MINNESOTA CODE OF AGENCY RULES

RULES OF THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

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Prepared by

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STATE OFFICE OF ADMINISTRATIVE HEARINGS

Chapter One: Rule Hearing Procedures

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OFFICE OF ADMINISTRATIVE HEARINGS

RULE HEARING AND CONTESTED CASE PROCEDURES
(Effective Date: 10/6/80)

Chapter One: 9 MCAR §§ 2.101-2.199 Rule Hearing Procedures.

9 MCAR § 2.101 Scope and purpose. The procedures contained herein shall govern the conduct of all rule hearings held by an agency of state government as defined in Minn. Stat. § 15.0411, subd. 2, for the purpose of the adoption of any rule as that term is defined in Minn. Stat. § 15.0411, subd. 3.

9 MCAR § 2.102 Initiation of hearing. Any agency desiring to initiate a rule hearing pursuant to Minn. Stat. §§ 15.0411 through 15.0417 and § 15.052 shall first file with the Chief Hearing Examiner or his designee the following documents:

A. A copy of the proposed rule or rules.

B. An Order for Hearing that shall contain the following:

1. A proposed time, date and place for the hearing to be held.

2. A statement that the Notice of Hearing shall be given to all persons who have registered with the agency for that purpose and a statement that the Notice of Hearing shall be published in the State Register.

3. The signature of the person authorized to order a hearing. If a board is ordering the hearing, the person signing the Order must be so authorized and a document of authority must be attached to the Order for Hearing.

C. The Notice of Hearing proposed to be issued that shall contain the following:

1. A proposed time, date and place for the hearing to be held.

2. A statement that all interested or affected persons will have an opportunity to participate.

3. A statement or a description of the subjects and issues involved. If the proposed rules themselves are not included with the Notice of Hearing, then the Notice must clearly indicate the nature and extent of the proposed rules and a statement shall be included announcing the availability and the means of obtaining upon request at least one free copy of the proposed rules.

4. A citation to the agency's statutory authority to promulgate the proposed rules.

5. A statement describing the manner in which interested persons may

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present their views and advising persons that the proposed rule may be modified as a result of the hearing process.

6. A statement advising interested persons that lobbyists must register with the State Ethical Practices Board, which statement shall read as follows:

> Minn. Stat. Ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (1979) Supp.) as any individual:
>
> (a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or
>
> (b) Who spends more than $250, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.
>
> The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, Saint Paul, Minnesota 55155, telephone (612) 296-5615.

7. A statement that written material may be submitted and recorded in the hearing record for five working days after the public hearing ends, and a statement that the comment period may be extended for a longer period not to exceed 20 calendar days if ordered by the Hearing Examiner at the hearing.

8. A separate paragraph which shall read as follows:

> Notice: Any person may request notification of the date on which the Hearing Examiner's Report will be available, after which date the agency may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the agency. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Hearing Examiner (in the case of the Hearing Examiner's Report), or to the agency (in the case of the agency's submission or resubmission to the Attorney General).

9. A separate paragraph which will read as follows:

> Notice is hereby given that 25 days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the agency and

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and at the Office of Administrative Hearings. This Statement of Need and Reasonableness will include a summary of all the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rule or rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

10. If required by Minn. Stat. § 15.0412, subd. 7, a statement relating to the expenditure of public monies by local public bodies.

11. A statement that the rule hearing procedure is governed by Minn. Stat. §§ 15.0411-15.0417 and 15.052 and by 9 MCAR §§ 2.101-2.113 (Minnesota Code of Agency Rules) and a statement that questions about procedure may be directed to the Hearing Examiner.

D. A statement by the agency of the number of persons expected to attend the hearing and the estimated length of time that will be necessary for the agency to present its evidence at the hearing.

Within ten days of receipt of the aforementioned documents, the Chief Hearing Examiner shall appoint a Hearing Examiner to preside at the hearing and the Hearing Examiner shall advise the agency as to the location at which and time during which a hearing should be held so as to allow for participation by all affected interests and shall advise the agency as to whether or not the proposed Notice of Hearing is proper as required by Minn. Stat. § 15.052, subd. 3.

9 MCAR § 2.103 Notice. The Notice of Hearing shall be given pursuant to provisions of Minn. Stat. § 15.0412, subd. 4.

9 MCAR § 2.104 Statement of need and reasonableness. Each agency desiring to adopt rules shall prepare a Statement of Need and Reasonableness which shall be prefiled pursuant to 9 MCAR § 2.105. The Statement of Need and Reasonableness shall be a document containing, at the minimum, a summary of all of the evidence and argument which is anticipated to be presented by the agency at the hearing justifying both the need for and the reasonableness of the proposed rule/rules, including citations to any statutes or case law to be relied upon, citations to any economic, scientific or other manuals or treatises to be utilized at the hearing, and a list of any expert witnesses to be called to testify on behalf of the agency, together with a brief summary of the expert opinion to be elicited. The Statement need not contain evidence and argument in rebuttal of evidence and argument presented by the public. To the extent that an agency is proposing amendments to existing rules, the agency need not demonstrate the need for and reasonableness of the existing rules not affected by the proposed amendments.

The Statement shall be prepared with sufficient specificity so that interested persons will be able to fully prepare any testimony or evidence in favor of or in opposition to the rule/rules as proposed. Presentation of evidence or testimony (other than bona fide rebuttal) not summarized in the Statement of

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Need and Reasonableness may result in the Hearing Examiner, upon proper motion made at the hearing by any interested person, recessing the hearing to a future date in order to allow all interested persons an opportunity to prepare testimony or evidence in opposition to such newly presented evidence or testimony, which recessing shall be for a period not to exceed 25 calendar days, unless the 25th day is a Saturday, Sunday or legal holiday, in which case, the next succeeding working day shall be the maximum date for the resumed hearing.

If the agency so desires, the Statement of Need and Reasonableness may contain the verbatim affirmative presentation by the agency, and, provided that copies are available for review at the hearing, may be introduced as an exhibit into the record as though read. In such instance, agency personnel or other persons thoroughly familiar with the rules and the agency's Statement shall be available at the hearing for questioning by the Hearing Examiner and other interested persons or to briefly summarize all or a portion of the Statement of Need and Reasonableness if requested by the Hearing Examiner.

9 MCAR § 2.105 Documents to be filed before hearing. At least 25 days prior to the date and time of the hearing, the agency shall file with the Hearing Examiner assigned to the hearing copies of the following documents:

A. The Notice of Hearing as mailed.

B. The agency's certification that the mailing list required by Minn. Stat. § 15.0412, subd. 4, which was used for the hearing, was accurate and complete.

C. An Affidavit of Mailing of the Notice to all persons on the agency's list.

D. An Affidavit of Additional Notice if such discretionary notice was given pursuant to Minn. Stat. § 15.0412, subd. 4.

E. The Statement of Need and Reasonableness.

F. The petition requesting a rule hearing, if one has been filed pursuant to Minn. Stat. § 15.0415.

G. All materials received following a notice made pursuant to Minn. Stat. § 15.0412, subd. 6, together with a citation to said notice.

H. The names of agency personnel who will represent the agency at the hearing together with the names of any other witness solicited by the agency to appear on its behalf.

I. A copy of the State Register in which the notice and rules or rule amendments were published.

9 MCAR § 2.106 Disqualification. The Hearing Examiner shall withdraw from participation in a rulemaking proceeding to which he has been assigned

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if, at any time, he deems himself disqualified for any reason. Upon the filing in good faith by an affected person of an affidavit of prejudice against the Hearing Examiner, the Chief Hearing Examiner shall determine the matter as a part of the record provided that the affidavit shall be filed no later than five days prior to the date set for hearing.

9 MCAR § 2.107 Conduct of hearings. All hearings held pursuant to Minn. Stat. § 15.0412 shall proceed substantially in the following manner:

A. All persons intending to present evidence or ask questions shall register with the Hearing Examiner prior to the presentation of evidence or questions by writing their names, addresses, telephone numbers and the names of any individuals or associations that the persons represent in connection with the hearing, on a register to be provided by the Hearing Examiner. The register shall include a section in which persons may indicate their desire to be informed of the date on which the Hearing Examiner's report will be available and the date on which the agency submits the record to the Attorney General.

B. The Hearing Examiner shall convene the hearing at the proper time and shall explain to all persons present the purpose of the hearing and the procedure to be followed at the hearing. The Hearing Examiner shall notify all persons present that the record will remain open for five working days following the hearing, or for a longer period not to exceed 20 calendar days if ordered by the Hearing Examiner, for the receipt of written statements concerning the proposed rule or rules.

C. The Hearing Examiner shall advise the persons present of the requirements of Minn. Stat. Ch. 10A concerning the registration of lobbyists.

D. The agency representatives and any others who will be presenting the agency position at the hearing shall identify themselves for the record.

E. The agency shall make available copies of the proposed rule at the hearing.

F. The agency shall introduce its exhibits relevant to the proposed rule including written material received prior to the hearing.

G. The agency shall make its affirmative presentation of facts showing the need for and the reasonableness of the proposed rule and shall present any other evidence it deems necessary to fulfill all relevant, substantive and procedural, statutory or regulatory requirements.

H. Interested persons shall be given an opportunity to address questions to the agency representatives or witnesses.

I. Interested persons shall be given an opportunity to be heard on the proposed rule and/or to present written evidence. All interested persons submitting oral statements are subject to questioning by representatives of the agency.

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J. The Hearing Examiner may question all persons, including the agency representatives.

K. The agency may present any further evidence that it deems appropriate in response to statements made by interested persons. Upon such presentation by the agency, interested persons may respond thereto.

L. Consistent with law, the Hearing Examiner shall be authorized to do all things necessary and proper to the performance of the foregoing and to promote justice, fairness and economy, including but not limited to, the power to:

1. Preside at the hearing;

2. Administer oaths or affirmations when he deems it appropriate;

3. Hear and rule on objections and motions;

4. Question witnesses where he deems it necessary to make a complete record;

5. Rule on the admissibility of evidence and strike from the record objectionable evidence.

9 MCAR § 2.108 The record. The record shall be closed upon the last date for receipt of written statements. The record in each hearing shall include all of the documents enumerated in 9 MCAR § 2.105, all written comments or other evidence received prior to, during or subsequent to the hearing but prior to the close of the record, and a tape recording of the hearing itself, unless a court reporter has taken the proceedings. In the event a transcript of the proceedings has been prepared, it shall be part of the record, and copies will be available to persons requesting them at a reasonable charge. The charge for transcripts shall be set by the Chief Hearing Examiner, and all monies received for transcripts shall be payable to the State Treasury and shall be deposited in the Office of Administrative Hearings' Account in the State Treasury. The agency and any other persons so requesting of the Hearing Examiner shall be notified of the date of the completion of the transcript.

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9 MCAR § 2.110 Report of the Hearing Examiner.

A. Subsequent to the close of the record, the Hearing Examiner shall make his or her report pursuant to Minn. Stat. § 15.052, subd. 3. If the report contains findings that the rules as last proposed by the agency prior to the close of the record are needed and reasonable and are not substantially changed from those which were published in the State Register, and that the agency has fulfilled the relevant substantive and procedural requirements imposed on the agency by rule or law, the Hearing Examiner shall file the original of said report, together with the complete record of the proceedings, with the agency. Both the agency, if authorized by statute, and the Office of Administrative Hearings shall make a copy of said report available to any interested person upon request at a reasonable charge.

B. If the Hearing Examiner's report contains findings that the rules as last proposed by the agency prior to the close of the hearing are substantially changed from those which were published in the State Register, or that the agency has failed to demonstrate the need or reasonableness of the rules, or has not fulfilled the relevant substantive and procedural requirements imposed on the agency by rule or law, he or she shall submit the report, together with the complete record of the proceedings, to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.0412, subd. 4d.

C. Upon receipt of a report from the Hearing Examiner, the Chief Hearing Examiner shall complete his review and submit his report, along with the complete record and the report of the Hearing Examiner, to the agency within 10 calendar days.

9 MCAR § 2.111 Substantial change. In determining whether the proposed final rule is substantially different, the Hearing Examiner shall consider the degree to which it:

A. Affects classes of persons not represented at the previous hearing; or

B. Goes to a new subject matter of significant substantive effect; or

C. Makes a major substantive change that was not raised by the original Notice of Hearing in such a way as to invite reaction at the hearing; or

D. Results in a rule fundamentally different from that contained in the Notice of Hearing.

9 MCAR § 2.112 Agency adoption of rules.

A. Upon receipt of a report directly from the Hearing Examiner, the agency shall, if it adopts the rules in accordance with the recommendations of the Hearing Examiner, submit the complete hearing record and a copy of the proposed rules to the Attorney General for a review as to form and legality, pursuant to Minn. Stat. § 15.0412, subd. 4e. If the agency proposes to adopt the rules with changes other than as recommended by the Hearing Examiner, it

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shall, prior to submitting them to the Attorney General, submit the complete hearing record and a copy of the rules as proposed to be adopted, showing the changes, to the Chief Hearing Examiner for a determination as to substantial change between the final proposed rules and the proposed rules published in the State Register, pursuant to Minn. Stat. § 15.0412, subd. 4e.

B. Upon receipt of a report from the Chief Hearing Examiner, the agency shall, prior to submitting the proposed rules and the complete hearing record to the Attorney General, either take the actions prescribed by the Chief Hearing Examiner to correct any defects in the proposed rules, or proceed under the provisions of Minn. Stat. § 15.0412, subd. 4d.

9 MCAR § 2.113 Effective date. These rules shall be effective for all rule proceedings initiated five working days after publication of these rules in the State Register.

9 MCAR §§ 2.114-2.199 Reserved for future use.

Chapter Two: 9 MCAR §§ 2.201-2.299 Contested Case Procedures.

9 MCAR § 2.201 Scope and purpose. The procedures contained herein shall govern all contested cases required to be conducted by the Office of Administrative Hearings.

9 MCAR § 2.202 Definitions.

A. Hearing Examiner. The Hearing Examiner means the person or persons assigned by the Chief Hearing Examiner pursuant to Minn. Stat. § 15.052, subd. 3, to hear the contested case.

B. Party. Party means each person named as a party by the agency in the Notice of and Order for Hearing, or persons granted permission to intervene pursuant to 9 MCAR § 2.210. The term "party" shall include the agency except when the agency participates in the contested case in a neutral or quasi-judicial capacity only.

C. Person. Person means any individual, partnership, corporation, joint stock company, unincorporated association or society, municipal corporation, or any government or governmental subdivision, unit or agency other than a court of law.

D. Service; serve. Service or serve means personal service or, unless otherwise provided by law, service by First Class United States mail, postage prepaid and addressed to the party at his last known address. An affidavit of service shall be made by the person making such service. Service by mail is complete upon the placing of the item to be served in the mail. Agencies of the State of Minnesota may also serve by depositing the item to be served with Central Mailing Section, Publications Division, Department of Administration.

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9 MCAR § 2.203 Hearing Examiners.

A. Request for assignment. Any agency desiring to order a contested case hearing shall first file with the Chief Hearing Examiner a request for assignment of a Hearing Examiner together with the Notice of and Order for Hearing proposed to be issued which shall include a proposed time, date and place for the hearing.

B. Assignment. Within 10 days of the receipt of a request pursuant to 9 MCAR § 2.203 A., the Chief Hearing Examiner shall assign a Hearing Examiner to hear the case, and the Hearing Examiner shall advise the agency as to the location at which and time during which a hearing should be held so as to allow for participation by all affected persons.

C. Duties. Consistent with law, the Hearing Examiner shall perform the following duties:

1. Grant or deny a demand for a more definite statement of charges.

2. Grant or deny requests for discovery including the taking of depositions.

3. Receive and act upon requests for subpoenas where appropriate.

4. Hear and rule on motions.

5. Preside at the contested case hearing.

6. Administer oaths and affirmations.

7. Grant or deny continuances.

8. Examine witnesses where he deems it necessary to make a complete record.

9. Prepare findings of fact, conclusions and recommendations.

10. Make preliminary, interlocutory or other orders as he deems appropriate.

11. Recommend a summary disposition of the case or any part thereof where there is no genuine issue as to any material fact or recommend dismissal where the case or any part thereof has become moot or for other reasons.

12. Permit testimony, upon the request of a party or upon his own motion, to be prefiled in whole or in part where the prefiling will expedite the conduct and disposition of the case without imposing an undue burden on any party.

13. Do all things necessary and proper to the performance of the foregoing.

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14. In his discretion, perform such other duties as may be delegated to him by the agency ordering the hearing.

9 MCAR § 2.204 Commencement of a contested case. A contested case is commenced, subsequent to the assignment of a Hearing Examiner, by the service of a Notice of and Order for Hearing by the agency.

