged except that the rule now specifies that all parties must waive their right to a hearing. To ensure that all parties have an opportunity to orally address the Court, it is reasonable to hold the hearing unless none of the parties wish to do so. This is also consistent with the Court's past practice.

**Subpart 2 - Motion pictures.**

Recently the Court has received increasing requests to view motion pictures during the hearing. As motion pictures are part of the record on review, it is appropriate for the Court to consider these requests.

Adequate preparation must be made for the showing so that the hearing may proceed smoothly and efficiently. It is thus reasonable for the Court to require advance notice of the expected showing, the time required, and to assign responsibility for bringing projection equipment.

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

Minn. Stat. § 176.461 (1984) entitles parties to apply to the Court for an order setting aside an award and granting a new hearing. It is thus reasonable to specify the procedure for obtaining this relief in this part.

Minn. Stat. § 176.461 (1984) prescribes many of the procedural requirements which appear in this part. While hearings were previously discretionary, the amendment now requires the Court to conduct hearings on petitions for an order to set aside an award. Mandatory hearings are reasonable due to the complexity of the issues and the significance of the relief requested.

**Part 9800.1200 - WRIT OF CERTIORARI.**

This part is not being amended.

**Part 9800.1300 - SECOND INJURY LAW.**

This rule is repealed. Under amendments to Minn. Stat. § 176.131, the commissioner of the Department of Labor and Industry now performs the functions described in this rule, not the Court.

**Part 9800.1400 - APPLICATIONS, PETITIONS AND MOTIONS.**

**Subpart 1 - Scope.**

This part prescribes the procedure to be followed where the specific type of relief requested is not contemplated elsewhere in these rules. This amendment modifies a similar general motion rule that appears in the existing rules.

**Subpart 2 - Procedure for filing.**

The procedure for filing motions is unchanged from the present rules. The requirement that motions be filed no later than five days prior to hearing formerly appeared in subpart 3. This provision is necessary to avoid unfair surprise at the hearing.

**Subpart 3 - Responses.**

This subpart, which is the same as the existing rule, sets forth the period for responding to motions. It provides ample time for opposing parties to respond to motions.

**Subpart 4 - Replies.**

Under this subpart the moving party now has five working days to reply to an objection of opposing counsel. This expansion of the time allotted in the present rule is necessary to give the moving party sufficient time to form a reply. As the entire pleading period is still only two weeks, the Court can still rapidly dispose of motions.

**Subpart 5 - Hearings not permitted.**

Hearings will not ordinarily be scheduled on motions. This is reasonable as parties' pleadings generally provide sufficient information to the Court. Where the Court is unable to reach a

decision on the basis of these documents, a hearing can be conducted. The scheduling of all motions for hearing would unnecessarily increase the Court's backlog and result in slower disposition of cases.

**Part 9800.1500 - PETITIONS FOR INTERVENTION.**

This is a new part authorized specifically by Minn. Stat. § 176.361, subd. 1 (1984). It is necessary to specify the procedure for intervening before the Court to ensure that all interested persons have an opportunity to participate. This eliminates piecemeal litigation and speeds the resolution of the Court's caseload.

**Subpart 1 - Scope.**

This provision refers parties to Minn. Stat. § 176.361, subd. 1 for a recitation of the substantive prerequisites for intervention. It also advises intervenors, who are often absent, that they must appear at all hearings. This is necessary to avoid continuances of hearings where intervenors fail to attend. It thus promotes efficient administration of the Court's caseload.

**Subpart 2 - Notice to potential intervenors.**

This subpart requires that parties notify interested persons of the pending proceeding. It is reasonable to put the burden on the parties to notify potential intervenors as they are in the best position to know whether persons who are not presently

parties may have an interest in a case. Potential intervenors typically include health care providers, the Department of Economic Security and the Department of Human Services. The 30 day time limit is adequate to permit parties to satisfy the notice requirement. To facilitate use of these rules, the Court has adopted the same procedure used by the Division and Office.

**Subpart 3 - Contents of petition.**

Petitions filed with the Court are subject to the same requirements used by the Office and Division. This ensures that petitions contain essential information while minimizing confusion of parties who litigate elsewhere in the workers' compensation system. It is reasonable to apply the same procedural requirements to all responses to petitions filed with the Court.

