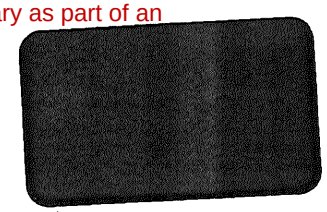

Proposed OAH
Workers' Compensation
Litigation Rules, Minn. R. 1420

STATEMENT OF NEED AND
REASONABLENESS

I. INTRODUCTION

These proposed rules of the Office of Administrative Hearings are introduced in conjunction with amendments to the Joint Workers' Compensation Litigation Rules of the Department of Labor and Industry (DLI) and the Office of Administrative Hearings (OAH). Sections I – VIII of this Statement of Need and Reasonableness (SONAR) apply to both the proposed Joint Rules in Minnesota Rules, chapter 1415 and the OAH Workers' Compensation Litigation Rules in chapter 1420.

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

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

duties and powers, the majority of the rule provisions address matters now within the authority of the Office of Administrative Hearings.

Regarding the workers' compensation litigation process, the Department of Labor and Industry remains responsible for matters such as maintenance of workers' compensation injury files, computer imaging and filing of documents, and informal administrative conferences. Additionally, DLI has authority to prescribe various forms used in litigation and authority to enforce compliance with the Workers' Compensation Act. OAH is responsible for the remainder of the litigation process, conducting hearings and other pre-hearing matters as well as informal administrative conferences. These proposed rules seek to separate matters relating only to OAH into one set of procedural rules, and revise the procedural matters relating to both agencies in joint rules. The revisions are needed to update the organization of the rules to better reflect the responsibilities of OAH and DLI following the merger legislation in 1998, and to update the rules based upon changes in statutes and procedures in the 20 years since the rules were last revised.

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

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

Should the rules go to hearing, witnesses on behalf of the agencies will include persons within the agencies or individuals practicing in the workers' compensation field with expertise in the area at issue. Their testimony will pertain to the problem being

addressed in the rules, the need for the rule at issue, and the reasonableness of the given proposed solution.

II. ALTERNATIVE FORMAT

Upon request, this Statement of Need and Reasonableness (SONAR) may be made available in an alternative format, such as large print, Braille, or cassette tape. To make a request, contact Sandra Haven at the Office of Administrative Hearings, 100 Washington Avenue South, Suite 1700, 612-341-7642 or fax number 612-349-2665. TTY users may call OAH at 612-341-7346.

III. STATUTORY AUTHORITY

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

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

DLI has general rulemaking authority relating to matters within its jurisdiction, including workers' compensation matters. This includes workers' compensation rules of practice regarding matters not before compensation judges (Minn. Stat. § 175.17(2)), rules governing its proceedings and the mode and manner of all investigations and hearings relative to the exercise of its powers and duties (Minn. Stat. § 175.171(2)), and rules to implement chapter 176 (176.83, subd. 1). In addition to the statutory authority previously mentioned, DLI has authority to prescribe forms and other reporting procedures that are required under chapter 176 (Minn. Stat. § 176.231, subd. 5 and 176.83, subd. 15), to adopt rules governing the intervention of other parties into workers' compensation claims (Minn. Stat. § 176.361, subd. 1 and Minn. Stat. § 176.83, subd. 9), and to adopt rules necessary to implement the law regarding the discontinuance of benefits.

IV. ISSUES OF NEED AND REASONABLENESS

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

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

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

V. COSTS OF COMPLIANCE AND ENFORCEMENT

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

No performance standards are set by the proposed rules, so no relaxation of such requirements is possible. Similarly, reporting requirements are not generally established. Few schedules or deadlines for compliance or reporting standards exist under these rules. The proposed rules establish timelines for completion of specific components of litigation in workers' compensation cases. These timelines are needed to expedite all types of hearings and obtain compliance with Minn. Laws, 1992, Ch. 510, Art. 2, Sec. 15, which seeks completion of 50 percent of hearings within two hours, 75

percent within four hours, and nearly all within one day. Exemptions for these timelines are available for good cause on a case-by-case basis. Only through the uniform application of the rule requirements can the workers' compensation case system meet its goals for timely and efficient hearings. Exceptions may be made in individual fact situations as allowed by the governing statute and the rules, based upon the facts of a particular case as presented to the judge. Through the proposed changes, OAH and DLI have attempted to reduce the overall volume and complexity of these rules.

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

VI. PERSONS AFFECTED, ADDITIONAL NOTICE GIVEN

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

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

minority members of the policy and budget committees having jurisdiction over the subject matter of the rules.

The Request for Comments and NIARWPH were also given or mailed to the members of the Workers' Compensation Insurers' Task Force; the members of the Workers' Compensation Advisory Council comprised of employer and employee representatives; members of the Rehabilitation Review Panel comprised of rehabilitation, medical, employer, and labor representatives; members of the Medical Services Review Board; medical and other associations interested in workers' compensation regulation, and to individuals or firms who receive workers' compensation litigation notices in batches from OAH because OAH sends a high volume of notices to these persons and firms. The batch notice list includes attorneys, insurers, and representatives of entities intervening as a party in workers' compensation proceedings. The NIARWPH was also sent to all persons who commented on the rules.

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

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

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

VII. OTHER CONSIDERATIONS

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

VIII. SPECIFIC RULE PROVISIONS (Please note that subparts not addressed in this SONAR are unchanged from the existing rule language in chapter 1415.)

Part 1420.0100 Scope and purpose.

This part clarifies the scope and purpose of this chapter of *Minnesota Rules.* Chapter 1420 includes workers' compensation litigation procedures affecting matters in formal litigation at OAH. The chapter generally does not apply to informal administrative conferences. However, parts 1420.0300 regarding professionalism and civility and part 1420.3700 regarding sanctions apply to all OAH proceedings. Chapter 1415 complements chapter 1420, providing procedures concerning matters under the rulemaking authority of both DLI and OAH, such as the service and filing of litigation documents, attorney fees, and procedures regarding informal administrative conferences. Part 1420.0100 alerts the reader that both sets of rules (chapter 1415 and 1420) must be used to form a set of litigation rules and that part 1420 does not apply to matters at DLI. A cross-reference to rules governing appellate procedures is also included to assist the rule user in locating other workers' compensation litigation rules.

Part 1420.0200 Definitions.

The definitions section of chapter 1420 generally contains the same words and definitions as part 1415.0300 with minor additions and deletions. The joint rules in part 1415 contain a definition of "imaging" that is not included in part 1420; the term is not used in part 1420. The OAH rules in part 1420 contain a definition of "expedited hearing" that is not included in part 1415; the term is not used in part 1415. Any other

definitions deleted from the former definitions in part 1415 and not otherwise explained were deleted because the term is not used in this chapter.

Subpart 1. Scope. This part simply indicates that the terms defined under this part have the meanings indicated for the purposes of this chapter. It reasonably explains the application of the definitions in the subparts that follow.

Subpart 2. Act. When the term "act" is used in the rules, it refers to the Workers' Compensation Act in Minnesota Statutes, chapter 176. The rule clearly sets this out. It is the same as the definition in part 1415.0300.

Subpart 5 of 1415.0300 (renumbered as 1420.0200, **subpart 3**). Chief judge. "Administrative law" is deleted from the title "chief administrative law judge" for ease of use and brevity.

Subpart 4 of 1415.0300. Calendar judge. The "calendar judge" definition of 1415.0300 is deleted as unnecessary. The proposed rules simply refer to the "judge" instead. Functions of the judge currently assigned to calendar duties change from time to time and often overlap somewhat with the role of the judge assigned to the case. For example, some issues are handled by the calendar judge when the assigned judge is unavailable or when there is no assigned judge. Other issues on cases not assigned to a particular judge are assigned to other judges who may or may not be the calendar judge. The current definition and use of the term "calendar judge" throughout the litigation rules creates confusion rather than clarity and is, therefore, deleted. This deletion from chapter 1415 is described here to explain the deletion of use of the term "calendar judge" in the rules that follow.

Subpart 4 of 1420.0200. Commissioner. This definition is the same definition used in part 1415.0300 to refer to the Commissioner of Labor and Industry.

Subpart 5. Court of appeals. This definition is the same definition used in part 1415.0300 to refer to the Workers' Compensation Court of Appeals.

Subpart 6. Days. A definition of "days" is added to clarify that its use in the rules generally refers to calendar days, and also to refer the reader to the general statute concerning how to calculate time periods. No substantive change is intended.

Subpart 7 of 1415.0300. Compensation judge. The definition of "compensation judge" is already contained in Minn. Stat. § 176.011, subd. 7a and is, therefore, deleted as unnecessary.

Subpart 7 of 1420.0200. Division. This definition designates "dIvision" as referring to the Workers' Compensation Division at DLI, not OAH.

Subpart 8. Expedited hearing. A definition of "expedited hearing" is added. The phrase "expedited hearing" is used in part 1420. The definition clarifies that the reference is to proceedings required by the Workers' Compensation Act to be heard within a shorter time period as compared to other hearings. This distinction affects accelerated procedures in cases filed under Minn. Stat. § 176.106, subd. 7 (Requests for Formal Hearing); 176.238, subd. 6 (Petitions to Discontinue Benefits and Objections to Discontinuance); 176.331 (Petitions with no Answer), and 176.341, subd. 6 (Hardship cases).

Subpart 9. Insurer. A definition of "insurer" is added for clarity. It is generally understood in the workers' compensation system that use of the term "insurer" refers to the entity responsible for paying workers' compensation benefits on behalf of the employer. When the employer is self-insured, the employer is also the insurer. When the employer is uninsured, the Special Compensation Fund acts as the insurer under Minn. Stat. § 176.183 with a right of recovery from the employer. As used in these rules, "insurer" refers to all three entities: the workers' compensation insurer of an employer, a self-insured employer, and the Special Compensation Fund in uninsured cases.

Subpart 10. Intervenor. A definition of "intervenor" is added. The term "intervenor" is used in the statutes and rules and needs to be defined for uniform usage. An "intervenor" is "a party who has an interest in a workers' compensation proceeding such that the person or entity may gain or lose by an order or decision in the case" and that has filed a motion to intervene pursuant to Minn. Stat. § 176.361. The definition is added for clarity and to simplify rule language by using one term rather than repeating the statutory phrase defining an intervenor. It is not intended as a substantive change.

Subpart 11. Judge. The "judge" definition is updated to reflect the current statute and agency organization. The designation of a judge as a "calendar judge" or "settlement judge" is removed as unnecessary and redundant. A calendar judge or settlement judge is a workers' compensation judge.

Subpart 12. Office. The definition of "office" to refer to OAH is unchanged from 1415.0300, subpart 13.

