

1 Office of Administrative Hearings

2

3 Adopted Permanent Rules Relating to Workers' Compensation

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5 Rules as Adopted

6 9 MCAR S 2.301 Scope and purpose. The procedures contained in 9

7 MCAR SS 2.301-2.326 shall govern all hearings required to be

8 conducted pursuant to the provisions of the Minnesota workers'

9 compensation laws, Minn. Stat. ch. 82 176 and the Minnesota

10 Administrative Procedure Act, Minn. Stat. SS 15.0411-15.052, as

11 those provisions might apply.

12 9 MCAR S 2.302 General authority and definitions.

13 A. Assignment or transfer of cases. The chief hearing
14 examiner has full responsibility for the assignment of cases for

15 trial to the compensation judges. The chief hearing examiner

16 may transfer to another compensation judge the proceedings on

17 any case in the event of the death, extended absence, or

18 disqualification of the compensation judge to whom it has been

19 assigned, and may otherwise reassign such cases if necessary to

20 expedite the proceedings if no oral testimony has been received

21 in the cases.

22 B. Authority of compensation judges. In any case which has
23 been regularly assigned to him or her for trial, a compensation

24 judge shall have full power, jurisdiction and authority to hear

25 and determine all issues of fact and law presented to him or her

26 and to issue such interlocutory and final orders, findings,

27 decisions and awards as may be necessary to the full

28 adjudication of the case.

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

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

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

35 3. "Commissioner" means the Commissioner of the

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1 Department of Labor and Industry.

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

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

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

7 ~~6-~~ 7. "Petition" means a claim filed by or on behalf of
8 an injured or deceased employee, employer or insurer which
9 initiates a contested workers' compensation case requiring
10 assignment for hearing.

11 ~~7-~~ 8. "Petitioner" means the injured employee, an heir or
12 dependent of a deceased employee or a party filing on their
13 behalf or an employer or insurer.

14 ~~8-~~ 9. "Settlement judge" means a workers' compensation
15 judge from the Department of Labor and Industry.

16 9 MCAR S 2.303 Joinder of parties.

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

24 B. Service. Any party requesting joinder of additional
25 parties shall serve a copy of the request on all existing
26 parties, and the party to be joined, and file the original with
27 proof of service with the ~~settlement or calendar~~ compensation
28 judge no later than ten days prior to the pretrial or settlement
29 conference, or within 15 days after receipt of a pretrial order,
30 unless the judge allows a shorter time when the moving party has
31 shown that the party is a necessary party, that the moving party
32 was unable, through due diligence, to previously ascertain the
33 name of or necessity of joining the party, and that the joinder
34 is necessary to a full and final determination of the rights or
35 liabilities of all persons. When this request is served on the
36 party to be joined, it shall be accompanied by copies of all

1 pleadings and the notice of the date, time and place set for a
2 settlement conference or ~~prehearing~~ pretrial conference.

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

9 D. Delay. In cases where the ~~settlement or calendar~~
10 compensation judge has denied the joinder because of the
11 requesting party's failure to meet the ~~ten-day~~ time requirement
12 requirements, the case shall not be stricken, continued or
13 otherwise delayed for the purposes of joinder, unless the
14 attorney for the ~~employee or dependent~~ petitioner consents to it.

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

- 17 1. The party to be joined and its insurer, if any;
- 18 2. The date and nature of the claimed personal injury or
19 impairment;
- 20 3. The detailed circumstances, in affidavit form, showing
21 that the party to be joined is a necessary party;
- 22 4. The supporting medical opinions relied upon, if
23 applicable;
- 24 5. If the party to be joined is the special compensation
25 fund, the detailed circumstances, in affidavit form, showing the
26 specific basis claimed for joinder, including the date of
27 registration of prior impairment or injury where applicable.

28 F. Objection. A party contesting joinder under 9 MCAR S
29 2.303 may do so by objection filed with the ~~settlement or~~
30 ~~calendar~~ compensation judge within ten days of service,
31 requesting a hearing thereon; otherwise, an ex parte order may
32 be issued granting or denying this joinder.

33 9 MCAR S 2.304 Commencement of proceedings; petitions;
34 responsibilities of attorneys; notice to third parties.

35 A. Commencement of proceedings. Original proceedings for
36 the adjudication of compensation rights and liabilities are

1 commenced by the service of a petition as provided by Minn.
 2 Stat. S 176.305. Any petition filed on behalf of an employee or
 3 his or her dependents shall certify that prior notice of
 4 intention to initiate proceedings has been sent to the adverse
 5 party, pursuant to Minn. Stat. S 176.271, subd. 2, and the date
 6 of that notice. Supporting medical reports shall be attached to
 7 the petition.

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

12 C. Contents of petitions. A petition shall contain the
 13 following information which shall be in the sequence listed in
 14 ~~1.-21.~~

15 1. Title. The title of the case shall include the
 16 petitioner's name, the employer's name and address, the
 17 insurer's name and address, the division's record number and the
 18 employee's social security number,

19 2. The petitioner's address,

20 3. The date of the alleged personal injury or onset of
 21 occupational disease,

22 4. The place of employment on the date of the alleged
 23 injury or disease,

24 5. The employee's weekly wage at the time of the alleged
 25 injury or disease,

26 6. A statement that the injury or disease arose out of
 27 and in the course of the employment,

28 7. A statement which specifies the nature and extent of
 29 the alleged injury or disease, including the percentage of
 30 disability, if known, attaching a copy of all medical reports,

31 8. The date on which the employer was first given notice
 32 of the alleged injury or disease and the manner in which the
 33 notice was given,

34 9. The name and address of the employer's insurer on the
 35 date of the alleged injury or disease or if the employer was
 36 self-insured, a statement to that effect,

1 10- A detailed listing of the dates of the alleged
2 disability, stating whether each date was for temporary total,
3 temporary partial, permanent total, or permanent partial
4 disability,

5 11- A detailed list of the medical benefits alleged to be
6 owing, giving the names, addresses, dates of treatment or
7 purchase of drugs, or other compensable items,

8 12- The names and addresses of any third parties who have
9 paid disability, medical or other benefits to the employee as a
10 result of the alleged injury or disease, listing the dates and
11 amounts of the payments, and the relevant claim number or policy
12 number,

13 13- A statement that attorney's fees are or are not
14 requested,

15 14- A statement that the employer and insurer were
16 notified, as required by Minn. Stat. S 176.271, subd. 2, that a
17 proceeding would be instituted and stating the relief sought,
18 giving the date of the notice and attaching a copy of the notice,

19 15- A signature and attestation by the employee,

20 16- The name, address and telephone number of the
21 employee's attorney unless the employee is representing himself
22 or herself,

23 17- A statement that a settlement or prehearing
24 conference is or is not requested and, if so, the requested
25 location for the conference,

26 18- A statement indicating the number of lay and medical
27 witnesses expected to be called as witnesses and the anticipated
28 length of their testimony,

29 19- A statement specifying the principal issues to be
30 resolved at hearing,

31 20- A statement that the employee is or is not presently
32 receiving workers' compensation benefits and, if the employee
33 is, the amounts and the name and address of the paying party,
34 and

35 21- The requested location for the regular hearing.