A. The Notice and Order. Unless otherwise provided by law, a Notice of and Order for Hearing, which shall be a single document, shall be served upon all parties and shall contain, among other things, the following:

1. The time, date and place for the hearing.

2. Name and address and telephone number of the Hearing Examiner.

3. A citation to the agency's statutory authority to hold the hearing and to take the action proposed.

4. A statement of the allegations or issues to be determined together with a citation to the relevant statutes or rules.

5. Notification of the right of the parties to be represented by legal counsel, by a person of their choice, or by themselves if not otherwise prohibited as the unauthorized practice of law.

6. A citation to these rules, to any applicable procedural rules of the agency, and to the contested case provisions of Minn. Stat. Ch. 15.

7. A statement advising the parties of the name of the agency official or member of the Attorney General's staff to be contacted to discuss informal disposition pursuant to 9 MCAR § 2.207 or discovery pursuant to 9 MCAR § 2.214.

8. A statement advising the parties that a Notice of Appearance must be filed with the Hearing Examiner within 20 days of the date of service of the Notice of and Order for Hearing if a party intends to appear at the hearing unless the hearing date is less than 20 days from the issuance of the Notice of and Order for Hearing.

9. A statement advising existing parties that failure to appear at the hearing may result in the allegations of the Notice of and Order for Hearing being taken as true, or the issues set out being deemed proved, and a statement which explains the possible results of the allegations being taken as true or the issues proved.

B. Service. Unless otherwise provided by law, the Notice of and Order for Hearing shall be served not less than 30 days prior to the hearing. Provided, however, that a shorter time may be allowed, where it can be shown to the Chief Hearing Examiner that a shorter time is in the public interest and that interested persons are not likely to be prejudiced.

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C. Publication. Where the agency participates in the hearing in a neutral or quasi-judicial capacity, the Notice of and Order for Hearing shall be published as required by law or as ordered by the agency, and copies of the Notice of and Order for Hearing may be mailed by the agency to persons known to have a direct interest.

D. Amendments. At any time prior to the close of the hearing, the agency may file and serve an amended Notice of and Order for Hearing, provided that, should the amended Notice and Order raise new issues or allegations, the parties shall have a reasonable time to prepare to meet the new issues or allegations if requested.

E. Alternative. With the prior written concurrence of the Chief Hearing Examiner, an agency may substitute other documents and procedures for the Notice of and Order for Hearing provided that the documents and procedures inform actual and potential parties of the information contained in 9 MCAR § 2.204 A. 1.-9. above.

9 MCAR § 2.205 Notice of Appearance. Each party intending to appear at a contested case hearing shall file with the Hearing Examiner and serve upon all other known parties a Notice of Appearance which shall advise the Hearing Examiner of the party's intent to appear and shall indicate the title of the case, the agency ordering the hearing, the party's current address and telephone number, and the name, office address, and telephone number of the party's attorney or other representative. The Notice of Appearance shall be filed with the Hearing Examiner within 20 days of the date of service of the Notice of and Order for Hearing, except that, where the hearing date is less than 20 days from the commencement of the contested case, the Notice of Appearance shall not be necessary. The failure to file a Notice may, in the discretion of the Hearing Examiner, result in a continuance of the hearing if the party failing to file appears at the hearing. A Notice of Appearance form shall be included with the Notice of and Order for Hearing for use by the party served.

9 MCAR § 2.206 Right to counsel. Any party may be represented by legal counsel throughout the proceedings in a contested case before an agency, by a person of their choice, or by themselves if not otherwise prohibited as the unauthorized practice of law.

9 MCAR § 2.207 Informal disposition. Informal disposition may be made of any contested case or any issue therein by stipulation, agreed settlement, or consent order at any point in the proceedings.

9 MCAR § 2.208 Default. The agency may dispose of a contested case adverse to a party which defaults. Upon default, the allegations of or the issues set out in the Notice of and Order for Hearing or other pleading may be taken as true or deemed proved without further evidence. A default occurs when a party fails to appear at a hearing or fails to comply with any interlocutory orders of the Hearing Examiner.

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9 MCAR § 2.209 Time.

A. Computation of time. In computing any period of time prescribed by these rules or the procedural rules of any agency, the day of the last act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday or a legal holiday.

B. Additional time after service by mail. Whenever a party has the right or is required to do some act or take some action within a prescribed period after the service of a notice or other paper upon him, or whenever such service is required to be made within a prescribed period before a specified event, and the notice or paper is served by mail, three days shall be added to the prescribed period. In the event an agency chooses to utilize the Central Mailing Section, Publications Division, Department of Administration, four days shall be added to the prescribed period.

9 MCAR § 2.210 Intervention.

A. Petition. Any person desiring to intervene in a contested case as a party shall submit a timely petition to intervene to the Hearing Examiner and shall serve the petition upon all existing parties and the agency. Timeliness will be determined by the Hearing Examiner in each case based on circumstances at the time of filing. The petition shall show how the petitioner's legal rights, duties, or privileges may be determined or affected by the contested case, and shall set forth the grounds and purposes for which intervention is sought and shall indicate petitioner's statutory right to intervene if one should exist. The agency may, with the consent of the Chief Hearing Examiner, and where good reason appears therefor, specify in the Notice of and Order for Hearing (if one is used) the final date upon which a petition for intervention may be submitted to the Hearing Examiner.

B. Objection. Any party may object to the petition for intervention by filing a Notice of Objection with the Hearing Examiner within seven days of service of the petition. The Notice shall state the party's reasons for objection and shall be served upon all parties, the person petitioning to intervene and the agency.

C. Order. The Hearing Examiner shall allow intervention upon a proper showing pursuant to 9 MCAR § 2.210 A. unless the Hearing Examiner finds that the petitioner's interest is adequately represented by one or more parties participating in the case.

D. Agency in a neutral capacity. Where the agency participates in the hearing in a neutral or quasi-judicial capacity, the agency staff, or a portion of the agency staff, may petition to intervene under the rule.

E. Participation by the public. The Hearing Examiner may, in the absence of a petition to intervene, nevertheless hear the testimony and receive exhibits from any person at the hearing, or allow a person to note his appearance,

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or allow a person to question witnesses, but no person shall become, or be deemed to have become, a party by reason of such participation. Persons offering testimony or exhibits may be questioned by parties to the proceeding.

9 MCAR § 2.211 Consolidation.

A. Authority. Whenever, before hearing on any contested case, the Chief Hearing Examiner, either on his own motion or on the motion of the Hearing Examiner assigned to the case, or upon petition by any party, determines (a) that separate contested cases present substantially the same issues of fact and law; (b) that a holding in one case would affect the rights of parties in another case; and (c) the consolidation would not substantially prejudice any party, the Chief Hearing Examiner may order such cases consolidated for a single hearing on the merits. Notwithstanding the requirements of this rule, the parties may stipulate and agree to such consolidation.

B. Notice of order. Following an order for consolidation, the Hearing Examiner shall forthwith serve on all parties a copy of the order for consolidation. The order shall contain, among other things:

1. A description of the cases for consolidation.

2. The reasons for consolidation.

3. Notification of a consolidated prehearing conference if one has been requested.

C. Objection to consolidation.

1. Petition for severance. Any party may object to consolidation by filing with the Hearing Examiner, and serving upon all parties and the agency, at least seven days prior to the hearing in the case, a petition for severance from consolidation, setting forth petitioner's name and address, the title of his case prior to consolidation, and the reasons for his petition.

2. Determination. If the Hearing Examiner finds that consolidation would prejudice petitioner, he may order such severance or other relief as he deems necessary.

9 MCAR § 2.212 Disqualification. The Hearing Examiner shall withdraw from participation in a contested case at any time if he deems himself disqualified for any reason. Upon the filing in good faith by a party of an affidavit of prejudice, the Chief Hearing Examiner shall determine the matter as a part of the record provided the affidavit shall be filed no later than five days prior to the date set for hearing.

9 MCAR § 2.213 Prehearing procedures.

A. Prehearing conference.

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1. Purpose. The purpose of the prehearing conference is to simplify the issues to be determined, to consider amendment of the agency's order if necessary, to obtain stipulations in regard to foundation for testimony or exhibits, to consider the proposed witnesses for each party, to consider such other matters that may be necessary or advisable and, if possible, to reach a settlement without the necessity for further hearing. Any final settlement shall be set forth in a settlement agreement or consent order and made a part of the record.

2. Procedure. Upon the request of any party or upon his own motion, the Hearing Examiner may, in his discretion, hold a prehearing conference prior to each contested case hearing. The Hearing Examiner may require the parties to file a prehearing statement prior to the prehearing conference which shall contain such items as the Hearing Examiner deems necessary to promote a useful prehearing conference. A prehearing conference shall be an informal proceeding conducted expeditiously by the Hearing Examiner. Agreements on the simplification of issues, amendments, stipulations, or other matters may be entered on the record or may be made the subject of an order by the Hearing Examiner.

B. Motions. Any application to the Hearing Examiner for an order shall be by motion which, unless made during a hearing, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. Motions provided for in these rules require a written notice, to all parties and to the agency, to be served five days prior to the submission of the motion to the Hearing Examiner, except where impractical. The Hearing Examiner may, at his discretion, require a hearing before an order on the motion will be issued. All orders on such motions, other than those made during the course of the hearing, shall be in writing and shall be served upon all parties of record and the agency if it is not a party. In ruling on motions where these rules are silent, the Hearing Examiner shall apply the Rules of Civil Procedure for the District Courts for the State of Minnesota to the extent that he or she determines that it is appropriate to do so in order to promote a fair and expeditious proceeding.

9 MCAR § 2.214 Discovery.

A. Demand. Each party shall, within 10 days of a demand by another party, disclose the following:

1. The names and addresses of all witnesses that a party intends to call at the hearing. All witnesses unknown at the time of said disclosure shall be disclosed as soon as they become known.

2. Any relevant written or recorded statements made by the party or by witnesses on behalf of a party. The demanding party shall be permitted to inspect and reproduce any such statements. Any party unreasonably failing upon demand to make the disclosure required by this rule may, in the discretion of the Hearing Examiner, be foreclosed from presenting any evidence at the hearing through witnesses not disclosed or through witnesses whose statements are not disclosed.

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B. Requests for admissions. A party may serve upon any other party a written request for the admission of relevant facts or opinions, or of the application of law to relevant facts or opinions, including the genuineness of any document. The request must be served at least 15 days prior to the hearing and it shall be answered in writing by the party to whom the request is directed within 10 days of receipt of the request. The written answer shall either admit or deny the truth of the matters contained in the request or shall make a specific objection thereto. Failure to make a written answer shall result in the subject matter of the request being deemed admitted.

C. Motion to Hearing Examiner. Upon the motion of a party, the Hearing Examiner may order discovery of any other relevant material or information, provided that privileged work product (e.g. that of attorneys, investigators, etc.) shall not be discoverable. The Hearing Examiner shall also recognize all other privileged information or communications which are recognized at law. Upon proper motion made to the Hearing Examiner, any means of discovery available pursuant to the Rules of Civil Procedure for the District Courts of the State of Minnesota may be allowed provided that such request can be shown to be needed for the proper presentation of a party's case, are not for purposes of delay, and the issues or amounts in controversy are significant enough to warrant extensive discovery. Upon the failure of a party to reasonably comply with an order of the Hearing Examiner made pursuant to this rule, the Hearing Examiner may make a further order as follows:

1. An order that the subject matter of the order for discovery or any other relevant facts shall be taken as established for the purposes of the case in accordance with the claim of the party requesting the order.

2. An order refusing to allow the party failing to comply to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence.

D. Proprietary information. When a party is asked to reveal material which he considered to be proprietary information or trade secrets, he shall bring the matter to the attention of the Hearing Examiner, who shall make such protective orders as are reasonable and necessary or as otherwise provided by law.

9 MCAR § 2.215 Depositions to preserve testimony. Upon the request of any party, the Hearing Examiner may order that the testimony of any witness be taken by deposition to preserve his testimony in the manner prescribed by law for depositions in civil actions. The request shall indicate the relevancy of the testimony and shall make a showing that the witness will be unable or cannot be compelled to attend the hearing or show other good cause.

9 MCAR § 2.216 Subpoenas. Requests for subpoenas for the attendance of witnesses or the production of documents shall be made in writing to the Hearing Examiner and shall contain a brief statement demonstrating the potential relevance of the testimony or evidence sought and shall identify any documents sought with specificity, and shall name all persons to be subpoenaed.

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A. Service of subpoenas.

1. A subpoena shall be served in the manner provided by the Rules of Civil Procedure for the District Courts of the State of Minnesota unless otherwise provided by law.

2. The cost of service, fees, and expenses of any witnesses subpoenaed shall be paid by the party at whose request the witness appears.

3. The person serving the subpoena shall make proof of service by filing the subpoena with the Hearing Examiner, together with his affidavit of service.

B. Motion to quash. Upon motion made promptly, and in any event at or before the time specified in the subpoena for compliance therewith, the Hearing Examiner may quash or modify the subpoena if he finds that it is unreasonable or oppressive.

9 MCAR § 2.217 The hearing.

A. Rights of parties. All parties shall have the right to present evidence, rebuttal testimony and argument with respect to the issues and to cross-examine witnesses.

B. Witnesses. Any party may be a witness or may present witnesses on his behalf at the hearing. All oral testimony at the hearing shall be under oath or affirmation. At the request of a party or upon his own motion, the Hearing Examiner may exclude witnesses from the hearing room so that they cannot hear the testimony of other witnesses.

C. Rules of evidence.

1. General rules. The Hearing Examiner may admit all evidence which possesses probative value, including hearsay, if it is the type of evidence on which reasonable prudent persons are accustomed to rely in the conduct of their serious affairs. The Hearing Examiner shall give effect to the rules of privilege recognized by law. Evidence which is incompetent, irrelevant, immaterial or unduly repetitious may be excluded.

2. Evidence must be offered to be considered. All evidence to be considered in the case, including all records and documents in the possession of the agency or a true and accurate photocopy thereof, shall be offered and made a part of the record in the case. No other factual information or evidence shall be considered in the determination of the case.

3. Documentary evidence. Documentary evidence in the form of copies or excerpts may be received or incorporated by reference in the discretion of the Hearing Examiner or upon agreement of the parties.

4. Notice of facts. The Hearing Examiner may take notice of judicially

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cognizable facts but shall do so on the record and with the opportunity for any party to contest the facts so noticed.

5. The burden of and standard of proof. The party proposing that certain action be taken must prove the facts at issue by a preponderance of the evidence, unless the substantive law provides a different burden or standard.

6. Examination of adverse party. A party may call an adverse party or his managing agent or employees or an officer, director, managing agent or employee of the State or any political subdivision thereof or of a public or private corporation or of a partnership or association or body politic which is an adverse party, and interrogate him by leading questions and contradict and impeach him on material matters in all respects as if he had been called by the adverse party. The adverse party may be examined by his counsel upon the subject matter of his examination in chief under the rules applicable to direct examination, and may be cross-examined, contradicted, and impeached by any other party adversely affected by his testimony.

D. The record.

1. The Hearing Examiner shall maintain the official record in each contested case until the issuance of his final report, at which time the record shall be sent to the agency.

2. What the record shall contain. The record in a contested case shall contain:

a. All pleadings, motions and orders;

b. Evidence received or considered;

c. Offers of proof, objections and rulings thereon;

d. The Hearing Examiner's findings of fact, conclusions and recommendations;

e. All memoranda or data submitted by any party in connection with the case;

f. The transcript of the hearing, if one was prepared.

3. The transcript. The verbatim record shall be transcribed if requested by the agency, a party or in the discretion of the Chief Hearing Examiner. If a transcription is made, the Chief Hearing Examiner shall require the requesting person and other persons who request copies of the transcript from him to pay a reasonable charge therefor. The charge shall be set by the Chief Hearing Examiner and all monies received for transcripts shall be payable to the State Treasurer and shall be deposited in the State Office of Administrative Hearings' Account in the State Treasury.

E. Continuances. A request for continuance shall be made in writing to

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the Hearing Examiner and shall be served upon all parties of record and the agency if it is not a party.

1. A request for continuance filed not less than five days prior to the hearing may, in the discretion of the Hearing Examiner, be granted upon a showing of good cause. Due regard shall be given to the ability of the party requesting a continuance to effectively proceed without a continuance.

2. A request for a continuance filed within five days of the hearing shall be denied unless good cause exists and the reason for the request could not have been earlier ascertained.

3. During a hearing, if it appears in the interest of justice that further testimony should be received, the Hearing Examiner, in his discretion, may continue the hearing to a future date and such oral notice on the record shall be sufficient.

F. Motions to the agency. No motions shall be made directly to or be decided by the agency subsequent to the assignment of a Hearing Examiner and prior to the completion and filing of the Hearing Examiner's report unless the motion is certified to the agency by the Hearing Examiner. Uncertified motions shall be made to the Hearing Examiner and considered by the agency in its consideration of the record as a whole subsequent to the filing of the Hearing Examiner's report.