Subparts 13 and 14. Petition; Petitioner. The definitions of "petition" and "petitioner" are slightly modified from 1415.0300, subparts 15 and 16 by adding a phrase to clarify that a petition is sometimes filed by or on behalf of a party other than an injured or deceased employee, employer, insurer, or special compensation fund. For example,

a medical provider, the DLI, or a rehabilitation provider may file a claim in limited circumstances. The expanded definition reflects current practice.

Subpart 15. Potential intervenor. A definition of "potential intervenor" is added for clarity. The term was occasionally used in part 1415 before proposed amendments and is more frequently used in both part 1415 and 1420 as amended. The definition describes a person or entity who has the right to file a motion to intervene as a party under the applicable statute and rule, but who has not filed a motion to intervene as a party. The definition assists the rule reader in understanding the application of the rules regarding intervenors and potential intervenors.

Subpart 17 of 1415.0300. Settlement judge. The definition of "settlement judge" is deleted from 1415.0300 as unnecessary for the reason expressed under subpart 11 above, and due to the reorganization moving the settlement judges from DLI to OAH as described under the Introduction section above. After the reorganization, it is no longer necessary or helpful to use the term "settlement judge" in the rules.

Part 1420.0300 Professionalism and civility.

OAH is committed to providing a professional and civil environment for resolving workers' compensation disputes. Regardless of the outcome of the dispute, we expect the litigants to be treated with respect and dignity by the participants in the process, including the OAH staff and private attorneys. The process, including the manner in which proceedings are conducted, reflects on the judicial system as a whole. Referencing the Rules of Professional Conduct and the Professionalism Aspirations adopted by the Minnesota Supreme Court in these rules underscores the commitment of OAH to these standards (Rules of Professional Conduct) and goals (Professionalism Aspirations). They are yardsticks by which the office expects to be measured and by which the profession as a whole is evaluated. The referenced standards and goals are easily accessible in the Minnesota Rules of Court annual publication, published by Thomson West.

Part 1420.1300 Joinder of parties.

This part is moved from part 1415.1300 and revised.

Subpart 1. Motion or amended petition. This subpart of part 1415.1300 is expanded to recognize that parties may be joined in a workers' compensation proceeding by either a motion for joinder or by filing an amended petition. This is consistent with current practice and with part 1415.1000, subpart 4 concerning amended petitions. The petitioner identifies the parties to the action in the petition and may subsequently add a party to the claim by filing an amended petition with additional parties subject to the exception in part 1415.1000, subp. 4. Proposed part 1415.1000, subp. 4 requires joinder of parties by motion if the hearing will occur in less than 120 days. Proposed part 1415.1300 includes a citation to part 1415.1000, subp. 4 as a cross-reference to assist the rule user in determining when an amended petition suffices to join a party, and when a motion is required to join a party.

Subpart 2. Service. The rule language regarding filing of a motion for joinder is deleted. Filing requirements are already covered by part 1415.0700, subpart 4 and need not be repeated here. The rule formerly required that a joinder motion was due by the time a pretrial statement is due. Obviously, it is best to join additional parties as early in the process as possible, however, at times the existence of an additional party or the medical or legal support to request joinder, is not available early in the process. If a motion to join an additional party is made later in the process, it may require either a continuance of a hearing date or result in denial of the motion if the party is not essential to the dispute. In any event, a motion may be brought and resolved (or an amended petition filed) according to the facts and circumstances of the case. The second sentence is slightly revised to improve the sentence structure and a requirement is added to inform the party to be joined of any scheduled hearing date. The party to be joined might not otherwise be aware of a scheduled hearing. Notice of an upcoming proceeding assists the party to be joined to take appropriate action in response to the motion (such as scheduling a medical examination in a timely manner, if needed, responding quickly to the motion, and if needed, requesting a continuance of the hearing date). The rule amendment also requires the petitioner filing an amended petition to serve the new party with prior pleadings, but not to again file the pleadings with the state. The new party, whether joined after a motion or by amended petition, will need to review the prior pleadings in the case to appropriately prepare for the case and to respond. However, OAH, DLI, and the parties to the original action already have the prior pleadings so they should not be sent duplicates. When a judge joins a party on the judge's own motion (such as when the petitioner should have named the special

compensation fund as a party but failed to do so), the modified language requires OAH to either serve the new party with the pleadings or designate another party to do so. Again, the new party will need to review the pleadings to appropriately prepare the case and respond. Therefore, the judge joining the new party on his or her own initiative would supply the pleadings or indicate by order the party designated to do so.

Subparts 3, 4, 5, and 6 of part 1415.1300. Late joinder; Delay; Contents of motion; Order. These subparts in part 1415.1300 are deleted as unnecessary. The general procedures for motions, including motions for joinder, are now included in part 1420.2250. Whether or not the motion will be granted depends upon the particular facts and circumstances of the case. All potential situations cannot be described by the rule and so the proposed rule does not attempt to do so. The necessary contents of the motion are contained in part 1420.2250.

Part 1420.1800 Settlement conferences.

Part 1420.1800 is moved from part 1415.1800 and revised.

Subpart 1. Purpose. This subpart is unchanged.

Subpart 2 of 1415.1800. Time limits. This subpart of part 1415.1800 is deleted as unnecessary. Its primary purpose was to regulate matters between the former Settlement Division at DLI and OAH concerning referral of cases from DLI to OAH. Now that the Settlement Division is a part of OAH, there is no need for a rule regarding internal transfer of a file from one division to another.

Subpart 3 of 1415.1800 (renumbered as 1420.1800, subpart 2). Attendance. Subpart 3 of 1415.1800 is renumbered as subpart 2 after the deletion of subpart 2 of the former rule. The phrase "personally or by representative" is added to clarify that a party need not personally attend a settlement conference if a representative appears for the party. This is consistent with current practice. Occasionally, due to the particular circumstances of the case, the judge may require attendance by both the party and the representative. However, this is not the practice in the typical case. The party is always welcome to attend, but unless ordered to do so, need not appear when a representative appears for the party.

Subpart 4 of 1415.1800 (renumbered as 1420.1800, subpart 3). Preconference demand and offer. Subpart 4 of 1415.1800 is renumbered as subpart 3 of 1420.1800 and renamed to more accurately reflect the rule content. Language regarding

discussion of the claim prior to a settlement conference is deleted as unnecessary and ineffective, and replaced with a requirement for the petitioner to make a settlement demand one week before the conference. The amendment replaces general language that had no significant effect with a specific directive designed to result in actual settlement of the claim. Requiring a prior settlement demand by the petitioner one week before the conference gets the settlement process in motion early enough so that the time spent in a settlement conference is more efficient and effective. If the petitioner picks up the file at least one week before the conference and determines its value or what additional information is needed so that a settlement demand may be made, it is more likely that the case will be settled at the conference. Likewise, the respondent must be prepared to respond to a demand for settlement and do so at least a day before the conference. The parties should then be prepared to discuss the merits of the case at the time of the conference and if not, there would be time to contact OAH before the conference date to ask that the case be either dismissed, referred for hearing, rescheduled, or stricken from the calendar. This preparation before the conference assists the parties is resolving the claim and conserves court time that is then spent on the cases that are ready for resolution.

Subparts 5 and 6 of 1415.1800. Conference procedures; pretrial statement. Subparts 5 and 6 of 1415.1800 are deleted as obsolete. As a practical matter, not all of the information contained in part 1415.1900, subpart 5 is typically available at the time of the settlement conference. For example, the hearing exhibits would typically not be prepared at the time of a settlement conference. One of the advantages of resolving a case at the settlement conference is to avoid the cost of preparing for the hearing. The claims summary required by subpart 3 of 1420.1800 is typically the information needed to assist in settlement of the case. Subpart 6 contains obsolete provisions concerning orders issued following a settlement conference. While it is possible that the parties might enter into a partial agreement following a settlement conference without resolving all of the disputed issues, that agreement would typically be memorialized in a partial Stipulation for Settlement rather than in an order from the presiding judge. This reduces the possibility for any misstatement of the agreement of the parties. Other stipulations concerning individual issues are recorded on the record on the day of hearing and memorialized in the Findings and Order. Because subparts 5 and 6 of 1415.1800 are generally inconsistent with current practice, they are deleted as obsolete.

Part 1420.1850 Resolution of claims with intervenors; hearings.

This new part addresses a longstanding troublesome area of the law. It specifies procedures in those cases in which the primary parties have reached agreement, but a dispute remains concerning the claim of an intervening party. The appropriate resolution of the intervenor's claim in these situations was addressed by the Minnesota Supreme Court in Parker/Lindberg v. Friendship Village, 39 W.C.D. 125, 395 N.W.2d 713 (Minn. 1986). The Supreme Court held that the judge must determine whether or not the intervenor was effectively excluded from settlement negotiations. Where the matter has been finally resolved previously, an excluded intervenor is entitled to full reimbursement of its claim. If the matter is not finally resolved, the intervenor may pursue its claim despite the settlement by the other parties and seek a determination regarding its interest. Part 1420.1850 clarifies the procedures concerning resolution of the intervenor's claim in situations where the principal parties have resolved their interests but have been unable to reach a settlement with the intervenor. The rule is needed to provide guidance to the parties in an area of uncertainty and to provide uniform procedures for the parties and the judge to follow.

Subpart 1. Stipulations without agreement of all intervenors or potential intervenors. Subpart 1 sets out the procedures where the primary parties have reached agreement but have been unable to resolve the claim of at least one intervenor or potential intervenor.

As provided in item A, if a party seeks to extinguish the rights of a potential intervenor under Minn. Stat. § 176.361, subd. 2, the Stipulation for Settlement must include evidence of the notice of the right to intervene given to the potential party as well as an affidavit of service. The consequence of extinguishment of rights is the potential party's inability to collect for services provided or payments made, therefore, the parties and the judge need to verify that proper notice was given and the potential intervenor did not submit a timely response. If proper notice was given and the potential intervenor chooses not to participate, the statute allows an order precluding the potential party from making a claim in the future relating to the workers' compensation claim.

Item B addresses cases in which an intervenor has asked to participate in the claim and the other parties have reached agreement on settlement terms, but have been unable to reach an agreement with the intervenor. In this situation, the intervenor may either: 1) sign the stipulated agreement and indicate that it has not been excluded from

negotiations, that an agreement on the intervenor claim was not reached and a hearing on the intervenor's claim on the merits is required; or 2) not sign the stipulated agreement. If the intervenor does not sign the stipulation, the Stipulation for Settlement must be served on the intervenor (and an Affidavit of Service included) to verify that the intervenor is aware of the partial Stipulation for Settlement, but has either not responded to efforts to negotiate or has responded but the claim could not be resolved. This places the intervenor on notice of the intention of the other parties to seek approval of the partial agreement, allowing the intervenor to either continue to negotiate with the parties or to prepare for a hearing. The Parker/Lindberg case does not require that all parties simultaneously reach an agreement before a settlement may be approved, however, it does require notice to the intervenor and an opportunity for the intervenor to be heard regarding its claims, including whether or not the partial settlement should be approved.

