

December 1, 2018

The Honorable Mark Dayton
Governor of Minnesota
130 State Capitol
75 Rev Dr. Martin Luther King Jr. Blvd.
St. Paul, Minnesota 55155

Senator Mary Kiffmeyer, Chair
Government Finance and Policy and
Elections Committee
Sen.Mary.Kiffmeyer@senate.mn

Senator Warren Limmer, Chair
Judiciary and Public Safety Finance
and Policy Committee
Sen.Warren.Limmer@senate.mn

Senator Jeremy Miller, Chair
Jobs and Economic Growth Finance
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Honorable Ryan Inman
Revisor of Statutes
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Representative Peggy Scott, Chair
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Representative Tim O'Driscoll, Chair
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Representative Pat Garofalo, Chair
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Representative Sarah Anderson, Chair
State Government Finance Committee
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Honorable Greg Hubinger
Director
Legislative Coordinating Commission
lcc@lcc.leg.mn

Re: Report on Obsolete, Unnecessary or Duplicative Rules

Dear Governor Dayton, Senators, Representatives, Director Hubinger and Revisor Inman:

Upon review as directed by Minn. Stat. § 14.05, subd. 5 (2018), the Office of Administrative Hearings has concluded that the rules, or portions of rules, identified in Attachment A should be repealed as obsolete, unnecessary or duplicative of other state statutes or rules. By January 1, 2019, the Office of Administrative Hearings will commence rulemaking and/or develop a bill for submission to the appropriate policy

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committees for the purpose of repealing the obsolete, unnecessary or duplicative rule language specifically identified in Attachment A.

Very truly yours,

A handwritten signature in black ink, appearing to read 'T. Pust', with a long horizontal flourish extending to the right.

TAMMY L. PUST
Chief Judge
Telephone: (651) 361-7900

Copy: reports@lrl.leg.mn

ATTACHMENT A

**Office of Administrative Hearings
2018 Obsolete/Unnecessary/Duplicative Rule Report**

Rule Citation	Portion of Rule to be Repealed (shown in strikeout form)	Reason for Repeal
<p>1400.5275 Documents Filed (contested case hearings)</p>	<p>Forms, documents, or written materials prepared specifically for and used or filed in contested proceedings before the office must be on standard size 8-1/2-inch by 11-inch paper.</p>	<p>Obsolete and unnecessary given agency's adoption of electronic filing.</p>
<p>1400.8000 Disruption of Hearing (contested case hearings)</p>	<p>Subpart 1. Cameras and Recordings. Television, newsreel, motion picture, still, or other Cameras, and mechanical recording devices may be operated in the hearing room during the course of the hearing after permission is obtained from the judge and then only pursuant to any conditions the judge may impose to avoid disruption of the hearing.</p> <p>Subp. 2. Other conduct. Pursuant to and in accordance with Minnesota Statutes, section 624.72, no person shall interfere with the free, proper, and lawful access to or egress from the hearing room. No person shall interfere with the conduct of, disrupt, or threaten interference with or disruption of the hearing. In the event of interference, disruption, or threat, the judge shall read this subpart to those persons causing such interference or disruption and thereafter proceed as deemed appropriate, which may include ordering the disruptive person to leave or be removed from the hearing.</p>	<p>Obsolete and unnecessary examples.</p> <p>Unnecessary process step which can impede public safety if it delays a judge's issuance of an order requiring disrupters to clear the courtroom.</p>