36 D. C. Heading of petition. Unless otherwise provided by

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1 law, all requests for action by ~~the commissioner,~~ a settlement,
 2 calendar or a compensation judge after the filing of a petition
 3 shall contain the ~~title~~ caption, the employee's social security
 4 number, and appropriate identification number of the case and
 5 shall indicate the type of action requested.

6 E- D. Responsibilities of attorneys; notice to third parties.

7 All attorneys representing employees, employers, or any other
 8 parties to a workers' compensation proceeding shall inquire of
 9 their clients at the time the proceeding is commenced, and again
 10 within five days of receipt of a notice of prehearing a pretrial
 11 order or pretrial conference, as to whether any third party,
 12 other than the workers' compensation insurer, has paid wage loss
 13 benefits or treatment expense to the employee or in the
 14 employee's behalf.

15 If inquiry discloses that any third party, such as an
 16 insurer or a welfare department, has made any such payments, the
 17 attorney discovering that fact shall then have the duty to place
 18 the third party on written notice, within five days, of its
 19 right to petition for intervention and reimbursement. The
 20 written notice shall have attached to it a copy of 9 MCAR S
 21 2.310 and also a copy of all pleadings in the case and a copy of
 22 all notices and all orders of the workers' compensation division
 23 of the department of labor and industry and of the office of
 24 administrative hearings served in the case to date, and shall
 25 specifically advise that:

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

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

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

35 4. Any failure of the third party to comply with any
 36 provisions of 9 MCAR S 2.310 shall result in a denial of the

1 claim for reimbursement unless the compensation judge determines
2 that the error or omission is merely technical.

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

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

12 Where inquiry by the attorney for the injured employee at
13 the time a proceeding is commenced discloses information that a
14 third party has made payments, the employee's claim petition
15 shall not be accepted for filing and the proceeding shall not be
16 considered commenced unless the claim petition is accompanied by
17 a proof of service of written notice upon the third party,
18 unless the time for commencing an action under the statute of
19 limitations in Minn. Stat. S 176.151 has run. The written
20 notice shall be in the form prescribed by 1-4.

21 9 MCAR S 2.305 Settlement judge review and settlement
22 conferences.

23 A. Referral. Upon the filing of a petition, the
24 commissioner, within ten days, shall refer the matter to a
25 settlement judge who shall review the filing to determine
26 whether a settlement conference is appropriate.

27 B. Disposition. If a settlement conference has been
28 requested or is deemed appropriate by the settlement judge, he
29 or she shall notify all parties of the date, time and place
30 where the settlement conference will be conducted. The
31 settlement conference shall be completed within 60 days of the
32 date of referral of the petition by the commissioner. If a
33 settlement conference has not been requested or is deemed to be
34 inappropriate, the settlement judge shall certify the matter to
35 the chief hearing examiner.

36 C. Retention of jurisdiction. If the settlement conference

1 cannot be concluded within 60 days, the settlement judge shall
 2 certify the matter to the chief hearing examiner, provided,
 3 however, that with the consent of the petitioner or his or her
 4 representative, the settlement judge may retain jurisdiction for
 5 an additional 60 days for purposes of receiving a full
 6 settlement of all issues.

7 D. A. Settlement alternatives not precluded. Nothing
 8 contained in this rule these rules shall preclude any party from
 9 requesting that a settlement conference be scheduled at any time
 10 prior to a hearing by a compensation judge, nor shall ~~it~~ they
 11 prohibit the chief hearing examiner or calendar compensation
 12 judge from setting a settlement conference on his or her own
 13 motion once the matter has been received from the commissioner.

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

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

31 9 MCAR S 2.306 Notice of intention to discontinue compensation
 32 payments.

33 A. Contents. A notice of intention to discontinue
 34 compensation filed pursuant to Minn. Stat. S 176-241, shall
 35 contain the following information:

36 1. The name and home address of the person whose

1 compensation would be discontinued,

2 2- The file number previously assigned by the division
3 and the office of administrative hearings,

4 3- The name and address of the attorney, if any, who
5 represented the employee during previous proceedings,

6 4- A description of the prior order, if any, under which
7 compensation was being paid and the name of the person issuing
8 the order,

9 5- The date the compensation is proposed to be
10 discontinued,

11 6- A complete list of facts supporting the discontinuance
12 which shall be prepared with sufficient specificity to allow the
13 employee to prepare an objection without the necessity of
14 requesting additional information,

15 7- If the proposed discontinuance is based on medical
16 evidence, copies of all medical reports bearing on the
17 employee's physical condition at the time of the proposed
18 discontinuance,

19 8- A statement which shall read as follows:

20 NOTICE

21 You have the right to object to this proposed
22 discontinuance. If you intend to object, you must
23 prepare a written objection and file it with the
24 Commissioner of the Minnesota Department of Labor and
25 Industry, Fifth Floor, Space Center Building, 444
26 Lafayette Road, St. Paul, Minnesota 55101. You may
27 contact (employer) or (insurer) regarding the
28 discontinuance and the procedures related to the
29 filing of an objection. If you file an exemption, it
30 may be mailed or personally delivered to the
31 Department of Labor and Industry at the address listed
32 above. An objection must contain your full name,
33 address and telephone number, the name of the employer
34 and insurer, the date of this notice and the file
35 number listed on this notice.

36 9- The name and address of the employer and insurer,

37 10- The name, address and telephone number of the
38 attorney representing the employer or insurer, and

39 11- The name, address and telephone number of the person
40 filing the notice.

41 B- Objections-

42 1- Any objection to the proposed discontinuance shall be
43 in writing, shall be filed with the commissioner, and shall

1 contain the following information:

2 a. The name, address and telephone number of the
3 employee;

4 b. The name, address and telephone number of the
5 person filing the objection, if it is not the employee;

6 c. The name of the employer and insurer;

7 d. The date of the notice of discontinuance, and

8 e. The file numbers which were listed on the notice of
9 discontinuance.

10 2. A. Hearing. When an objection to a notice of intention
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12 to discontinue compensation payments has been filed or where it
13 -----
14 appears to the commissioner that the right to compensation may
15 not have terminated, and the matter shall be has been referred
16 -----
17 to the chief hearing examiner who, it shall be set the matter
18 -----
19 for hearing on a priority basis not less than 30 nor more than
20 75 days from the date of the receipt of the matter from the
21 commissioner.

22 3. B. Objection as claim petition. Any objection filed more
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24 than 120 days after service of a notice to discontinue shall be
25 treated as a claim petition for purposes of scheduling a hearing
26 -----
27 and shall not be heard on a priority basis.

28 C. Petitions for discontinuance. When an employer or
29 insurer petitions the commissioner for an order allowing
30 discontinuance of benefits but has chosen not to discontinue
31 payments until after a final determination and the matter has
32 -----
33 been referred to the chief hearing examiner, the petitioner
34 -----
35 shall be entitled to a hearing on the same priority basis as set
36 forth in B-2. Petitions filed under this provision shall
contain the same information as required for a notice of
discontinuance A.

9 MCAR S 2-307 Answers:

32 A. Service and filing. An answer to each petition shall be
33 served and filed within 20 days after service of the application
34 unless a waiver has been obtained pursuant to Minn. Stat. S
35 176-321, subd. 3.

