

1 Occupational Safety and Health Review Board

2

3 Adopted Rules of Procedure for Practice Before the Occupational  
4 Safety and Health Review Board

5

6 Rules as Adopted

7 8 MCAR S 1.7250 General provisions.

8 A. Definitions. For the purposes of 8 MCAR SS  
9 1.7250-1.7255, the following terms have the meanings given them.

10 1. "Act" means the Minnesota Occupational Safety and  
11 Health Act of 1973, Minnesota Statutes, sections 182.65 to  
12 182.674.

13 2. "Commissioner," "board," "person," "employer," and  
14 "employee," have the meanings set forth in Minnesota Statutes,  
15 section 182.651.

16 3. "Chairperson" means the chairperson of the board as  
17 designated by the governor.

18 4. "Executive secretary" means the executive secretary of  
19 the Occupational Safety and Health Review Board.

20 5. "Hearing examiner" means a person assigned to hear a  
21 contested case by the Office of Administrative Hearings.

22 6. "Affected employee" means an employee of a cited  
23 employer who is exposed within the scope of his employment to  
24 the alleged hazard described in the citation.

25 7. "Authorized employee representative" means a labor  
26 organization that has a collective bargaining relationship with  
27 the cited employer and that represents affected employees. It  
28 also means a person authorized to act on behalf of affected  
29 employees.

30 8. "Representative" means any person, including an  
31 authorized employee representative or legal counsel for an  
32 authorized employee representative, authorized by a party or  
33 intervenor to represent him in a proceeding.

34 9. "Citation" means a written communication issued by the  
35 commissioner to an employer pursuant to Minnesota Statutes,  
36 section 182.66.

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1           10. "Notification of proposed penalty" means a written  
2 communication issued by the commissioner to an employer pursuant  
3 to Minnesota Statutes, section 182.661, subdivision 1 or 2.

4           11. "Day" means a calendar day.

5           12. "Working day" means all days except Saturdays,  
6 Sundays, or holidays as defined in Minnesota Statutes, section  
7 645.44.

8           13. "Proceeding" means any proceeding before the board or  
9 before a hearing examiner.

10           14. "Party" means each person named as a party by the  
11 board in the notice of and order for hearing, or persons granted  
12 permission to intervene pursuant to 9 MCAR S 2.210.

13           15. "Intervenor" means any person who has submitted a  
14 petition to intervene with the hearing examiner in accordance  
15 with 9 MCAR S 2.210.

16           16. "Person" means any individual, partnership,  
17 corporation, joint stock company, unincorporated association or  
18 society, municipal corporation, or any government or  
19 governmental subdivision unit or agency other than a court of  
20 law.

21        B. Scope of rules. Rules 8 MCAR SS 1.7250-1.7255 shall  
22 govern all proceedings before the board, ~~except.~~ Additionally,  
23 all contested case and rule hearing proceedings are governed by  
24 9 MCAR SS 2.101-2.222.

25           In the absence of a specific provision, procedures shall be  
26 in accordance with the Minnesota Administrative Procedure Act.

27        C. Extensions of time. Requests for extensions of time for  
28 the filing of any pleading or document must be received by the  
29 board three days in advance of the date on which the pleading or  
30 document is due to be filed.

31        D. Record address. The initial pleading filed by a person  
32 must contain his name, address, and telephone number. Any  
33 change in the information must be communicated promptly in  
34 writing to the hearing examiner or the board, as the case may  
35 be, and to all other parties and intervenors. A party or  
36 intervenor who fails to furnish the information waives his right

1 to notice and service under E.

2 E. Service and notice.

3 1. At the time of filing pleadings or other documents, a  
4 copy shall be served by the filing party or intervenor on every  
5 other party or intervenor.

6 2. Service upon a party or intervenor who has appeared  
7 through a representative must be made only upon such  
8 representative.

9 3. Unless otherwise ordered, service may be made by  
10 postage prepaid first class mail, personal delivery, or by  
11 posting. Service is made at the time of mailing, personal  
12 delivery, or posting.