<p>1400.8200 Agency Decision (contested case hearings)</p>	<p>Following receipt of the judge’s report, the agency shall proceed to make its final decision in accordance with Minnesota Statutes, section 14.61 and 14.62 and shall serve a copy of its final order upon the office by first class mail.</p>	<p>Obsolete and unnecessary given agency’s adoption of electronic filing.</p>
<p>1420.8609 Hearing Record (Revenue Recapture Act cases)</p>	<p>Subpart 1. Maintaining. The administrative law judge shall maintain the official record in each case until the issuance of the report, at which time the record, except for the audiomagnetic recordings thereof, shall be sent to the agency. The audiomagnetic recordings shall be retained by the office for five years from the date that the record is returned to the agency. Unless an agency requests a longer retention period for a specific case, the recordings may be erased or otherwise destroyed at the end of the five-year period.</p> <p>Subp. 2. Content. The record shall contain: A. the notice of hearing and all motions and orders which have been reduced to writing; B. evidence received or considered; C. an audiomagnetic recording of the hearing; D. the administrative law judge's report; E. all memoranda or data submitted by any party in connection with the case; and F. the transcript of the hearing, if one was prepared.</p> <p>Subp. 3. [No change.]</p> <p>Subp. 4. Transcript. The audiomagnetic recording of the hearing shall be transcribed if requested by a party or if ordered by the chief administrative law judge. The party requesting a transcript is responsible for the cost. The parties may agree to divide the cost. When the chief administrative law judge requests a transcript, the agency is responsible for the cost.</p>	<p>Obsolete in light of agency’s use of electronic recording system(s).</p>

<p>1400.8611 Disruption of Hearing (Revenue Recapture Act hearings)</p>	<p>Subpart 1. Cameras. Television, newsreel, motion picture, still or other Cameras may be operated in the hearing room during the course of the hearing unless the administrative law judge determines that such operation is disrupting the hearing.</p> <p>Subp. 2. Recordings. The official audiomagnetic recording of the hearing shall be made by the administrative law judge. Any party may also record all or part of the proceedings. Nonparties may record all or part of the proceedings unless the administrative law judge determines that such recording is disrupting the hearing. In the event of failure of the official recording equipment, the administrative law judge may direct any person or party to provide the administrative law judge with its original recording or a copy of any recording of the proceeding upon payment of the cost of the recording medium.</p> <p>Subp. 3. Other conduct. Pursuant to and in accordance with the provisions of Minnesota Statutes, section 624.72, no person shall interfere with the free, proper, and lawful access to or egress from the hearing room. No person shall interfere with the conduct of, disrupt, or threaten interference with or disruption of the hearing. In the event of such interference or disruption or threat thereof, the administrative law judge shall read this rule to those persons causing such interference or disruption and thereafter proceed as is deemed appropriate.</p>	<p>Obsolete and unnecessary examples.</p> <p>Obsolete in light of agency's use of electronic recording system(s).</p> <p>Unnecessary process step which may impede public safety in that it delays a judge's issuance of an order requiring disrupters to clear the courtroom.</p>
<p>1415.0500 Legal Documents (workers' compensation cases)</p>	<p>Forms and documents used or filed in all workers' compensation proceedings before the division or the office must be on white standard size 8-1/2 by 11 inch paper, and must contain the case identifying information required by Minnesota Statutes, section 176.275, and must also indicate the type of action requested. Pleadings and motions must also include the full caption of the case listing all parties.</p>	<p>Obsolete and unnecessary given agency's adoption of electronic filing.</p>

	<p>All legal documents filed by an attorney must include the attorney's Minnesota Supreme Court license number.</p>	
<p>1415.0700 Service and Filing (workers' compensation cases)</p>	<p>Subpart 1. Service by state. The division and the office must serve all notices, findings, orders, decisions, or awards upon the parties by first class mail at their addresses of record or by personal service, or, if authorized by the recipient, by facsimile or electronic mail.</p> <p>If the division or office has received notice that a party is represented by an attorney, the attorney must be served with all documents. Service on the attorney is considered service on that party, except that all final orders or awards adjudicating a disputed claim, decisions, awards, orders striking a case from the calendar, continuance orders, and notices of proceedings must also be served directly on the party.</p> <p>Subp. 1a. [No change]</p> <p>Subp. 2. Service by parties. A party may serve documents by first class mail, by personal service, or, if authorized by the recipient, by facsimile or electronic mail. All documents filed in connection with a proceeding at the division or office must be served on all parties and filed, together with an affidavit of service, with the division. If a party is represented by an attorney in the matter, the attorney must be served with all documents. Service on the attorney is considered service on that party, except where Minnesota Statutes, chapter 176, requires otherwise.</p> <p>Subp. 3. [No change]</p> <p>Subp. 4. Filing with state. A. Except as provided in item B, all Documents must be filed with the division. Filed documents must be accompanied by an affidavit of service in a form acceptable to the district courts. A document is filed upon its receipt by the division or</p>	<p>Obsolete and unnecessary given the 2017 Legislature's amendment of Minn. Stat. § 176.285.</p> <p>Obsolete and unnecessary given the agency's adoption of electronic filing.</p> <p>Obsolete and unnecessary given the 2017 Legislature's amendment of Minn. Stat. § 176.285.</p>