Subpart 2. Initial hearing on partial settlement. Subpart 2, item A, sets out the procedures for an initial hearing regarding whether or not the partial Stipulation for Settlement should be approved. The rule reasonably provides a two-step process. The first step is to determine whether or not the partial Stipulation for Settlement that does not resolve an intervenor claim should be approved. The matter is scheduled as quickly as possible, within 30 to 60 days.[2] The matter is expedited to allow an appropriate agreement to be approved as soon as possible and payments made in accordance with the agreement. If all parties are in agreement, a Stipulation for Settlement is generally handled by OAH within a week of receipt. Stipulations without agreement of all parties are handled as expeditiously as possible, but are somewhat delayed due to the statutory requirement to give 30 days notice of a hearing.

Item B. The key issue at the time of this initial hearing on the settlement agreement is whether or not the agreement of the other parties precludes a determination regarding the intervenor claim. For example, the terms of the settlement would be reviewed to ensure that it does not prejudice the right of the intervenor to make its claim. The parties would need to be available and willing to participate in the proceedings regarding the unresolved claim.

Item C. If the judge approves a partial settlement, the unresolved intervenor claim would proceed to a hearing on the merits at a later date when the parties are prepared to do so. The rule provides a method for the parties to seek a quick hearing

[2] Thirty days notice of a hearing must be given. Minn. Stat. § 176.341. subd. 3.

regarding stalled settlement negotiations and then proceed to either resolve the final issues or schedule a full hearing on the merits of the claim as provided in subpart 3. A potential intervenor is expected to act in a timely matter upon notice of the right to intervene in accordance with Minn. Stat. § 176.361, subd. 2, or forego its claim related to the workers' compensation claim. The primary parties should not be expected to delay resolution of the claim indefinitely due to difficulties in securing a response from a potential party. The rules allow the primary parties to seek and obtain an order extinguishing a potential intervenor's right to participate in the workers' compensation proceeding when the potential intervenor has failed to respond to a notice of the right to intervene, prejudicing the rights of the other parties to fully resolve the claim. Pursuant to May v. DKR Sales, Inc., slip op. W.C.C.A. (March 12, 2004), exclusion of a potential intervenor's interest is not appropriate when the employee makes and establishes a claim for the same benefit. This exception is noted in the rule.

Subpart 3. Intervenor hearing on the merits. Subpart 3 sets out the second step of the intervenor hearing procedures: a hearing on the merits of the intervenor's claim.

Item A. If a partial Stipulation for Settlement was approved and an intervenor claim remains unresolved, a hearing is needed to resolve the claim on the merits. Item A sets out the procedural steps concerning the scheduling of a hearing. A separate petition to request a hearing is not necessary when a petition is already pending. For example, where the employee filed a Claim Petition for benefits and the claims of the employee are resolved by agreement, the Claim Petition would remain pending on the intervenor claims and OAH would schedule a hearing on the remaining intervenor claim. If the other parties resolved the case without ever filing a petition for benefits, a petition must then be filed by the intervenor or another party as provided in Minn. Stat. § 176.291. The intervenor or another party must do so within 30 days after the approval of the partial Stipulation for Settlement. This allows the parties to know whether or not the intervenor intends to pursue its claim in the workers' compensation system for payment and to prepare for a hearing. Thirty days, the same time period allowed for appealing a decision in the workers' compensation system, is a sufficient time period for the parties to decide whether to pursue the claim and if so, to file a petition so stating. When OAH schedules a hearing on the merits of an intervenor's claim, it is a full evidentiary hearing on the employee's underlying claim as well as any reimbursement to the intervenor. At least one-half day is needed to hear such a claim, therefore, the rule indicates it will be scheduled for at least one-half day.

Item B, in accordance with established case law[3], sets out the items of proof at a hearing on the merits of the intervenor's claim. One argument an intervenor or potential intervenor may advance is that it was effectively excluded from settlement negotiations or from a litigated claim by lack of notice or by an unreasonable or bad faith offer of settlement. If the intervenor is successful in proving exclusion, it is entitled to 100% reimbursement of its claim. If the judge does not find that the intervenor was excluded from the claim, the intervenor must prove its claim on the merits.[4] To do so, the intervenor must prove any employee claims that have not already been established from which the intervenor's claim is derived. For example, if the intervenor's claim is for the payment of medical bills related to a work injury, the intervenor must establish that the medical treatment was reasonably required as a result of a work injury. If the employee has not previously established that the injury arose out of and in the course and scope of employment and the treatment was reasonable and necessary, those elements of proof fall on the intervenor in addition to proof of the services provided and the reasonable value of those services. Similarly, a rehabilitation provider seeking to obtain payment for vocational services would need to establish (if not already determined or admitted) that the services were provided in connection with a work injury and that the services were a part of a reasonable rehabilitation plan. There are many defenses to the payment of workers' compensation benefits; these examples touch on the most basic defenses, however, there may be others in an individual case. The Stipulation for Settlement typically lists the defenses to the claim asserted by the insurer. To establish its claim, the intervenor would need to overcome the defenses relevant to the claim.

Subpart 4. Potential intervenor claims after final order. Subpart 4 delineates procedures to resolve a potential intervenor claim after a settlement or a decision concerning the rights of the primary parties as well as potential intervenors has occurred. The judge's determination in this situation centers on whether or not proper notice was given to the potential party and whether or not the potential party failed to act in a timely matter if notice was given. In order to promote timely resolution of disputes and final resolution of claims, the request for a hearing must be made by the potential intervenor within 30 days of the potential intervenor's knowledge of exclusion from a final resolution of the case. A potential intervenor who fails to take action within 30 days waives the

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[3] Parker/Lindberg v. Friendship Village; 395 N.W.2d 713, 39 W.C.D. 125 (Minn. 1986); Le v. Kurt Manufacturing; 557 N.W.2d 202, 55 W.C.D. 650 (Minn. 1996); Stage v. Lion's Tap, Inc., slip op. W.C.C.A. (May 2, 1996).

[4] See Hardie v. Cotter & Co., , 45 W.C.D. 263, (W.C.C.A., June 21, 1990 and June 28, 1991).

right to contest the matter already concluded. The appeal period in workers' compensation cases is generally 30 days, a reasonable period of time to evaluate whether or not a final determination should be accepted or contested. The same time period is allowed a potential intervening party who wishes to assert that it was not given proper notice of the right to participate in a matter that has been resolved. A 30-day period to respond is also allowed by Minn. Stat. § 176.361 when a potential intervenor is given notice of a pending claim that will be heard on an expedited basis in an administrative conference. Except where the matter will not be heard for an extended period of time (in which case a 60-day response period is allowed by Minn. Stat. § 176.361), the statute frequently allows a 30-day response period. It is a reasonable time period for the potential intervenor to request a hearing under this subpart. Subpart 4 is consistent with case law in this area and Minn. Stat. § 176.361, allowing full reimbursement to an excluded potential party, and precluding the potential party's interest in the workers' compensation claim where it failed to act in a timely manner.

1420.1900 Pretrial procedures.

Subpart 1 of 1415.1900. Independent medical evaluation. Part 1420.1900 is moved from part 1415.1900 and revised. Former subpart 1 is deleted as unnecessary because it is duplicative of Minn. Stat. § 176.155.

Subpart 2 of 1415.1900. Conference (renumbered as subpart 1 of 1420.1900). There are minor modifications to the first sentence of this part that do not change its substantive meaning. The rest of former subpart 2 is deleted as unnecessary. Attendance requirements are already previously stated.

Subpart 3 of 1415.1900. Location, notice of conference. This subpart is renumbered as subpart 2 of 1420.1900. The substance is unchanged.

Subpart 4 of 1415.1900. Settlement discussions. Subpart 4 of part 1415.1900 is deleted as unnecessary. Again, a rule requirement that parties be ready to discuss settlement or discuss settlement prior to a pretrial conference is not particularly effective. The deleted requirements state the agency's desire concerning the parties' settlement negotiations but do not state a clearly enforceable requirement. The parties will engage in meaningful settlement negotiations when it is in their interest to do so, not because an agency rule requires that they do so.

Subpart 5 of 1415.1900 (renumbered as 1420.1900, subpart 3). Conference procedures. Subpart 5 of 1415.1900 is renumbered as part 1420.1900, subpart 3. This subpart is revised to generally state the information required at a pretrial conference and deleting the overly detailed list in the previous rule. The claims must be stated with specificity, but need not be outlined in such great detail as in the former rule. Procedures regarding authorizations for the release of medical information are contained in part 1420.2200, the discovery rule, and in Minn. Stat. § 176.291; therefore, they are not repeated here. Potential intervenors must be identified. However, item J relating to only some potential intervenors is deleted and the broader inquiry required by Minn. Stat. § 176.361 substituted. A reasonable deadline for submission of pretrial statements is added for cases in which no pretrial conference is scheduled: 30 days before the hearing. This applies to cases that are not expedited. (Expedited cases generally are scheduled so quickly that pretrial statements are not required and they include very limited issues for determination.) Exchange of pretrial statements 30 days before the hearing assists the parties and the judge in preparing for the hearing, clarifying issues for determination, and disclosing an updated list of witnesses and exhibits. In order for OAH to provide the appropriate personnel needed for the hearing, the parties must also be prepared to indicate at the pretrial or in a pretrial statement whether any special security measures or language interpretation is needed. The language of new subpart 3 is consistent with current practice.

Subpart 6 of 1415.1900. Pretrial statement. Subpart 6 of 1415.1900 is deleted as obsolete. The current deadlines for submitting the pretrial statement are now contained in part 1420,1900, subpart 3. The pretrial statement is due on or before the date of the pretrial conference. This simplifies the procedure and reduces burdens on the parties. The party will need to prepare the case for pretrial conference. During this preparation, the party also prepares a pretrial statement and either files it just before the conference or hand delivers it at the time of the pretrial conference. The new procedure reduces the number of times the party must review the file, thereby reducing costs. If a pretrial conference is not held in a case, the pretrial statement must be filed 30 days in advance of the hearing to clarify issues and witnesses for trial. Pretrial statements are generally not required in expedited cases given the generally limited issues and timeframes for expedited cases.

