

STATE OF MINNESOTA

WORKERS' COMPENSATION COURT OF APPEALS

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

**STATEMENT OF
NEED AND
REASONABLENESS**

INTRODUCTION

Practice before the Workers' Compensation Court of Appeals is regulated by Minn. Rules ch. 9800 (1988). The proposed amendments incorporate recent statutory revisions and eliminate ambiguities and inconsistencies in the present rules. These amendments also help to insure fair and prompt dispute resolution by promoting adequate preparation for and presentation of cases brought before this court.

Some of the proposed amendments have been adopted in whole or in part from the Minnesota Rules of Civil Appellate Procedure, which are applicable to proceedings before the Minnesota Court of Appeals and the Supreme Court. Uniformity of procedure in the various appellate-level courts is desirable to

reduce the burden on the members of the bar and to avoid procedural errors which adversely affect the interests of the parties.

The adoption of procedural rules of practice is authorized by Minn. Stat. § 175A.07, subd. 4 (1986).

Part 9800.0100 - DEFINITIONS.

Subpart 3 - Appellant.

This subpart is amended to specify that the term "appellant" is applicable only to the first party filing a notice of appeal. While the present rules and the rules as amended generally impose the same requirements on appellants and cross-appellants, this change is necessary to emphasize the responsibilities of cross-appellants. Under the present rules, there was some confusion, for example, about the briefing period applicable to cross-appellants pursuant to part 9800.0900. It is thus reasonable to distinguish between appellants and cross-appellants in the definition subpart of these rules.

Subpart 3a - Cross Appellant.

This subpart is added to provide a definition for cross-appellant so as to distinguish it from the term appellant. The need for this change is discussed under part 9800.0100, subp. 3, above.

Subpart 8 - Motion Pictures.

This subpart is added to clarify the definition of motion pictures to include video tapes.

Part 9800.0200 - EXAMINATION OF FILES.

This rules is not being amended.

Part 9800.0300 - PREPARATION AND FORM OF LEGAL DOCUMENTS.

Ease of review of documents promotes prompt and efficient resolution of appeals. It is thus reasonable to require that all legal documents filed with the court be double-spaced. Double-spaced is required for briefs and motions prepared for proceedings before the Minnesota Court of Appeals and Supreme Court. Minn. R. Civ. App. P. 132.01 and 132.02. This amendment thus also serves the interests of uniformity.

Part 9800.0400 - TEMPORARY ORDERS.

This amendment is necessary to clarify that petitions for temporary orders, rather than temporary orders, must conform to Minn. Stat. § 176.191, and part 1415.2300. It is not intended as a substantive change.

Part 9800.0500 - CONTINUANCES OF ORAL ARGUMENTS.

Hearings before this court generally consist of oral argument. It is thus more precise to use the term "oral argument" rather than the more general expression "hearing."

This rule is amended to provide that continuances will be granted only upon a showing of good cause. This change incorporates language contained in part 1415.2800 and thus serves the goal of uniformity. It also places a heavier burden on the party seeking a continuance than does the current rule, and therefore promotes speedy resolution of workers' compensation matters.

Part 9800.0510 - NONAPPEARANCE OF COUNSEL.

On occasion, counsel for a party fails to appear at oral arguments without notifying the court. It is not reasonable to penalize or inconvenience the other parties by delaying or continuing the hearing in these circumstances. This part is therefore added to notify parties of the procedure that will be followed in these cases. This rule is identical to Minn. R. Civ. App. P. 134.05.

Part 9800.0600 - NOTICE OF SETTLEMENT.

This rule was repealed previously.

Part 9800.0700 - STIPULATION FOR SETTLEMENT.

This rule is not being amended.

Part 9800.0800 - APPEAL OF ATTORNEY FEES BY EMPLOYEE.

This rule is not being amended.

Part 9800.0900 - BRIEFS ON APPEAL.