	<p>the office by 4:30 p.m. on a state business day. Documents received after 4:30 p.m. on a state business day are considered filed on the next open state business day.</p> <p>B. If the document requires attention by the office within two business days, it must be filed with the office. Stipulations for settlement require attention by the office within two business days. Exhibits for video hearings are filed with the office as provided in part 1415.2900, subpart 6. Exhibits submitted while a hearing record is open are filed with the office.</p> <p>C. Because documents are destroyed after imaging, a party shall retain an original document and file a copy with the division except when filing a notice of appeal, or where the division has notified the party that an original must be filed because the quality or authenticity of a document is at issue. The original notice of appeal under Minnesota Statutes, section 176.421, must be filed with the office and copied to the division. This filing must be by mail or in person. A filing by facsimile or electronic transmission is not effective.</p> <p>Subp. 5. Electronic or fax filing. A party is authorized to file a document with the office or the division by facsimile if the document is 15 pages or less in length. A party may file a document by electronic transmission only as authorized by the division or office. A notice of appeal, as provided in subpart 4, may not be filed by facsimile or electronic transmission. The filed facsimile or transmitted information has the same force and effect as the original. Where the quality or authenticity of a document is at issue, the division or the office shall require the original document to be filed. Where the division or office has not identified quality or authenticity as an issue and the document is filed by facsimile or electronic transmission, the party shall not also file the original document.</p>	<p>Obsolete given the 2018 Legislature's enactment of Minn. Stat. § 176.2611.</p> <p>Obsolete and unnecessary given the agency's adoption of electronic filing.</p> <p>Obsolete and unnecessary with respect to the office of administrative hearings given the agency's adoption of electronic filing.</p>
<p>1415.1250 Intervention</p>	<p>Subpart 1 Motion. A person desiring to intervene in a workers' compensation case under this chapter must serve and file a motion or</p>	<p>Unnecessary and duplicative in that there is</p>

<p>(workers' compensation cases)</p>	<p>application to intervene within 60 days of notice under part 1415.1100 or, for an expedited hearing, within 30 days of notice under part 1420.2150, subpart 5, or within 30 days of notice of an administrative conference under part 1415.3700.</p> <p>Subp. 2. Personal appearance by intervenor. Unless a stipulation has been signed and filed or the intervenor's right to reimbursement has otherwise been established, the intervenor shall personally attend all scheduled administrative conferences and hearings where required by Minnesota Statutes, section <u>176.361</u>, unless an alternative to personal appearance is allowed by the commissioner or the judge.</p>	<p>no "application" to intervene; intervention is made by motion.</p> <p>Obsolete since the 2017 Legislature's amendment of Minn. Stat. § 176.361 providing that personal appearance is no longer required for intervenors.</p>
<p>1415.3700 Administrative Conferences (workers' compensation cases)</p>	<p>Subparts 1- 2. [no change]</p> <p>Subp. 3. Appearances. All parties, and the qualified rehabilitation consultant if the conference is conducted under Minnesota Statutes, section 176.106, concerning rehabilitation services, must be given notice and the opportunity to attend administrative conferences or, at their option, to present documents on their behalf. A potential intervenor may attend the conference. Intervenors are required to appear as provided in part 1415.1250, subpart 2, and Minnesota Statutes, section 176.361, subdivision 4. A party may be represented by an attorney. The employee and insurer, or designated person having authority to act on behalf of the party regarding the matter in dispute, is required to attend an administrative conference under Minnesota Statutes, section 176.239, unless health reasons, distances, or other good cause prevents attendance. If absent because of distance, the employee and insurer or authorized designee of the employee and insurer must be available by telephone at the scheduled conference time.</p> <p>Subps. 4 - 8. No change</p>	<p>Obsolete since the 2017 Legislature's amendment of Minn. Stat. § 176.361 providing that personal appearance is no longer required for intervenors.</p>