Subpart 7 of 1415.1900. Evidence not disclosed at conference. This deleted subpart of 1415.1900 addressed admissibility of evidence not disclosed at a pretrial

conference. Whether or not evidence will be admitted into evidence is decided on a case-by-case basis depending upon the facts. The appellate courts have been fairly lenient concerning the admissibility of evidence in workers' compensation cases and have also afforded broad latitude to the judge in making those decisions. Subpart 7 listed some of the factors considered in making such a determination, but it was not necessarily an exhaustive list of factors. In some situations, the judge may allow undisclosed evidence to be submitted but also allow a post-hearing response to the late submission. Whether or not the information is allowed as a part of the hearing record and if any other opportunity to respond will be allowed are determinations best left to the judge in an individual case after argument from the parties. Therefore, subpart 7 is deleted as unnecessary.

Subpart 8 of 1415.1900. Matters agreed upon. This subpart of 1415.1900 is deleted for the same reasons expressed in this SONAR concerning part 1420.1800, subpart 6. Occasionally, the judge may issue an order concerning matters agreed upon at a pretrial conference, however, this is not the usual practice, except perhaps in response to arguments regarding a contested motion presented at a pretrial conference, or to memorialize an agreement concerning complex procedural matters. The former rule language implies issuance of an order whenever there are agreed upon matters in a pretrial conference. Because that it not the current practice, the subpart is deleted as overly burdensome and obsolete.

Subpart 9 of 1415.1900. Medical, treatment issues. Subpart 9 of 1415.1900 is deleted as obsolete. The rule addresses an issue under an outdated version of Minn. Stat. § 176.135 and 176.106 concerning authority regarding issues of medical causation. Subsequent to promulgation of 1415.1900, subpart 9, Minn. Stat. § 176.135, subd. 1(e) and 176.106, subd. 9 changed the law and eliminated the need for the rule. At one time, certain medical issues could only be determined by DLI. Following the amendment of the above statutes as well as the reorganization moving the settlement judges at DLI to OAH in 1998, the referral of issues from one agency to another is no longer necessary.

Part 1420.2050 Settlement agreements.

Subpart 1. Contents. This brief rule replaces part 1415.2000. The rule is simple, reducing burdens on the parties by eliminating unnecessary requirements. Subpart 1 summarizes the information needed in the Stipulation for Settlement to fully explain the

dispute and the resolution of the dispute. The rule (as compared to part 1415.2000) eliminates unnecessary details, but requires the information necessary for approval by the judge. Some settlement agreements are conclusively presumed reasonable under Minn. Stat. § 176.521. Others, such as those precluding future medical or rehabilitation services, must be shown to be reasonable and, therefore, require information justifying such an agreement. The proposed award assists the office in expediting issuance of an order approving the agreement where appropriate. Subpart 1 is consistent with current practice.

Subpart 2. Filing. Subpart 2 specifies the time deadline for filing a Stipulation for Settlement following verbal agreement of the parties. Forty-five days is a reasonable period of time following the agreement to reduce the agreement to writing, have it signed by the parties, and submit it for approval to the judge. If a settlement agreement is not filed within 45 days, the matter may be placed back on the trial calendar or dismissed unless good cause for the delay is shown. Former part 1415.2000 allowed 30 days for the Stipulation for Settlement to be filed. This deadline is often difficult to meet, especially when there are multiple parties who must review and sign the agreement. Over the years, the number of intervening parties has increased, thereby increasing the number of parties with whom agreement must be reached and who must sign the settlement agreement prior to submission of the Stipulation for Settlement. Therefore, the time limit is slightly lengthened, but kept short enough to encourage prompt and final resolution of disputed claims. The time period may be extended where good cause is shown for the delay. This provides flexibility as appropriate based upon the facts of the case. OAH gives notice to the parties that a settlement agreement or explanation for the delay is expected before any definitive action is taken. This allows the parties to communicate with OAH regarding circumstances complicating the finalization of a settlement agreement. At times, the parties require assistance is finalizing a settlement agreement. When submission of a settlement agreement is delayed, OAH may reschedule the matter for a conference or hearing to facilitate final resolution, or dismiss the matter if it is not ready for resolution. The former rule did not specify a result if a settlement agreement was not timely filed. Without a consequence for failing to meet the deadline, the former rule was less effective.

Part 1420.2150 Expedited proceedings.

Subparts 1 and 2. Expedited hearings; Issues limited. Part 1420.2150 replaces part 1415.2100. Part 1415.2100 addressed expedited hearings after the filing of a Petition to Discontinue Benefits or an Objection to Discontinuance of benefits. The scheduling requirements for these cases are set out by statute and need not be repeated in the rule. The new expedited proceedings rule is broader than part 1415.2100; it also covers Requests for Formal Hearing under Minn. Stat. § 176.106, requests for expedited hearings when a timely Answer to a petition is not filed under section 176.331, petitions granted hardship expedited status under section 176.341, subd. 6, and requests to approve urgent medical treatment recommendations. OAH is required to expedite the hearing in these situations or has made a determination that it is appropriate to do so. The rule consolidates all of the various expedited procedures in one section. Having a uniform set of procedures for all expedited proceedings will make it easier for the parties to understand and comply with requirements. An expedited hearing is defined in part 1420.0200, subp. 8. The difference in hearing date varies considerably between cases on the regular calendar and those given expedited status. In order to avoid unfairly favoring individual claimants, early hearing dates are only given where the statutory requirements allowing preferential treatment are met and where an urgent medical procedure cannot be obtained without prior approval. It is reasonable to expedite requests to approve surgery or other urgently needed treatment where the surgery or treatment cannot be obtained without judicial approval. Where there is another payor for the treatment, the approval does not preclude the employee from obtaining the treatment. In such cases, the case need not be expedited.

Hearings on discontinuance issues are limited to the claims and issues raised in the initial pleading as provided in Minn. Stat. § 176.238, subd. 6. The requirement is needed and reasonable for all other expedited hearing types as well because the quick time frames make it difficult for parties to complete discovery, obtain adverse examination reports, and prepare for trial. Allowing subsequent amendments that expand the issues would give the parties even less time to prepare.

Subpart 3. Expansion of issues. The question of whether to allow an expansion of issues addressed in an expedited hearing requires balancing the needs for efficiency and economy of procedures with the requirement to provide an early hearing when appropriate, but deny it when a party would be unfairly prejudiced by it. Many parties have multiple disputes pending in the workers' compensation system simultaneously. It sometimes makes perfect sense to combine disputes to avoid the need for two hearings

with the same parties. At other times, the parties are able to manipulate the filing of pleadings to secure an early hearing and then seek to add other issues that do not warrant expedited treatment as a means of obtaining an earlier hearing. To maintain calendar control so that only the cases deserving expedited treatment are expedited, the rule limits the issues that may be raised in expedited proceedings. If the expansion of issues is agreed to by all the parties and by OAH, it is allowed. Expanding the issues to include issues not subject to expedited treatment will change the decision deadline for the judge to the usual 60 days instead of 30 days for expedited cases. Some disputes may be combined into one proceeding, but if substantially more discovery and preparation time is required as a result, the case is removed from the expedited calendar. This discourages a party from filing a pleading subject to expedited scheduling in an effort to obtain an early hearing, and then amending the claim to include the other disputed issues that would ordinarily be heard on the regular hearing schedule. If an expansion of issues is allowed in such a case, the case may be removed from the expedited calendar. The rule allows OAH to maintain calendar control, expediting only those cases that meet the statutory criteria and at the same time, combining some disputes to avoid multiple hearings.

Subpart 4. Incomplete pleadings. Expedited cases require quick handling to resolve the claim within the statutory deadlines. A hearing is usually required within 60 days of the filing of a petition resulting in an expedited hearing. Minn. Stat. §§ 176.106, subd. 7; 176.238, subd. 6. Because of the short time deadlines, an omission in an expedited pleading must be promptly corrected. If it is corrected within 10 days of notice of the omission, the case maintains expedited status. If the missing information is not provided quickly, OAH may not be able to keep the case on track to be scheduled by the statutory deadlines and the due process rights of other litigants may be infringed.

Subparts 5 and 6. Intervention; Discovery. Shorter intervention and discovery deadlines are needed in expedited cases to keep the case on track to be heard quickly. Notices to potential intervenors must be sent out quickly (ten days after filing the petition) and potential intervenors must respond more quickly than in cases on the regular calendar. As provided by proposed rule 1415.1250, this rule allows a 30-day response period by the potential intervenor. A shortened response period is necessary so that all parties and claims are clearly identified before the hearing and the parties have time to prepare for the hearing. The shorter deadline in expedited cases is consistent with Minn. Stat. § 176.361 allowing a 30-day response period for cases heard in

administrative conferences. (These generally are scheduled within 60 days under Minn. Stat. § 176.106, subd. 3.

1420.2200 Discovery.

Subpart 1. Demand. This rule is moved from part 1415.2200 and revised. Item B is slightly modified to clarify that non-privileged statements are subject to disclosure, but that privileged communications would not be released. Statements by a party are covered by this rule as well, so the language is modified to make that clear. The change to "a party or witnesses on behalf of a party" removes any doubt that statements made by the party must be disclosed. This is consistent with current practice and the original intent of the rule. New items D and E require disclosure of relevant wage and personnel records and wage information from subsequent employers to substantiate a claim for temporary partial disability benefits. These disclosures are consistent with current practice. Wage records are essential to proof of disputes concerning the weekly wage at the time of injury and claims regarding reduced wages after the injury; they are needed to determine the amount of claimed workers' compensation wage loss benefits. The employee must either provide all the wage records or an authorization to allow the insurer to obtain the wage records from the employer. Personnel records are often needed to substantiate or refute claims regarding notice of the injury, reasons for termination from employment, the nature of job duties, and more. Personnel records are only required to be disclosed where they are relevant to the dispute. In such cases, it is reasonable to disclose them to allow each party access to information needed to present its case.

Item F regarding admissions is added. The rules have not previously addressed a request for admissions. As in civil matters, it is sometimes appropriate to dispose of foundational or other matters by admissions, narrowing the scope of issues requiring proof at the hearing. Concerning videotaped surveillance, the insurer may find it helpful to establish by an admission that the claimant is the subject of videotaped surveillance and that the surveillance accurately depicts the activities covered by surveillance. If these matters are admitted, it may not be necessary to have the investigator testify; the parties then may focus their arguments and testimony concerning the significance of the activities. Disputes concerning whether or not the party must reply to a request for admissions or the effect of an admission or lack of an admission may be resolved by

motion as described under subpart 5 of the same rule. A failure to respond to a request for admissions may be inadvertent, or the party may not be represented by an attorney at the time of the request and is unsure how to proceed. The proposed rule stops short of allowing a failure to reply to stand as an admission. If the party serving the request for admission seeks to either compel a reply, or an order finding the matter admitted, or preclusion of evidence to the contrary, a motion requesting such a finding must be made under subpart 5. This allows the non-responding party two opportunities to object or deny the matter. If the non-responding party fails to do so after two opportunities, it is less likely that the failure to respond was simply an oversight or a lack of information concerning how to proceed. The rule balances the reasonable goal of narrowing the issues for hearing while also protecting the rights of a party who may be unfamiliar with the legal process or simply missed a deadline to respond.