13 4. Service must be certified by a written statement that  
14 sets forth the date and manner of service. The statement must  
15 be signed by the person accomplishing service, and it must be  
16 filed with the pleading or document.

17 5. If service is made by posting, the posting must take  
18 place within two working days of receipt of the document  
19 posted. Certification of posting must be filed with the  
20 executive secretary within five working days of receipt of the  
21 document.

22 6. Where service is accomplished by first class mail or  
23 personal delivery, certification must be filed with the  
24 executive secretary within five working days of receipt of the  
25 document.

26 7. If there are any affected employees who are not  
27 represented by an authorized employee representative, the  
28 employer shall, within two working days of receiving the  
29 acknowledgement of the notice of contest or petition for  
30 modification of abatement date, post, where the citation is  
31 required to be posted, a copy of the notice of contest and a  
32 notice informing affected employees of their right to party  
33 status and of the availability of all pleadings for inspection  
34 and copying at reasonable times. A notice in the following form  
35 complies with this paragraph:

36 (Name of employer)

1 Your employer has been cited by the Commissioner of Labor  
2 and Industry for violation of the Minnesota Occupational Safety  
3 and Health Act of 1973. The citation has been contested and  
4 will be the subject of a hearing. . Affected employees are  
5 entitled to participate in this hearing as parties under the  
6 terms and conditions established by the Occupational Safety and  
7 Health Review Board in its rules of procedure. Notice of intent  
8 to participate should be sent to: Executive Secretary,  
9 Occupational Safety and Health Review Board, 444 Lafayette Road,  
10 St. Paul, MN 55101, or any other address that the review board  
11 has. The notice of intent to participate must contain the  
12 employees' names, addresses, representatives, if any, and a  
13 statement that they are affected employees of the cited employer.

14 All papers relevant to this matter may be inspected at:  
15 (Place reasonably convenient to employees, preferably at or  
16 near workplace.)

17 Where appropriate, the second sentence of the above notice  
18 will be deleted and the following sentence will be substituted:

19 The reasonableness of the period prescribed by the  
20 Commissioner of Labor and Industry for abatement of the  
21 violations has been contested and will be the subject of a  
22 hearing.

23 8. Service and notice to affected employees not  
24 represented by an authorized employee representative are deemed  
25 accomplished by posting.

26 9. Certification of the posting required in 7. must be  
27 filed with the executive secretary of the board within five  
28 working days of receipt of the document. If the employer fails  
29 to certify the posting in the prescribed manner, the board shall  
30 dismiss the notice of contest.

31 10. If there are any affected employees who are  
32 represented by an authorized employee representative, the  
33 employer shall by first class mail or personal delivery serve  
34 upon the representative the notice set forth in 7. and a copy of  
35 the notice of contest.

36 11. Service and notice to employees represented by an

1 authorized employee representative are deemed accomplished by  
2 serving the representative by first class mail or personal  
3 delivery.

4 12. Certification of the service required in 10. must be  
5 filed with the executive secretary of the board within five  
6 working days of receipt of the document. If the employer fails  
7 to certify the service in the prescribed manner, the board shall  
8 dismiss the notice of contest.

9 13. A copy of the notice of hearing to be held before the  
10 hearing examiner must be served by the employer on affected  
11 employees who are not represented by an authorized employee  
12 representative by posting within two days of receipt a copy of  
13 the notice of hearing at or near the place where the citation is  
14 required to be posted.

15 14. Certification of the posting required in 13. must be  
16 filed with the hearing examiner and a copy sent to the executive  
17 secretary of the board within five working days of receipt of  
18 the notice of hearing. If the employer fails to certify the  
19 posting in the prescribed manner, the notice of contest shall be  
20 dismissed.

21 15. A copy of the notice of hearing to be held before the  
22 hearing examiner shall be served by the employer on the  
23 authorized employee representative of affected employees, if  
24 any, by mail or personal delivery, if the employer has not been  
25 informed that the authorized employee representative has entered  
26 an appearance as of the date the notice is received by the  
27 employer.