	<p>Subp. 9. Administrative conference documents. A. Documents submitted to the office during an administrative conference are not maintained in the permanent division file. A party desiring to file an administrative conference document in the permanent division file must file the document with the division.</p> <p>B. A party submitting a document to be considered at a conference scheduled to be conducted at the office by video technology must prefile the document with the office at the location of the judge at least one full business day before the conference date. Mailed or delivered documents to be considered at the video conference must be placed in a separate, sealed envelope and marked with the name and date of the case and the employee's file number, and must be identified as conference documents of the submitting party. Faxed documents may not exceed 15 pages and must be clearly marked as video conference documents for immediate hand delivery to the judge; must include the name and file number of the employee and the date of the conference; and must identify the submitting party. An adverse party must also receive the documents for a video conference at least one full business day before the conference date.</p>	<p>Obsolete and unnecessary given that the agency does not conduct administrative conferences by video.</p>
<p>1415.3900 Discontinuance Conferences (workers' compensation cases)</p>	<p>Subpart 1 No change</p> <p>Subp. 2. Request. The employee may request that the office schedule an administrative conference to discuss a proposed discontinuance of benefits. If the proposed discontinuance is based on a reason other than a return to work, the employee's request for a conference must be personally delivered or received by the division or office no later than 12 days from the date a notice of intention to discontinue benefits, which was served on the employee and the employee's attorney, was filed. The employee shall direct a written request for a discontinuance conference to the division or a telephone</p>	

	<p>request to the office. If the proposed discontinuance is based on a return to work, the employee's request must be received by the division or office within 30 days of the reported date of the employee's return to work. Allowance will be made, if appropriate, for nonreceipt or delay under Minnesota Statutes, section 176.285.</p> <p>If the insurer discontinues, reduces, or suspends benefits without properly serving and filing a notice of intention to discontinue benefits and with the required attachments in a situation in which a notice of intention to discontinue benefits was required under part 5220.2630 and Minnesota Statutes, section 176.238, the employee may request an administrative conference within 40 days after the employee received the last payment but no later than 12 days after a notice of intention to discontinue benefits is properly served and filed, or 30 days after the employee returned to work if the notice is properly served and filed within 14 days after the insurer has notice of the employee's return to work.</p> <p>Subps. 3 - 6. No change.</p>	<p>Obsolete and unnecessary given agency's adoption of electronic filing.</p>
<p>1420.2600 Reassignment and Disqualification (workers' compensation cases)</p>	<p>Subpart 1. [No change].</p> <p>Subp. 2. Disqualification by a party. A party or the party's attorney may file an affidavit of prejudice and motion to disqualify a judge if the party reasonably believes that a hearing before the assigned judge cannot be fair due to the judge's prejudice or bias. The affidavit must be served on opposing parties and filed with the chief judge not more than ten days after the filing party has received notice of the assigned judge or has knowledge of the grounds for disqualification, whichever occurs last. Upon filing of the motion and affidavit of prejudice, the chief judge or designee shall issue an order and assign the case to another judge if appropriate.</p>	

