

**CHAPTER 1415**  
**OFFICE OF ADMINISTRATIVE HEARINGS**  
**LITIGATION PROCEDURES**

<b>WORKERS' COMPENSATION LITIGATION PROCEDURES</b>		1415.1900	PRETRIAL PROCEDURES.
1415.0100	SCOPE AND PURPOSE.	1415.2000	SETTLEMENTS.
1415.0200	GENERAL AUTHORITY.	1415.2100	OBJECTIONS TO DISCONTINUANCE AND PETITIONS TO DISCONTINUE COMPENSATION PAYMENTS.
1415.0300	DEFINITIONS.	1415.2200	DISCOVERY.
1415.0400	MEDICAL AUTHORIZATIONS.	1415.2300	TEMPORARY ORDERS.
1415.0500	LEGAL DOCUMENTS.	1415.2400	PETITIONS FOR CONTRIBUTION OR REIMBURSEMENT.
1415.0600	EXAMINATION OF WORKERS' COMPENSATION FILES.	1415.2500	CONSOLIDATION.
1415.0700	SERVICE.	1415.2600	DISQUALIFICATION.
1415.0800	NOTICE OF REPRESENTATION.	1415.2700	SUBPOENAS.
1415.0900	NOTICE OF CLAIM FOR WORKERS' COMPENSATION BENEFITS.	1415.2800	CONTINUANCES.
1415.1000	COMMENCEMENT OF PROCEEDINGS.	1415.2900	THE HEARING.
1415.1100	NOTICE TO POTENTIAL INTERVENORS.	1415.3000	THE COMPENSATION JUDGE'S DECISION.
1415.1200	INTERVENTION.	1415.3100	REHEARING.
1415.1300	JOINDER OF PARTIES.	1415.3200	ATTORNEY FEES.
1415.1400	ANSWER.	1415.3300	TAXATION OF COSTS AND DISBURSEMENTS.
1415.1500	DEFAULT AWARD.	1415.3400	OTHER HEARINGS.
1415.1600	AWARD ON THE PLEADINGS.	1415.3500	EXHIBITS; REMOVAL AND RETURN.
1415.1700	DISMISSAL.	1415.3600	SEVERABILITY.
1415.1800	SETTLEMENT CONFERENCE BY DIVISION.		

**WORKERS' COMPENSATION LITIGATION PROCEDURES**

**1415.0100 SCOPE AND PURPOSE.**

Parts 1415.0100 to 1415.3500 govern all workers' compensation matters in litigation before settlement judges in the Workers' Compensation Division of the Department of Labor and Industry and compensation judges in the Office of Administrative Hearings under Minnesota Statutes, section 176.305. Parts 1415.0100 to 1415.3500 do not apply to administrative conferences conducted by the division under Minnesota Statutes, sections 176.102, 176.103, 176.135, 176.136, 176.242, and 176.243.

**Statutory Authority:** *MS s 14.51; 176.83*

**History:** 9 SR 333

**1415.0200 GENERAL AUTHORITY.**

**Subpart 1. Assignment or transfer of cases.** The chief administrative law judge has responsibility for the assignment of cases for trial to compensation judges. The chief administrative law judge may transfer to another compensation judge the proceedings on any case in the event of the death, extended absence, or disqualification of the compensation judge to whom it has been assigned, and may otherwise reassign a case if necessary to expedite the proceedings if no oral testimony has been received in the case.

**Subp. 2. Authority of compensation judges.** In any case which has been regularly assigned to a judge for trial, a compensation judge shall have full power, jurisdiction, and authority to hear and determine all issues of fact and law presented except those issues specifically reserved to the commissioner, the department, or the board, panel, or Court of Appeals, by the act. The judge shall issue interlocutory and final orders, findings, decisions, and awards necessary to the full adjudication of a case.

**Statutory Authority:** *MS s 14.51; 176.83*

**History:** 9 SR 333; L 1984 c 640 s 32

**1415.0300 DEFINITIONS.**

Subpart 1. **Scope.** For the purposes of parts 1415.0100 to 1415.3500, the following terms have the meanings given them.

Subp. 2. **Act.** "Act" means the Workers' Compensation Act, Minnesota Statutes, chapter 176.

Subp. 3. **Board.** "Board" means the Medical Services Review Board.

Subp. 4. **Calendar judge.** "Calendar judge" means the workers' compensation judge from the Office of Administrative Hearings responsible for hearing motions and other proceedings in cases not yet assigned to a particular compensation judge.

Subp. 5. **Chief administrative law judge.** "Chief administrative law judge" means the chief administrative law judge of the Office of Administrative Hearings.

Subp. 6. **Commissioner.** "Commissioner" means the commissioner of the Department of Labor and Industry.

Subp. 7. **Compensation judge.** "Compensation judge" means a workers' compensation judge from the Office of Administrative Hearings.

Subp. 8. **Court of appeals.** "Court of appeals" means the workers' compensation court of appeals.