The timely submission of adequately prepared briefs is an essential part of the appellate process. This part is amended to clarify the responsibilities of the parties and to put parties on notice that failure to carry out these responsibilities may have adverse consequences, including dismissal of their appeals.

Subpart 1 - Filing of Brief of Appellant and Cross-Appellant Where a Transcript is Required.

This amendment specifies that both appellants and cross-appellants must serve and file a brief within the time provided, and that that brief may address only those issues contained in that party's notice of appeal.

In the past, some cross-appellants have combined their brief on cross-appeal with their respondent's brief, and served and filed that combined brief pursuant to the time requirement applicable to respondent's briefs. That

practice unfairly allowed the cross-appellant additional time to prepare the brief on cross-appeal, and delayed the appellant's response to the cross-appeal. With this amendment, all parties who appeal are on equal footing, which was the original intent of the present rule.

This amendment also notifies the parties that issues which are raised in the notice of appeal but are not addressed in the brief will be considered waived. Because of the relatively short period within which a party must file an appeal, parties frequently specify more issues in the notice of appeal than they eventually decide to pursue in their brief. However, the court has no way of knowing whether or not the parties have made a conscious decision to waive these issues. Additionally, the court often has no basis to understand a party's position if the issue raised by an appealed-from finding is not explained.

It is not reasonable for the parties to expect the court to develop and make their arguments for them. Cases which are not adequately briefed may also require more time to decide. To facilitate expeditious and well-considered disposition of appeals, it is thus reasonable and necessary to require the parties to brief all issues they wish the court to consider. The Minnesota Supreme Court also imposes this requirement. See Balder v. Haley, 399 N.W.2d 77 (Minn. 1987); Melina v. Chaplin, 327 N.W.2d 19 (Minn. 1983).

For the same reason, this rule as amended notifies the parties that failure to submit a brief on appeal or cross-appeal may result in dismissal of the appeal pursuant to part 9800.1710.

Subpart 2 - Filing of Brief of Appellant Where No Transcript of the Proceedings is Required.

The amendment to this subpart effects changes identical to those discussed under part 9800.0900, subp. 1, above. The word "hearing" is changed to "oral argument" to promote consistency throughout the Rules.

Subpart 3 - Filing of Brief of Respondent.

This subpart as amended is intended to clarify that all respondents' briefs, including the respondent's brief of any cross-appellant, must be filed within the time provided. The filing deadline for respondents' briefs has been extended by 5 days from 20 to 25 days because of comments from the practicing bar which underscore the fact that respondents' briefs are often as detailed and difficult to prepare as appellants' briefs.

Further expansion of the time allowed for respondents' briefs was considered but rejected in the interests of an expeditious resolution of appeals. Delays are particularly disfavored in workers' compensation proceedings. The five-day extension granted by this amendment represents a reasonable compromise between respondents' legitimate desire for additional time and the interests of efficiency.

The word "hearing" is changed to "oral argument" to promote consistency throughout the Rules.

Subpart 4 - Filing of Respondent's Brief Where No Appellant's Brief is Filed.

This subpart has been deleted because these rules as amended provide that issues not briefed are waived, and the failure of an appellant to file a brief may result in dismissal. See part 9800.0900, subp. 1 and 2; part 9800.1710. It is thus unnecessary to provide a deadline for the filing of a respondent's brief where no appellant's brief has been filed.

Subpart 5 - Reply Briefs.

The word "hearing" is changed to "oral argument" to promote consistency throughout the Rules.

Part 9800.1000 - ORAL ARGUMENTS ON APPEAL.

Oral argument is not of value to the court in all cases. The interests of judicial economy require that criteria be established to aid the court in determining whether or not to allow oral argument in a given case. This part has been extensively amended to delineate the circumstances in which oral argument will be scheduled.

This part also provides that only parties who timely file a request for argument will be allowed to participate in oral argument.

Subpart 1 - Criteria Considered in Granting Oral Argument.