Any party may request that a pending motion or a motion decided adversely to that party by the Hearing Examiner before or during the course of the hearing be certified by the Hearing Examiner to the agency. In deciding what motions should be certified, the Examiner shall consider the following:

1. Whether the motion involves a controlling question of law as to which there is substantial ground for a difference of opinion; or

2. Whether a final determination by the agency on the motion would materially advance the ultimate termination of the hearing; or

3. Whether or not the delay between the ruling and the motion to certify would adversely affect the prevailing party; or

4. Whether to wait until after the hearing would render the matter moot and impossible for the agency to reverse or for a reversal to have any meaning; or

5. Whether it is necessary to promote the development of the full record and avoid remanding.

G. Hearing procedure.

1. Hearing Examiner conduct. The Hearing Examiner shall not communicate, directly or indirectly, in connection with any issue of fact or law

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with any person or party including the agency concerning any pending case, except upon notice and opportunity for all parties to participate.

2. Conduct of the hearing. Unless the Hearing Examiner determines that the public interest will be equally served otherwise, the hearing shall be conducted substantially in the following manner:

a. After opening the hearing, the Hearing Examiner shall, unless all parties are represented by counsel, state the procedural rules for the hearing including the following:

(1) All parties may present evidence and argument with respect to the issues and cross-examine witnesses. At the request of the party or the attorney for the party whose witness is being cross-examined, the Hearing Examiner may make such rulings as are necessary to prevent repetitive or irrelevant questioning and to expedite the cross-examination to the extent consistent with disclosure of all relevant testimony and information.

(2) All parties have a right to be represented by an attorney at the hearing.

(3) The rules of evidence as set forth in 9 MCAR § 2.217 C. 1.

b. Any stipulations, settlement agreements or consent orders entered into by any of the parties prior to the hearing shall be entered into the record.

c. The party with the burden of proof may make an opening statement. All other parties may make such statements in a sequence determined by the Hearing Examiner.

d. After any opening statements, the party with the burden of proof shall begin the presentation of evidence. He shall be followed by the other parties in a sequence determined by the Hearing Examiner.

e. Cross-examination of witnesses shall be conducted in a sequence determined by the Hearing Examiner.

f. When all parties and witnesses have been heard, opportunity shall be offered to present final argument, in a sequence determined by the Hearing Examiner. Such final argument may, in the discretion of the Hearing Examiner, be in the form of written memoranda or oral argument, or both. Final argument need not be recorded, in the discretion of the Hearing Examiner. Written memoranda may, in the discretion of the Hearing Examiner, be submitted simultaneously or sequentially and within such time periods as the Hearing Examiner may prescribe.

g. After final argument, the hearing shall be closed or continued at the discretion of the Hearing Examiner. If continued, it shall be either (a) continued to a certain time and day, announced at the time of the hearing

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and made a part of the record, or (b) continued to a date to be determined later, which must be upon not less than five days' written notice to the parties.

h. The record of the contested case proceeding shall be closed upon receipt of the final written memorandum, transcript, if any, or late filed exhibits which the parties and the Hearing Examiner have agreed should be received into the record, whichever occurs latest.

3. Participation by agency head. An agency which is a party to a contested case may only participate in the hearing by the giving of testimony and through its designated representative or counsel. Where the agency is not a party and participates in the hearing in a neutral or quasi-judicial capacity, the agency head or a member of the governing body of the agency or his delegate may engage in such examination of witnesses as the Hearing Examiner deems appropriate.

H. Disruption of hearing.

1. Cameras. No television, newsreel, motion picture, still or other camera, and no mechanical recording devices, other than those provided by the Office of Administrative Hearings or at its discretion, shall be operated in the hearing room during the course of the hearing unless permission is obtained from the Hearing Examiner prior to the opening of the hearing and then subject to such conditions as the Hearing Examiner may impose to avoid disruption of the hearing.

2. Other conduct. Pursuant to and in accordance with the provisions of Minn. Stat. § 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 Hearing Examiner shall read this rule to those persons causing such interference or disruption and thereafter proceed as he deems appropriate.

9 MCAR § 2.218 The Hearing Examiner report and the agency decision.

A. Basis for the report and the decision.

1. The record. No factual information or evidence which is not a part of the record shall be considered by the Hearing Examiner or the agency in the determination of a contested case.

2. Administrative notice. The Hearing Examiner and agency may take administrative notice of general, technical or scientific facts within their specialized knowledge in conformance with the requirements of Minn. Stat. § 15.0419, subd. 4.

B. Hearing Examiner's report. Following the close of the record, the Hearing Examiner shall make his report pursuant to Minn. Stat. §§ 15.0412,

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subd. 4d, and 15.052, subd. 3, and, upon completion, a copy of said report shall be served upon all parties by personal service, by First Class mail or by depositing it with the Central Mailing Section, Publications Division, Department of Administration.

C. Agency decision. Following receipt of the Hearing Examiner's report, the agency shall proceed to make its final decision in accordance with Minn. Stat. §§ 15.0421 and 15.0422, and shall serve a copy of its final order upon the Hearing Examiner by First Class mail.

9 MCAR § 2.219 Rehearing. An agency Notice of and Order for Rehearing shall be served on all parties in the same manner prescribed for the Notice of and Order for Hearing provided that the Hearing Examiner may permit service of the Notice and Order for Rehearing less than 30 days prior to rehearing. The rehearing shall be conducted in the same manner prescribed for a hearing.

9 MCAR § 2.220 Emergency procedures. Nothing contained in these rules is intended to preempt, repeal or be in conflict with any rule or statute which provides for acts by the agency in an emergency or procedure for conduct by the agency in such a situation.

9 MCAR § 2.221 Severability. If any provision of these rules is held invalid, such invalidity shall not affect any other provisions of the rules which can be given effect without the invalid provision, and to this end the provisions of these rules are declared to be severable.

9 MCAR § 2.222 Effective date. These rules shall be effective for all contested cases commenced five working days after publication of these rules in the State Register.

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Office of Administrative Hearings

Workers' Compensation Rules

9 MCAR § 2.301 Scope and purpose. The procedures contained in 9 MCAR §§ 2.301-2.326 shall govern all hearings required to be conducted pursuant to the provisions of the Minnesota workers' compensation laws, Minn. Stat. ch. 176 and the Minnesota Administrative Procedure Act, Minn. Stat. §§ 15.0411-15.052, as those provisions might apply.

9 MCAR § 2.302 General authority and definitions.

A. Assignment or transfer of cases. The chief hearing examiner has full responsibility for the assignment of cases for trial to the compensation judges. The chief hearing examiner may transfer to another compensation judge the proceedings on any case in the event of the death, extended absence, or disqualification of the compensation judge to whom it has been assigned, and may otherwise reassign such cases if necessary to expedite the proceedings if no oral testimony has been received in the cases.

B. Authority of compensation judges. In any case which has been regularly assigned to him or her for trial, a compensation judge shall have full power, jurisdiction and authority to hear and determine all issues of fact and law presented to him or her and to issue such interlocutory and final orders, findings, decisions and awards as may be necessary to the full adjudication of the case.

C. Definitions. For the purposes of 9 MCAR §§ 2.301-2.326, the following terms have meanings given them.

1. "Calendar judge" means a workers' compensation judge from the Office of Administrative Hearings.

2. "Chief hearing examiner" means the Chief Hearing Examiner of the Office of Administrative Hearings.

3. "Commissioner" means the Commissioner of the Department of Labor and Industry.

4. "Compensation judge" means a workers' compensation judge from the Office of Administrative Hearings.

5. "Division" means the Workers' Compensation Division of the Department of Labor and Industry.

6. "Office" means the Office of Administrative Hearings.

7. "Petition" means a claim filed by or on behalf of an injured or

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deceased employee, employer or insurer which initiates a contested workers' compensation case requiring assignment for hearing.

8. "Petitioner" means the injured employee, an heir or dependent of a deceased employee or a party filing on their behalf or an employer or insurer.

9. "Settlement judge" means a workers' compensation judge from the Department of Labor and Industry.

9 MCAR § 2.303 Joinder of parties.

A. Request. Upon a motion of any party or upon his or her own motion, a compensation judge may order the joinder of additional parties necessary for the full adjudication of the case. A party not present or represented at the time of joinder shall forthwith be served by the party requesting joinder with copies of the order of joinder and all pleadings in the case.

B. Service. Any party requesting joinder of additional parties shall serve a copy of the request on all existing parties, and the party to be joined, and file the original with proof of service with the compensation judge no later than ten days prior to the pretrial or settlement conference, or within 15 days after receipt of a pretrial order, unless the judge allows a shorter time when the moving party has shown that the party is a necessary party, that the moving party was unable, through due diligence, to previously ascertain the name of or necessity of joining the party, and that the joinder is necessary to a full and final determination of the rights or liabilities of all persons. When this request is served on the party to be joined, it shall be accompanied by copies of all pleadings and the notice of the date, time and place set for a settlement conference or pretrial conference.

C. Affidavit. When a party requests joinder less than ten days prior to the pretrial or settlement conference date or more than 15 days after receipt of a pretrial order, the request shall include an affidavit of the requesting party stating the facts necessary to show cause why the lesser time should be allowed.

D. Delay. In cases where the compensation judge has denied the joinder because of the requesting party's failure to meet the time requirements, the case shall not be stricken, continued or otherwise delayed for the purposes of joinder, unless the attorney for the petitioner consents to it.

E. Contents of motion. All motions for joinder shall contain at least the following:

1. The party to be joined and its insurer, if any;

2. The date and nature of the claimed personal injury or impairment;

3. The detailed circumstances, in affidavit form, showing that the party to be joined is a necessary party;

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4. The supporting medical opinions relied upon, if applicable;

5. If the party to be joined is the special compensation fund, the detailed circumstances, in affidavit form, showing the specific basis claimed for joinder, including the date of registration of prior impairment or injury where applicable.

F. Objection. A party contesting joinder under 9 MCAR § 2.303 may do so by objection filed with the compensation judge within ten days of service, requesting a hearing thereon; otherwise, an ex parte order may be issued granting or denying this joinder.

9 MCAR § 2.304 Commencement of proceedings; petitions; responsibilities of attorneys; notice to third parties.

A. Commencement of proceedings. Original proceedings for the adjudication of compensation rights and liabilities are commenced by the service of a petition as provided by Minn. Stat. § 176.305.

B. Consolidation of claims. Claims by several employees arising out of the same accident may be consolidated in one proceeding only by consent of all parties or by order on appropriate motion.

C. Heading of petition. Unless otherwise provided by law, all requests for action by a compensation judge after the filing of a petition shall contain the caption, the employee's social security number, and appropriate identification number of the case and shall indicate the type of action requested.

D. Responsibilities of attorneys; notice to third parties. All attorneys representing employees, employers, or any other parties to a workers' compensation proceeding shall inquire of their clients within five days of receipt of a notice of a pretrial order or pretrial conference, as to whether any third party, other than the workers' compensation insurer, has paid wage loss benefits or treatment expense to the employee or in the employee's behalf.

If inquiry discloses that any third party, such as an insurer or a welfare department, has made any such payments, the attorney discovering that fact shall then have the duty to place the third party on written notice of its right to petition for intervention and reimbursement. The written notice shall have attached to it a copy of 9 MCAR § 2.310 and also a copy of all pleadings in the case and a copy of all notices and all orders of the division and of the office served in the case to date, and shall specifically advise that:

1. The petitioner has commenced a proceeding to recover workers' compensation benefits, and that under Minn. Stat. § 176.361 and 9 MCAR § 2.310 the third party has the right to petition for intervention and reimbursement of payments made for treatment and wage loss;

2. The name and address of all parties to the proceeding and the names and addresses of their attorneys;

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3. The name of the third party's insured, the nature of the payments made, and any identifying claim and policy number;

4. Any failure of the third party to comply with any provisions of 9 MCAR § 2.310 shall result in a denial of the claim for reimbursement unless the compensation judge determines that the error or omission is merely technical.

Failure of a petitioner's attorney to comply in a timely manner with this rule shall be taken into consideration as an additional significant factor in determining the attorney's fee under Minn. Stat. § 176.081.

Failure of an attorney representing an employer and insurer to comply in a timely manner with this rule shall be taken into consideration for purposes of determining whether a penalty shall be assessed against the employer and insurer under Minn. Stat. § 176.225 for unreasonable or vexatious delay.

9 MCAR § 2.305 Settlement conferences.

A. Settlement alternatives not precluded. Nothing contained in these rules shall preclude any party from requesting that a settlement conference be scheduled at any time prior to a hearing by a compensation judge, nor shall they prohibit the chief hearing examiner or compensation judge from setting a settlement conference on his or her own motion once the matter has been received from the commissioner.

B. Attendance. At any settlement conference conducted before a calendar or compensation judge, all parties shall attend and shall, if they are a representative of a party, be authorized to reach a full settlement on all or any issues in the case.

C. Matters agreed upon. If, following a settlement conference, a settlement has not been reached but the parties have reached agreement on any facts, legal or medical issues, or levels of benefits, the calendar or compensation judge presiding over the settlement conference shall, if he or she approves of those matters agreed upon, issue an order confirming and approving those matters agreed upon. The order shall be binding on any compensation judge who may subsequently be assigned to hear the case. Issues once agreed upon and approved may be reopened by the compensation judge only upon motion of any party on the basis of newly discovered evidence which was not reasonably discoverable at the earlier time.

See ARO36835T

9 MCAR § 2.306 Notice of intention to discontinue compensation payments.

A. Hearing. When an objection to a notice of intention to discontinue compensation payments has been filed or where it appears to the commissioner that the right to compensation may not have terminated and the matter has been referred to the chief hearing examiner, it shall be set for hearing on a priority basis not less than 30 nor more than 75 days from the date of the receipt of the matter from the commissioner.

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B. Objection as claim petition. Any objection filed more than 120 days after service of a notice to discontinue shall be treated as a claim petition for purposes of scheduling a hearing and shall not be heard on a priority basis.

C. Petitions for discontinuance. When an employer or insurer petitions the commissioner for an order allowing discontinuance of benefits but has chosen not to discontinue payments until after a final determination and the matter has been referred to the chief hearing examiner, the petitioner shall be entitled to a hearing on the same priority basis as set forth in A.

9 MCAR § 2.307 Service.

A. Service by state. The chief hearing examiner, and calendar or compensation judges shall serve all notices, findings, orders, decisions or awards upon the parties or their attorneys or agents of record by first class mail at their addresses of record or by personal service.

B. Service by parties. A party may accomplish service of any document either by first class mail or by personal service. Service of any document required to be served by or on a party may be served by or on the party's attorney or authorized agent. Upon filing of the document served, it shall be accompanied by an affidavit or proof of service which shall be in the form acceptable to the district courts.

C. Service by mail. Service of all documents and pleadings may be made by first class United States mail upon all parties to a proceeding whether residents of the same city, town or otherwise. Computation of time in such instances shall be in accordance with the provisions of Minn. Stat. § 645.15.

9 MCAR § 2.308 Hearings.

A. Definition of hearing. For the purposes of 9 MCAR §§ 2.301-2.326, a hearing may be called a settlement conference, a pretrial conference, or a regular hearing. Nothing contained herein is intended to change the statutory requirement that hearings, as defined by statute, be conducted by compensation judges from the office of administrative hearings.

1. A settlement conference is a proceeding conducted by a compensation judge. It is for the primary purpose of providing assistance to the parties in resolving disputes and securing a settlement of all issues and for the secondary purpose of assisting the parties in narrowing the issues and of expediting preparation and trial of the matter.

2. A pretrial conference may be required whether or not a settlement conference has been held and may be conducted by telephone. The purposes of a pretrial conference are to ascertain if there are genuine disputes requiring resolution by a calendar or compensation judge, to provide assistance to the parties in resolving disputes, to narrow the issues, and to expedite preparation and trial if a regular hearing is necessary. A pretrial conference is conducted by a calendar or compensation judge. It shall be conducted by telephone if

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the location set for the pretrial conference would require any party to travel more than 50 miles to attend. Written notice of this hearing shall be given at least 20 days prior to the date of the hearing.

3. A regular hearing is a hearing set for the purpose of receiving evidence and is conducted by a compensation judge.

B. Notice of hearing. Notice of the time and place for hearing shall be provided to all parties to a case as required by 9 MCAR § 2.307 A., except that oral or written notification of the date, time and place for a regular hearing which is given to the parties by a calendar or compensation judge at the time of a settlement or pretrial conference shall be sufficient notice. Each attorney receiving notice of the hearing date at a settlement or pretrial conference shall be responsible for notifying each party the attorney represents of the hearing date. When a written notice is required, it shall be given at least 30 days prior to the date of hearing, except:

1. When notice is waived by all parties;

2. When a different time is expressly agreed to by all parties; or

3. When the notice is governed by contrary law or rule.

9 MCAR § 2.309 Continuances.

A. Continuances not favored. Requests for continuances are inconsistent with the requirement that workers' compensation proceedings be expeditious and are, therefore, not favored and will be granted only upon a clear showing of good cause. The parties are expected to submit for decision all matters in controversy at a single hearing and to produce at the hearing all necessary evidence, including witnesses, documents, medical reports, payroll statements and all other matters considered essential in the proof of a party's claim or defense.