**Part 9800.1600 - COMMENCEMENT OF APPEALS.**

This new part is necessitated by the 1983 revisions to the Workers' Compensation Act under which workers' compensation litigation proceeds in two different forums. Disability benefit issues are decided by compensation judges at the Office and appealable to the Court. Disputes concerning the rehabilitation or medical treatment of injured workers are decided by rehabilitation and medical specialists at the Division. They are appealable first to the Rehabilitation Review Panel and the Medical Services Review Board respectively, and then to the

Court. It is thus necessary to add a part which prescribes the procedure for appealing decisions from each forum to the Court.

**Subpart 1 - Filing notice of appeal.**

This subpart underscores that the notice tolls the appeal period as set forth in Minn. Stat. § 176.421, subd. 2 (1984). It also tells parties who wish to appeal where to file their notices of appeal. This is necessary to minimize confusion for litigants.

**Subpart 2 - Notification of receipt of transcript.**

Under this provision the Court will notify the parties when the transcript is received. This notice is necessary as the appellant's briefing period begins when the transcript is received. See Part 9800.0900, subp. 1. As this notification also asks two questions which aid in the Court's administration of its docket, it will also be sent where there is no record below and the briefing period begins upon the filing of the notice. See Part 9800.0900, subp. 2.

First, the notification inquires whether the parties wish a hearing. This information is necessary to help the Court plan its calendar. Further, parties file only an original brief all parties waive oral argument. See Part 9800.0900.

The notice also asks parties whether other aspects of the case are pending in other workers' compensation forums. This is important because the Division disposes of rehabilitation and medical disputes in fewer than three months. The Office takes

over a year to decide disability benefit issues. Some cases contain both disability benefit issues as well as rehabilitation and medical issues. In those instances, the rehabilitation or medical portion of the case is likely to reach the Court before the Office has issued its decision.

Where a matter has been split, the Court will delay its consideration until the entire matter can be consolidated before the Court. It is most efficient for the Court to consider all aspects of a matter simultaneously. The Court also avoids inconsistent decisions by consolidating all segments of a case. The Court must thus determine whether parts are pending below to permit consolidation.

**Part 9800.1700 - TAXATION OF COSTS AND DISBURSEMENTS.**

This new part prescribes the procedure for petitioning for taxation of costs and disbursements. It is consistent with Minn. Stat. § 176.511 (1984) which governs taxation of costs. To simplify this process, parties use the petition procedure contained in Part 9800.1400 to petition for taxation of costs.

In addition to the requirements of Part 9800.1400, petitions under this part must be filed within 45 days after the filing of the Court's decision in the main action. In the past parties have sometimes waited years before filing for taxation of costs. Because of this long hiatus, the Court must completely relearn facts and issues in the case to rule on the petition. The Court

can more quickly and efficiently handle petitions which are promptly filed. At the same time 45 days is ample time for the losing party to decide whether to appeal and, if not, for the prevailing party to file its petition for taxation.

**Part 9800.1800 - SUSPENSION OF RULES.**

This part permits the Court to suspend the rules in the rare case where conformity to the rules would work an extremely grave injustice. Parts containing requirements imposed by law can under no circumstances be suspended. The petition procedure prescribed by Part 9800.1400 must be followed under this part.

**FISCAL IMPACT ON LOCAL PUBLIC BODIES.**

As required by Minn. Stat. § 14.11, subd. 1 (1984), the Court has considered the fiscal impact of these amendments on local public bodies. These rules will not require the expenditure of public moneys by local public bodies.

**IMPACT ON SMALL BUSINESS.**

The Court has considered the impact of these rules on small business as required by Minn. Stat. § 14.115 (1984). It has concluded that the rules accommodate the needs of small business. Insurers and self-insured employers do not qualify as small businesses under Minn. Stat. § 14.115, subd. 1 (1984). Health care providers are exempt by Minn. Stat. § 14.115, subd. 7 (c)

(1984) as regulated service businesses. Further, these amendments, which eliminate ambiguities and simplify existing procedures, actually reduce the burdens on all litigants. To create special exceptions for small businesses would detract from the fairness of these rules and jeopardize the integrity of the Court.