Subparts 2, 3, 4, and 5. Depositions; Motions for disputed or additional discovery; Motion for direct testimony by physician or health care provider; Penalties. These subparts contain only minor language clarifications that remove more complex and unnecessary references to the judge. There is no substantive change intended from part 1415.2200, except that items B, C, and D are modified regarding the filing of depositions. The changes provide that depositions need not be routinely filed; they are only filed when used as an exhibit in a hearing. This eliminates unnecessary filings and deposition copies, reducing costs for the parties. Depositions are not needed by the state unless the deposition is submitted as a part of the hearing record to assist the judge in making a decision on a contested issue. In item D of subpart 2, the language is slightly modified so that it is consistent with the rule concerning the filing of documents in 1415.0700. Subpart 3 is also slightly modified to clarify that motions regarding discovery may address any disputed discovery issues, those for additional discovery not specifically addressed by the rule and those involving the extent of any discovery. This is consistent with current practice. A renumbering is needed in subpart 4 following the transfer of the hearing rule to chapter 1420 instead of joint rules in chapter 1415.

Subpart 6. Protective orders. This language regarding protective orders in subpart 6 is slightly modified to expand the scope of the subpart. The subpart as modified covers a broader range of situations involving sensitive information that a party seeks to protect from disclosure. Whether the sensitive information involves trade secrets or very personal medical information, a party seeking to limit the scope of its use may seek a protective order limiting or prohibiting its use. The rule is updated to more

comprehensively cover the categories of information that a party may legitimately seek to protect. The rule reasonably balances the need for information to determine eligibility for benefits while also recognizing that release of sensitive information may have far-reaching and unintended effects such that its use and availability should be limited.

Subpart 7. Employer's expert examinations. The title of this subpart is slightly changed to more accurately reflect its content. The subpart addresses the employer and insurer's independent expert examinations. "Oral" examination is changed to "verbal" examination for clarity. (An "oral" examination could be construed as an examination of the mouth.) The sentence regarding wage and employment authorization in the previous rule is deleted as duplicative of subpart 1.D of 1420.2200. A cross-reference is added in this discovery rule to the new motion rule (1420.2250) to direct the rule user to procedures for resolving a dispute regarding a proposed examination or evaluation. The employee may object to an examination by motion and an insurer may seek to compel an examination by motion. The reference to filing procedures is deleted as unnecessary; filing procedures are contained in part 1415.0700 and need not be repeated here.

Subpart 8. Disclosure of surveillance evidence. A new subpart 8 is added regarding disclosure of surveillance evidence. The former rule did not specifically address surveillance evidence. The rule is needed to assist the parties by defining when and how surveillance evidence should be disclosed. The current law is rather vague in this regard and there is no standard method or timeline for doing so or stated consequences for failing to do so. The proposed rule fills that gap.

Item A defines surveillance evidence as surreptitiously taken photos, videos, or other depictions taken without the subject's consent and includes the surveillance report. Personal observations and the notes of the investigator are not included as surveillance evidence. The notes are often not needed because the relevant information is incorporated into a report. Personal observations may be obtained as witness testimony. The report of the investigator is needed to interpret the visual surveillance evidence and must also be routinely disclosed under the rule. Without the identifying information contained in the surveillance report, it would be difficult for the subject of the surveillance to respond to it.

Item A also requires the party wishing to offer surveillance evidence to disclose its existence at least 30 days before the hearing and where taken less than 30 days before a hearing, no later than 5 business days before a hearing. The workers'

compensation no-fault system is not designed to encourage secrets and surprises, but instead to resolve claims based upon disclosure of relevant information in a forthright manner. Surveillance evidence is to be revealed during the discovery process and then used as appropriate to bolster or refute a claim. In order to properly prepare for a hearing, this information must be available at least one week before hearing and preferably 30 days before hearing unless it is not yet in existence at that time. In the occasional case in which the insurer does not intend to use the surveillance in its case in chief but then determines that it must do so to prevent a miscarriage of justice or fraud, the insurer may submit undisclosed surveillance upon proof of its use for that purpose. The burden would be on the proponent of the evidence to show that the undisclosed surveillance is vital to the insurer's defense to prevent a miscarriage of justice or fraud.

Item B requires the proponent of the surveillance evidence to provide a copy of the surveillance evidence to the subject or the subject's attorney. Other parties to the claim must be notified of the existence of surveillance evidence. If the copy is provided at least 10 days prior the hearing, it may be mailed. If it is provided less than 10 days before the hearing, the insurer must deliver it by messenger. Messenger service delivery is required in these instances to ensure that the recipient has time to review the surveillance and prepare for the hearing. If the subject is provided with an edited version of surveillance, the subject is entitled to review the unedited version as well or request a copy of the unedited version. This allows the party to determine whether or not the edited version accurately depicts the activities on the day of the surveillance. The insurer bears the expense of the unedited version. The insurer is in the best position to bear this expense and also has control over what version of taped surveillance is initially provided.

Part 1420.2250 Motion practice.

This new rule establishes procedures for motions in workers' compensation cases. Previously, procedures concerning various types of motions were scattered throughout chapter 1415. Uniform procedures are established by the new rule to provide easy access to the information and to simplify procedures. Efficiency in litigation is achieved by resolving as many issues as possible prior to the ultimate hearing on the case. One of the ways to resolve issues is through motions. OAH and DLI have encountered motions embedded in answers, pretrial statements, or letters that do not

follow any formal notice or reply procedures. These methods of requesting relief cause confusion and delay in workers' compensation cases. By adding a little more formality to motion procedures, OAH expects to eliminate those problems which have arisen as a result of a lack of uniform procedures.

Subpart 1. Timing. As provided in subpart 1, motions generally should be filed early in the process, thereby moving the case toward the earliest resolution and avoiding the need to postpone proceedings. If the circumstances giving rise to the motion occurred around the time of the pretrial conference or later, then, of course, it would not be possible to submit a motion by the date of the pretrial conference. There may also be situations specifically addressed in the rules and statute allowing a later motion. The rule sets out the general rule to which there will be legitimate exceptions. A response to a motion is expected within 10 days. A 10-day response period is the established practice. A party requiring additional response time due to the particular facts of the case or unavailability of the responding party would be expected to request additional time to respond.

Subpart 2. Contents of motion and response to motion. As described in the first paragraph of this SONAR regarding this part, motions have historically been submitted in many different ways and are sometimes contained within another pleading. This leads to difficulty for DLI and OAH in identifying the document correctly on the file's Table of Contents and in ensuring the appropriate handling of the motion. Therefore, the motion must be appropriately titled as a motion and not contained within another pleading. Subpart 2 lists the needed components of motions and responses to motions to provide sufficient information to allow the judge to either take action on the motion or to determine what further proceedings are necessary to resolve the motion. The rule summarizes current practice procedures.

Subpart 3. Judge action on motion. This subpart indicates that judges will take action on a motion within 30 days, a reasonable period of time to review the motion, determine if there are any objections, and then either issue an order or otherwise indicate to the parties how the motion will be resolved. Subparts 1 and 2 set forth time periods for the parties regarding the submission of motions and responses to motions. Subpart 3 adds the time period for the judge to respond to the submissions of the parties. Not every motion can reasonably be resolved within 30 days after it is filed. If additional procedures are needed, the judge is to determine what additional proceedings are needed and to so inform the parties within 30 days after the motion is filed. This

time schedule is necessary to keep the cases moving forward toward final resolution. An unresolved motion dispute would otherwise delay case resolution. Often the motion dispute involves pretrial discovery disputes or issues regarding coverage that must be resolved before meaningful settlement negotiations or a hearing may be held. Timely action by the judge following the filing of a motion helps prevent unnecessary delay regarding the ultimate outcome of the litigation.

Part 1420.2350 Temporary orders.

Subpart 1. Petition. This part replaces 1415.2300 concerning temporary orders under Minn. Stat. § 176.191 for payment by one insurer in a dispute between insurers concerning liability for payment to the employee. The former rule only referred to a party submitting a petition as one agreeing to pay under a temporary order. An employee may also file a petition for temporary order, seeking an order with or without the agreement of the insurer to commence payment. Part 1420.2350 incorporates this updating of the rule, consistent with the current version of Minn. Stat. § 176.191 and case law. Items A through G list the information necessary for the judge to determine whether or not a temporary order is appropriate, and information necessary for the insurers to appropriately respond to the request. The rule is consistent with current practice. The former rule, part 1415.2300, also contained a provision for requesting that the Special Compensation Fund at DLI make temporary payments under a temporary order pursuant to Minn. Stat. § 176.191, subd. 2. The statutory section authorizing such payments by the Special Compensation Fund (except when the Special Compensation Fund is otherwise a party, such as when the employer was uninsured) was repealed in 1995; therefore, the provisions regarding payment by the Fund (except in uninsured cases) are removed from the rule.

Subpart 2. Necessary parties. Subpart 2 lists the necessary parties to a petition for temporary order. The list if essentially unchanged from the prior rule except that for the reasons expressed just above in subpart 1, the Special Compensation Fund is only a party if the employer was uninsured at the time of injury.

Subpart 3. Proposed order. As under the prior rule, a proposed order is submitted along with the petition. This expedites the process, allowing quick handling by the judge and prompt payment by the insurer when a petition is granted. The rule does not state the exact wording of the proposed order as set forth in the prior rule. The rules

generally do not contain exact language for proposed orders, however, suggested orders are available from OAH and in the Workers' Compensation Deskbook published by the Minnesota State Bar Association, Continuing Legal Education office.

Subpart 4. Objections. This new subpart prescribes a 10-day objection period to a Petition for Temporary Order. A Petition for Temporary Order is handled on an expedited basis. Typically, in these situations, the employee has already waited a significant period of time for payment from one of the insurers and a prompt resolution is needed. The response period is the same time period as that allowed for a response to a motion or a request for attorney fees. A petition for temporary order is similar to a motion; there are limited issues under consideration such that 10 days is a sufficient time period for the respondent to state any disagreement and reason for the position taken. Where the party is agreeing to make payment, it would not be necessary for the judge to wait 10 days for an objection before acting on the petition. The rule codifies current practice.

Part 1420.2400 Petitions for contribution or reimbursement.