36 B. Proof of service. The answer shall be accompanied by

1 proof of service upon the opposing parties:

2 G- Contents: The answer shall contain the following:

3 1- Specific responses to allegations regarding the date
4 and nature of the injury, the employment status, notice, wage,
5 relationship of the injury to employment, insurance, benefits
6 paid, matters in dispute, affirmative defenses and additional
7 matters as deemed necessary by the answering party,

8 2- Any medical report upon which the answer is based, if
9 available,

10 3- If a medical examination by a doctor chosen by the
11 employer or insurer has not already been completed, the date,
12 time and place for the exam which shall be scheduled to take
13 place within 75 days from the date of service of the notice of
14 intention to initiate proceedings. Any request for an extension
15 of time for scheduling the examination shall be subject to the
16 approval of the calendar or settlement judge, whichever has
17 jurisdiction of the matter at the time the request is made.

18 9 MCAR S 2-308 2.307 Service.

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

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

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

1 9 MCAR S ~~2-309~~ 2.308 Hearings.

2 A. Definition of hearing. For the purposes of 9 MCAR SS
 3 2.301-2.326, a hearing may be called a settlement conference, a
 4 ~~prehearing~~ pretrial conference, or a regular hearing. Nothing
 5 contained herein is intended to change the statutory requirement
 6 that hearings, as defined by statute, be conducted by
 7 compensation judges from the office of administrative hearings.

8 1. A settlement conference is a ~~hearing~~ proceeding
 9 conducted by a ~~settlement~~ compensation judge. It is for the
 10 primary purpose of providing assistance to the parties in
 11 resolving disputes and securing a settlement of all issues and
 12 for the secondary purpose of assisting the parties in narrowing
 13 the issues and of expediting preparation and trial of the
 14 matter. The conference may be conducted by telephone and in the
 15 cases where the location of the settlement conference would
 16 require any party to travel more than 50 miles to attend, it
 17 shall be conducted by telephone unless all parties agree
 18 otherwise. Written notice of this hearing shall be given at
 19 least 20 days prior to the date of the hearing.

20 2. A ~~prehearing~~ pretrial conference may be required
 21 whether or not a settlement conference has been held and may be
 22 conducted by telephone. The purposes of a ~~prehearing~~ pretrial
 23 conference are to ascertain if there are genuine disputes
 24 requiring resolution by a calendar or compensation judge, to
 25 provide assistance to the parties in resolving disputes, to
 26 narrow the issues, and to expedite preparation and trial if a
 27 regular hearing is necessary. A ~~prehearing~~ pretrial conference
 28 is conducted by a calendar or compensation judge. It shall be
 29 conducted by telephone if the location set for the ~~prehearing~~
 30 pretrial conference would require any party to travel more than
 31 50 miles to attend. Written notice of this hearing shall be
 32 given at least 20 days prior to the date of the hearing.

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

35 B. Notice of hearing. Notice of the time and place for
 36 hearing shall be provided to all parties to a case as required

1 by 9 MCAR S ~~2-308~~ 2.307 A., except that oral or written
 2 notification of the date, time and place for a regular hearing
 3 which is given to the parties by a ~~settlement~~, calendar or
 4 compensation judge at the time of a settlement or ~~prehearing~~
 5 pretrial conference shall be sufficient notice. Each attorney
 6 receiving notice of the hearing date at a settlement or
 7 ~~prehearing~~ pretrial conference shall be responsible for
 8 notifying each party the attorney represents of the hearing
 9 date. When a written notice is required, it shall be given at
 10 least ~~five~~ 30 days prior to the date of hearing, except:

- 11 1. When notice is waived by all parties;
- 12 2. When a different time is expressly agreed to by all
 13 parties; or
- 14 3. When the notice is governed by contrary law or rule.

15 ~~9~~ MCAR S 2.309 Continuances.

16 ~~1-~~ A. Continuances not favored. Requests for continuances
 17 are inconsistent with the requirement that workers' compensation
 18 proceedings be expeditious and are, therefore, not favored and
 19 will be granted only upon a clear showing of good cause. The
 20 parties are expected to submit for decision all matters in
 21 controversy at a single hearing and to produce at the hearing
 22 all necessary evidence, including witnesses, documents, medical
 23 reports, payroll statements and all other matters considered
 24 essential in the proof of a party's claim or defense.

25 ~~2-~~ B. Request. When a continuance is to be requested prior
 26 to the hearing date, the party requesting the continuance shall
 27 have first contacted all other parties to determine whether
 28 mutual agreement to the continuance can be reached and, if the
 29 continuance be granted, the availability of all parties for
 30 hearing at future specific dates. When all parties are in
 31 agreement with the request for continuance and have agreed to a
 32 date for a future hearing, which date has been approved by the
 33 compensation, ~~calendar or settlement~~ or calendar judge before
 34 whom the matter is pending, and when the continuance request is
 35 made no less than ten working days prior to the hearing date,
 36 the continuance shall be granted.

1 3- C. Motion. If all parties have not agreed to a

 2 continuance, requests for continuances shall be made to the
 3 compensation, or calendar or settlement judge before whom the

 4 matter is pending. When made more than ten working days prior
 5 to the hearing date, the request shall be in writing in the form
 6 of a motion for continuance and shall be served on all parties.
 7 If less than ten working days remain prior to the hearing date,
 8 notice of the motion may be made orally. A hearing on the
 9 motion shall be conducted only if ordered by the settlement,
 10 compensation or calendar judge to whom the motion is made.

11 4- D. Good cause. Good cause shall not include:

 12 a- 1. When an insurer retains more than one counsel on

 13 its own payroll who practice in the field of workers'
 14 compensation law, unavailability of the counsel assigned to the
 15 case because of engagement in another court or otherwise unless
 16 all such counsel are committed elsewhere;

17 b- 2. When a law firm consists of more than one member

 18 who practice in the field of workers' compensation law,
 19 unavailability of the counsel assigned to the case because of
 20 engagement in another court or otherwise unless all such counsel
 21 are committed elsewhere;

22 c- 3. Unavailability of an individual law practitioner

 23 because of engagement in another court, if he has failed to
 24 notify the judge in charge of the trial court calendar of that
 25 court that he has been assigned to a date and time certain in a
 26 workers' compensation case;

27 d- 4. Unavailability of a medical or other witness if the

 28 witness' deposition could have been taken between the time of
 29 receipt of the notice of the hearing date and the date of the
 30 hearing.

31 9 MCAR S 2.310 Intervention.

32 A. Motion. Any person desiring to intervene in a workers'
 33 compensation case as a party shall submit a timely motion to
 34 intervene to the settlement judge unless the matter has been
 35 referred to the chief hearing examiner for assignment, in which
 36 case the motion shall be submitted to the compensation judge to

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

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

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

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

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

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

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

33 7. A proof of service;

34 8. At the option of the intervenor, a proposed
35 stipulation which states that all of the payments for which
36 reimbursement is claimed are related to the injury or condition

1 in dispute in the case and that, if the petitioner is successful
 2 in proving the compensability of the claim, it is agreed that
 3 the sum be reimbursed to the intervenor.

4 B. Stipulation. When the person serving the motion for
 5 intervention has included a proposed stipulation, all parties
 6 shall either execute and return the signed stipulation to the
 7 intervenor or serve upon the intervenor and all other parties
 8 specific and detailed objections to any payments made by the
 9 intervenor which are not conceded to be correct and related to
 10 the injury or condition the employee petitioner has asserted is
 11 compensable. If a party has not returned the signed stipulation
 12 or filed objections within ~~20~~ 30 days of service of the motion,
 13 the intervenor's right to reimbursement for the amount sought
 14 shall be deemed to have been ~~be~~ established ~~without the~~
 15 ~~necessity of the intervenor participating further in the~~
 16 ~~proceedings~~ provided that the petitioner's claim is determined
 17 to be compensable.