Minnesota Statute § 176.421, subd. 6(1) (1986) provides that the court may grant oral argument on appeal. Formerly, an oral argument was required in all cases. For efficient administration of the court's docket and prompt disposition of the large volume of cases appealed to this court, this amendment provides criteria for deciding which cases will be decided without oral argument.

Subpart 1A continues the court's present practice of considering cases without oral argument where the parties have waived it. Subpart 1A has been modified, however, to provide that oral arguments will not be held if the parties fail to request an oral argument pursuant to part 9800.1600, subp. 2. Therefore, an affirmative waiver of argument is not required. Rather, a failure to timely file a request for oral argument is now given the same effect as a waiver under these rules.

Subparts 1B and 1C allow the court to make its own determination as to whether the matter merits oral argument. This amendment reflects legislative intent as expressed in Minn. Stat. § 176.421, subd. 6(1) (1986). The criteria set out in this subpart are substantially similar to those contained in Minn. R. Civ. App. P. 134.01 d(1) and (2).

Cases which are not factually or legally complicated do not necessarily benefit from oral argument. Such appeals are often more efficiently disposed of without the delay attendant to setting a matter for argument. It is therefore reasonable for the court to base its decision of whether or not to grant argument on whether the resolution of appealed issues would establish legal precedent and whether argument would be desirable to clarify the facts or law. Control of the court's docket and speedy dispute resolution are thus reasonably served by this amendment.

Subpart 2 - Motion Pictures.

The word "hearing" is changed to "oral argument" to promote consistency throughout the Rules. Notice to all parties is required to avoid surprise and to enable them to adequately prepare their arguments. This amendment also deletes duplicative language and serves to clarify that the party who desires to show a motion picture is responsible for providing the projection equipment.

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

Comments from the bar indicate that five days is not an adequate time period in which to respond to an application under this rule. An application to set aside an award is often similar to other petitions filed in the workers' compensation system, and responding to such applications require more preparation than the current rule contemplates. It is therefore necessary and

reasonable to expand the response time to give the responding party a fair opportunity to prepare, thereby aiding the court with its decision on the merits. The amendment thus extends response time from 5 to 20 days.

Part 9800.1200 - WRIT OF CERTIORARI.

This part is not being amended.

Part 9800.1300 - SECOND INJURY LAW.

This part was repealed previously.

Part 9800.1400 - APPLICATIONS, PETITIONS, AND MOTIONS.

Subpart 2 - Procedures for Filing.

This subpart is amended to clarify that all requests for relief under this part are subject to the requirements of this subpart. The present subpart is on its face arguably applicable only to motions. This amendment is therefore reasonable and necessary to resolve confusion engendered by the current language. It also clarifies that the timing requirements for filing apply only to matters which have been scheduled for oral argument.

This amendment is not intended as a substantive change.

Subpart 3 - Responses.

The word "motion" is changed to "request for relief" to reflect the change in part 9800.1400, subp. 2, as amended.

Subpart 5 - Oral Argument Not Permitted.

The word "hearings" is changed to "oral argument" to promote consistency throughout the Rules.

Part 9800.1500 - PETITION FOR INTERVENTION.

This rule is not being amended.

Part 9800.1600 - COMMENCEMENT OF APPEALS.

Subpart 1 - Filing Notice of Appeal.

This subpart is amended to reflect the 1987 amendment to Minn. Stat. § 176.421, which specifies the filing requirements for a cross-appeal. Minn. Stat. § 176.421, subd. 3a (1987). Including this information in this subpart is reasonable to avoid confusion about the time deadlines for cross-appeals.

Subpart 1A, 1B and 1C have been deleted. The Medical Services Review Board and the Rehabilitation Review Panel now have limited jurisdiction. See Minn. Stat. §§ 176.102 and 176.103 (1987). Specific references to appeals from these bodies is no longer desirable and may in fact be misleading. In addition, all appeals to this court must be taken within 30 days of whatever decision is being appealed. It is thus unnecessary to specify the time requirements particular to various decisions.

Subpart 1a - Preparation of Transcript.