28 16. Certification of the service of the notice of hearing  
29 required in 15. must be filed with the hearing examiner and a  
30 copy sent to the executive secretary of the board within five  
31 working days of receipt of the document. If the employer fails  
32 to certify the service in the prescribed manner, the notice of  
33 contest shall be dismissed.

34 17. When a notice of contest is filed by an affected  
35 employee who is not represented by an authorized employee  
36 representative and there are other affected employees who are

1 represented by an authorized employee representative, the  
2 unrepresented employee shall, upon receiving acknowledgement by  
3 the board of his notice of contest, serve a copy on the  
4 authorized employee representative by mail or personal delivery  
5 and shall file certification of service with the executive  
6 secretary within five working days.

7 18. When a notice of contest is filed by an affected  
8 employee or an authorized employee representative, a copy of the  
9 notice of contest must be provided to the employer for posting  
10 in the manner prescribed in E.

11 19. An authorized employee representative who files a  
12 notice of contest is responsible for serving any other  
13 authorized employee representative whose members are affected  
14 employees.

15 20. Where posting is required by this section, posting  
16 must be maintained until commencement of the hearing or until  
17 earlier disposition.

18 21. If a settlement proposal is filed with the hearing  
19 examiner, it shall be served upon affected employees by the  
20 employer. For affected employees represented by an authorized  
21 employee representative, service shall be accomplished by  
22 personal delivery or first class mail to the representative.  
23 For affected employees not so represented, service shall be  
24 accomplished by posting. Proof of service of the settlement  
25 proposal on affected employees shall be filed with the hearing  
26 examiner.

27 F. Filing.

28 1. Before a case is assigned to a hearing examiner, all  
29 papers must be filed with the executive secretary. After the  
30 case has been assigned to a hearing examiner and before the  
31 issuance of his decision, all papers must be filed with the  
32 hearing examiner at the address given in the notice informing  
33 the parties of the assignment, with the exception of the  
34 certification of posting and service prescribed in E.14. and  
35 16., which must be filed with the hearing examiner and the  
36 executive secretary. After issuance of the decision by the

1 hearing examiner, all papers must be filed with the executive  
2 secretary of the board.

3 2. Unless otherwise ordered, all filing may be  
4 accomplished by first class mail.

5 3. Filing is deemed effected at the time of mailing.

6 G. Consolidation. Cases may be consolidated on the motion  
7 of any party, on the hearing examiner's own motion, or on the  
8 board's own motion, where there exist common parties, common  
9 questions of law or fact, or both, or in other circumstances as  
10 justice and the administration of the act require.

11 H. Severance. Upon its own motion, or upon the motion of  
12 any party, the board or the hearing examiner may, for good  
13 cause, order any proceeding severed with respect to some or all  
14 issues or parties.

15 I. Protection of trade secrets and other confidential  
16 information. Upon application by any person in a proceeding  
17 where trade secrets or other matters may be divulged, the  
18 hearing examiner shall issue orders as may be appropriate to  
19 protect the confidentiality of these matters.

20 8 MCAR S 1.7251 Parties and representatives.

21 A. Party status.

22 1. Affected employees or an authorized representative may  
23 choose to participate as parties provided they file notice of  
24 intent to participate at least five days before the start of the  
25 hearing. The notice of intent to participate must contain the  
26 employees' names, addresses, representatives, if any, and a  
27 statement that they are affected employees of the cited  
28 employer. This notice shall be filed with the executive  
29 secretary if a hearing examiner has not yet been assigned.  
30 After a hearing examiner has been assigned, this notice shall be  
31 filed with the hearing examiner and served upon all other  
32 parties.

33 2. Where a notice of contest is filed by an employee or  
34 by an authorized employee representative with respect to the  
35 reasonableness of the date for abatement of a violation, the  
36 type of alleged violation, the proposed penalty, or notification

1 issued, the employer charged with the responsibility of the  
2 alleged violation may choose party status by filing a notice at  
3 least five days before the start of the hearing. The notice  
4 must contain the employer's name, address, and representative,  
5 if any. This notice shall be filed with the executive secretary  
6 if a hearing examiner has not yet been assigned. After a  
7 hearing examiner has been assigned, this notice shall be filed  
8 with the hearing examiner and served upon all other parties.