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

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

29 E. Presentation of evidence by intervenor. Unless a
 30 stipulation has been signed and filed or the intervenor's right
 31 to reimbursement has otherwise been established, at the regular
 32 hearing on the claim petition where intervention has been
 33 granted, the intervenor shall present evidence in support of his
 34 or her claim ~~after the petitioner has rested,~~ unless otherwise
 35 ordered by the compensation judge, ~~in order that the issue of~~
 36 ~~intervention may be promptly determined with no undue delay that~~

1 may prejudice the rights of the original parties.

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

6 G. Failure of attorney to respond. Failure by the
7 employee's petitioner's attorney to submit a timely response
8 which also complies otherwise with this rule shall be a
9 significant additional factor to be taken into consideration
10 under Minn. Stat. S 176.081 in determining the amount of the
11 attorney's fees. Failure by an attorney representing an
12 employer or insurer to submit a timely response which also
13 complies otherwise with the requirements of this rule shall be
14 taken into consideration for purposes of determining whether a
15 penalty shall be assessed against the employer or insurer under
16 Minn. Stat. S 176.225 for unreasonable or vexatious delay.

17 9 MCAR S 2.311 Consolidation.

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

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

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

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

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

32 B. Receipt of evidence. Under consolidation, all
33 documentary evidence previously received in an individual case
34 shall be reintroduced in the consolidated proceedings under a
35 master file if the compensation judge assigned to try the case
36 designates one file as a master file. When so adduced, the

1 evidence shall be deemed part of the record of each of the
 2 several consolidated cases. Evidence received subsequent to the
 3 order of consolidation shall be similarly received with like
 4 force and effect.

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

- 10 1. A description of the cases for consolidation;
- 11 2. The reasons for consolidation;
- 12 3. Notification of a consolidated ~~prehearing~~ pretrial
 13 conference if one has been requested. -----

14 D. Objection to consolidation.

- 15 1. Motion for severance. Any party may object to
 16 consolidation by filing with the appropriate judge, and serving
 17 upon all parties at least seven days prior to the regular
 18 hearing in the case, a motion for severance from consolidation,
 19 setting forth the ~~petitioner's~~ name and address, the title of
 20 his case prior to consolidation, and the reasons for his
 21 ~~petition~~ the motion. -----

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

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

30 9 MCAR S 2.312 Disqualification.

31 ~~A. Procedures:~~ A compensation judge shall withdraw from
 32 participation in a case at any time if the judge deems himself
 33 or herself disqualified, prejudiced or biased for any reason.
 34 Proceedings to disqualify a compensation judge shall be
 35 initiated by the service on all parties and the filing of a
 36 motion for disqualification supported by affidavit ~~or~~

1 declaration under penalty of perjury stating in detail facts
 2 establishing grounds for disqualification of the compensation
 3 judge to whom a case or proceeding has been assigned. If the
 4 compensation judge assigned to hear the matter and the grounds
 5 for disqualification are known, The motion for disqualification
 6 shall be filed with the chief hearing examiner not more than ten
 7 days after the moving party has received notice of the
 8 assignment of the judge to the hearing or has knowledge of the
 9 grounds for disqualification, whichever occurs last. In no
 10 event shall any such motion be entertained after the swearing of
 11 the first witness. The motion shall be determined by the chief
 12 hearing examiner or his designee. The fact that a compensation
 13 judge has previously determined a similar case contrary to the
 14 interests of the moving party in the pending case shall not be
 15 grounds for disqualification.

16 B. Affidavit for reassignment. The petitioner and parties
 17 responding to a petition shall be entitled to reassignment of a
 18 regular hearing to another compensation judge in accordance with
 19 the provisions of this section. Proceedings for a reassignment
 20 shall be instituted by the filing of an affidavit under penalty
 21 of perjury in substantially the following form:

22
 23 State of Minnesota

24 ss

25 County of -----

26 -----, being duly sworn, deposes and
 27 says: That (s)he is (a party) (attorney for a party) to the
 28 above entitled case, that affiant believes that (s)he cannot
 29 have a (fair) (expeditious) (inexpensive) (unencumbered)
 30 (impartial) trial before the workers' compensation judge (before
 31 whom the case is pending) (to whom the case is assigned):

32
 33 -----

34 Subscribed and sworn to before me

35 this-----day of-----, 19---

36 -----

1 Notary Public

2 My commission expires-----

3 If the compensation judge assigned to hear the case is
4 known, the affidavit shall be filed not more than five working
5 days after receipt of the notice of regular hearing and be
6 directed to the attention of the chief hearing examiner. A copy
7 of the affidavit shall be served on all other parties or their
8 attorneys at the same time the affidavit is filed. In no event
9 shall any such affidavit be entertained after the swearing of
10 the first witness at a regular hearing.

11 Upon the filing of an affidavit for reassignment in
12 accordance with the provisions of this section, without any
13 further act or proof, the chief hearing examiner shall assign
14 the case or proceeding to another compensation judge. Upon
15 reassignment a new notice of regular hearing shall be served.
16 Under no circumstances shall more than one such reassignment be
17 made in any one case or proceeding pursuant to the affidavit of
18 any one party, provided, however, that one additional
19 reassignment may be made upon petition of a party on the other
20 side. The petition by the other party shall be filed in the
21 manner and time hereinbefore provided.

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

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

30 9 MCAR S 2.313 Prehearing Pretrial procedures.

31 A. Requirement. All cases shall be subject to a settlement
32 conference or a prehearing pretrial conference whenever
33 possible, at which all parties shall attend or be represented,
34 unless a settlement judge or calendar or compensation judge
35 orders otherwise. A compensation judge shall order that a
36 pretrial or settlement conference be conducted if any party

1 requests that one be conducted. If parties are represented by
 2 ~~attorneys~~, the attorneys shall bring with them their appointment
 3 calendars. If a party is not represented by an attorney, the
 4 party shall appear personally and shall be prepared to arrange
 5 agreeable dates for the regular hearing. Parties or their
 6 attorneys attending a settlement or ~~prehearing~~ pretrial
 7 conference must have authority to settle their respective claims.