	<p>A party or the party's attorney may file a motion to disqualify a judge for a cause other than or in addition to that described in an affidavit of prejudice. The motion must be supported by an affidavit detailing the facts establishing the grounds for disqualification and filed with the chief judge not more than ten days after the moving party has received notice of the assigned judge or has knowledge of the grounds for disqualification, whichever occurs last. The motion will be decided by the chief judge or a designee.</p> <p>Subp. 3. Reassignment. A request for reassignment under Minnesota Statutes, section 176.312, is subject to the same procedures set forth in subpart 2, except that an affidavit of prejudice is not required. Each party is allowed one per case under this subpart and Minnesota Statutes, section 176.312. For purposes of this part, "case" means the initial assignment of a judge for hearing and all subsequent hearings regarding the same parties with the same judge. If the parties to the claim subsequently change, only the new parties may request reassignment. If a judge assignment is made just prior to a hearing, a party may request reassignment orally and then file the written request for reassignment on or before the hearing date. If a judge assignment is made just before the hearing, the written petition for reassignment may be faxed to the office or filed in person on or before the date of hearing. The chief judge may reassign a case or a particular hearing to a different judge as necessary when the assigned judge is unavailable to hear the case as scheduled.</p> <p>Subps. 4 - 5. No change.</p>	<p>Obsolete, unnecessary and duplicative in that the two paragraphs are redundant.</p> <p>Obsolete and unnecessary given the agency's adoption of electronic filing.</p>
<p>1420.2800 Continuances</p>	<p>Subparts 1 - 2. [No change.]</p> <p>Subp. 3. Motion. A request for continuance must be in writing in the form of a motion for continuance pursuant to part 1420.2250. Urgent</p>	

<p>(workers' compensation cases)</p>	<p>requests may be made orally to the assigned judge. For urgent requests on cases that have not been assigned to a judge, the continuance request must be made to the telephone calendar line designated by the office for such requests.</p> <p>Subps. 4. - 5 [No change.]</p>	<p>Obsolete and unnecessary given the agency's adoption of electronic filing.</p>
<p>1420.2900 Hearing (workers' compensation cases)</p>	<p>Subparts 1 - 5. No change.</p> <p>Subp. 6. Evidence. A. The judge will accept only relevant and material evidence that is not repetitive or cumulative.</p> <p style="padding-left: 40px;">B. Exhibits for hearings scheduled to be conducted by video technology must be prefiled with the office at least three business days before the hearing. Mailed, or delivered Exhibits must be placed in a separate, sealed envelope marked with the name and date of the case, the file number, and must be identified as exhibits of the submitting party. Faxed exhibits may not exceed 15 pages in length and must be clearly marked as video hearing exhibits for immediate hand delivery to the judge, and must include the name and file number of the case, the date of hearing, and identify the submitting party. An adverse party must also receive the exhibits at least three business days before the hearing.</p> <p>Subp. 7. Record requirements. Record requirements are as follows:</p> <p style="padding-left: 40px;">A. The office shall maintain the official record, other than the stenographic notes of a hearing reporter, in each case until the issuance of the final order.</p> <p style="padding-left: 80px;">B-D. No change.</p> <p>Subp. 8. No change.</p>	<p>Obsolete and unnecessary given the agency's adoption of electronic filing.</p> <p>Obsolete language in that the agency has not provided stenographic transcription services for decades.</p>

	<p>Subp. 9. Disruption of hearing. Persons in the hearing room may not converse in a disruptive manner, read newspapers, smoke, chew gum, eat food, or drink liquids other than water, or otherwise disrupt the hearing while the hearing is in session, and counsel shall so instruct parties they represent, witnesses they call, and persons accompanying them. A cellular telephone must be turned off in the hearing room unless the judge grants permission for it to be turned on. Guns and other weapons are not allowed in the hearing room or on the premises of the office.</p> <p>No television, video, digital, still, or other cameras, and no electronic recording devices, other than those provided by the office may be operated in the hearing room during the course of the hearing unless permission is obtained from the judge. Permission is subject to conditions set by the judge to avoid disruption of the hearing.</p> <p>Under Minnesota Statutes, section 624.72, no person may interfere with the free, proper, and lawful access to or egress from the hearing room. No person may interfere or threaten interference with a hearing, or disrupt or threaten disruption of a hearing.</p>	<p>Obsolete and unnecessary language; disruption of court proceedings takes different forms in today's world such that generic language is more appropriate and useful for assuring public safety.</p>
<p>6000.1400 Exhibits (boundary adjustment cases)</p>	<p>Unless the presiding administrative law judge directs otherwise, persons offering exhibits shall submit a single copy. Where possible, parties should offer an exhibit in 8 1/2 by 11-inch size.</p>	<p>Obsolete and unnecessary given the agency's adoption of electronic filing.</p>