9 3. Intervention and appearance by nonparties may be  
10 granted pursuant to 9 MCAR S 2.210.

11 B. Representatives of parties and intervenors.

12 1. Any party or intervenor may appear in person or  
13 through a representative.

14 2. A representative of a party or intervenor shall be  
15 deemed to control all matters respecting the interest of such  
16 party or intervenor in the proceeding.

17 3. Affected employees who are represented by an  
18 authorized employee representative may appear only through the  
19 authorized employee representative.

20 4. Nothing contained herein requires any representative  
21 to be an attorney-at-law.

22 5. Withdrawal of appearance of any representative may be  
23 affected by filing a written notice of withdrawal and by serving  
24 a copy thereof on all parties and intervenors.

25 8 MCAR S 1.7252 Pleadings and motions.

26 A. Form.

27 1. Except as provided in 8 MCAR S 1.7252, there are no  
28 specific requirements on the form of any pleading. A pleading  
29 is simply required to contain a caption sufficient to identify  
30 the parties in accordance with B. It must include the board's  
31 and the hearing examiner's docket number, if any, and a clear  
32 and plain statement of the relief that is sought, together with  
33 the ground for the relief.

34 2. Pleadings and other documents, other than exhibits,  
35 must be typewritten or otherwise be legible on paper,  
36 approximately 8-1/2 inches by 11 inches.



1 3. Pleadings must be signed by the party filing or by his  
2 representative. Signing constitutes a representation by the  
3 signer that he has read the document or pleading, that to the  
4 best of his knowledge, information, and belief the statements  
5 made in it are true, and that it is not interposed for delay.

6 4. The board may refuse for filing any pleading or  
7 document that does not comply with the requirements of 1., 2.,  
8 and 3.

9 B. Caption; titles of cases.

10 1. Cases initiated by a notice of contest shall be titled:  
11 Commissioner of Labor and Industry,

12 Complainant

13 v.

14 (Name of contestant),

15 Respondent

16 2. Cases initiated by a petition for modification of  
17 abatement date shall be titled:

18 (Name of employer),

19 Petitioner

20 v.

21 Commissioner of Labor and Industry,

22 Respondent

23 3. Cases in which a third party interest has been  
24 exercised shall be entitled:

25 Commissioner of Labor and Industry,

26 Complainant

27 v.

28 (Name of employer),

29 Respondent

30  
31 (Name of Authorized Employee Representative),

32 Authorized

33 employee

34 representative

35  
36 4. The titles listed in 1., 2., and 3. must appear at the

1 left upper portion of the initial page of any pleading or  
2 document, other than exhibits, filed.

3 5. The initial page of any pleading or document, other  
4 than exhibits, must show, at the upper right of the page,  
5 opposite the title, the docket number, if known, assigned by the  
6 executive secretary of the board.

7 C. Notices of contest. The commissioner shall, within seven  
8 working days of receiving a notice of contest, transmit the  
9 original to the board, together with copies of all relevant  
10 documents.

11 D. Employer contests.

12 1. Complaint.

13 a. The commissioner shall file a complaint with the  
14 board no later than 40 days after receiving the notice of  
15 contest.

16 b. The complaint must set forth all alleged violations  
17 and proposed penalties that are contested, stating with  
18 particularity:

19 (1) the basis for jurisdiction;

20 (2) the time, location, place, and circumstances of  
21 each alleged violation; and

22 (3) the considerations upon which the date for  
23 abatement and the proposed penalty on each alleged violation are  
24 based.

25 c. If the commissioner seeks in his complaint to amend  
26 his citation or proposed penalty, he shall set forth the reasons  
27 for amendment and shall state with particularity the change  
28 sought.

29 d. At any time in the proceedings, an employer may  
30 withdraw his notice of contest.