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

14 C. Conference procedures. At the settlement or ~~prehearing~~
 15 pretrial conference:

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

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

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

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

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

35 6. If the ~~employee~~ petitioner plans to introduce hospital
 36 records into evidence, the ~~employee~~ petitioner or his attorney

1 shall bring to the settlement or ~~prehearing~~ pretrial conference
2 written authorizations for opposing counsel to examine those
3 records if the authorizations have not previously been provided;

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

11 8. If the ~~employee~~ petitioner is claiming temporary total
12 disability, the ~~employee~~ petitioner or attorney shall state at
13 the settlement or ~~prehearing~~ pretrial conference the dates of
14 time lost from work;

15 9. If the ~~employee~~ petitioner is claiming temporary
16 partial disability, the ~~employee~~ petitioner or attorney shall
17 state the dates of the claim, the approximate amount of the
18 claim, and the names and addresses of the employers for whom the
19 employee worked during the period of the claim; authorizations
20 to permit opposing counsel to confirm wages earned in those
21 employments shall have been furnished at least ten days prior to
22 the scheduled settlement or ~~prehearing~~ pretrial conference; and,
23 an itemized breakdown of the claim for temporary partial
24 disability shall be submitted to the compensation judge and
25 opposing counsel at least ten days prior to the time of the
26 regular hearing;

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

34 11. If a dispute exists on the wage rate at the time of
35 the injury, the attorney for the employer and insurer shall
36 furnish to opposing counsel at least ten days prior to the

1 settlement or ~~prehearing~~ pretrial conference, copies of the
 2 relevant wage records of the ~~employee~~ petitioner;

3 12. The attorney for the ~~employee or dependents~~
 4 petitioner shall furnish to the ~~settlement or~~ calendar or
 5 compensation judge a copy of his retainer agreement with the
 6 ~~employee or dependents~~ petitioner and shall state the amount of
 7 retainer fee paid. He shall be prepared at the time of hearing
 8 or settlement to show the reasonableness of any attorney's fees
 9 or costs, in accordance with Minn. Stat. S 176.081.

10 D. ~~Prehearing~~ Pretrial statement. At the time a case is
 11 first set for a ~~settlement or prehearing~~ pretrial conference or
 12 prior to setting the date for a regular hearing, if the
 13 information is not already on file, the ~~settlement judge or~~
 14 calendar or compensation judge may order the parties to
 15 complete, serve on each other and file a ~~prehearing~~ pretrial
 16 statement which shall contain any of the items in C. which the
 17 ~~settlement or calendar~~ judge deems appropriate. In making a
 18 determination on the requirement of the preparation of
 19 ~~prehearing~~ pretrial statements, the ~~settlement or calendar~~ judge
 20 shall take into consideration the number of parties involved in
 21 the case, the nature and extent of the medical issues, and the
 22 nature, extent and type of disability claimed. When a pretrial
 23 statement has been ordered, the petitioner shall serve and file
 24 a statement within 20 days of the date of the order. The
 25 responding parties shall serve and file their statement within
 26 30 days of the date of the order. Thereafter, a petitioner may
 27 serve and file an amended pretrial statement based solely on
 28 information presented in the responding parties' statements and
 29 not on new issues, which amended statement shall be filed within
 30 40 days of the date of the order.

31 E. Evidence not disclosed at conference. Evidence, or other
 32 matters listed in C. which have not been disclosed at the
 33 ~~prehearing~~ settlement or pretrial conference or in a pretrial
 34 statement shall not be allowed to be presented at the regular
 35 hearing unless it can be shown to the compensation judge that
 36 the evidence or other matters offered were discovered subsequent

1 to the ~~prehearing~~ filing of a pretrial statement or pretrial
 2 conference, whichever occurs last, were not discoverable through
 3 the exercise of due diligence prior to that time, and that the
 4 other parties have been advised of the evidence or other matters
 5 prior to the trial and have had an opportunity for review.

6 F. Temporary orders. Any insurer or self-insurer
 7 voluntarily agreeing to pay benefits pursuant to Minn. Stat. S
 8 ~~176.91~~ 176.191, subd. 1, while the case is pending before the
 9 office, shall file a formal petition for temporary order.

10 1. The petition shall contain the following:

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

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

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

22 2. The original petition for temporary order, with proof
 23 of service on all necessary parties, shall be filed with the
 24 ~~division, the office, or the court of appeals,~~ depending upon
 25 where the matter is pending;

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

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

34 NOW, THEREFORE, IT IS HEREBY ORDERED, that (name of insurer
 35 or self-insured) having consented to payment of compensation
 36 benefits pursuant to Minn. Stat. S 176.191 shall pay to (name),

1 employee petitioner, compensation at the weekly rate of
 2 \$(amount), during the period of employee's petitioner's
 3 disability, beginning (date), and shall also pay reasonable
 4 medical expenses related to employee's petitioner's said
 5 disability.

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

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

17 {WORKERS' COMPENSATION DIVISION}
 18 (COMPENSATION JUDGE)
 19 {COURT OF APPEALS}

20
 21
 22 By.....

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

26 G. Payment of benefits by special compensation fund. An
 27 employee A petitioner seeking payment of benefits by the special
 28 compensation fund pursuant to Minn. Stat. S 176.191, subd. 2,
 29 when the case is pending before the office, shall file a formal
 30 petition for temporary order.

- 31 1. The petition shall contain the following:
 - 32 a. A statement that written demand for payment
 - 33 pursuant to Minn. Stat. S 176.191, subd. 1, has been made
 - 34 against all employers and insurers party to the claim and that
 - 35 the payment demanded has been refused;
 - 36 b. The names and addresses of all employers and

1 insurers or self-insurers who are parties to the claim;

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

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

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

12 2. The original of the petition for temporary order, with
13 proof of service on all necessary parties, shall be filed with
14 ~~the division, the office, or the court of appeals,~~ depending
15 upon where the matter is pending;

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

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

24 NOW, THEREFORE, IT IS HEREBY ORDERED that the State
25 Treasurer, as custodian of the special compensation fund, shall,
26 pursuant to Minn. Stat. S 176.191, subd. 2, pay to (name),
27 ~~employee~~ petitioner, compensation at the weekly rate of
28 \$(amount), during the period of ~~employee's~~ petitioner's
29 disability, beginning (date), and shall also pay reasonable
30 medical expenses related to the ~~employee's~~ petitioner's said
31 disability.

32 IT IS FURTHER ORDERED, that following a final determination
33 of liability and if it has been determined that one or more
34 employers or insurers are liable for all or part of the
35 compensation paid pursuant to this temporary order, then the
36 division, the compensation judge or Court of Appeals shall order

1 the parties held liable to reimburse the State Treasurer, as
2 custodian of the special compensation fund, for all or part of
3 the compensation paid pursuant to this temporary order, for
4 which the other parties are held liable, including interest at
5 the rate of 12 percent per annum.

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

8 {WORKERS' COMPENSATION DIVISION}
9 (COMPENSATION JUDGE)
10 {COURT OF APPEALS}

11
12
13 By.....

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

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

- 19 1. The employee or dependents petitioner;

- 20 2. All insurers or self-insured named in the petition for
21 temporary order;
- 22 3. Any employer who is uninsured or whose insurer for the
23 date of the alleged injury in that employment is unknown;
- 24 4. The state treasurer, as custodian of the special
25 compensation fund, if the petition is made pursuant to Minn.
26 Stat. S 176.191, subd. 2.

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

33 J. Circumstances of nonapproval of temporary orders.
34 Temporary orders, as a general rule, shall not be approved if
35 made contingent upon the waiver by the employee petitioner of
36 his rights to claim an additional award pursuant to Minn. Stat.

1 S 176.225, or to have fees for his attorney assessed against the
2 employer and insurer in addition to compensation pursuant to
3 Minn. Stat. S 176.191 or 176.081, subd. 8.

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

8 9 MCAR S 2.314 Discovery.