Subpart 1. Contents. This part is moved from part 1415.2400 and revised. Minor changes are made to update this subpart. Claims against the Special Compensation Fund are no longer referred to as claims against the state treasurer; the outdated reference is deleted. Signing of a petition verifies the petition; therefore, the phrase "and verified" is removed to avoid any implication that something other than a signature is required. The rule number for the cross-referenced consolidation rule is revised to reflect its move from joint litigation rules in chapter 1415 to chapter 1420.

Subpart 2. Filing. Pretrial orders, as formerly provided in part 1415.1900, subpart 6, are no longer routinely used by OAH. The reference to the pretrial order is therefore removed from this subpart and replaced by a deadline for filing a petition for contribution 60 days before a hearing date where no pretrial is held, or 10 days before a pretrial conference. When there is another claim pending that is scheduled for hearing and one of the parties to the claim also files a claim for contribution and/or reimbursement from a party for benefits paid or payable in the future, the rule specifies the deadline for filing such a claim. If the contribution/reimbursement claim is made early enough to allow participation and discovery by a new party, it may be addressed as a part of the already pending action. If it is brought too late for a new party to fully

participate, a separate claim must be initiated and heard in a separate proceeding. The minimum time needed to add a contribution claim in such a case is ten days before a pretrial and 60 days before a hearing. The added 60-day deadline is at approximately the same time as 20 days after receipt of the previously used pretrial orders. The rule is simply updated to reflect current procedures.

Subpart 3. Answer. The reference to a "verified" Answer is deleted for the same reason expressed under subpart 1 above. The signing of the Answer verifies the contents of the Answer. The filing of the Answer does not trigger the setting of a pretrial conference; therefore, language so stating is removed from the rule. Matters are set for pretrial conferences based upon the filing date of the petition and after review by the assigned judge. The language implying that a pretrial conference will be scheduled after an Answer if filed is misleading and inaccurate; therefore, it is deleted.

Part 1420.2500 Consolidation.

Subpart 1. Authorization. This part is moved from part 1415.2500 and revised. The proposed rule clarifies that consolidated cases merge claims of the same employee only. The rule addresses requests to hear claims of different employees together in one proceeding ("companion cases") in subpart 3. Consolidation of claims involving the same employee is generally favored by the rules so long as the parties have a reasonable period of time to prepare for the hearing. Given the large volume of claims handled by OAH and the limited number of judges to hear the cases, consolidation of claims saves time for OAH and the parties, keeping the wait for a hearing as short as possible. Adding issues to an already scheduled hearing uses less attorney, judge, and clerical time as opposed to scheduling multiple proceedings. The amendment clarifies that OAH may combine multiple pleadings involving the same employee and similar issues into a single hearing. There are limitations to consolidation of expedited proceedings that are provided in part 1420.2150; therefore, this limitation is noted in subpart 1. Subject to that exception, consolidation is generally allowed unless it would prejudice the rights of a party. The amendments conform the rule to current practice.

Subpart 2 of 1415.2500. Receipt of evidence. The deleted language in this subpart of 1415.2500 pertains to paper files. Most of the existing files in the system are computer files. The deleted language does not apply to computer files. Therefore, the language is deleted as obsolete. The last sentence of the former rule is also inaccurate

for both paper and computer files. Files are indexed by the date of injury. When files are combined because a dispute includes more than one injury, the documents become a part of the combined computer file and the file with the oldest injury date, but not of each "file" separated by date of injury. The entire subpart is deleted as obsolete and unnecessary under the current filing system.

Subpart 3 of 1415.2500. Notice of order. This subpart of the former rule is deleted as unnecessary. A consolidation order is issued when cases are consolidated, however, the rules need not list every order issued. Subpart one already indicates that consolidation "may be ordered".

Subpart 4 of 1415.2500. Objection to consolidation (renumbered as **subpart 2** of 1420.2500). The first sentence of 1415.2500 is slightly modified for readability without a change in the substance of the rule. The last sentence is deleted as unnecessary; it does not add anything significant to the rule.

Subpart 3 of 1420.2500. Companion cases. Subparts 1 and 2 of 1420.2500 address consolidation of claims involving the same parties. Occasionally, parties seek to group claims involving different parties, typically because the same legal issue needs to be addressed in each case. Because of data privacy issues, the cases cannot be consolidated. Combining multiple cases into one hearing and one file would mingle private medical and other data that might then become available to other parties in the combined cases. Subpart 3 of 1420.2500 provides that while these cases cannot be consolidated for data privacy reasons, they may be handled as companion cases while scheduling the cases for settlement conferences or other proceedings, thereby conserving resources for the parties and the state. When orders are issued in the companion cases, a separate order for each case is needed to avoid unnecessarily disclosing private information regarding other parties.

Subpart 5 of 1415.2500. Service of pleadings and decisions. Subpart 5 of 1415.2500 is deleted for the same reasons expressed regarding subpart 2 of part 1415.2500. Multiple copies were needed for paper files, however, most of the current files are computer-based such that additional copies for each combined dispute are no longer needed. Separate documents are needed as provided in subpart 3, however, in companion cases involving more than one employee.

Part 1420.2600 Reassignment and disqualification.

This rule is moved from part 1415.2600 and revised. The rule is renamed and restructured to cover both disqualification of a judge based upon an affidavit of prejudice and requests for reassignment of the judge as a matter of right. The vast majority of requests for assignment of a different judge are requests for reassignment within 10 days of notice of a judge assignment under Minn. Stat. § 176.312. The previous rule (1415.2600) did not specifically address requests for reassignment.

Subpart 1. Disqualification by judge. The title of this subpart is changed to more accurately reflect its contents.

Subpart 2. Disqualification by a party. Subpart 2 addresses procedures for a party to disqualify a judge, either as a matter of right, or based on prejudice or other cause. Modifications to this subpart clarify that a request to disqualify a judge for prejudice is accomplished by motion. The chief judge or designee then considers the motion and makes reassignments as appropriate. The modified language is consistent with current practice. A cross-reference to the applicable statute regarding disqualification and reassignment is added to assist the reader in locating the law on the subject.

A clarification is added that defines "case" under the governing statute, Minn. Stat. § 176.312. A party is allowed to request reassignment of the judge as a matter of right once per case. "Case" for this purpose is defined as the initial assignment of a judge for hearing and all subsequent hearings regarding the same parties. OAH believes this interpretation is in line with the intent of Minn. Stat. §§ 176.312 and 176.307, that a party is allowed one chance to request reassignment of the judge from the case, and not a second chance to request reassignment if the case comes back to the judge for subsequent hearings regarding the same injury. The block-assigned judge pursuant to section 176.307 is the judge who is familiar with the case and should again be assigned matters relating to that injury so long as the judge has not been removed for prejudice or other cause. If the attorney is allowed to strike the case on the second hearing regarding the same parties, that continuity is lost. The rule recognizes that cases evolve and sometimes the parties change somewhat; there may be an addition or subtraction of a party the next time around with some of the same parties remaining. In this situation, the parties present in the prior proceeding are bound by their actions at that time. If, for example, the employee and the insurer did not request a judge reassignment for the first hearing and then a second hearing is scheduled with the same parties and one additional party, only the new party would have a right to reassignment.

If that party does not request a reassignment, the same judge would hear the case so long as that judge was still available to hear it. This is consistent with the legislatively mandated block assignment system in section 176.307, enacted in 1992, and section 176.312.

"Proof of service" is changed to "affidavit of service" for clarity and uniformity of use in these rules. Service is proven by filing an affidavit of service; therefore, in this part and 1420.2900, subpart 3.C., rule language referring to "proof of service" is changed to "affidavit of service". "Affidavit with proof of service" is changed in this subpart to "affidavit of service". The affidavit of service is the means of proving service. The revised language removes any implication that a means of proving service other than an affidavit may be required.

Subpart 3. Reassignment. Subpart 3 is added to address the difference between requests for reassignment as a matter of right, and other requests to remove a judge under Minn. Stat. § 176.312. New language clarifies that requests for reassignment are subject to the same time limitations (ten days after notice), definitions of "case", and limitations (applies to hearings and not other proceedings) as provided elsewhere in the rule concerning requests for disqualification of the judge. The procedures for requests for reassignment are not new, but were not previously stated in the rule. The rule also codifies current procedure regarding the filing of a request for reassignment when the assignment is made just prior to the hearing. In such cases, the party is expected to bring the written request for reassignment to the hearing or send it by fax to be received by the date of hearing. OAH retains the right to reassign a case as necessary when the assigned judge is not available to hear the case. This allows the parties to move forward and have the case heard as scheduled by another judge and prevents a lost hearing day for OAH. The last new sentence added concerning reassignment of cases replaces the deleted language of the previous rule in part 1415.2600, subpart 3. The general principle remains the same: reassignment to a different judge generally does not result in a continuance of the case. A continuance is occasionally necessary when the assigned judge is unavailable.

Subpart 4. Consolidated cases. There is no change to this subpart.

Subpart 5. Conferences. This part is modified from the former rule to add administrative conferences to the list of proceedings to which a request for disqualification or reassignment does not apply. The rules formerly did not address administrative conference procedures. With these amendments, administrative

conference procedures are added to the rules. Disqualification or reassignment of the judge, according to Minn. Stat. § 176.312, only applies to hearings and not informal proceedings such as administrative conferences. Therefore, subpart 5 is amended to clarify that requests to reassign or remove a judge apply to formal proceedings only and not to informal administrative conference proceedings. The title is also modified accordingly.

Part 1420.2605 Disposition of coverage issues.

Subpart 1. Motion. This rule is moved from DLI rules in part 5220.2605 and revised. This rule was formerly implemented primarily by the settlement division at DLI; that unit was moved to OAH in 1998. Subpart 1 concerning independent contractor or employment status issues raised in an Answer is revised to include a cross-reference to the statute regarding answers for easy reference. The rule is also revised to specify the procedures by which a disposition of coverage motion may be decided. This part allows insurance coverage issues to be bifurcated from the other issues in a case. Because coverage of the claim is a threshold issue that may resolve all issues when decided, it is sometimes more efficient to separate coverage issues for determination before consideration of other disputed issues. The cited sections of *Minnesota Statutes*, chapter 176 provide the acceptable procedures for resolving disputed issues by methods other than a full evidentiary hearing. The additional language clears up confusion regarding how the bifurcated coverage issues should be decided. If the parties agree to the facts, a decision based upon stipulated facts is appropriate. If the dispute involves limited factual issues and the parties request a summary decision based upon arguments only, a summary decision under Minn. Stat. § 176.305 is appropriate. In all other situations, a hearing is held to resolve the coverage issues. The amendments are consistent with current practice and with the case of Clay v. American Residential Mortgage Corporation, slip op. W.C.C.A. (December 11, 1996).