31 2. Notice to respondent. The commissioner shall file and  
32 serve on the respondent no later than 40 days after receiving  
33 the notice of contest a notice stating the following:

34 a. that the basis for the board's authority to hold a  
35 hearing is to be found in Minnesota Statutes, section 182.664;

36 b. that the party has a right to be represented by

1 legal counsel in all proceedings;

2 c. that the rules of the board and the rules of the  
3 Office of Administrative Hearings apply to the proceedings;

4 d. the name of the agency official or member of the  
5 Attorney General's staff to be contacted to discuss informal  
6 disposition under 9 MCAR S 2.207 or discovery under 9 MCAR S  
7 2.214 C.; and

8 e. ~~that a failure to appear at the hearing may result~~  
9 ~~in the allegations of the pleadings being taken as true~~  
10 respondent has a right to a contested case hearing before an  
11 independent hearing examiner from the Office of Administrative  
12 Hearings pursuant to Minnesota Statutes, sections 14.48 to  
13 14.62, and 182.664, subdivision 3;

14 f. that respondent may present evidence and argument  
15 with respect to the issues and cross-examine witnesses;

16 g. where the procedural rules may be obtained;

17 h. that parties may attempt to settle the matter  
18 without a hearing; and

19 i. that should respondent wish to initiate discovery  
20 pursuant to 9 MCAR S 2.214 C. prior to the setting of a hearing  
21 date, respondent must file a discovery motion with the review  
22 board and the case will be transferred to the Office of  
23 Administrative Hearings for a decision on the discovery motion.

24 3. Answer.

25 a. Within 15 days after service of the complaint, the  
26 party against whom the complaint was issued shall file an answer  
27 with the board.

28 b. The answer must contain a short and plain statement  
29 denying those allegations in the complaint which the party  
30 intends to contest. Any allegation not denied is deemed  
31 admitted.

32 c. If an answer is not filed with the executive  
33 secretary in a timely manner, the notice of contest shall be  
34 dismissed.

35 E. Petitions for modification of abatement date.

36 1. When a petition for modification of abatement date

1 filed under 8 MCAR S 1.7280 is objected to by the commissioner,  
2 affected employees, or an authorized employee representative,  
3 the petition must be processed as follows:

4 a. The petition, citation, and objections received by  
5 the Department of Labor and Industry must be forwarded to the  
6 board within three days after the expiration of the 15-day  
7 period set out in 8 MCAR S 1.7280 C.4.

8 b. The board shall docket and process the petition in  
9 the same manner as any other contested case, except that all  
10 hearings on the petitions must be handled on an expedited basis.

11 c. An employer petitioning for a modification of  
12 abatement date has the burden of proving that he has made a good  
13 faith effort to comply with the abatement requirements of the  
14 citation and that abatement has not been completed because of  
15 factors beyond his control.

16 d. Within ten days after receiving notice of the  
17 docketing by the board of any petition for modification of  
18 abatement date, each objecting party shall file a response  
19 setting forth the reasons for opposing the granting of a  
20 modification date different from that requested in the petition.

21 F. Employee contests.

22 1. An affected employee or authorized employee  
23 representative may file a notice of contest with respect to the  
24 time fixed for abatement, the citation, the type of alleged  
25 violation, the proposed penalty, or notification issued.

26 2. Employee contestations will be handled in accordance  
27 with C. and D.

28 3. At any time in the proceedings, an employee may  
29 withdraw his notice of contest.

30 G. Statement of position. At any time prior to the  
31 commencement of the hearing before the hearing examiner, any  
32 party may file a statement of position with respect to any or  
33 all issues to be heard.

34 H. Response to motions. Any party upon whom a motion is  
35 served has ten days from service of the motion to file a  
36 response.

1 I. Failure to file. Failure to file any pleading pursuant  
2 to 8 MCAR SS 1.7250-1.7255 when due, may, in the discretion of  
3 the board or the hearing examiner, constitute a waiver of the  
4 right to further participation in the proceedings.