B. Request. When a continuance is to be requested prior to the hearing date, the party requesting the continuance shall have first contacted all other parties to determine whether mutual agreement to the continuance can be reached and, if the continuance be granted, the availability of all parties for hearing at future specific dates. When all parties are in agreement with the request for continuance and have agreed to a date for a future hearing, which date has been approved by the compensation or calendar judge before whom the matter is pending, and when the continuance request is made no less than ten working days prior to the hearing date, the continuance shall be granted.

C. Motion. If all parties have not agreed to a continuance, requests for continuances shall be made to the compensation or calendar judge before whom the matter is pending. When made more than ten working days prior to the hearing date, the request shall be in writing in the form of a motion for continuance and shall be served on all parties. If less than ten working days remain prior to the hearing date, notice of the motion may be made orally. A

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hearing on the motion shall be conducted only if ordered by the compensation or calendar judge to whom the motion is made.

D. Good cause. Good cause shall not include:

1. When an insurer retains more than one counsel on its own payroll who practice in the field of workers' compensation law, unavailability of the counsel assigned to the case because of engagement in another court or otherwise unless all such counsel are committed elsewhere;

2. When a law firm consists of more than one member who practice in the field of workers' compensation law, unavailability of the counsel assigned to the case because of engagement in another court or otherwise unless all such counsel are committed elsewhere;

3. Unavailability of an individual law practitioner because of engagement in another court, if he has failed to notify the judge in charge of the trial court calendar of that court that he has been assigned to a date and time certain in a workers' compensation case;

4. Unavailability of a medical or other witness if the witness' deposition could have been taken between the time of receipt of the notice of the hearing date and the date of the hearing.

9 MCAR § 2.310 Intervention.

A. Motion. Any person desiring to intervene in a workers' compensation case as a party shall submit a timely motion to intervene to the compensation judge to whom the case has been assigned or to a calendar judge if the case has not yet been assigned. The motion shall be served on all parties either personally or by first class mail. A motion to intervene shall be served and filed within 30 days after a person has received notice that a claim petition has been filed as provided in 9 MCAR § 2.304 D. In any other situation, timeliness will be determined by the calendar or compensation judge in each case based on circumstances at the time of filing. The motion shall show how the moving party's legal rights, duties or privileges may be determined or affected by the case, shall set forth the grounds and purposes for which intervention is sought and shall indicate the moving party's statutory right to intervene if one should exist. The motion shall be accompanied by the following, if applicable:

1. An itemization of disability payments showing the period during which the payments were or are being made, the weekly or monthly rate of the payments and the amount of reimbursement claimed;

2. A summary of the medical or treatment payments, broken down by medical or treatment creditor, showing the total bill submitted, the period of treatment covered by that bill, the amount of payment on that bill, and to whom the payment was made;

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3. Copies of all medical or treatment bills on which some payment was made;

4. Copies of the worksheets or other information setting forth how the payments on medical or treatment bills were calculated;

5. A copy of the relevant policy or contract provisions upon which the claim for reimbursement is based;

6. A proposed order allowing intervention with sufficient copies to serve on all parties;

7. A proof of service;

8. At the option of the intervenor, a proposed stipulation which states that all of the payments for which reimbursement is claimed are related to the injury or condition in dispute in the case and that, if the petitioner is successful in proving the compensability of the claim, it is agreed that the sum be reimbursed to the intervenor.

B. Stipulation. When the person serving the motion for intervention has included a proposed stipulation, all parties shall either execute and return the signed stipulation to the intervenor or serve upon the intervenor and all other parties specific and detailed objections to any payments made by the intervenor which are not conceded to be correct and related to the injury or condition the petitioner has asserted is compensable. If a party has not returned the signed stipulation or filed objections within 30 days of service of the motion, the intervenor's right to reimbursement for the amount sought shall be deemed to be established provided that the petitioner's claim is determined to be compensable.

C. Attendance by intervenor. Unless a stipulation has been signed and filed or the intervenor's right to reimbursement has otherwise been established, the intervenor shall attend all settlement or pretrial conferences and shall attend the regular hearing if ordered to do so by the compensation judge.

D. Order. If an objection to intervention remains following settlement or pretrial conferences, the calendar judge shall enter an order ruling on the intervention which order shall be binding on the compensation judge to whom the case is assigned for a regular hearing.

E. Presentation of evidence by intervenor. Unless a stipulation has been signed and filed or the intervenor's right to reimbursement has otherwise been established, at the regular hearing on the claim petition where intervention has been granted, the intervenor shall present evidence in support of his or her claim unless otherwise ordered by the compensation judge.

F. Effects of noncompliance with rule. Failure to comply with any provision of this rule shall result in a denial of the claim for reimbursement unless the compensation judge determines that the error or mistake is merely technical.

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G. Failure of attorney to respond. Failure by the petitioner's attorney to submit a timely response which also complies otherwise with this rule shall be a significant additional factor to be taken into consideration under Minn. Stat. § 176.081 in determining the amount of the attorney's fees. Failure by an attorney representing an employer or insurer to submit a timely response which also complies otherwise with the requirements of this rule shall be taken into consideration for purposes of determining whether a penalty shall be assessed against the employer or insurer under Minn. Stat. § 176.225 for unreasonable or vexatious delay.

9 MCAR § 2.311 Consolidation.

A. Authorization. Consolidation of two or more related cases may be ordered for the purpose of receiving evidence. Consolidation may be ordered upon motion by any party to the calendar or compensation judge or upon the calendar or compensation judge's own motion if the calendar or compensation judge determines:

1. That separate cases present substantially the same issues of fact and law;

2. That a holding in one case would affect the rights of the parties in the other case; and

3. That the consolidation would not substantially prejudice the rights of any party.

Notwithstanding the requirements of this rule, the parties may stipulate and agree to such consolidation.

B. Receipt of evidence. Under consolidation, all documentary evidence previously received in an individual case shall be reintroduced in the consolidated proceedings under a master file if the compensation judge assigned to try the case designates one file as a master file. When so adduced, the evidence shall be deemed part of the record of each of the several consolidated cases. Evidence received subsequent to the order of consolidation shall be similarly received with like force and effect.

C. Notice of order. Following the granting of an order for consolidation, the calendar or compensation judge shall forthwith serve on all parties and the commissioner a copy of the order for consolidation. The order shall contain, among other things:

1. A description of the cases for consolidation;

2. The reasons for consolidation;

3. Notification of a consolidated pretrial conference if one has been requested.

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D. Objection to consolidation.

1. Motion for severance. Any party may object to consolidation by filing with the appropriate judge, and serving upon all parties at least seven days prior to the regular hearing in the case, a motion for severance from consolidation, setting forth the reasons for the motion.

2. Determination. If the judge finds that consolidation would prejudice the rights of the party moving for severance, the judge shall order such severance or other relief as he or she deems necessary.

E. Service of pleadings and decisions. Separate pleadings shall be filed and separate findings, orders, decisions and awards will be made and filed in each case consolidated for hearing.

See AR 03857

9 MCAR § 2.312 Disqualification. A compensation judge shall withdraw from participation in a case at any time if the judge deems himself or herself disqualified, prejudiced or biased for any reason. Proceedings to disqualify a compensation judge shall be initiated by the service on all parties and the filing of a motion for disqualification supported by affidavit stating in detail facts establishing grounds for disqualification of the compensation judge to whom a case or proceeding has been assigned. The motion for disqualification shall be filed with the chief hearing examiner not more than ten days after the moving party has received notice of the assignment of the judge to the hearing or has knowledge of the grounds for disqualification, whichever occurs last. The motion shall be determined by the chief hearing examiner or his designee. The fact that a compensation judge has previously determined a similar case contrary to the interests of the moving party in the pending case shall not be grounds for disqualification.

Unless required because of the unavailability of a compensation judge to hear the case, no continuance shall be granted by reason of a disqualification under this section. If a continuance is necessary, another regular hearing will be scheduled as early as possible.

Consolidated cases are to be considered as one case within the meaning of this section. This section is not applicable to settlement or pretrial conferences.

9 MCAR § 2.313 Pretrial procedures.

A. Requirement. All cases shall be subject to a settlement conference or a pretrial conference at which all parties shall attend or be represented, unless a calendar or compensation judge orders otherwise. A compensation judge shall order that a pretrial or settlement conference be conducted if any party requests that one be conducted. If parties are represented by attorneys, the attorneys shall bring with them their appointment calendars. If a party is not represented by an attorney, the party shall appear personally and shall be prepared to arrange agreeable dates for the regular hearing. Parties or their attorneys attending a settlement or pretrial conference must have authority to settle their respective claims.

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B. Settlement discussions. Prior to any settlement or pretrial conference, the parties shall discuss the possibility of settlement if they deem that a reasonable basis for settlement exists. Parties or attorneys appearing at settlement or pretrial conferences shall be prepared to participate in settlement discussions.

C. Conference procedures. At the settlement or pretrial conference:

1. All parties shall be prepared to state the issues;

2. All parties shall state the names, and addresses if known, of all witnesses they intend to call;

3. All parties shall give notice of any amendments to pleadings that may still be necessary;

4. All parties shall file copies of all medical reports not already on file. Reports of medical examinations completed after any settlement or pretrial conference shall be filed as soon as available prior to the regular hearing;

5. Each party shall state what exhibits, including photographs, motion picture films, video tapes and documentary evidence, are intended to be used at the hearing, and copies of these exhibits shall be made available to opposing counsel no later than ten days prior to the date of the regular hearing; provided, however, that if any party requests showing of motion picture films or video tapes prior to the regular hearing, it shall pay the expense for the showing and may tax this expense in the same manner as other disbursements;

6. If the petitioner plans to introduce hospital records into evidence, the petitioner or his attorney shall bring to the settlement or pretrial conference written authorizations for opposing counsel to examine those records if the authorizations have not previously been provided;

7. If the petitioner is claiming medical or other treatment expenses, the petitioner or the attorney shall state those expenses at the time of the settlement or pretrial conference, and shall furnish opposing counsel with copies of itemized bills for such expenses at least ten days prior to the settlement or pretrial conference;

8. If the petitioner is claiming temporary total disability, the petitioner or attorney shall state at the settlement or pretrial conference the dates of time lost from work;

9. If the petitioner is claiming temporary partial disability, the petitioner or attorney shall state the dates of the claim, the approximate amount of the claim, and the names and addresses of the employers for whom the employee worked during the period of the claim; authorizations to permit opposing counsel to confirm wages earned in those employments shall have been furnished at least ten days prior to the scheduled settlement or pretrial con-

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ference; and, an itemized breakdown of the claim for temporary partial disability shall be submitted to the compensation judge and opposing counsel at least ten days prior to the time of the regular hearing;

10. The parties or their attorneys shall state whether payment for disability benefits, on medical or treatment expenses, or on funeral expenses has been made by any party other than the workers' compensation carrier. If payment has been made, the name and address of the party making payment shall be furnished to the calendar or compensation judge, together with any identifying policy or claim numbers;

11. If a dispute exists on the wage rate at the time of the injury, the attorney for the employer and insurer shall furnish to opposing counsel at least ten days prior to the settlement or pretrial conference, copies of the relevant wage records of the petitioner;

12. The attorney for the petitioner shall furnish to the calendar or compensation judge a copy of his retainer agreement with the petitioner and shall state the amount of retainer fee paid. He shall be prepared at the time of hearing or settlement to show the reasonableness of any attorney's fees or costs, in accordance with Minn. Stat. § 176.081.

D. Pretrial statement. At the time a case is first set for a settlement or pretrial conference or prior to setting the date for a regular hearing, if the information is not already on file, the calendar or compensation judge may order the parties to complete, serve on each other and file a pretrial statement which shall contain any of the items in C. which the judge deems appropriate. In making a determination on the requirement of the preparation of pretrial statements, the judge shall take into consideration the number of parties involved in the case, the nature and extent of the medical issues, and the nature, extent and type of disability claimed. When a pretrial statement has been ordered, the petitioner shall serve and file a statement within 20 days of the date of the order. The responding parties shall serve and file their statement within 30 days of the date of the order. Thereafter, a petitioner may serve and file an amended pretrial statement based solely on information presented in the responding parties' statements and not on new issues, which amended statement shall be filed within 40 days of the date of the order.

E. Evidence not disclosed at conference. Evidence, or other matters listed in C. which have not been disclosed at the settlement or pretrial conference or in a pretrial statement shall not be allowed to be presented at the regular hearing unless it can be shown to the compensation judge that the evidence or other matters offered were discovered subsequent to the filing of a pretrial statement or pretrial conference, whichever occurs last, were not discoverable through the exercise of due diligence prior to that time, and that the other parties have been advised of the evidence or other matters prior to the trial and have had an opportunity for review.

F. Temporary orders. Any insurer or self-insurer voluntarily agreeing to pay benefits pursuant to Minn. Stat. § 176.191, subd. 1, while the case is pending before the office, shall file a formal petition for temporary order.

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1. The petition shall contain the following:

a. Name of the employer and its insurer (or self-insured) consenting to payment of compensation benefits and medical expenses;

b. The dispute involved, including the name and address of other employer and its workers' compensation insurer, if known, that may be liable for workers' compensation benefits and the date of the alleged injury while working for the employer;

c. The beginning date of the employee's present disability, and the compensation rate that the insurer or self-insurer will voluntarily pay;

2. The original petition for temporary order, with proof of service on all necessary parties, shall be filed with the office;

3. The petition for temporary order shall be accompanied by a prepared formal order that should be substantially in the following form:

The undersigned having examined the foregoing petition for temporary order and the compensation files and records herein, and it appearing that a temporary order for payment of compensation benefits should be issued pending a final determination, as provided by Minn. Stat. § 176.191, subd. 1;

NOW, THEREFORE, IT IS HEREBY ORDERED, that (name of insurer or self-insured) having consented to payment of compensation benefits pursuant to Minn. Stat. § 176.191 shall pay to (name), petitioner, compensation at the weekly rate of $ (amount), during the period of petitioner's disability, beginning (date), and shall also pay reasonable medical expenses related to petitioner's said disability.

IT IS FURTHER ORDERED, that following a final determination of liability and if it has been determined that some other employer or insurer is liable for all or part of the compensation paid pursuant to this temporary order, then the division, the compensation judge, or Court of Appeals shall order the parties held liable to reimburse (name of paying party) for all or part of the compensation paid pursuant to this temporary order, for which the other parties are held liable, including interest at the rate of five percent per annum.

Dated at . . . . . , Minnesota
this . . . . . day of . . . . . .

(COMPENSATION JUDGE)

. . . . . .
By . . . . . .

The original and sufficient copies of the order to make service upon all necessary parties, and any attorneys representing them, shall be filed.

G. Payment of benefits by special compensation fund. A petitioner seeking

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payment of benefits by the special compensation fund pursuant to Minn. Stat. § 176.191, subd. 2, when the case is pending before the office, shall file a formal petition for temporary order.

1. The petition shall contain the following:

a. A statement that written demand for payment pursuant to Minn. Stat. § 176.191, subd. 1, has been made against all employers and insurers party to the claim and that the payment demanded has been refused;

b. The names and addresses of all employers and insurers or self-insurers who are parties to the claim;

c. A statement as to the dispute involved and the dates of all alleged injuries while working for each employer;

d. The beginning date of the petitioner's present disability, the compensation rate applicable for each injury date, the proposed compensation rate to be paid by the special compensation fund, and an itemization of all medical expenses requested to be paid pursuant to the temporary order;

e. Copies of all medical reports supporting the claimed period of disability and the causal relationship of that disability to the petitioner's employment.

2. The original of the petition for temporary order, with proof of service on all necessary parties, shall be filed with the office;

3. The petition for temporary order shall be accompanied by a prepared formal order that should be substantially in the following form:

The undersigned having examined the foregoing petition for temporary order and the compensation files and records herein, and it appearing that a temporary order for payment of compensation benefits should be issued pending a final determination, as provided by Minn. Stat. § 176.191, subd. 2;

NOW, THEREFORE, IT IS HEREBY ORDERED that the State Treasurer, as custodian of the special compensation fund, shall, pursuant to Minn. Stat. § 176.191, subd. 2, pay to (name), petitioner, compensation at the weekly rate of $ (amount), during the period of petitioner's disability, beginning (date), and shall also pay reasonable medical expenses related to the petitioner's said disability.

IT IS FURTHER ORDERED, that following a final determination of liability and if it has been determined that one or more employers or insurers are liable for all or part of the compensation paid pursuant to this temporary order, then the division, the compensation judge or Court of Appeals shall order the parties held liable to reimburse the State Treasurer, as custodian of the special compensation fund, for all or part of the compensation paid pursuant to this temporary order, for which the other parties are held liable, including interest at the rate of 12 percent per annum.

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Dated at . . . . . , Minnesota
this . . . . . day of . . . . . .

(COMPENSATION JUDGE)

. . . . . .
By . . . . . .