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

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

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

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

36 B. Depositions. Pursuant to the provisions of Minn. Stat. S

1 176.411, subd. 2, depositions may be taken in the manner which
 2 the law provides for depositions in civil actions in the
 3 district courts for the state, except where a compensation judge
 4 orders otherwise. When a party has objected to the taking of a
 5 deposition, the party requesting the deposition shall bring a
 6 motion before the ~~settlement~~, compensation or calendar judge,
 7 before whom the case is pending at the time of the motion, who
 8 shall determine whether the deposition should go forward. The
 9 motion shall state, with specificity, the facts or other reasons
 10 supporting the need for the desposition. The ~~settlement~~,
 11 compensation or calendar judge shall order the deposition to
 12 proceed if the judge finds that the request for the taking of
 13 the deposition has been shown to be needed for the proper
 14 presentation of a party's case, is not for purposes of delay,
 15 that unusual or extraordinary circumstances exist which compel
 16 extensive discovery, or that the issues or amounts in
 17 controversy are significant enough to warrant extensive
 18 discovery.

19 Depositions for the purpose of preserving testimony or for
 20 presenting ~~medieal~~ testimony due to the unavailability of the
 21 ~~deeter~~ witness shall be allowed. Unless, for good cause shown,
 22 the party taking the deposition has obtained the permission of
 23 the calendar judge, or compensation judge if the case has been
 24 assigned for hearing, to take the deposition subsequent to the
 25 hearing, it shall be taken sufficiently in advance of the
 26 hearing so that the deposition is filed prior to or at the
 27 commencement of the regular hearing ~~er~~, at the latest, on the
 28 day of the regular hearing.

29 The original copy of any deposition taken for purposes of
 30 presenting testimony in the case shall be filed with the
 31 ~~settlement~~ judge if the case is still pending before the
 32 ~~settlement~~ judge or with the office of administrative hearings
 33 if the matter has been referred to the chief hearing examiner
 34 for assignment. The original copy of any deposition taken
 35 solely for purposes of discovery shall be sealed and filed as in
 36 the case of evidentiary depositions but shall not be reviewed or

1 utilized in any fashion by the compensation judge unless the
2 deposition shall be formally entered as evidence in the case.

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

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

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

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

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

34 9 MCAR S 2.315 Petitions for contribution or reimbursement.

35 A. Contents. Petitions for contribution or reimbursement in
36 cases pending before the office shall set forth in detail the

1 allegations showing the basis of the claim for contribution or
 2 reimbursement against the additional employer or insurer named,
 3 therein, or of the claim for reimbursement against the state
 4 treasurer, custodian of the special compensation fund. The
 5 petition shall be supported by medical evidence, and shall be
 6 signed and verified. The original petition shall be filed with
 7 the settlement judge if the matter is pending before the
 8 division or with the chief hearing examiner if the matter has
 9 been referred for assignment, together with proof of service
 10 upon the employee or his attorney and all additional parties
 11 named in it.

12 B. Filing. In all cases where a claim petition or other
 13 form of action is pending, A petition for contribution or
 14 reimbursement under this rule shall be filed no later than ten
 15 days prior to a settlement or prehearing pretrial conference or
 16 within 20 days of receipt of a pretrial order if a pretrial
 17 conference is not automatically set, and copies of all
 18 pleadings, including any notice of settlement or prehearing
 19 pretrial conference shall be served upon the additional
 20 employers or insurers by the party bringing the petition. In
 21 cases where no action is pending, the filing of the petition for
 22 contribution or reimbursement with the division shall initiate
 23 proceedings.

24 C. Answer. Within 20 days after being served with a copy of
 25 a petition for contribution or reimbursement under this rule,
 26 employers or their insurers, other than the petitioning party,
 27 may file a verified answer to the petition in accordance with
 28 the provisions of Minn. Stat. S 176.321 and, if not already set
 29 for settlement or prehearing a pretrial conference, the matter
 30 shall may be set for a settlement or prehearing pretrial
 31 conference in accordance with these rules.

32 D. Notice to employee petitioner. The employee petitioner
 33 shall be notified of all of the proceedings and should be
 34 represented by an attorney of his or her choice. A copy of all
 35 motions or answers shall be duly served upon the employee
 36 petitioner, the employee's petitioner's attorney, or both in

1 accordance with Minn. Stat. S 176.321.

2 9 MCAR S 2.316 Subpoenas. Subpoenas may be obtained without
3 charge from the ~~workers' compensation division or the office of~~
4 ~~administrative hearings.~~ The name and address and telephone
5 number of the party or attorney requesting service of the
6 subpoena shall be included on the subpoena before service is
7 made. When service is made, service and witness fees shall be
8 tendered in accordance with Minn. Stat. S 357.22.

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

14 9 MCAR S 2.317 The hearing.

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

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

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

- 1 1. The date of the examination;
- 2 2. The history of the injury;
- 3 3. The patient's complaints;
- 4 4. The source of all facts set forth in the history and
- 5 complaints;
- 6 5. Findings on examination;
- 7 6. Opinion as to the extent of disability and work
- 8 limitations, if any;
- 9 7. The cause of the disability and, if applicable,
- 10 whether the work injury was a substantial contributing factor
- 11 toward the disability;
- 12 8. The medical treatment indicated;
- 13 9. If permanent partial disability is an issue, an
- 14 -----
- 15 opinion as to whether or not permanent disability has resulted
- 16 from the injury and whether or not the condition has
- 17 stabilized. If stabilized, a description of the disability with
- 18 a complete evaluation; and
- 19 10. The reason or reasons for the opinion or opinions.
- 20 D. Rights of parties. All parties shall have the right to
- 21 present evidence, to cross-examine witnesses, and to present
- 22 rebuttal testimony.
- 23 E. Witnesses. Any party may be a witness or may present
- 24 witnesses on his behalf at the hearing. All oral testimony at
- 25 the hearing shall be under oath or affirmation. At the request
- 26 of a party or upon his own motion for good cause, the
- 27 compensation judge may exclude witnesses from the hearing room
- 28 so that they cannot hear the testimony of other witnesses.
- 29 F. Rules of evidence.
- 30 1. Pursuant to Minn. Stat. S 176.411, subd. 1, the
- 31 compensation judge is bound neither by the common law or
- 32 statutory rules of evidence nor by technical or formal rules of
- 33 pleading or procedure.
- 34 2. Evidence must be offered to be considered. All
- 35 evidence to be considered in the case, including all records and
- 36 documents in the possession of any party, or a true and correct
- photocopy thereof, shall be offered and made a part of the

1 record in the case. No other factual information or evidence
 2 shall be considered in the determination of the case. Any
 3 independent investigation by the compensation judge pursuant to
 4 the provisions of Minn. Stat. S 176.391, subd. 1, shall be part
 5 of the record provided all parties are aware of the
 6 investigation and have had an opportunity to participate in it.
 7 No other factual information or evidence shall be considered in
 8 -----
 the determination of the case.

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

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

17 5. Examination of adverse party. A party may call an
 18 adverse party or his managing agent or employees or an officer,
 19 director, managing agent or an employee of the state or any
 20 political subdivision thereof or of a public or private
 21 corporation or of a partnership or association or body politic
 22 which is an adverse party, and interrogate them by leading
 23 questions and contradict and impeach them on material matters in
 24 all respects as if they had been called by the adverse party.
 25 The adverse party may be examined by his counsel upon the
 26 subject matter of his or her examination in chief under the
 27 rules applicable to direct examination, and may be
 28 cross-examined, contradicted, and impeached by any other party
 29 adversely affected by the testimony.

30 G. The record.

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

35 2. The record in a compensation case shall contain:

36 a. All pleadings, motions and orders, including the

1 judgment roll and the entire record from any previous hearing
2 which is relevant to the issues under consideration;

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

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

8 d. Offers of proof, objections and rulings thereon;

9 e. The compensation judge's order;

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

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

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

16 3. The transcript.