5 J. Reinstatement. Request for reinstatement of a notice of  
6 contest which has been dismissed by the board for failure to  
7 comply with procedures must be made in writing and be filed with  
8 the executive secretary of the board within five days of receipt  
9 of the order of dismissal. This statement should contain  
10 reasons why the rules of procedure have not been complied with.

11 K. Notice of readiness for hearing.

12 1. Subsequent to the timely filing of an answer, a party  
13 that is prepared for hearing may file a notice of readiness for  
14 hearing with the board and serve a copy on all parties.

15 2. Upon receipt of the notice of readiness for hearing,  
16 the board shall schedule a hearing. The board shall serve a  
17 written notice of hearing and order on all parties at least 30  
18 days prior to the hearing date. The employer shall serve a copy  
19 of the notice of hearing and order on affected employees and  
20 authorized employee representatives pursuant to 8 MCAR S 1.7250

21 E. The notice of hearing and order must state the following:

22 a. that if a party chooses to appear at the hearing, a  
23 notice of appearance must be filed by that party with the  
24 hearing examiner within 20 days of the date of service of the  
25 notice of hearing and order pursuant to 9 MCAR S 2.205; and

26 b. that a failure to appear at the hearing may result  
27 in the allegations of the pleadings being taken as true.

28 8 MCAR S 1.7253 Post hearing procedures.

29 A. Decisions of hearing examiners.

30 1. The decision of the hearing examiner must include  
31 findings of fact, conclusions of law, and an order.

32 2. The hearing examiner shall sign and date the  
33 decision. Upon service of the decision by the hearing examiner,  
34 jurisdiction rests solely in the board, and all subsequent  
35 motions, petitions, and other pleadings filed must be addressed  
36 to the board.

1 B. Notice of appeal.

2 1. Any party may file a notice of appeal of the findings  
3 and decision of a hearing examiner with the board.

4 2. A notice of appeal must contain a concise statement of  
5 each portion of the findings and decision to which exception is  
6 taken. It may be accomplished by a statement of reasons relied  
7 upon. The notice of appeal must include the legal or factual  
8 issues that are raised on appeal. The original and four copies  
9 shall be filed with the board.

10 3. The notice of appeal must be received by the board at  
11 its offices in St. Paul, Minnesota, on or before the 30th day  
12 following ~~publication~~ issuance of the hearing examiner's  
13 findings and decision.

14 4. Within ten days after the filing of a notice of  
15 appeal, any other party may file a notice of appeal of the  
16 hearing examiner's findings and decision regardless of the  
17 30-day period stated in 3.

18 5. At the time of filing a notice of appeal, the party  
19 seeking appeal shall serve a copy of the notice of appeal on  
20 every other party of record.

21 C. Briefs. The board may order the parties to file any  
22 briefs or memoranda it deems necessary. Each brief or  
23 memorandum must state the legal or factual issues involved in  
24 the appeal and each party's stance on these issues.

25 D. Stay of order of hearing examiner. The timely filing by  
26 any party of a notice of appeal to the board stays the order of  
27 the hearing examiner.

28 E. Oral argument before board.

29 1. Oral argument before the board will be heard from each  
30 party or party's representative unless it is waived by that  
31 party.

32 2. At least ten days before the date set for oral  
33 argument, the executive secretary will advise all parties to the  
34 proceedings of the date, hour, place, time allotted, and scope  
35 of the argument.

36 3. The board is limited in its review of a hearing

1 examiner's findings and decision to the matters preserved in the  
2 record.

3 F. Decision of hearing examiner not appealed to board. If  
4 no party files a notice of appeal within the 30-day time limit  
5 provided in B.2., the decision of the hearing examiner becomes a  
6 final order of the board.

7 8 MCAR S 1.7254 Settlement.

8 A. Settlement is encouraged at any stage of the proceedings  
9 if the settlement is consistent with the provisions and  
10 objectives of the act.

11 B. Settlement agreements must be signed and dated by each  
12 party.

13 C. Settlement agreements must contain a provision stating  
14 that the date on which the employer has served the agreement  
15 upon affected employees in the manner prescribed by 8 MCAR S  
16 1.7250 E.21.