The original and sufficient copies of the order to make service upon all necessary parties, and any attorneys representing them, shall be filed.

H. Necessary parties. For the purpose of this rule, the following shall be deemed necessary parties:

1. The petitioner;

2. All insurers or self-insured named in the petition for temporary order;

3. Any employer who is uninsured or whose insurer for the date of the alleged injury in that employment is unknown;

4. The state treasurer, as custodian of the special compensation fund, if the petition is made pursuant to Minn. Stat. § 176.191, subd. 2.

I. Answer. Within ten days after being served with a copy of the petition for temporary order and order hereunder, employers or their insurers, other than paying party, or the state treasurer, as custodian of the special compensation fund, may file a verified answer to the petition in accordance with the provisions of Minn. Stat. § 176.321.

J. Circumstances of nonapproval of temporary orders. Temporary orders, as a general rule, shall not be approved if made contingent upon the waiver by the petitioner of his rights to claim an additional award pursuant to Minn. Stat. § 176.225, or to have fees for his attorney assessed against the employer and insurer in addition to compensation pursuant to Minn. Stat. §§ 176.191 or 176.081, subd. 8.

K. Effect of filing. The filing of a petition for temporary order shall not cause the matter to be placed on the trial calendar, unless accompanied by a petition for contribution or reimbursement.

9 MCAR § 2.314 Discovery. See ARO3685T

A. Demand. Each party shall, within 30 days of a demand by another party, disclose or furnish the following:

1. The names and addresses of all witnesses that a party intends to call at the regular hearing. All witnesses unknown at the time of the disclosure shall be disclosed as soon as they become known if a prior demand has been made.

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2. Any relevant written or recorded statements made by witnesses on behalf of a party. The demanding party shall be permitted to inspect and reproduce any such statements which reproduction shall be at the expense of the party requesting reproduction. Any party unreasonably failing upon demand to make the disclosure required by this rule, upon proper motion made to the compensation judge at the time of trial, may be foreclosed from presenting any evidence at the hearing through witnesses not disclosed or through witnesses whose statements are not disclosed.

3. Medical privilege shall be deemed waived as to the injuries or conditions alleged in the petition by the filing of the petition alleging injury or occupational disease. Medical authorizations shall be furnished, upon demand, to adverse parties. Likewise, any and all medical reports shall be provided, upon demand, to all adverse parties. Upon demand, the petitioner shall disclose the names and addresses of all persons who have treated the petitioner in the past for injuries or conditions identical or similar to those alleged in the petition, the dates of the treatment, and shall provide medical authorization for each.

B. Depositions. Pursuant to the provisions of Minn. Stat. § 176.411, subd. 2, depositions may be taken in the manner which the law provides for depositions in civil actions in the district courts for the state, except where a compensation judge orders otherwise. When a party has objected to the taking of a deposition, the party requesting the deposition shall bring a motion before the compensation or calendar judge, before whom the case is pending at the time of the motion, who shall determine whether the deposition should go forward. The motion shall state, with specificity, the facts or other reasons supporting the need for the deposition. The compensation or calendar judge shall order the deposition to proceed if the judge finds that the request for the taking of the deposition has been shown to be needed for the proper presentation of a party's case, is not for purposes of delay, that unusual or extraordinary circumstances exist which compel extensive discovery, or that the issues or amounts in controversy are significant enough to warrant extensive discovery.

Depositions for the purpose of preserving testimony or for presenting testimony due to the unavailability of the witness shall be allowed. Unless, for good cause shown, the party taking the deposition has obtained the permission of the calendar judge, or compensation judge if the case has been assigned for hearing, to take the deposition subsequent to the hearing, it shall be taken sufficiently in advance of the hearing so that the deposition is filed prior to or at the commencement of the regular hearing.

The original copy of any deposition taken for purposes of presenting testimony in the case shall be filed with the office if the matter has been referred to the chief hearing examiner for assignment. The original copy of any deposition taken solely for purposes of discovery shall be sealed and filed as in the case of evidentiary depositions but shall not be reviewed or utilized in any fashion by the compensation judge unless the deposition shall be formally entered as evidence in the case.

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C. Motions for additional discovery. Upon the motion of any party, the compensation or calendar judge having jurisdiction at the time of the motion may order discovery of any other relevant material or information, recognizing all privileges recognized at law. The judge may order any means of discovery available pursuant to the rules of civil procedure for the district courts of the state of Minnesota provided that the request for such discovery can be shown to be needed for the proper presentation of a party's case, is not for purposes of delay, and that the issues or amounts in controversy are significant enough to warrant extensive discovery.

D. Penalties. Upon the failure of a party to reasonably comply with 9 MCAR §§ 2.301-2.326 relating to discovery or with an order of a compensation or calendar judge made pursuant to this rule, upon a motion properly made at the time of the hearing, the compensation judge assigned to the regular hearing may make a further order as follows:

1. An order that the subject matter of the order for discovery or any other relevant facts shall be taken as established for the purposes of the case in accordance with the claim of the party requesting the order; or

2. An order refusing to allow the party failing to comply to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence.

E. Proprietary information. When a party is asked to reveal material which that party considers to be proprietary information or trade secrets, he or she shall bring the matter to the attention of the appropriate judge, who shall make such protective orders as are reasonable and necessary or as otherwise provided by law.

9 MCAR § 2.315 Petitions for contribution or reimbursement.

A. Contents. Petitions for contribution or reimbursement in cases pending before the office shall set forth in detail the allegations showing the basis of the claim for contribution or reimbursement against the additional employer or insurer named therein, or of the claim for reimbursement against the state treasurer, custodian of the special compensation fund. The petition shall be supported by medical evidence, and shall be signed and verified.

B. Filing. A petition for contribution or reimbursement under this rule shall be filed no later than ten days prior to a pretrial conference or within 20 days of receipt of a pretrial order if a pretrial conference is not automatically set, and copies of all pleadings, including any notice of pretrial conference shall be served upon the additional employers or insurers by the party bringing the petition.

C. Answer. Within 20 days after being served with a copy of a petition for contribution or reimbursement under this rule, employers or their insurers, other than the petitioning party, may file a verified answer to the petition in accordance with the provisions of Minn. Stat. § 176.321 and, if not already

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set for a pretrial conference, the matter may be set for a pretrial conference in accordance with these rules.

D. Notice to petitioner. The petitioner shall be notified of all of the proceedings and should be represented by an attorney of his or her choice. A copy of all motions or answers shall be duly served upon the petitioner, the petitioner's attorney, or both in accordance with Minn. Stat. § 176.321.

9 MCAR § 2.316 Subpoenas. Subpoenas may be obtained without charge from the office. The name and address and telephone number of the party or attorney requesting service of the subpoena shall be included on the subpoena before service is made. When service is made, service and witness fees shall be tendered in accordance with Minn. Stat. § 357.22.

Upon motion promptly made, and in any event at or before the time specified in the subpoena for compliance with it, the calendar judge or compensation judge, if the case has been assigned for regular hearing, may quash or modify the subpoena if the judge finds that it is unreasonable or oppressive.

See AR0328 ST

9 MCAR § 2.317 The hearing.

A. Notice. A place, date and time certain will be assigned to each case. Notice of the regular hearing will be given as soon as the assigned date is known, but shall be given at least 30 days in advance of the hearing. The notice will include the place of hearing and the amount of time allowed for the hearing and the name of the compensation judge assigned, if known. Cases will be set for one location only, which shall be that most convenient for the petitioner, and adequate time will be allowed so that the case may be completely heard in one setting. In the event that an additional hearing date is required, it shall be set by agreement of all parties and the compensation judge. If the parties cannot agree, the compensation judge shall set the hearing as provided herein.

B. Availability of medical witnesses. As soon as the parties are apprised of the date scheduled for hearing, they shall immediately notify all medical witnesses in writing and arrange for their presence or for the taking of their deposition pursuant to 9 MCAR § 2.314 B.

C. Medical reports. The production of medical evidence in the form of written reports, by stipulation of the parties is encouraged. These reports should include:

1. The date of the examination;
2. The history of the injury;
3. The patient's complaints;
4. The source of all facts set forth in the history and complaints;
5. Findings on examination;

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6. Opinion as to the extent of disability and work limitations, if any;

7. The cause of the disability and, if applicable, whether the work injury was a substantial contributing factor toward the disability;

8. The medical treatment indicated;

9. If permanent partial disability is an issue, an opinion as to whether or not permanent disability has resulted from the injury and whether or not the condition has stabilized. If stabilized, a description of the disability with a complete evaluation; and

10. The reason or reasons for the opinion or opinions.

D. Rights of parties. All parties shall have the right to present evidence, to cross-examine witnesses, and to present rebuttal testimony.

E. Witnesses. Any party may be a witness or may present witnesses on his behalf at the hearing. All oral testimony at the hearing shall be under oath or affirmation. At the request of a party or upon his own motion for good cause, the compensation judge may exclude witnesses from the hearing room so that they cannot hear the testimony of other witnesses.

F. Rules of evidence.

1. Pursuant to Minn. Stat. § 176.411, subd. 1, the compensation judge is bound neither by the common law or statutory rules of evidence nor by technical or formal rules of pleading or procedure.

2. Evidence must be offered to be considered. All evidence to be considered in the case, including all records and documents in the possession of any party, or a true and correct photocopy thereof, shall be offered and made a part of the record in the case. Any independent investigation by the compensation judge pursuant to the provisions of Minn. Stat. § 176.391, subd. 1, shall be part of the record provided all parties are aware of the investigation and have had an opportunity to participate in it. No other factual information or evidence shall be considered in the determination of the case.

3. Documentary evidence. Documentary evidence in the form of copies of excerpts may be received or incorporated by reference upon agreement of the parties or if ordered by the compensation judge.

4. Notice of facts. The compensation judge may take notice of judicially cognizable facts but shall do so on the record and with the opportunity for any party to contest the facts so noticed.

5. Examination of adverse party. A party may call an adverse party or his managing agent or employees or an officer, director, managing agent or an employee of the state or any political subdivision thereof or of a public or private corporation or of a partnership or association or body politic which is

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an adverse party, and interrogate them by leading questions and contradict and impeach them on material matters in all respects as if they had been called by the adverse party. The adverse party may be examined by his counsel upon the subject matter of his or her examination in chief under the rules applicable to direct examination, and may be cross-examined, contradicted, and impeached by any other party adversely affected by the testimony.

G. The record.

1. The compensation judge shall maintain the official record, other than the stenographic notes of a hearing reporter if one was used, in each case until the issuance of the judge's final order.

2. The record in a compensation case shall contain:

a. All pleadings, motions and orders, including the judgment roll and the entire record from any previous hearing which is relevant to the issues under consideration;

b. Evidence received or considered unless, through agreement of the parties or by order of the compensation judge, custody of an exhibit is given to one of the parties;

c. Those parts of the official file on the matter at the division which the compensation judge incorporates;

d. Offers of proof, objections and rulings thereon;

e. The compensation judge's order;

f. All memoranda or data submitted by any party in connection with the case;

g. A transcript of the hearing, if one was prepared; and

h. The audio-magnetic recording tapes, if that device was used to record the hearing.

3. The transcript.

a. The chief hearing examiner shall direct that the verbatim record of a hearing shall be transcribed if requested by any person. If a transcription is made, except as provided in c., the chief hearing examiner shall require the requesting person and other persons who request copies of the transcript to pay a reasonable charge for them if transcribed by the office. If transcribed by someone other than the office, the person requesting the transcription or a copy shall be liable to the person preparing the transcript for the charge.

b. Charges for transcripts prepared by the office shall be set by the chief hearing examiner, with the approval of the Department of Finance, and

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all moneys received for transcripts prepared by the office shall be payable to the State Treasurer, Office of Administrative Hearings Account.

c. Pursuant to the provisions of Minn. Stat. § 176.421, subd. 4, clause (3), a party may petition the chief hearing examiner for an order directing that a transcript be prepared, for purposes of appeal to the Court of Appeals, at no cost to the appellant. A petition filed under this provision shall include the following:

(1) Caption of the case;

(2) Case identification numbers;

(3) Name, address and telephone number of the attorney representing the appellant;

(4) A sworn affidavit from the appellant which shall include:

(a) Appellant's monthly personal income from all sources including income from trusts, bonds, and savings certificates;

(b) A list, at market value, of all stocks, bonds, savings certificates or other certificates of indebtedness held by the appellant and the appellant's spouse if residing in the same household;

(c) If residing in the same household, the monthly personal income from all sources for appellant's spouse;

(d) A statement of the monthly expenses for the appellant's household;

(e) If the appellant owns any rental property, a statement showing the appellant's equity in the property and the monthly income and expense for the property;

(f) If the appellant owns outright or is purchasing the property in which he or she resides, a statement showing the market value of the property, the appellant's equity in the property, and the present monthly payments, if any.

H. Continuances during the hearing. If it appears in the interests of justice that further testimony should be received, the compensation judge, with the consent of all parties, may continue the hearing to a future date and oral notice on the record shall be sufficient if given at the time of the original hearing. Otherwise, the notice of the date for the continued hearing shall be in writing and served on all parties.

I. Hearing procedure.

1. Compensation judge conduct. The compensation judge shall not

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communicate, directly or indirectly, in connection with any issue of fact or law with any party concerning any pending case, except upon notice and opportunity for all parties to participate. After the time the first witness is sworn, unless all parties agree, all of the proceedings shall be on the record, including any and all motions, objections, offers of proof, rulings of the judge, arguments of the parties other than final arguments, or other comments of the parties, their representative, or the judge. A compensation judge shall not order a court reporter to refrain from recording anything said during the course of a hearing absent the consent of all parties present nor shall a compensation judge turn off an audio magnetic recording device being used to record the proceedings, other than for reasonable breaks, absent the consent of all parties present.

2. Unless the compensation judge determines that the substantial rights of the parties will be ascertained better in some other manner, the hearing shall be conducted substantially in the following manner:

a. After opening the hearing, the compensation judge shall, unless all parties are represented by counsel, state the procedural rules for the hearing;

b. Any stipulations, settlement agreements or consent orders entered into by any of the parties prior to the hearing shall be entered into the record;

c. If the compensation judge requests opening statements, the party with the burden of proof shall proceed first. All other parties shall make such statements in a sequence determined by the compensation judge;

d. After any opening statements, the party with the burden of proof shall begin the presentation of evidence. That party shall be followed by the other parties in a sequence determined by the compensation judge;

e. Cross-examination of witnesses shall be conducted in a sequence determined by the compensation judge;

f. When all parties and witnesses have been heard, if the compensation judge believes that legal issues remain unresolved, opportunity may be afforded to present final argument, in a sequence determined by the compensation judge. Final argument may, in the discretion of the compensation judge, be in the form of written memoranda or oral argument, or both. Oral final argument shall not be recorded, unless requested by a party or upon the order of the compensation judge. Written memoranda shall, when allowed, be submitted simultaneously or sequentially and within such time periods as the compensation judge shall prescribe. Final arguments shall be limited to legal issues only;

g. After final argument, if any, the hearing shall be closed or continued if ordered by the compensation judge. If continued, it shall be either continued to a certain time and day, which shall be announced at the time of

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the hearing and made a part of the record, or continued to a date to be determined later, which must be upon not less than 15 days written notice to the parties;

h. The record of the case shall be closed upon receipt of the final written memorandum, transcript, if any, or late-filed exhibits which the parties and the compensation judge have agreed should be received into the record, whichever occurs last.

J. Disruption of hearing.

1. Cameras. No television, newsreel, motion picture, still or other camera, and no mechanical recording devices, other than those provided by the office of administrative hearings, shall be operated in the hearing room during the course of the hearing unless permission is obtained from the compensation judge and then subject to such conditions as the compensation judge may impose to avoid disruption of the hearing.

2. Other conduct. Pursuant to and in accordance with the provisions of Minn. Stat. § 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 or disruption or threat thereof, the compensation judge shall read this rule to those persons causing the interference or disruption and thereafter proceed as the judge deems appropriate.

See AR0368ST

9 MCAR § 2.318 The compensation judge's decision.

A. Basis for the decision.

1. The record. No factual information or evidence which is not a part of the record shall be considered by the compensation judge in the determination of the case.

2. Administrative notice. The compensation judge may take administrative notice of general, technical or scientific facts within the judge's specialized knowledge in conformance with the requirements of Minn. Stat. § 15.0419, subd. 4 provided that notice of the taking of such administrative notice is given and opportunity has been provided to all parties to rebut the facts sought to be noticed.

B. Compensation judge decisions.

1. Following the close of the record, the compensation judge shall prepare his or her decision and, upon completion, it shall be served on all parties.

2. The compensation judge's decision shall contain the following in the sequence as listed:

a. The date and location of the hearing and the compensation judge's name;

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b. Appearances by parties, if pro se, or their attorneys, giving the full name and mailing address, including zip code, of each;

c. The date on which the record of the hearing closed;

d. A notice of the right of parties to appeal and how the appeal can be perfected;

e. Findings of fact, conclusions and a determination on each issue raised. In cases involving a multiplicity of issues, the compensation judge may organize the decision by major subissues if the judge determines that organizing the decision in that manner will aid the reader in understanding the contents of it.