Subpart 2. Filing. Subpart 2 is modified, consistent with part 1415.0700 and 1420.2250, to provide that the motion is served and filed in the same manner as other motions. The language that is inconsistent with the cited sections concerning service and filing is deleted. The service language is deleted as duplicative of part 1415.0700, subpart 2. The requirement to file an affidavit of service is already covered by part 1415.0700, subpart 2. Therefore, language concerning an affidavit of service in the

former 5220.2605, subpart 2 is unnecessary and deleted. Any stipulated facts must be filed for review by the judge and so the rule is amended to so provide. The words "an oral" to describe a hearing are deleted to avoid confusion; a party requesting a hearing would be requesting a hearing as otherwise provided in the rules. The description of a hearing as "an oral hearing" is not intended to describe anything other than the usual evidentiary hearing and it is, therefore, removed.

Subpart 3. Decision; hearing. Subpart 3 is amended to conform to subpart 1 and to chapter 176 and the Clay decision. The statutory options for deciding the issues without a full evidentiary hearing are listed.

Subpart 4 of 5220.2605. Appeal. Former subpart 4 of 5220.2605 is deleted as obsolete. The appeal procedures related to the various methods of resolving the coverage dispute are contained in the statutes cross-referenced in subpart 1 and need no further explanation in the rule.

Subpart 5 of 5220.2605. Hearing on the merits. (Part 5220.2605 is renumbered as 1420.2605, subpart 4.) A minor change is made to 5220.2605, subp. 5 to reflect the 1998 reorganization of litigation functions at DLI and OAH. The hearings are scheduled by OAH as provided in the rule.

Part 1420.2700 Subpoenas.

This rule was moved from part 1415.2700 and revised. There are only minor modifications. The reference to obtaining subpoenas from DLI is removed as obsolete. After the reorganization in 1998 that moved the settlement judges to OAH, subpoenas related to workers' compensation litigation are issued from OAH. The other minor change removes unnecessary references concerning the judge who will handle a motion to quash or modify a subpoena; instead the rule is simplified to simply indicate that the judge (the judge assigned at OAH to handle the motion) will respond to the motion.

Part 1420.2800 Continuances.

Subpart 1. Continuances not favored. This part is moved from 1415.2800 and revised. The first sentence is divided into two sentences for easier readability. The last sentence of 1415.2800 is deleted as unnecessary and misplaced; it pertains primarily to the submission of evidence and not to continuances. and it is inconsistent in some

respects with current law. There are situations in which different aspects of the same claim are pending simultaneously in accordance with the statute and should not be combined into one proceeding and other instances in which consolidation makes sense. Those situations are the subject of the consolidation and expedited proceedings rules, however, not this continuance rule. At times, consolidation of multiple claims results in the need for a continuance and the facts must be evaluated under the principles set forth in the rule.

Subpart 2. Request. Subpart 2 of 1415.2800 is modified to allow a continuance of a hearing by agreement of the parties and OAH when the request is made more than 30 days before the hearing. Part 1415.2800 indicated 10 days, however, a 10-day notice does not allow OAH to use the original hearing date for another proceeding. Given the large number of claims awaiting resolution and the reduced number of judges to hear them, OAH needs to make maximum use of any open hearing days. OAH is striving to keep the wait for a hearing date to a reasonable period of time. Continuances granted more than 30 days before the hearing are less of a problem because another case may be scheduled in its place. Continuances at less than 30 days before the hearing date cannot be used for another scheduled case; the parties must be given 30 days notice of a hearing. The amendment maintains better control of the calendar. A very liberal continuance policy is not conducive to settlement and early resolution of claims. A continuance may still be approved in a case that would be heard in less than 30 days, but it would not be automatically approved.

Subpart 3. Motion. Continuance requests generally must be in the form of a written motion. This procedure follows the existing rules. Urgent requests may be made orally to the judge. Minor changes to subpart 3 are made to simplify the rules and procedures; a request to continue a case is made to the assigned judge. Subpart 3 also explains that urgent continuance requests for cases not yet assigned to a judge are made to a designated telephone line. OAH added this service to provide one convenient phone number to assist the parties in making continuance requests on unassigned cases. The dedicated phone line provides the parties with one number to call instead of having to determine which OAH staff is assigned to handle the requests on any given day. This calendar line is monitored regularly to assist the parties as needed. A motion for a continuance is subject to the new rule on motions, part 1420.2250; the new motion rule is cross-referenced in the rule. Procedures concerning motions are contained in part 1420.2250.

Subpart 4. Good cause. Items A and B of 1415.2800, subpart 4 contain the same criteria; A applies to in-house counsel and B applies to multi-member law firms. These two items are combined into one item for simplicity. Item C is deleted as too harsh. A conflict of a solo practitioner with a court date elsewhere is a reasonable basis for a continuance request. OAH requests that attorneys send in their unavailable dates so that OAH does not schedule them on a date the attorney has a scheduling conflict, but there are times that assignments are made simultaneously by OAH and another court and a continuance is necessary. These situations are handled on a case-by-case basis. A new item C is added that more accurately summarizes the approach taken by OAH in granting or denying continuances; it is generally not allowed where the reason for the conflict was foreseeable and avoidable. This is consistent with current practice.

Part 1420.2900 The hearing.

Subpart 1. Notice. This part is moved from 1415.2900 and revised. Language in subpart 1 regarding oral notice of hearing in lieu of written notice is deleted. This procedure is not the current practice; written notice is given. When a hearing cannot be concluded in one day, it may be continued to another day that is less than 30 days from the date the notice is sent if all parties are available. Therefore, item D is added so stating. Language regarding setting cases for one location only is deleted; a case scheduled by video technology would have more than one location. Also, the hearing location may not be the location the petitioner considers the most convenient. OAH attempts to schedule hearings reasonably close to the petitioner, generally within 100 miles of the employee's residence. OAH is recently requiring more parties to travel a little further to the hearing location in order to cover more cases with fewer judges and to resolve the cases as quickly as possible. This is necessary due to state budget cuts despite a stable OAH caseload of unresolved cases. The rule is also slightly revised to delete language indicating the parties must agree to an additional hearing date. OAH sets the hearing date based upon its computerized information regarding the availability of the parties. It is not reasonable for OAH to confirm the date in every case with the parties. OAH provides multiple means for the parties to inform the office of scheduling conflicts and then schedules cases according to the information provided.

Subpart 2. Availability of witnesses. A sentence is added to 1415.2900, subpart 2 to require a party needing an interpreter to translate for a witness to so advise OAH.

This is necessary so that OAH may engage the services of an interpreter to be present at the hearing. This sentence is moved from 1415.2900, subpart 9. C (4) to this subpart regarding witnesses.

Subpart 3. Medical evidence. Language in 1415.2900, subpart 3 regarding procedures relating to motions for the oral testimony of a health care provider is deleted as unnecessary. Instead, a cross-reference to the motion rule is inserted. This provides uniform procedures for motions, simplifying procedures to reduce burdens on the parties. Therefore, the remainder of item A is unnecessary. Item B of 1415.2900, subpart 3 is unnecessary as well. Obviously, the judge will issue an order ruling on the motion in accordance with the statute. Part 1415.2900, subp. 3, item C regarding health care provider testimony is covered by Minn. Stat. § 176.155, subd. 5. Nothing significant is added by item C, so it is deleted.

Part 1415.2900, subpart 3, item D, renumbered as 1420.2900, subp. 3, item B, contains only minor revisions. The changes improve the readability of the rule. A physician is a health care provider and so the phrase "physician or health care provider" is changed to "health care provider" throughout this part to remove the redundancy. The phrase "in the following order" is removed from this item. The order of information in the health care provider's narrative report is not particularly significant; it is not necessary for the provider to adhere to a rigid format so long as the necessary information is provided.

Part 1415.2900, subp. 3, item E, renumbered as 1420.2900, subp. 3, item C, removes "physician" as just described and also changes "proof of service" to "affidavit of service" as explained under part 1420.2600, subpart 2 in this document.

Part 1415.2900, subp. 3, item F is deleted as obsolete. The issue addressed in item F is no longer a concern following enactment of Minn. Stat. §§ 176.135, subd. 1(e) and 176.106, subd. 9 in 1987, establishing that compensation judges also have jurisdiction over issues of medical causation.

Subpart 4. Rights of parties. No change is made to this subpart.

Subpart 5. Witnesses. A minor change is made to this subpart concerning the presence of witnesses in the courtroom. At the discretion of the judge, witnesses may be excluded except to testify. The judge has the authority to ensure the integrity of the process. The exclusion of witnesses is one such tool that may be used to do so.

Subpart 6. Evidence. The existing language in 1415.2900, subpart 6.A is deleted because it adds nothing to Minn. Stat. § 176.411, subd. 1 regarding evidence. New language is added that allows only material and relevant evidence but not repetitive or

cumulative evidence. This will help reduce the amount of evidence that is presented, saving cost and speeding up the hearing process. Only those medical records or reports that are relevant and material may be admitted into evidence. Too often, attorneys introduce the employee's entire medical record, which may be six inches thick, some having nothing to do with the work injury or at best only marginally relevant. This forces the judge to read all of the medical records which could be inappropriate under medical privacy laws, and which wastes valuable time that could be spent on other cases waiting to be heard. It is reasonable to exclude repetitive and cumulative evidence as unnecessary and burdensome.

New language in item B provides procedures for video hearing exhibits. Exhibits typically are hand-carried to the hearing. For a video hearing, parties are located in more than one city and are, therefore, unable to immediately receive the exhibits of parties in another location. In order for all parties and the judge to have access to all of the exhibits during the hearing, exhibits must be pre-filed at OAH and delivered to an adverse party in advance of the hearing. The rule provides they must be received at least three days before the hearing, allowing sufficient time for receipt by the assigned judge and parties before the hearing occurs. The three-day window also allows for coordination of exhibits between the parties to avoid duplicates. If exhibits are not received three days before the hearing, it also gives a small window of time for duplicate delivery if an unanticipated problem in delivery occurs. Exhibits will generally need to be mailed or delivered unless they are no more than 15 pages in length. Exhibits for video proceedings of 15 pages or less may be faxed to OAH and to the other parties. Longer documents tie up fax machines that are needed for other incoming and outgoing mail. The separate packaging of exhibits in a sealed envelope with a specific video exhibits label sets these documents apart from others, noting the urgent need for immediate delivery. This special marking and handling procedure is designed so that the parties all have access to this critical information in time for the video hearing to proceed as planned. Inevitably, unanticipated exhibits are also offered into evidence. These unexpected exhibits will be handled on a case-by-case basis by the judge during the hearing.

The remainder of 1415.2900, subpart 6 is basically a restatement of the rules of evidence, workers' compensation statutes, or general principles of administrative law. In an effort to reduce the complexity of the rules, these provisions are deleted.