17 D. Settlement agreements submitted by the parties must be  
18 accompanied by an appropriate proposed order.

19 E. Only contested items are subject to settlement.

20 F. Once a settlement has been reached, the contesting party  
21 must withdraw the notice of contest.

22 G. All settlement agreements and orders must be approved by  
23 a hearing examiner. A settlement agreement and order shall not  
24 be approved until at least ten days following service of the  
25 settlement proposal on affected employees.

26 H. The board may vacate any settlement agreement and order  
27 that is contrary to the act or board rules.

28 I. An affected employee may file with the hearing examiner  
29 an objection to a proposed settlement agreement within ten days  
30 of service of the proposed agreement upon the employee. The  
31 hearing examiner shall give consideration to the objection  
32 before approving or disapproving the settlement.

33 8 MCAR S 1.7255 Miscellaneous provisions.

34 A. Expedited proceeding.

35 1. Upon application of any party or intervenor, or upon

1 his own motion, any board member may order an expedited  
2 proceeding.

3 2. When an expedited proceeding is ordered, the executive  
4 secretary shall notify all parties and intervenors.

5 3. The hearing examiner assigned in an expedited  
6 proceeding shall make necessary rulings with respect to time for  
7 filing of pleadings and with respect to all other matters,  
8 without reference to times set forth in these rules, shall order  
9 daily transcripts of the hearing, and shall do all other things  
10 necessary to complete the proceeding in the minimum time  
11 consistent with fairness.

12 B. Standards of conduct. All persons appearing in any  
13 proceeding shall conform to the standards of ethical conduct  
14 required in the courts of the state of Minnesota.

15 C. Ex parte communication.

16 1. With respect to the merits of any case not concluded,  
17 there shall be no ex parte communication between the board,  
18 including any member, officer, employee, or agent of the board  
19 who is employed in the decisional process, and any of the  
20 parties or intervenors.

21 2. If ex parte communication occurs, the board may make  
22 orders or take whatever action fairness requires. Upon notice  
23 and hearing, the board may take any disciplinary action  
24 appropriate in the circumstances against any person who  
25 knowingly and willfully makes or solicits the making of a  
26 prohibited ex parte communication.

27 D. Restrictions on participation by investigative or  
28 prosecuting officers. In any proceeding noticed pursuant to the  
29 rules in this part, the Commissioner of Labor and Industry shall  
30 not participate or advise with respect to the report of the  
31 hearing examiner or the board decision.

32 E. Inspection and reproduction of documents. Subject to the  
33 provisions of law restricting public disclosure of information,  
34 any person may, at the offices of the board, inspect and copy  
35 any document filed in any proceeding. Costs are borne by the  
36 person.



1 F. Restrictions with respect to former employee or member.

2 1. No former employee or member of the board or the  
3 Department of Labor and Industry may appear before the board as  
4 an attorney or other representative for any party in any  
5 proceeding or other matter, formal or informal, in which he  
6 participated personally and substantially during the period of  
7 his employment or tenure.

8 2. No former employee or member of the board or the  
9 Department of Labor and Industry may appear before the board as  
10 an attorney or other representative for any party in any  
11 proceeding or other matter, formal or informal, in which he was  
12 involved during the period of his employment or tenure, unless  
13 one year has elapsed since the termination of the employment or  
14 tenure.

15 G. Special circumstances; waiver of rules. In special  
16 circumstances not contemplated by 8 MCAR SS 1.7250-1.7255, or  
17 for good cause shown, the board may, upon application by any  
18 party or intervenor, or on its own motion, after three days  
19 notice to all parties and intervenors, waive any rule or make  
20 any orders as justice or the administration of the act requires.

21 H. Penalties.

22 1. All penalties assessed by the board are civil.

23 2. The board has no jurisdiction under Minnesota  
24 Statutes, section 182.667 and must conduct no proceeding under  
25 it.

26

27 Repealer. Rules MOSHC 253 and 254 of the Department of Labor  
28 and Industry are repealed.