C. Readability. Compensation judge decisions shall be clear and concise and shall be written in a prose style which can be read and understood by persons of average intelligence. English rather than Latin terms shall be used unless it is necessary to utilize the Latin terminology.

D. Proposed decision filed by party. Any party may file a proposed decision with the compensation judge before the record is closed. Any proposed decision submitted shall conform to the provisions of these rules, shall be served on all other parties and shall be in a form which would allow the compensation judge to sign and issue the decision if it is acceptable. It shall also include a brief memorandum setting forth the issues and explaining the decision on each issue.

9 MCAR § 2.319 Rehearing. When a compensation judge has issued his or her findings, conclusions and decision, the judge's jurisdiction over the case shall end, except for taxation of disbursements or awarding of attorney's fees, unless the matter is referred to the compensation judge by the Court of Appeals and the chief hearing examiner for supplemental findings, taking of additional testimony, rehearing, or other action; provided that compensation judges may correct clerical or mathematical errors in decisions at any time prior to appeal.

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9 MCAR § 2.320 Settlements.

A. Stipulations. Stipulations for settlement are allowed pursuant to Minn. Stat. §§ 176.081, subd. 7a and 176.521 and shall conform to those sections and to the requirements of this rule.

B. Filing. All stipulations for settlement shall be filed within 30 days of the date the settlement was negotiated.

C. Approval. Stipulations for settlement reached and agreed upon subsequent to the referral of the case to the chief hearing examiner shall be filed with and, except in cases where all parties are represented by attorneys or for those filed pursuant to Minn. Stat. § 176.081, subd. 7a, subject to approval by the compensation judge assigned to hear the case or a calendar judge if the matter has not yet been assigned.

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Where a settlement has been agreed upon pursuant to Minn. Stat. § 176.081, subd. 7a, when the offer and acceptance is filed, it shall include findings of fact, conclusions and an award on all issues, including attorney's fees and costs. It shall be filed with the chief hearing examiner who shall immediately send the settlement and the file to the commissioner for entry of the agreed upon award. Where approval is not required pursuant to Minn. Stat. § 176.521, the award required by 9 MCAR § 2.320 G. shall be immediately signed by the compensation judge, served on all parties, and filed with the commissioner.

D. Contents. Stipulations for settlement shall contain the following information:

1. A brief statement of all of the admitted material facts;

2. A detailed statement of the matters in dispute, setting forth the contentions of the parties, supported by all medical reports or other documents in the possession of each party pertaining to each issue;

3. The weekly wage and compensation rate of the petitioner;

4. An itemization of the sums, if any, previously paid by the employer and insurer;

5. A statement that all medical or treatment expenses have been paid by the employer and insurer, or an itemization of the expenses which have not been paid by the employer and insurer, indicating which payments, if any, have been made by the employee. The stipulation shall specifically state whether any third party has paid any of the expenses and, if payments have been made, shall include the name and address of the third party together with any identifying claim or policy number;

6. The number of weeks and rate of compensation and, in cases of permanent partial disability, the percentage loss or loss of use upon which the compromise agreement is based;

7. Where applicable, the amount payable by the employer and insurer to the workers' compensation division for the benefit of the special compensation fund;

8. Where applicable, a statement that the employee has been fully advised of the provisions of Minn. Stat. §§ 176.132 and 176.645, and the effect of the settlement upon any future claims for supplementary benefits or adjustment of benefits;

9. Where applicable, a statement that the petitioner is claiming or waiving his or her right to make application for an award of attorney's fees against the employer or insurer pursuant to Minn. Stat. §§ 176.081, subd. 7 or 8, 176.135 or 176.191.

E. Attorney's fees detailed. Stipulations for settlement of cases in which

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the petitioner have engaged the services of an attorney shall be accompanied by a statement of the amount of attorney's fees requested and an itemization of the costs incurred, specifying who will be responsible for payment of each cost, and shall provide sufficient information to show the reasonableness of the requested fees and costs in accordance with Minn. Stat. § 176.081. If no fees are requested, the stipulation shall so state.

F. Medical reports. Stipulations for settlement shall be accompanied by copies of all medical reports in the possession of the parties which have not previously been filed.

G. Award. The parties involved in the settlement shall submit an award on stipulation prepared for signature by the applicable judge and sufficient copies thereof for all parties to be served if the settlement is approved.

H. Copy to client. The attorney representing the petitioner shall furnish a copy of the stipulation for settlement to his or her client at the time the client signs the stipulation.

I. Signatures. Stipulations for settlement shall be signed by all parties as required by Minn. Stat. § 176.521.

J. Payment. The employer and insurer shall make payments pursuant to an award on stipulation within 14 days from the date the award on stipulation is filed with the commissioner.

9 MCAR § 2.321 Attorney fees.

A. Notice of representation. Whenever an employer or insurer receives notice that an attorney is representing a petitioner, 25 percent of the compensation, not including medical expense, shall be withheld pending an order determining the reasonable value of any claim for legal services or disbursements pursuant to Minn. Stat. § 176.081. Written notice that the compensation is being withheld shall immediately be mailed to the petitioner, the attorney and the division at its Saint Paul office.

B. Filing of certain documents as application. In applicable cases, the filing of a claim petition or an objection to discontinuance of compensation shall constitute an application for the award of attorney fees against the employer and insurer pursuant to Minn. Stat. § 176.081, subd. 7.

C. Application. Application for determination and approval of any claim for legal services or disbursements may be filed by the employer or insurer, the petitioner or the attorney. Unless ordered otherwise by a compensation judge, an application for attorney fees shall be by written petition. Any application shall disclose the amount of compensation withheld, the total fees or disbursements previously paid to said attorney or his associates and, if filed by the attorney for the petitioner, the amount of any retainer fee paid. Applications filed by attorneys shall contain sufficient information to show the reasonableness of the requested fees in accordance with Minn. Stat. § 176.081, subd. 5.

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A separate application is not necessary if filed as part of a stipulation for settlement.

D. Filing. Applications under this rule shall be filed with the compensation judge assigned to hear the case or a calendar judge if no assignment has been made.

E. Settlements. In cases where an offer of settlement has been made, in writing, pursuant to the provisions of Minn. Stat. § 176.081, subd. 7a, and the offer has not been accepted, upon receipt of the compensation judge's decision, the following procedure shall be followed:

1. The party seeking to impose the sanctions imposed by Minn. Stat. § 176.081, subd. 7a, shall file proof of the offer with the chief hearing examiner within ten calendar days of the date of the compensation judge's decision. The filing shall include an order prepared for signature by the chief hearing examiner which would amend the compensation judge's decision.

2. When filing the material requested above, copies shall be served on all other parties at the same time.

3. Any party objecting to the entry of the order shall, within five calendar days of receipt of the proposed order, serve and file an objection, which may be in the form of a letter, stating in detail the reasons why the order should not be signed. A response to the objection, if any, must be filed within five calendar days of the objection.

4. If no objection is received, the chief hearing examiner shall sign, serve and file the order within ten calendar days of its filing. If objection has been received, it shall be determined by the chief hearing examiner within ten calendar days after the filing of the objection. Parties shall not have the right to a hearing on the objection. The chief hearing examiner's determination shall be in writing and is appealable to the Workers' Compensation Court of Appeals.

9 MCAR § 2.322 Taxation of costs and disbursements.

A. Informal request. Prior to submitting a formal request for payment or reimbursement of costs and disbursements, an informal request should be made by the taxing party. If agreement cannot be reached on all items, the taxing party may then proceed as delineated herein, including in the formal request an indication of those costs agreed upon.

B. Service of formal request. Service of the request for taxation of costs and disbursements shall be made upon the other parties, or their attorneys, by the taxing party.

C. Service of objection. An opposing party has five working days from the date of service upon him in which to serve and file a formal objection to taxation or allowance, with admission or proof of service upon the other parties.

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D. Hearing. If requested, a time for hearing before the compensation judge who heard the case shall be fixed. A notice thereof shall be given to the parties by the compensation judge.

9 MCAR § 2.323 Second injury law. If a dispute arises following the notice of intention to claim reimbursement under Minn. Stat. § 176.131, subd. 6, and the commissioner refers the matter to the chief hearing examiner it shall be assigned to a compensation judge for hearing which hearing shall be conducted as provided by Minn. Stat. § 176.411, with right of appeal.

9 MCAR § 2.324 Other hearings. Pursuant to the provisions of Minn. Stat. § 15.052, subd. 3, all hearings not discussed herein but required to be conducted by a compensation judge of the office of administrative hearings shall be conducted in substantial compliance with these rules provided, however, that in any dispute wherein an immediate hearing is necessary in order to carry out the purpose and intent of the Minnesota workers' compensation law, the notice of hearing shall be given not less than five working days prior to the hearing date. The chief hearing examiner shall provide expedited assignment of compensation judges to these hearings and shall assign compensation judges to the hearings in a manner which will allow the compensation judge's decision to be issued immediately upon conclusion of the hearing or as soon thereafter as may be reasonable and practical.

9 MCAR § 2.325 Permanent partial disability panel.

A. Notification to administrator. Upon receipt of a file from the commissioner, if the chief hearing examiner, or a calendar or compensation judge if the case has been assigned to them, determines from a review of the file that permanent partial disability is a significant issue to be determined in the case, the chief hearing examiner shall immediately notify the administrator of the workers' compensation court of appeals if the petitioner resides in a county selected by the court of appeals pursuant to the provisions of Minn. Stat. § 176.152, subd. 7.

B. Questions to panel. When the administrator of the workers' compensation court of appeals notifies the chief hearing examiner of the names and addresses of the members of the permanent partial disability panel, the compensation judge, or the chief hearing examiner in cases in which a compensation judge has not yet been assigned, shall submit written questions to the panel. A copy of the questions shall be served on all parties at the same time.

C. Hearing. When the chief hearing examiner or compensation judge receives the report of the panel, the case shall be set for a regular hearing as soon as practicable.

D. Disputes relating to payment of panel members. Disputes relating to the payment of the fees of panel members arising pursuant to the provisions of Minn. Stat. § 176.152, subd. 6, shall be brought to the attention of the compensation judge assigned to hear the case no later than 20 days prior to the date of the hearing. The parties disputing the fee shall notify the compensa-

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tion judge, in writing, of the intent to dispute the fee, stating therein the specific facts relied upon in disputing the fee. A copy of this notification shall be served on all other parties and the members of the panel at the same time as it is filed with the compensation judge. At the hearing, the dispute shall be determined as other issues in the case.

9 MCAR § 2.326 Exhibits: removal and return.

A. Requests for removal. All requests for permission to remove any exhibit or document from the official file must be made to the compensation judge to whom the file has been assigned or to the supervisor of the docket section of the office.

B. Return without consent or notice. Upon the expiration of the time in which to appeal, all exhibits or other documentary evidence may be returned to their source of origin without the consent of the parties or notice thereto. A copy of the letter of transmittal of the exhibits or documents shall remain in the file as part of the record of the case.

C. Request for return. Upon expiration of the time in which to appeal, exhibits or other documentary evidence shall be returned to their source upon the request of the party producing the exhibit or evidence at the hearing or the party which introduced the evidence into the record. A request for return of exhibits or documents shall be made in writing to the compensation judge, shall contain the title and appropriate identification number of the case in which they were entered into evidence, and shall identify the exhibits or documents requested. A telephone number of the person making the request shall be included with the request.

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PROCEDURES FOR HEARINGS RELATING TO POWER PLANT SITING OR HIGH VOLTAGE TRANSMISSION LINE ROUTING

§ 2.401 Scope and purpose. The procedures contained herein shall govern the conduct of all hearings conducted for the Environmental Quality Board involving the siting of large electric power generating plants, the routing of high voltage transmission lines and to the route exemption process contained in Minn. Stat. § 116C.57, subd. 5, provided, however, that the procedures for hearing concerning the revocation or suspension of a site certificate or construction permit shall be those contained in Minn. Rule HE Chapter Two, as are the hearings conducted pursuant to Minn. Stat. § 116C.57, subd. 3, relating to the determination of emergencies (see 9 MCAR § 2.416).

§ 2.402 Definitions.

A. Board. Board means the Environmental Quality Board.

B. Intervenor. Intervenor means any person granted permission to intervene in any proceeding pursuant to these rules.

C. Party. Party means the applicant, persons proposing routes or sites which the Board orders to be considered pursuant to Minn. Stat. ch. 116C and rules adopted thereunder, and persons granted permission to intervene pursuant to 9 MCAR § 2.408. State agencies or participating department staff, citizen committees appointed by the Board, shall intervene if they are to formally advocate one route or site in preference to another. Notice is given that, pursuant to Minn. Stat. § 15.0421, only parties who could be adversely affected by the Report of the Hearing Examiner can be legally assured of the opportunity to present argument to the Board prior to its decision.

D. Person. Person means an individual, partnership, joint venture, private or public corporation, association or society, firm, public service company, cooperative, political subdivision, municipal corporation, governmental unit or agency, public utility district, or any other entity, public or private, however organized.

E. Proceeding/proceedings. As used herein, these terms mean all events including prehearings, hearings, orders and reports issued necessary to the completion of this hearing process on any application by a utility for the siting of a power plant, the routing of a transmission line, or exemptions.

F. Service; serve. Unless otherwise provided by law, service or serve means service by First Class United States mail, postage prepaid, and addressed to the person to be served at his last known address. An affidavit of service shall be made by the person making such service. Service by mail is complete upon the placing of the item to be served in the mail. Service may also be made personally.

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§ 2.403 Hearing examiners.

A. Request for assignment. When the Board desires to order a hearing under this Chapter, it shall first file with the Chief Hearing Examiner a request for assignment of a Hearing Examiner, together with a draft of the notice of hearing proposed to be published and served.

B. Assignment. Within ten days of receipt of a request pursuant to 9 MCAR § 2.403 A., the Chief Hearing Examiner shall assign a Hearing Examiner to hear the case, and the Hearing Examiner shall advise the Board as to the location at which and time during which a hearing should be held so as to allow for participation by all affected persons.

C. Duties. Consistent with law, the Hearing Examiner shall perform the following duties:

1. Grant or deny motions for discovery or for the taking of depositions.

2. Receive and act upon requests for subpoenas.

3. Hear and rule on motions.

4. Preside at the hearing.

5. Administer oaths and affirmations.

6. Grant or deny continuances.

7. Examine witnesses where he deems it necessary.

8. Prepare finds of fact, conclusions and recommendations.

9. Make preliminary, interlocutory or other orders as he deems appropriate.

10. Do all things necessary and proper to the performance of the foregoing.

§ 2.404 Commencement.

A. Notice of hearing. Proceedings under this chapter are commenced by the Board issuing a Notice of Hearing pursuant to the requirements of Minn. Stat. ch. 116C. The Notice of Hearing shall contain, but not be limited to, the following:

1. The date, time and place for each hearing.

2. Name and address and telephone number of the Hearing Examiner.

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3. A citation to the Board's statutory authority to hold the hearing and to take the action proposed.

4. A description of the proposed project together with a citation to the relevant statutes or rules.

5. Notification that all persons may be represented by legal counsel, but that such representation is not required.

6. A citation to these rules and to any applicable procedural rules of the Board and where they may be obtained.

7. The name, address, phone number and function of the Public Advisor designated by the Board pursuant to Minn. Stat. § 116C.59, subd. 3.

8. The name, address and telephone number of the appropriate member of the Power Plant Siting Staff who will be representing the Board and the name, address and telephone number of the member of the Attorney General's staff who may be contacted for advice on matters dealing with Board procedures.

9. A statement advising all persons of the right to intervene, the procedures which must be complied with, and a summary description of the rights and responsibilities intervening parties have as opposed to other persons wishing to participate.

10. The date, time and place of any prehearing conference.

11. The place where all interested persons may review all materials including all prefiled testimony, and the date when such will be available.

12. A listing of the existing parties giving the name and address of the person designated to receive all notices.

13. A statement of the commencement times and places of the public hearings where cross-examination by parties will occur, where questioning by interested persons will occur, and where direct testimony or comments from the public will occur.

14. A statement indicating that hearings may be recessed and reset by the Hearing Examiner pursuant to 9 MCAR § 2.413.

15. A listing of witnesses exempted from appearing throughout the hearing process pursuant to 9 MCAR § 2.413 B., and a listing of the dates and places such witnesses will be in attendance.

B. Subsequent notices. The Hearing Examiner may order subsequent notices to be issued by the Board as he deems appropriate containing corrections of earlier notices and additional information available after issuance of earlier notices. Such subsequent notices shall be disseminated in the same

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manner as the original notice, unless the Hearing Examiner, for good cause shown, orders some other method of dissemination.

C. Defects in the notices shall not invalidate the proceedings, provided a bona fide attempt to comply with this rule has been made.