This subpart has been added to emphasize that transcripts must be prepared unless the court orders otherwise. This is presently required by statute. Minn. Stat. § 176.421, subd. 3 (1986). However, in practice, the parties sometime agree that a transcript is unnecessary and no transcript is ordered as required by Minn. Stat. § 176.421, subd. 5 (1986). On some occasions this prevents the court from fully considering issues raised in the appeal. Requiring preparation of a transcript unless otherwise ordered by the court after application of a party is a reasonable way to avoid this potential problem.

Subp. 2 - Notification of Receipt of Transcript.

The word "hearing" is changed to "oral argument" to promote consistency throughout the Rules. In addition, this subpart also deletes the requirement that parties notify the court of issues pending before the workers' compensation court, Medical Services Review Board, or Rehabilitation Review Panel. As previously noted, the jurisdiction of the Medical Services Review Board and the Rehabilitation Review Panel has been substantially limited. Reference to these bodies is no longer necessary and may be misleading. In addition, in practice, consolidation is seldom ordered because the benefits of consolidation are often outweighed by the disadvantage of delaying disposition of the matter on appeal. Despite this revision, the parties remain free to notify the court of other pending matters and to ask for consolidation, in appropriate cases, pursuant to the procedures set out in part 9800.1400.

This subpart further specifies that the failure of a party to file a timely response will be deemed a waiver of oral argument. This is reasonable and necessary to insure compliance with this rule and to avoid delay in disposing of the appeal. This subpart codifies the current practice of this court.

Part 9800.1700 - TAXATION OF COSTS AND DISBURSEMENTS.

This part is not being amended.

Part 9800.1710 - DISMISSAL.

This part has been added to provide that an appeal or cross-appeal may be dismissed if an appellant or cross-appellant fails to file a brief.

As previously explained, timely filing of adequately prepared briefs is an essential part of the review process. When an appellant fails to file a brief, it is often impossible for the court to identify that party's position on appeal. The court is then left in the position of making the party's arguments for it, which is not fair to the other parties in the case. It is therefore reasonable to require the filing of an appellant's or cross-appellant's brief in all instances.

This rule also provides that an appeal may be reinstated after dismissal if the appellant or cross-appellant can show good cause for failing to timely file a brief, that the appeal or cross appeal is meritorious, and that reinstatement would not substantially prejudice the rights of any other party. The addition of this provision avoids the likelihood that an appellant or cross-appellant will be unduly penalized for a technical error or an excusable failure to file a brief. It is reasonable to allow reinstatement under these circumstances to facilitate disposition of appeals on the merits, thereby protecting the substantive rights of the parties.

This part is substantially similar to Minn. R. Civ. App. P. 142.02, and is desirable to promote uniformity of appellate procedure.

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

This part has been added to allow any member of the court to consider a case on the record and the briefs, whether or not that judge was present at oral argument. This procedure is necessary and reasonable to promote prompt determination of appeals by avoiding the delay which now occurs when a judge assigned to a particular case cannot take part in a decision for one reason or another. This provision also avoids the necessity of rehearing oral argument, which is presently allowed at the request of the parties when there is a change in court personnel. The rule also provides further incentives to the parties to adequately address all the issues in their written briefs.

This part is substantially similar to Minn. R. Civ. App. P. 134.08, which is desirable to promote uniformity of appellate procedure.

Part 9800.1800 - SUSPENSION OF RULES.

This part is amended to reflect the addition of other parts.

FISCAL IMPACT ON LOCAL PUBLIC BODIES.

As required by Minn. Stat. § 14.11, subd. 1 (1986), 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 BUSINESSES.

The court has considered the impact of these rules on small business as required by Minn. Stat. § 14.115 (1986). 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 (1986). Health care providers are exempt by Minn. Stat. § 14.115, subd. 7(c) (1986) as regulated service businesses. Further, these amendments eliminate ambiguities and simplify existing procedures for all litigants. To create special exceptions for small businesses would detract from the fairness of these rules and jeopardize the integrity of the court.