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

26 b. Charges for transcripts prepared by the office
27 shall be set by the chief hearing examiner, with the approval of
28 the Department of Finance, and all moneys received for
29 transcripts prepared by the office shall be payable to the State
30 Treasurer, Office of Administrative Hearings Account.

31 c. Pursuant to the provisions of Minn. Stat. S
32 176.421, subd. 4, clause (3), a party may petition the chief
33 hearing examiner for an order directing that a transcript be
34 prepared, for purposes of appeal to the Court of Appeals, at no
35 cost to the appellant. A petition filed under this provision
36 shall include the following:

- 1 (1) ~~Title~~ Caption of the case;

 2 (2) Case identification numbers;
 3 (3) Name, address and telephone number of the
 4 attorney representing the appellant;
 5 (4) A sworn affidavit from the appellant which shall
 6 include:
- 7 (a) Appellant's monthly personal income from all
 8 sources including income from trusts, bonds, and savings
 9 certificates;
- 10 (b) A list, at market value, of all stocks,
 11 bonds, savings certificates or other certificates of
 12 indebtedness held by the appellant and the appellant's spouse if
 13 residing in the same household;
- 14 (c) If residing in the same household, the
 15 monthly personal income from all sources for appellant's spouse;
- 16 (d) A statement of the monthly expenses for the
 17 appellant's household;
- 18 (e) If the appellant owns any rental property, a
 19 statement showing the appellant's equity in the property and the
 20 monthly income and expense for the property;
- 21 (f) If the appellant owns outright or is
 22 purchasing the property in which he or she resides, a statement
 23 showing the market value of the property, the appellant's equity
 24 in the property, and the present monthly payments, if any.
- 25 H. Continuances during the hearing. If it appears in the
 26 interests of justice that further testimony should be received,
 27 the compensation judge, ~~in his or her discretion~~ with the
 28 ~~consent of all parties~~, may continue the hearing to a future
 29 -----
 date and oral notice on the record shall be sufficient if given
 30 at the time of the original hearing. Otherwise, the notice of
 31 the date for the continued hearing shall be in writing and
 32 served on all parties.
- 33 I. Hearing procedure.
- 34 1. Compensation judge conduct. The compensation judge
 35 shall not communicate, directly or indirectly, in connection
 36 with any issue of fact or law with any party concerning any

1 pending case, except upon notice and opportunity for all parties
 2 to participate. After the time the first witness is sworn,
 3 -----
 4 unless all parties agree, all of the proceedings shall be on the
 5 -----
 6 record, including any and all motions, objections, offers of
 7 -----
 8 proof, rulings of the judge, arguments of the parties other than
 9 -----
 10 final arguments, or other comments of the parties, their
 11 -----
 12 representative, or the judge. A compensation judge shall not
 13 -----
 14 order a court reporter to refrain from recording anything said
 15 -----
 16 during the course of a hearing absent the consent of all parties
 17 -----
 18 present nor shall a compensation judge turn off an audio
 19 -----
 20 magnetic recording device being used to record the proceedings,
 21 -----
 22 other than for reasonable breaks, absent the consent of all
 23 -----
 24 parties present.

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

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

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

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

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

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

34 f. When all parties and witnesses have been heard, if
 35 the compensation judge believes that legal issues remain
 36 unresolved, opportunity may be afforded to present final

1 argument, in a sequence determined by the compensation judge.
2 Final argument may, in the discretion of the compensation judge,
3 be in the form of written memoranda or oral argument, or both.
4 Oral final argument shall not be recorded, unless requested by a
5 party or upon the order of the compensation judge. Written
6 memoranda shall, when allowed, be submitted simultaneously or
7 sequentially and within such time periods as the compensation
8 judge shall prescribe. Final arguments shall be limited to
9 legal issues only;

10 g. After final argument, if any, the hearing shall be
11 closed or continued if ordered by the compensation judge. If
12 continued, it shall be either continued to a certain time and
13 day, which shall be announced at the time of the hearing and
14 made a part of the record, or continued to a date to be
15 determined later, which must be upon not less than 15 days
16 written notice to the parties;

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

22 J. Disruption of hearing.

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

30 2. Other conduct. Pursuant to and in accordance with the
31 provisions of Minn. Stat. S 624.72, no person shall interfere
32 with the free, proper and lawful access to or egress from the
33 hearing room. No person shall interfere with the conduct of,
34 disrupt or threaten interference with or disruption of the
35 hearing. In the event of interference or disruption or threat
36 thereof, the compensation judge shall read this rule to those

1 persons causing the interference or disruption and thereafter
2 proceed as the judge deems appropriate.

3 9 MCAR S 2.318 The compensation judge's decision.

4 A. Basis for the decision.

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

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

15 B. Compensation judge decisions.

16 1. Following the close of the record, the compensation
17 judge shall prepare his or her decision and, upon completion,
18 ~~shall immediately file it with the commissioner who shall serve~~
19 ~~it on all parties as required by Minn. Stat. S 176.281~~ it shall
20 be served on all parties. -----

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

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

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

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

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

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

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

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

14 9 MCAR S 2.319 Rehearing. When a compensation judge has issued
 15 his or her findings, conclusions and decision, the judge's
 16 jurisdiction over the case shall end, except for taxation of
 17 disbursements or awarding of attorney's fees, unless the matter
 18 is ~~referred~~ referred to the compensation judge by the Court of
 19 Appeals and the chief hearing examiner for supplemental
 20 findings, taking of additional testimony, rehearing, or other
 21 action; provided that compensation judges may correct clerical
 22 or mathematical errors in decisions at any time prior to appeal.

23 9 MCAR S 2.320 Settlements.

24 A. Stipulations. Stipulations for settlement are allowed
 25 pursuant to Minn. Stat. SS 176.081, subd. 7a and 176.521 and
 26 shall conform to ~~that section~~ those sections and to the
 27 requirements of this rule.

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

30 C. Approval. Stipulations for settlement shall be filed
 31 with and approved by the commissioner or the commissioner's
 32 designee if the case has not been referred to the chief hearing
 33 examiner.

34 Stipulations for settlement reached and agreed upon
 35 subsequent to the referral of the case to the chief hearing

1 examiner shall be filed with and, except in cases where all
 2 parties are represented by attorneys or for those filed pursuant
 3 to Minn. Stat. S 176.081, subd. 7a, subject to approval by the
 4 compensation judge assigned to hear the case or the a calendar
 5 judge if the matter has not yet been assigned.

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

17 D. Contents. Stipulations for settlement shall contain the
 18 following information;

- 19 1. A brief statement of all of the admitted material
 20 facts;
- 21 2. A detailed statement of the matters in dispute,
 22 setting forth the contentions of the parties, supported by all
 23 medical reports or other documents in the possession of each
 24 party pertaining to each issue;
- 25 3. The weekly wage and compensation rate of the employee
 26 petitioner;
- 27 4. An itemization of the sums, if any, previously paid by
 28 the employer and insurer;
- 29 5. A statement that all medical or treatment expenses
 30 have been paid by the employer and insurer, or an itemization of
 31 the expenses which have not been paid by the employer and
 32 insurer, indicating which payments, if any, have been made by
 33 the employee. The stipulation shall specifically state whether
 34 any third party has paid any of the expenses and, if payments
 35 have been made, shall include the name and address of the third
 36 party together with any identifying claim or policy number;

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

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

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

11 9. Where applicable, a statement that the employee
12 petitioner is claiming or waiving his or her right to make
13 -----
14 application for an award of attorney's fees against the employer
15 or insurer pursuant to Minn. Stat. SS 176.081, subd. 7 or 8,
16 176.135 or 176.191.