§ 2.405 **Right to counsel.** All persons may be represented by legal counsel, or by a person of their choice, or they may represent themselves.

§ 2.406 **Time.**

A. Computation of time. In computing any period of time prescribed by these rules or the procedural rules of the Board, the day of the last act, event, or default from which the designated period of time begins to run shall not be included. The last calendar day of the period so computed shall be included, unless it is a Saturday, Sunday or legal holiday, in which event the next working day shall be deemed the last day of the period.

B. Additional time after service by mail. Whenever a person has the right or is required to do some act or take some action within a prescribed period after the service of a notice or other paper upon him, or whenever such service is required to be made within a prescribed period before a specified event, and the notice or paper is served by mail, three days shall be added to the prescribed period.

§ 2.407 **Public participation.** At all hearings conducted pursuant to this chapter, all persons will be allowed and encouraged to participate without the necessity of intervening as parties. Such participation shall include, but not be limited to:

A. Offering direct testimony with or without benefit of oath or affirmation and without the necessity of prefiling as required by 9 MCAR § 2.413 I.

B. Offering direct testimony or other material in written form at or following the hearing. However, testimony which is offered without benefit of oath or affirmation, or written testimony which is not subject to cross-examination, shall be given such weight as the Hearing Examiner deems appropriate.

C. Questioning all persons testifying. Any person who wishes to cross-examine a witness but who does not want to ask questions orally, may submit questions in writing to the Hearing Examiner, who will then ask the questions of the witness. Questions may be submitted before or during the hearings.

§ 2.408 **Intervention.**

A. Petition. Any person desiring to intervene in the hearings as a party shall submit a timely petition to intervene to the Hearing Examiner and shall serve the petition upon all existing parties. Timeliness will be determined by the Hearing Examiner in each case based on circumstances at the time of

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filing. The petition shall show how the petitioner's legal rights, duties or privileges may be determined or affected by the proceedings, how his rights, duties and privileges are not otherwise represented, and shall set forth the grounds and purposes for which intervention is sought and shall indicate petitioner's statutory or legal right to intervene, if one should exist. The Hearing Examiner, with the consent of all parties, may waive the requirement that the petition be in writing.

B. Objection. Any party may object to the petition for intervention by filing a Notice of Objection with the Hearing Examiner within seven days of service of the petition. The Notice shall state the party's reasons for objecting and shall be served upon all parties and the person petitioning to intervene.

C. Order. The Hearing Examiner shall allow intervention upon a proper showing pursuant to 9 MCAR § 2.408 A. unless the Hearing Examiner finds that the petitioner's interest is adequately represented by one or more parties participating in the case. In the event the Hearing Examiner finds that one or more petitions are similar, he may order the petitions to be consolidated as one, allowing all such petitioners intervention but only as one party.

D. Responsibilities of intervenors. Once a petition to intervene has been granted, an intervenor shall have all of the rights and responsibilities of a party.

§ 2.409 Disqualification. The Hearing Examiner shall withdraw from participating in the proceedings at any time if he deems himself disqualified for any reason. Upon the filing in good faith by a person of an affidavit of prejudice, the Chief Hearing Examiner shall determine the matter as a part of the record provided the affidavit shall be filed no later than five days prior to the date set for the first hearing date.

§ 2.410 Prehearing conference.

A. Purpose. The purpose of the prehearing conference is to simplify the issues to be determined, to obtain stipulations to foundation for testimony or exhibits, to discuss schedules for hearings and other procedural events, and to resolve other matters that may be necessary or appropriate. Potential intervenors, and other interested persons, may attend the prehearing conference.

B. Procedure. Upon the request of any party or upon his own motion, the Hearing Examiner may, in his discretion, hold a prehearing conference which shall be held at a time, date and place to be determined by the Hearing Examiner to best maximize the ability of all interested persons to attend. Notice of any prehearing conference shall be given in the Notice of Hearing, if possible. Otherwise, notice shall be given pursuant to 9 MCAR § 2.404 B. The Hearing Examiner may require the parties to file a prehearing statement prior to the prehearing conference which shall contain such items as the Hearing Examiner deems necessary to promote a useful prehearing conference. A prehearing conference shall be an informal proceeding conducted expeditiously

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by the Hearing Examiner. Agreements on the simplification of issues, amendments, stipulations, or other matters may be entered on the record or may be made the subject of an order by the Hearing Examiner.

§ 2.411 Depositions to preserve testimony. Upon the request of any person, the Hearing Examiner may order that the testimony of any witness be taken by deposition to preserve his testimony in the manner prescribed by law for depositions in civil actions. The request shall indicate the relevance of the testimony and shall make a showing that the witness will be unable or cannot be compelled to attend the hearing or show other good cause.

§ 2.412 Subpoenas. Requests for subpoenas for the attendance of witnesses or the production of documents shall be made in writing to the Hearing Examiner and shall contain a brief statement demonstrating the potential relevance of the testimony or evidence sought and shall identify any documents sought with specificity. The Hearing Examiner will grant the request for subpoenas only upon a finding of such relevance.

A. Service of subpoenas.

1. A subpoena shall be served in the manner provided by the Rules of Civil Procedure for the District Courts of the State of Minnesota unless otherwise provided by law.

2. The cost of service, fees, and expenses of any witness subpoenaed shall be paid by the person at whose request the witness appears.

3. The person serving the subpoena shall make proof of service by filing the subpoena with the Hearing Examiner, together with his affidavit of service.

B. Motion to quash. Upon motion made promptly, and in any event at or before the time specified in the subpoena for compliance therewith, the Hearing Examiner may quash or modify the subpoena if he finds that it is unreasonable or oppressive.

§ 2.413 Hearings.

A. Hearing procedures.

1. Conduct of the proceedings. The proceedings shall be conducted substantially in the following manner:

a. After opening the hearing, the Hearing Examiner shall indicate the procedural rules for the hearing including, but not limited to, the following:

(1) All persons may present evidence and argument with respect to the issues and cross-examine witnesses.

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(2) All persons may be represented by legal counsel, but such representation is not required.

(3) The rules of evidence as set forth in 9 MCAR § 2.413 E.

b. Cross-examination shall be conducted in a sequence determined by the Hearing Examiner.

c. The record of the hearing shall be closed at a date to be set by the Hearing Examiner. Such date will correspond to a specific number of calendar days beyond the close of the last hearing date, computed pursuant to 9 MCAR § 2.406 A. Written comment will be accepted if postmarked no later than the date set by the Hearing Examiner. However, the record shall remain open beyond that date for the sole purpose of receiving the final Environmental Impact Statement.

2. Sequence of the proceedings.

a. All hearings shall recess at 11:00 p.m. unless the Hearing Examiner determines that the public interest will best be served in any given hearing by continuing the hearing beyond 11:00 p.m. The Hearing Examiner may, in his discretion, order a time and place for a continuance of that hearing.

b. The hearing may be scheduled in two stages. The first stage shall be for the purpose of introducing into evidence all of the prefiled direct testimony of the parties, and the cross-examination of each witness by all other parties. The subsequent stage shall be for the purpose of allowing all other interested persons to present their direct testimony and to question witnesses that offered testimony during the first stage of the hearing process.

c. Nothing contained herein shall be interpreted so as to prevent the public from being present during the first stage of the proceedings or to question witnesses at an appropriate time during the first stage of the proceedings, should time allow. The Hearing Examiner may give priority to those members of the public desiring to ask questions which would enable them to better prepare for cross-examination during subsequent stages. It is the intended purpose of the two-stage process to establish specific hearing dates for the primary purpose of public participation in order to avoid inconveniencing the general public by requiring them to wait until late at each hearing before having opportunity to offer direct testimony and ask questions. However, at the discretion of the Hearing Examiner, the applicant and other parties may present a brief summary of the prefiled direct testimony at the beginning of each session.

d. Nothing contained herein shall be interpreted so as to prevent the Hearing Examiner from establishing additional hearing dates on Motion or at his discretion.

3. Representation of state agencies. Any state agency which participates in the proceedings as a party may only participate through its desig-

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nated representative or counsel. Exceptions to this rule may be allowed at the discretion of the Hearing Examiner for good cause shown.

B. Availability of witnesses. All witnesses who offer prefiled direct testimony in compliance with 9 MCAR § 2.413 I., shall be available for questioning by interested persons at each hearing date and place. In the event a witness cannot be available throughout the hearing process, the party on whose behalf the witness testified shall request an exemption from this rule of the Hearing Examiner prior to the publication of the Notice of Hearing. The request shall state the reasons why the witness cannot be present at each hearing, and the date, or dates, on which the witness can be available. For good cause shown, the Hearing Examiner shall grant the exemption and shall immediately notify the Board. The Board shall then include in the Notice of Hearing a statement indicating the name of the witness, the nature of his testimony, and the dates and places where the witness will be available for questioning by all parties and persons. The party requesting the exemption shall do so in writing and shall serve a copy of the request on all other parties. Any party may object to the exemption by filing his written objection with the Hearing Examiner and serving a copy on all parties within five working days of the date of the request. In the event an objection is made, the Hearing Examiner shall immediately notify all parties of the date, time and place where he will hear arguments on the request, subsequent to which he shall issue an order granting or denying the request for exemption. The Hearing Examiner may also grant exemptions, at any time, upon a showing of need due to unforeseeable circumstances. The same notice and objection procedure may be followed if circumstances permit, or the Hearing Examiner may utilize any other procedure if he deems it more appropriate. A subsequent Notice of Hearing shall issue reflecting any such exemption granted by the Hearing Examiner.

In the event a witness has prefiled testimony and fails to present himself for questioning, such prefiled testimony shall be given such weight as the Hearing Examiner deems appropriate.

C. Rights of persons. All persons shall have the right to present evidence, rebuttal testimony and argument with respect to the issues and to cross-examine witnesses.

D. Witnesses. Any person may be a witness or present witnesses on his behalf at the hearings. Direct testimony shall be admitted as allowed by 9 MCAR § 2.407.

E. Rules of evidence.

1. General rules. The Hearing Examiner may admit all evidence which possesses probative value, including hearsay, if it is the type of evidence on which prudent persons are accustomed to rely in the conduct of their serious affairs. The Hearing Examiner shall give effect to the rules of privilege recognized by law. Evidence which is incompetent, irrelevant, immaterial or unduly repetitious may be excluded.

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2. Evidence must be offered to be considered. All evidence to be considered in the case, including all records and documents (except tax returns and tax reports) in the possession of the Board or a true and accurate photocopy thereof, shall be offered and made a part of the record in the case. No other factual information or evidence (except tax returns and tax reports) shall be considered in the determination of the case.

3. Documentary evidence. Documentary evidence in the form of copies or excerpts may be received or incorporated by reference in the discretion of the Hearing Examiner.

4. Notice of facts. The Hearing Examiner may take notice of judicially cognizable facts but shall do so on the record and with the opportunity for any person to rebut.

5. The burden of proof. Any route or site proposer must prove the facts at issue by a preponderance of the evidence, unless the substantive law provides a different burden.

6. Weight of testimony. Oral testimony received without benefit of oath or affirmation and written submissions that are not subject to cross-examination shall be given such weight as the Hearing Examiner deems appropriate.

F. The record.

1. Preparation of record. Pursuant to Minn. Stat. § 15.0418, the Office of Hearing Examiners, upon certification of the official record of the case by the Board to it, shall prepare and maintain the official record in each proceeding.

2. Contents of the record. The record in a hearing shall contain:

a. All pleadings, motions and orders;

b. Evidence received or considered;

c. Offers of proof, objections and rulings thereon;

d. The Hearing Examiner's findings of fact, conclusions and recommendations;

e. All memoranda or data submitted by any person and considered by the Hearing Examiner in connection with the case.

f. The transcript of each hearing, if any.

3. The transcript.

a. Reporter. Unless the Chief Hearing Examiner determines that the

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use of a court reporter is more appropriate, an audio-magnetic recording device shall be used to keep a record at any hearing which takes place under this chapter.

b. Transcription. The verbatim record shall be transcribed if requested by a person or in the discretion of the Chief Hearing Examiner. If a transcription is made, the Chief Hearing Examiner may require the requesting person and other persons who request copies of the transcript from him to pay a reasonable charge therefor. The charge shall be set by the Chief Hearing Examiner, and all monies received for transcripts shall be payable to the State Treasurer and shall be deposited in the State Office of Hearing Examiners account in the State Treasury.

4. Environmental documents. Any draft Environmental Impact Statement (in the case of routes) or any draft Environmental Report (in the case of sites) required to be prepared by rules of the Board shall be entered into the record at a point during the hearing process which will allow all persons an opportunity to review and comment on the material. In addition, all comments and responses to comments which the Board desires to consider shall be entered into the record promptly after they are received.

G. Continuances. During a hearing, if it appears in the interest of justice that further testimony should be received, the Hearing Examiner, in his discretion, may continue the hearing to a future date and such oral notice on the record may be sufficient.

H. Motions. No motions shall be made directly to or be decided by the Board subsequent to the appointment of a Hearing Examiner and prior to the completion and filing of the Hearing Examiner's report unless the motion is certified to the Board by the Hearing Examiner. Uncertified motions shall be made to the Hearing Examiner and considered by the Board in its consideration of the record as a whole subsequent to the filing of the Hearing Examiner's report.

I. Prefiled testimony. All direct testimony to be offered by any party proposing a route or site shall be prepared in advance in question and answer form and shall be filed 14 days prior to the first hearing date in the following manner:

1. The original and one copy with the Hearing Examiner;

2. One copy with the Board;

3. One copy with each party; and

4. One copy at a place in each county where a hearing is to be held pursuant to statute at a location designated by the Board for public review.

Said testimony will be part of the record in each proceeding as if read, but all of the witnesses shall be available for cross-examination and questioning at

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each and every hearing subject to the provisions of 9 MCAR § 2.413 B. Objections to such direct testimony may be made by any person, any time during the hearings conducted pursuant to this chapter. Five copies of the prefiled testimony of each witness shall be made available for the review by the public at each hearing.

At the hearing, the party presenting the testimony may, if it deems appropriate, briefly summarize the prefiled testimony prior to start of cross-examination.

Nothing contained herein shall be deemed to foreclose any party from presenting rebuttal testimony or from presenting testimony in response to reasonably unforeseen areas, both without the necessity of prefiling.

J. Disruption of hearing.

1. Cameras. Television, newsreel, motion picture, still or other cameras shall be operated in a manner as not to disrupt the hearing. The Hearing Examiner may limit operation if disruption occurs.

2. Other conduct. Pursuant to and in accordance with the provisions of Minn. Stat. § 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 Hearing Examiner shall read this rule to those persons causing such interference or disruption and thereafter proceed as he deems appropriate.

§ 2.414 The decision.

A. Basis for determination.

1. The record. No factual information or evidence, except tax returns and tax reports, which is not a part of the record shall be considered by the Hearing Examiner or the Board in the determination of a hearing.

2. Administrative notice. The Hearing Examiner or the Board may take administrative notice of general, technical or scientific facts within their specialized knowledge in conformance with the requirements of Minn. Stat. § 15.0419, subd. 4.

B. Hearing Examiner's report. Following the close of the record and the completion of the transcript, the Hearing Examiner shall make his report pursuant to Minn. Stat. § 15.052, subd. 3, and, upon completion, a copy of said report shall be served upon all parties by First Class mail. A copy of the report shall also be filed at places designated for public review pursuant to 9 MCAR § 2.413 I. 4.

C. Board decision. Following receipt of the Hearing Examiner's report, the Board shall proceed to make its final decision in accordance with Minn. Stat. ch. 15 and ch. 116C.

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§ 2.415 **Rehearing.** A rehearing pursuant to Board order shall be commenced in the same manner as set forth for commencement of proceeding in 9 MCAR § 2.404. The rehearing shall be conducted in the same manner prescribed for a hearing.

§ 2.416 **Emergency procedures.** Any hearings held pursuant to section 116C.57, subd. 3, to determine if an emergency exists shall be governed by the contested case procedures contained in Chapter Two of the Rules of the Office of Hearing Examiners. If the Board finds that an emergency does exist, then any hearings on the designation of a site or route shall be governed by the rules contained in this chapter (Chapter 4), provided, however, that the Hearing Examiner, in his discretion, may modify any time limits contained herein if he finds that such modification is needed to expedite the hearings.

§ 2.417 **Severability.** If any provision of these rules is held invalid, such invalidity shall not affect any other provisions of the rules which can be given effect without the invalid provision, and to this end, the provisions of these rules are declared to be severable.

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Chapter Five: Rules Governing Hearings Based on the Revenue Recapture Act

9 MCAR S 2.501 Scope and waiver of these rules.

A. Scope. These rules govern hearings between state agencies and taxpayers based on the Revenue Recapture Act, (Laws of Minnesota 1980, chapter 607, article XII, to be codified as Minnesota Statutes, sections 270A.01 to 270A.12 (1980)). In addition, these rules may be used for any other hearings conducted by the State Office of Administrative Hearings if all parties to a particular hearing agree to use them. In the event that these rules are used for a proceeding other than one arising under the Revenue Recapture Act, the parties shall agree upon appropriate substitutions for terms in the rules which are peculiar to the Revenue Recapture Act (example: claimant agency, debtor, etc.).