Subpart 7. Record requirements. Minor changes are made to part 1415.2900, subp. 7 regarding the official record in the case. Changes to item A remove unnecessary words that do not add to the item's meaning. A reference to the record being kept by the judge is changed to "the office" as the maintainer of the record. The judge plays a critical role in maintaining the hearing record, assisted by staff members also responsible for handling the file. Most of the changes to item B just clean up the language. Subpart 7.B (1) contains changes from part 1415.2900, supb. 7.B (1) that limit the amount of material from the Division file that is automatically part of the record. This change is needed to reduce the amount of material that the judge must review and to speed up the decision-making process. It is reasonable because it does not restrict the parties from introducing additional documents if they are material and relevant. The judge may also incorporate relevant portions of the judgment roll under B (3). In subitem B (2), a reference to the exhibit rule is added. Exhibits are part of the record, but are not kept indefinitely. The cross-referenced exhibit rule describes how long the exhibits remain a part of the record and allows for retrieval of exhibits and destruction after they are no longer needed. The cross-referenced rule directs the rule user to another related rule. In subitem B (8), an amendment clarifies that the audiotape used to record the hearing is only a part of the record until a final order is issued that is not appealed. After the appellate process is exhausted, there is no further need to keep the audiotape as a part of the record. It is useful during any appellate process. After that, its only use might be for a proceeding outside of the worker' compensation system. Given the volume of cases heard and the very unusual request for a transcript after the appeal period has run, it is not reasonable for OAH to keep all the tapes as a part of the official record for the unlikely situation that it might be useful in some other unrelated proceeding.

Items 7. (C) and (D) from 1415.2900 are amended to delete obsolete language. OAH no longer employs court reporters; many years ago it did so and they sometimes transcribed a hearing record. Currently, individuals outside of OAH prepare all transcripts; therefore, the obsolete language is deleted.

Item 7 E, renumbered as 7.D, is simplified in (4) to require an applicant requesting a free transcript to supply a complete accounting of household income and holdings as well as monthly expenses. The existing rule is overly detailed. The revised rule lessens the burden on the requesting party while continuing to require the information necessary to determine whether or not a free transcript should be supplied.

Subpart 8 of 1415.2900. Continuances during hearing. This subpart of 1415.2900 regarding oral notice of a continued hearing is obsolete. Written notices of a continued hearing are sent as provided in subpart 1.

Subpart 9 of 1415.2900. Hearing procedure (renumbered as 1420.2900, **subpart 8**). Part 1415.2900, subp. 9. (A) is deleted an unnecessary. The 2000 legislature, in an amendment to Minn. Stat. § 14.48, determined that the workers' compensation judges are subject to the Code of Judicial Conduct as administered by the Board on Judicial Standards. 2000 Minn. Laws, chapter 355, Section 1. Ex parte communication with a party is prohibited by the Code of Judicial Conduct and need not be addressed in the rule. The Judicial Code sets forth the general professional manner in which the judge must conduct himself or herself and conduct the proceedings.

Former item B, renumbered as item A, contains primarily minor language changes that do not change the substantive meaning. In A (2), "settlement agreements, or consent orders" is deleted as redundant of "stipulations". It does not add anything of substance to the sentence. Item A (7) is deleted as unnecessary and duplicative of other rule language. The procedures for any continued hearing date are already covered by subpart 1. Item A (7) (formerly B (8)) is amended to more accurately state current practice, that the judge determines what exhibits may be submitted after the hearing. A party's agreement to introduction of a late exhibit may influence the judge's decision, but is not determinative of whether or not the exhibit is admissible.

Subitems C (1), (2), and (3) of 1415.2900, subp. 9 are deleted an unnecessary. These are general court procedures that need not be stated in the rule. Subitem C (4) of 1415.2900, subp. 9 is moved to subpart 2 of 1420.2900. Subitem C (5) of 1415.2900, subp. 9 is moved to new subpart 9, disruption of hearing. The subject matter of former C (5) deals with disruptive conduct by participants. Therefore, it more appropriately is placed in 1420.2900, subp. 9.

Subpart 10 of 1415.2900. Disruption of hearing (renumbered as 1420.2900, **subpart 9**). The first sentence of this subpart is moved from the former subpart 9.C (5) as described above. The amended rule bans cell phones in hearings (unless the judge grants permission in an exceptional circumstance) to limit unnecessary disruption of the proceedings and to facilitate a clean hearing record of the proceedings. Guns and other weapons are banned from the premises for the safety of the litigants, the OAH employees, and guests. The litigation at OAH involves important issues that affect the lives and livelihood of those participating. Easy access to weapons is not conducive to

peaceful resolution of the claim though the established procedures. The landlord of the main OAH building has also banned guns from the premises. The procedures established by these rules and the governing statute provide for the orderly and peaceful resolution of disputed claims. Carrying or using weapons is obviously inconsistent with the purpose of the office.

The language in the second paragraph of new subpart 9 is updated to include current terminology regarding recording devices in place of outdated terms. The last sentence requiring the judge to read the rule to a person disrupting a hearing and to take other appropriate action is deleted as unnecessary. The judge must determine the best option in the event of disruptive actions. Given the wide range of possible disruptive activity from food consumption to violence, there is no one approach that is responsive to all situations, nor is the behavior of disruptive litigants likely to be significantly affected by reading rule language to the disruptive litigant.

Part 1420.3150 Amended findings; appeals.

Subpart 1. Amended findings. This part specifically allows amendment of findings and orders within 30 days following issuance of the findings and orders if an appeal has not been filed. The judge retains jurisdiction over the case until the decision became final 30 days later (if no appeal is filed). During this time, corrections sometimes are appropriate. For example, occasionally, the judge may inadvertently omit a finding and order on an issue and the parties agree that amended findings are appropriate to address the omitted issue. Minnesota Statutes, section 176.371 requires the judge to dispose of all questions of fact and law submitted. Mistakes occur and if a mistake may be easily addressed by a quick amended finding and order, the parties are saved the time and expense necessary to appeal the decision. If a party has filed an appeal, there would no longer be jurisdiction to amend the findings and the appellate court would address the matter. Amended findings within 30 days of issuance of a decision are an efficient and effective means of correcting errors and omissions, providing a complete and accurate decision, and allowing the parties to avoid the expense, time, and uncertainty of the appellate process. The infrequent disagreement regarding an amended finding, as with any finding, may then be resolved by the filing of an appeal.

Subpart 2. Filing fee for appeal. This subpart clarifies that the $25 filing fee to appeal a decision applies to both appellants and cross-appellants. This has been the

practice for decades. The rule clarifies that cross-appellants are also "appellants" under Minn. Stat. § 176.421. Therefore, they are subject to the filing fee.

Part 1420. 3700 Sanctions.

Subpart 1. Generally. A new rule is proposed for establishing when and how the judge may impose sanctions. Sanctions are appropriate when a party or attorney has failed to comply with an order of the judge or willfully failed to comply with applicable provisions of these rules or other applicable law. Legislation in 1995 at Minn. Stat. § 176.081, subd. 12 supports the need for these sanctions. The two different standards for imposing sanctions are intended to ensure that sanctions are only imposed on a person who knowingly violates the law or an order or disregards obligations under a judge's order. Where violation of a rule or other law is involved, willful failure is required. This ensures that the sanction does not impose harm on someone who was innocently unaware. Where violation of an order is at issue, the violator is expected to have read the order and therefore knows what action is required. Failure to read an order constitutes the reckless disregard of a litigant's or attorney's obligation in conducting litigation and therefore justifies imposition of sanctions where a violation occurs.

The specific sanctions are either those provided by the statute or are the normal and ordinary sanctions used to compel compliance and efficiency in district court matters. The sanctions are found at other locations in the rules and have previously been shown to be needed and reasonable. All of the sanctions listed in part 1420.3700 have been used by judges in maintaining efficient hearing calendars that are fair to all litigants in compensation cases. A new provision setting forth all available sanctions is needed and reasonable to provide notice to litigants of what adverse consequence may follow noncompliance and ensure that judges have the express authority to apply sanctions over any violation of law or order which meets this part's standard.

Subpart 2. Procedures. This subpart sets forth procedures regarding sanctions. A sanction may be imposed after a motion of a party in accordance with the rule regarding motions (part 1420.2250), or on the judge's own motion. This is consistent with current practice and appellate case law. Disputes have arisen in cases involving a sanction at the judge's own motion where no hearing was held; the parties have been uncertain how to contest such an order. The case of Ritacco v. Malmborg & Sons, W.C.C.A., May 12, 1997, held that such an order is a summary decision under Minn.

Stat. § 176.305, subd. 1a. The summary decision procedure as determined applicable by the Workers' Compensation Court of Appeals is incorporated into the rule language.

Subpart 3. Failure to appear or notify. Subpart 3 sets out a specific monetary sanction for a party's failure to notify OAH of the need to cancel a proceeding. The rule sets out the established practice that it is the petitioner's responsibility to notify OAH when a proceeding is no longer necessary due to resolution of the claim. This notice is critical so that judicial and other resources are not wasted. At times, OAH has contracted with security personnel, interpreters, court reporters, and video facilities to provide services for the conference or hearing. When the parties resolve the case but fail to notify OAH of resolution, OAH is required to pay those who appeared to provide services or pay a facilities cancellation fee. OAH is also unable to effectively manage the calendar by reassigning other matters to the assigned judge when it is not aware that a case has been settled and a proceeding should be cancelled. As of September 2003, the typical minimum charges for security personnel were about $140 (a 4-hour minimum of $35 per hour), about $120 for interpreters (a 2-hour minimum of $50 to $60 per hour), and about $120 for court reporters. Video facility cancellation charges vary depending on the facility. The $150 sanction in the rule will allow OAH to recoup its out-of-pocket costs that are caused by the failure of a party to appropriately inform OAH of a cancellation. It is expected that the ability to impose a specific sanction set out in the rules will encourage the parties to appropriately notify OAH given that additional incentive to do so.

The rule also requires a party canceling a proceeding to take reasonable steps to notify the other parties. If a party fails to do so, it may be liable for the reasonable expense of another party's appearance. Again, a potential sanction for failing to notify the parties of cancellation of a proceeding is intended to encourage the parties with knowledge of the cancellation to take the necessary steps to avoid unnecessary appearances by other parties. The sanction is simply to pay the actual expense incurred by the party not reasonably notified.

Part 1420.3800 Severability.

This part mirrors the severability clause in part 1415.3600 (renumbered in the proposed Joint Workers' Compensation Litigation Rules as 1415.4100). It is needed and reasonable for the same reasons the original rule was promulgated, to act as a savings

clause for the remainder of the rules and parts of rules should any other part of the rules be found invalid for any reason.

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