17 E. Attorney's fees detailed. Stipulations for settlement of
18 cases in which the employee or dependents petitioner have
19 -----
20 engaged the services of an attorney shall be accompanied by a
21 statement of the amount of attorney's fees requested and an
22 itemization of the costs incurred, specifying who will be
23 responsible for payment of each cost, and shall provide
24 sufficient information to show the reasonableness of the
25 requested fees and costs in accordance with Minn. Stat. S
26 176.081. If no fees are requested, the stipulation shall so
27 state.

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

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

35 H. Copy to client. The attorney representing the employee
36 or dependents petitioner shall furnish a copy of the stipulation

for settlement to his or her client at the time the client signs
the stipulation.

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

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

6 9 MCAR S 2.321 Attorney fees.

7 A. ~~Autherization~~ Notice of representation. Whenever an

8 employer or insurer receives notice that an attorney is
9 representing an ~~employee or dependent~~ a petitioner, 25 percent

10 of the compensation, not including medical expense, shall be
11 withheld pending an order determining the reasonable value of
12 any claim for legal services or disbursements pursuant to Minn.
13 Stat. S 176.081. Written notice that the compensation is being
14 withheld shall immediately be mailed to the ~~employee or~~
15 ~~dependents~~ petitioner, the attorney and the division at its

16 Saint Paul office.

17 B. ~~Filing~~ of certain documents as application. In

18 applicable cases, the filing of a claim petition or an objection
19 to discontinuance of compensation shall constitute an
20 application for the award of attorney fees against the employer
21 and insurer pursuant to Minn. Stat. S 176.081, subd. 7.

22 C. ~~Application~~. Application for determination and approval

23 of any claim for legal services or disbursements may be filed by
24 the employer or insurer, the ~~employee or dependents~~ petitioner

25 or the attorney. Unless ordered otherwise by a compensation

26 judge, an application for attorney fees shall be by written

27 petition. Any application shall disclose the amount of
28 compensation withheld, the total fees or disbursements
29 previously paid to said attorney or his associates and, if filed
30 by the attorney for the ~~employee or dependents~~ petitioner, the

31 amount of any retainer fee paid. Applications filed by
32 attorneys shall contain sufficient information to show the
33 reasonableness of the requested fees in accordance with Minn.
34 Stat. S 176.081, subd. 5.

35 A separate application is not necessary if filed as part of
36 a stipulation for settlement as provided in these rules.

1 ~~C. D. Filing.~~ Applications under this rule shall be filed
 2 with the ~~commissioner~~ unless the case has been referred to the
 3 chief hearing examiner for assignment, in which case it shall be
 4 filed with the compensation judge assigned to hear the case or
 5 the a calendar judge if no assignment has been made.

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

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

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

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

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

33 9 MCAR S 2.322 Taxation of costs and disbursements.

34 A. Informal request. Prior to submitting a formal request
 35 for payment or reimbursement of costs and disbursements, an
 36 informal request should be made by the taxing party. If

1 agreement cannot be reached on all items, the taxing party may

2 then proceed as delineated herein, including in the formal

3 request an indication of those costs agreed upon.

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

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

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

14 9 MCAR S 2.323 Second injury law.

15 A- Application- Application for registration of physically
16 impaired employees shall be in a format prescribed by the
17 division and submitted pursuant to rules of the commissioner-

18 B- Hearing- Should the commissioner deem the application
19 unacceptable prior to the subsequent injury, the applicant may,
20 within 60 days following receipt of notice of rejection,
21 petition to the division, in writing, for hearing upon the
22 application. A copy of the petition shall be served by the
23 applicant upon the state treasurer, custodian of the special
24 compensation fund, and upon the attorney general. Upon receipt
25 of the petition, the commissioner shall refer the matter to the
26 chief hearing examiner for hearing which hearing shall be
27 conducted by a compensation judge as provided by Minn. Stat. S
28 176.411, with right of appeal-

29 E- Referral- If a dispute arises following the notice of
30 intention to claim reimbursement under Minn. Stat. S 176.131,
31 subd. 6, and the commissioner shall refer refers the matter to
32 the chief hearing examiner who it shall assign the matter be
--
33 assigned to a compensation judge for hearing which hearing shall

34 be conducted as provided by Minn. Stat. S 176.411, with right of
35 appeal.

1 9 MCAR S 2.324 Other hearings. Pursuant to the provisions of
2 Minn. Stat. S 15.052, subd. 3, all hearings not discussed herein
3 but required to be conducted by a compensation judge of the
4 office of administrative hearings shall be conducted in
5 substantial compliance with these rules provided, however, that
6 in any dispute wherein an immediate hearing is necessary in
7 order to carry out the purpose and intent of the Minnesota
8 workers' compensation law, the notice of hearing shall be given
9 not less than five working days prior to the hearing date. The
10 chief hearing examiner shall provide expedited assignment of
11 compensation judges to these hearings and shall assign
12 compensation judges to the hearings in a manner which will allow
13 the compensation judge's decision to be issued immediately upon
14 conclusion of the hearing or as soon thereafter as may be
15 reasonable and practical.

16 9 MCAR S 2.325 Permanent partial disability panel.

17 A. Notification to administrator. Upon receipt of a file
18 from the commissioner, if the chief hearing examiner, or a
19 calendar or compensation judge if the case has been assigned to
20 them, determines from a review of the file that permanent
21 partial disability is a significant issue to be determined in
22 the case, the chief hearing examiner shall immediately notify
23 the administrator of the workers' compensation court of appeals
24 if the ~~employee~~ petitioner resides in a county selected by the
25 court of appeals pursuant to the provisions of Minn. Stat. S
26 176.152, subd. 7.

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

35 C. Hearing. When the chief hearing examiner or compensation
36 judge receives the report of the panel, the case shall be set

1 for a regular hearing as soon as practicable.

2 D. Disputes relating to payment of panel members. Disputes
3 relating to the payment of the fees of panel members arising
4 pursuant to the provisions of Minn. Stat. S 176.152, subd. 6,
5 shall be brought to the attention of the compensation judge
6 assigned to hear the case no later than 20 days prior to the
7 date of the hearing. The parties disputing the fee shall notify
8 the compensation judge, in writing, of the intent to dispute the
9 fee, stating therein the specific facts relied upon in disputing
10 the fee. A copy of this notification shall be served on all
11 other parties and the members of the panel at the same time as
12 it is filed with the compensation judge. At the hearing, the
13 dispute shall be determined as other issues in the case.

14 9 MCAR S 2.326 Exhibits: removal and return.

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

20 B. Return without consent or notice. Upon the expiration of
21 the time in which to appeal, all exhibits or other documentary
22 evidence may be returned to their source of origin without the
23 consent of the parties or notice thereto, upon order of the
24 compensation judge. A copy of the letter of transmittal of the
25 exhibits or documents shall remain in the file as part of the
26 record of the case.

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

1 shall be included with the request.