B. Waiver and modification. Upon request of all parties, the hearing examiner shall waive or modify any of these rules provided that such waiver or modification does not conflict with any provision of Minnesota Statutes, sections 15.0418 to 15.0426, section 15.052, or sections 270A.01 to 270A.12.

9 MCAR S 2.502 Definitions.

A. Agency, claimant agency: Agency or claimant agency means the state or public agency asserting a claim to a tax refund.

B. Debtor: Debtor means a natural person whose tax refund is the subject of a claim by the claimant agency.

C. Party: Party means the claimant agency, the debtor, and any other persons granted permission to intervene pursuant to 9 MCAR S 2.506 of these rules.

D. Service, serve: Service or serve may be accomplished by either:

1. Delivering a document to an individual in person or by leaving a document at his/her home with some person of suitable age and discretion who resides in the same house. If a person is confined to a federal or state institution, a copy of the document must also be served upon the chief executive officer of the institution; or,

2. Mailing the document to the person by first class United States mail. Postage shall be prepaid. Mail to a person other than a state agency shall be addressed to the last known address of the person. Agencies of the state of Minnesota may also deposit the document with the Central Mailing Section, Publications Division, Department of Administration, addressed as above.

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9 MCAR S 2.503 Initiating a hearing.

A. Request for assignment. Any agency desiring to order a hearing shall first contact the Chief Hearing Examiner or his designee and request the assignment of an examiner. The request shall include a proposed date, time and place for the hearing. If requested by the Chief Hearing Examiner or his designee, the agency shall file a copy of the Notice of Hearing proposed to be issued.

B. Assignment. Within ten days of the receipt of a request, the Chief Hearing Examiner or his designee shall assign an examiner to hear the case. Unless the Chief Hearing Examiner or his designee have already agreed with the agency, the examiner shall advise the agency as to the location, date and time for the hearing. In offering such advice, the examiner shall consider the location of known parties, witnesses and other participants so as to maximize convenience and minimize cost. After reaching agreement with the Chief Hearing Examiner or his designee or upon receiving advice from the examiner, the agency shall issue the Notice of Hearing.

9 MCAR S 2.504 The notice of hearing.

A. The Notice of Hearing shall be served at least 20 days before the hearing.

B. Content of notice. The Notice of Hearing shall be served upon all parties. The notice shall be worded in clear, nontechnical language and shall contain, at a minimum, the following:

1. The time, date and place for the hearing.

2. The name, address and telephone number of the hearing examiner.

3. A statement of the allegations or issues to be determined at the hearing, together with a citation to any relevant statutes and rules. If the debt arises from more than one event or transaction, each event or transaction shall be noted.

4. A citation to the statutory authority to hold the hearing and to take the action proposed.

5. A citation to these rules, and notification of how copies may be obtained.

6. A brief description of the procedure to be followed at the hearing.

7. The name, address and telephone number of the agency representative to be contacted to discuss informal disposition

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of the dispute, along with an explanation of the types of informal disposition which the agency might consider.

8. Notification that a party need not be represented by an attorney but may choose to be represented by an attorney or any other person of their choice.

9. A statement advising the parties to bring to the hearing all documents, records, and witnesses they need to present their position. In addition, a statement that subpoenas may be available to compel the attendance of witnesses or the production of documents and a reference to the rule relating to subpoenas, 9 MCAR S 2.509.

10. A statement advising parties that failure to appear at the hearing will result in the allegations of the notice being taken as true, and a statement which explains the possible results if the allegations are taken as true.

9 MCAR S 2.505 Default.

A. A default occurs when a party fails to appear at a hearing.

B. If the claimant agency appears at a hearing but the debtor does not, the allegations in the notice of hearing shall be taken as true and deemed proved without further evidence. If the debtor appears at a hearing, but the claimant agency fails to appear, the examiner shall recommend that the hearing be dismissed with prejudice. If neither the claimant party nor the debtor appear at a hearing, the examiner shall recommend that the case be dismissed with prejudice.

9 MCAR S 2.506 Additional parties -- intervention.

A. Petition. Any person not named in the notice of hearing who desires to participate as a party shall submit a written petition to intervene to the examiner and shall serve a copy of the petition upon all existing parties and the agency. The petition shall show (1) how the petitioner's legal rights, duties, or privileges may be determined or affected by the proceeding, (2) shall set forth the grounds and purposes for which intervention is sought, and (3) shall indicate petitioner's statutory right to intervene if one should exist.

B. Objection. Any party may object to the petition for intervention by filing a written notice of objection with the examiner within seven days of service of the petition if there is sufficient time before the hearing. The notice shall state the party's reasons for objection and a copy shall be served upon all parties, the person petitioning to intervene and the agency. If there is insufficient time before the hearing for such written objection, the objection may be made orally at the hearing.

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C. Order. The examiner shall allow intervention upon a proper showing pursuant to paragraph A. above unless the examiner finds that the petitioner's interest is adequately represented by one or more other parties participating in the case.

9 MCAR S 2.507 Prehearing procedures.

A. Prehearing conference. Upon the request of any party or upon his/her own motion, the examiner shall hold a prehearing conference prior to the hearing, if the amount in controversy in any case exceeds $1,000.

1. Purpose. The purpose of the prehearing conference is to simplify the issues to be determined at the hearing; to consider amendment of the agency's notice if necessary; to obtain agreements in regard to uncontested facts or admissibility of testimony or exhibits; to determine the identity and number of proposed witnesses for each party; to consider such other matters that may be necessary or advisable; and, if possible, to reach a settlement without the necessity for further hearing.

2. Procedure. A prehearing conference shall be an informal proceeding conducted expeditiously by the examiner. Agreements on the simplification of issues, uncontested facts, admissibility of evidence, or other matters shall be either entered on the record at the hearing or be made the subject of a written order by the examiner.

B. Prehearing motions. If a party desires the examiner to issue an order before the hearing or during a continuance in the hearing, (other than a request for a continuance or a subpoena), he/she shall make a request to the examiner in writing. The request shall state, in detail, the need for the order and what is being requested. A copy of the request shall be served upon all known parties. If a party is opposed to the granting of a motion, he should notify the examiner as soon as possible. Orders on motions may be either oral or written but the examiner shall notify all parties of record of the order.

9 MCAR S 2.508 Prehearing discovery. A party may demand that any other party disclose the names and addresses of all witnesses that the other party intends to have testify at the hearing. The demand shall be in writing and shall be directed to the party or his/her attorney. Responses to the demand shall be served within ten days of receipt of the demand. Any witnesses unknown at the time of the disclosure shall be disclosed as soon as they become known. Any party unreasonably failing, upon demand, to make such disclosure shall be foreclosed from presenting any evidence at the hearing through an undisclosed witness.

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9 MCAR S 2.509 Subpoenas.

A. Requests. A party desiring to compel the attendance of a witness or the production of documents shall file with the examiner a written request for a subpoena. The request shall indicate:

1. The name and address of the person upon whom the subpoena will be served;

2. A brief statement of the potential relevance of the testimony or documents sought;

3. If the subpoena request is for the production of documents, the documents sought should be identified with specificity.

B. Service of Subpoenas. Subpoenas shall be served personally in the manner provided in 9 MCAR S 2.502 D.1. They shall not be served by mail. The witness fees applicable in the district courts pursuant to Minnesota Statutes, section 357.22 shall apply and shall be paid to the potential witness at the time of service. Such fees are $10 per day for each day of attendance plus 12 cents per mile for travel going to and returning from the place of attendance, to be estimated from the witness' residence.

C. Objection to a subpoena. Any person served with a subpoena who has an objection to it may file an objection with the examiner. The objection shall be filed promptly, and in any event at or before the time specified in the subpoena for compliance. The examiner shall cancel or modify the subpoena if he/she finds that it is unreasonable or oppressive, taking into account (1) the issues or amounts in controversy, (2) the costs or other burdens of compliance when compared with the value of the testimony or evidence sought for the presentation of a party's case, and (3) whether or not there are alternative methods of obtaining the desired testimony or evidence. Modification may include requiring the party requesting the subpoena to pay reasonable costs of producing documents, books, papers or other tangible things.

9 MCAR S 2.510 Changes in date, time or place.

A. Requests. Any party who desires to change the date, time or place from that announced in the notice of hearing shall contact the other known parties, or their representatives, and seek agreement regarding a new time, date or place. If the parties can agree, and if the examiner's schedule allows, the examiner shall approve the change.

B. Notice. If time permits, the agency shall send a written notice to all parties and the examiner setting forth the new time, date or place.

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C. Continuances during a hearing. If it appears in the interest of justice that further evidence should be received, the examiner shall continue the hearing to a future date. Oral notice on the record shall be sufficient notice of the additional date.

9 MCAR S 2.511 Conduct of the hearing.

The hearing shall be conducted substantially in the following manner:

A. The examiner shall open the hearing by reading the title of the case, stating the amount claimed by the claimant agency and briefly stating the facts as alleged in the notice of hearing which give rise to the claim.

B. Any stipulations, settlement agreements or consent orders entered into by any of the parties prior to the hearing shall be entered into the record.

C. The claimant agency shall have the burden of proof and shall begin the presentation of evidence. It shall be followed by the other parties in a sequence determined by the examiner.

D. Testimony may be given in narrative fashion by witnesses rather than by question and answer format.

E. Cross-examination of witnesses shall be conducted in a sequence and in a manner determined by the examiner to expedite the hearing while ensuring a fair hearing. At the request of the party whose witness is being cross-examined, the examiner shall make such rulings as are necessary to prevent argumentative, repetitive or irrelevant questioning and to expedite the cross-examination to the extent consistent with the disclosure of all relevant testimony and information.

F. Any party may be a witness or may present other persons as witnesses at the hearing. All oral testimony at the hearing shall be under oath or affirmation.

G. A party may question an adverse party or any witness identified with an adverse party, by leading questions and contradict and impeach him/her on material matters.

H. When all parties and witnesses have been heard, the hearing shall be closed unless a continuance has been ordered under 9 MCAR S 2.510.

9 MCAR S 2.512 Rights and obligations of parties.

A. Be prepared. A party shall have all evidence to be presented, both oral and written, available on the date set for hearing. Requests for subpoenas, depositions, or continuances shall be made within a reasonable time after their need becomes

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evident to the requesting party.

B. Respond to orders from the examiner. If the examiner orders that parties do an act, or not do an act, the parties shall comply with the order. If a party objects to an order, such objection shall be stated in advance of the order as part of the record.

C. Right to receive copies. The examiner shall send copies of all orders or decisions to all parties simultaneously. Any party sending a letter, exhibit, brief, memorandum, or other document to the examiner shall simultaneously send a copy to all other parties, provided, however, that this requirement shall not apply to requests for subpoenas.

D. Right to counsel and communication with represented party. A party need not be represented by an attorney. He/she may represent himself/herself, or may be represented by an attorney or any other person of his/her choice. If a party has notified other parties that he/she will be represented by an attorney, all communications shall be directed to that attorney.

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9 MCAR S 2.513 Rights and obligations of non-parties.

A. Testify and offer evidence. Any person may offer testimony or other evidence relevant to the case. Any non-party offering testimony or other evidence may be questioned by parties to the proceeding.

B. Question witnesses. Generally, non-parties shall not be allowed to question witnesses, provided, however, that the examiner may allow such questioning if he/she deems it necessary for the development of a full and complete record.

9 MCAR S 2.514 Rights and obligations of the examiner.

A. Impartiality. An examiner assigned to a case shall be free of any personal, political or economic association that would impair his/her ability to function in a fair and objective manner. Should an examiner believe that he/she cannot comply with this rule, he/she shall withdraw from the case.

B. Communication with parties or others. The examiner shall not communicate, directly or indirectly, with any person or party concerning any issue of fact or law relevant to a pending case except upon notice to all parties and opportunity for them to participate. When these rules authorize communications contrary to this prohibition, such communications shall be limited to only those matters permitted by these rules.

C. Duties. Consistent with law and these rules, the examiner shall perform the following duties:

1. Receive, and recommend action to the Chief Hearing

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Examiner upon receipt of, requests for subpoenas.

2. Hear and rule on motions.

3. Preside at the hearing.

4. Administer oaths and affirmations.

5. Grant or deny continuances.

6. Examine witnesses where deemed necessary to make a complete record.

7. Prepare findings of fact, conclusions and recommendations.

8. Make preliminary, interlocutory or other orders as deemed necessary to assure a fair hearing.

9. Recommend a summary disposition of the case or any part thereof where there is no genuine issue as to any material fact or recommend dismissal where the case or any part thereof has become moot or for other reasons.

10. Do all things necessary and proper to the performance of the foregoing.

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9 MCAR S 2.515 Rules of evidence.

A. General rules. The examiner shall admit all evidence which logically tends to prove or disprove an important fact, including hearsay, if it is the type of evidence on which reasonable prudent persons are accustomed to rely in the conduct of their serious affairs. The examiner shall give effect to the rules of privilege recognized by law. Evidence which is incompetent, irrelevant, immaterial, or unduly repetitious shall be excluded.

B. Evidence must be offered to be considered. All evidence to be considered in the case, including all records and documents in the possession of the claimant agency or a true and accurate photocopy thereof, shall be offered and made a part of the record in the case. No other factual information or evidence shall be considered in the determination of the case.

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C. Documentary evidence. Documentary evidence may be introduced in the form of copies or excerpts or may be incorporated by reference into the record. Copies of a document shall be received to the same extent as the original document unless (1) a genuine question is raised as to the accuracy or authenticity of the copy or (2) in the circumstances, it would be unfair to admit the copy in lieu of the original.

D. Notice of facts. The examiner may take notice of judicially cognizable facts but shall do so on the record and

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with the opportunity for any party to contest the facts so noticed.

9 MCAR S 2.516 Burden and standard of proof. The claimant agency shall have the burden of proving the amount and existence of the debt and its right to collect the debt by a preponderance of the evidence. If the debtor asserts any affirmative defenses, the debtor shall have the burden of proving the existence of any such defense by a preponderance of the evidence.

9 MCAR S 2.517 Timing of the decision. Following the close of the record, the examiner shall make his/her report pursuant to Minnesota Statutes, section 15.052, subdivision 3, and, upon completion, a copy of said report shall be served upon all parties.

9 MCAR S 2.518 The record.

A. The examiner shall maintain the official record in each case until the issuance of the report, at which time the record (except for the audio-magnetic recordings thereof) shall be sent to the agency.

B. What the record shall contain. The record shall contain:

1. The notice of hearing and all motions and orders which have been reduced to writing;

2. Evidence received or considered;

3. An audio-magnetic recording of the hearing;

4. The examiner's report;

5. All memoranda or data submitted by any party in connection with the case;

6. The transcript of the hearing, if one was prepared.

C. The record of the contested case proceeding shall be closed upon the completion of the testimony, receipt of the final written memorandum or transcript, if any, or late-filed exhibits which the parties and the examiner have agreed should be received into the record, whichever occurs latest.

D. The transcript. The audio-magnetic recording of the hearing shall be transcribed if requested by a party or if ordered by the Chief Hearing Examiner. If a transcription is made, the Chief Hearing Examiner shall require the requesting person and other persons who request copies of the transcript from him to pay a reasonable charge therefor. The charge shall be set by the Chief Hearing Examiner and all monies received for transcripts shall be payable to the State Treasurer and shall be

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deposited in the State Office of Administrative Hearings' Account in the State Treasury.

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9 MCAR S 2.519 Disruption of the hearing.

A. Cameras. Television, newsreel, motion picture, still or other cameras may be operated in the hearing room during the course of the hearing unless the examiner determines that such operation is disrupting the hearing.

B. Recordings. The official audio-magnetic recording of the hearing shall be made by the examiner. Any party may also record all or part of the proceedings. Non-parties may record all or part of the proceedings unless the examiner determines that such recording is disrupting the hearing. In the event of failure of recording equipment, the examiner may direct any person or party to provide the examiner with the original or a copy of any recording of the proceeding upon payment of the cost of the recording medium.

C. 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 examiner shall read this rule to those persons causing such interference or disruption and thereafter proceed as is deemed appropriate.

9 MCAR S 2.520 Rehearing. Any agency notice of and order for rehearing shall be served on all parties in the same manner prescribed for the notice of and order for hearing, provided that the examiner shall permit service of the notice and order for rehearing less than 20 days prior to rehearing if the parties agree to such earlier service. The rehearing shall be conducted in the same manner prescribed for a hearing.

9 MCAR S 2.521 Severability. If any provision of these rules is held invalid, such invalidity shall not affect any other provisions of the rules which can be given effect without the invalid provision, and to this end, the provisions of these rules are declared to be severable.

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