Subp. 9. **Division.** "Division" means the Workers' Compensation Division of the Department of Labor and Industry.

Subp. 10. **DVR.** "DVR" means the Division of Vocational Rehabilitation, Department of Jobs and Training.

Subp. 11. **Fund director.** "Fund director" means the director of the Special Compensation Fund, Workers' Compensation Division, Department of Labor and Industry.

Subp. 12. **Judge.** "Judge" means a calendar or compensation judge from the Office of Administrative Hearings or a settlement judge from the Department of Labor and Industry.

Subp. 13. **Office.** "Office" means the Office of Administrative Hearings.

Subp. 14. **Panel.** "Panel" means the Rehabilitation Review Panel.

Subp. 15. **Petition.** "Petition" means a claim filed by or on behalf of an injured or deceased employee, employer, insurer, or special compensation fund which initiates a contested workers' compensation case requiring assignment for hearing.

Subp. 16. **Petitioner.** "Petitioner" means the injured employee, an heir or dependent of a deceased employee or a party filing on their behalf, an employer or insurer, or the special compensation fund.

Subp. 17. **Settlement judge.** "Settlement judge" means a workers' compensation judge from the Department of Labor and Industry.

**Statutory Authority:** *MS s 14.51; 176.83*

**History:** *9 SR 333; L 1984 c 640 s 32; 1Sp1985 c 14 art 9 s 75*

**1415.0400 MEDICAL AUTHORIZATIONS.**

An employee shall provide the employer and insurer with appropriate signed medical authorizations within 30 calendar days of receipt of a written request for them. A written request for medical authorization must inform the employee of the 30-day requirement. In pending litigation failure to comply with the request for appropriate medical authorizations constitutes grounds for striking the case from the active trial calendar until authorizations are furnished. The employer or insurer may bring a motion to strike the case from the calendar if authorizations have not been furnished and the employer or insurer is unable to adequately defend its case.

**Statutory Authority:** *MS s 14.51; 176.83*

**History:** *9 SR 333*

#### **1415.0500 LEGAL DOCUMENTS.**

Forms and documents used or filed in all workers' compensation proceedings before the division or the office must be on standard size 8-1/2 by 11 inch paper.

Unless otherwise provided by law, requests for action by the division or office after the filing of a petition must contain the caption, the employee's social security number, any appropriate identification numbers of the case, and indicate the type of action requested.

All legal documents filed by an attorney must include the attorney's Minnesota Supreme Court license number.

**Statutory Authority:** *MS s 14.51; 176.83*

**History:** *9 SR 333*

#### **1415.0600 EXAMINATION OF WORKERS' COMPENSATION FILES.**

Persons desiring to examine a file maintained by the division or office shall present a written authorization to inspect the file to designated personnel of the division or office. The authorization must be signed and dated by a party to the claim who is either the employee, the employer, the insurer, a dependent in death cases, or a legal guardian in cases of mental or physical incapacity. The authorization must specify the person or party authorized to review the file. The authorization is placed in and becomes part of the file.

This part does not grant greater access to the files than that given by the Minnesota Data Privacy Act or the Workers' Compensation Act.

**Statutory Authority:** *MS s 14.51; 176.83*

**History:** *9 SR 333*

#### **1415.0700 SERVICE.**

**Subpart 1. Service by state.** The division and the office must serve all notices, findings, orders, decisions, or awards upon the parties by first class mail at their addresses of record or by personal service.

If the division or office has received notice that a party is represented by an attorney or authorized agent, documents required to be served on the party must also be served on the attorney or agent.

**Subp. 2. Service by parties.** A party may serve documents by first class mail or by personal service. Service of documents required to be served on a party must also be served on the party's attorney or authorized agent. Filed documents must be accompanied by an affidavit or proof of service in a form acceptable to the district courts.

**Subp. 3. Computation of time.** Computation of time for service is governed by Minnesota Statutes, section 645.15.

**Statutory Authority:** *MS s 14.51; 176.83*

**History:** *9 SR 333*

#### **1415.0800 NOTICE OF REPRESENTATION.**

**Subpart 1. Filing.** When an employee is represented by an attorney, written notice of representation must be filed with the division, or if the case has been certified to the office, with the office.

A. The notice of representation must be signed by the attorney, signed by the employee, dependent, or heir, and include the address and telephone number of the attorney, the attorney's Minnesota Supreme Court license number, the employee's social security number, and the date of the claimed injury or disease.

**1415.0800 LITIGATION PROCEDURES**

416

A copy of the fully executed retainer agreement must be attached to the notice of representation filed with the division or office.

B. Copies of the notice must be sent to the employer, the insurer, and other parties, if any.

C. Failure to file the notice and retainer agreement will be considered in determining attorney fees according to Minnesota Statutes, section 176.081, subdivision 5.

Subp. 2. **Substitution of attorney.** If the employee, dependent, or heir is represented by an attorney who may have an undetermined claim for fees and the employee, dependent, or heir subsequently desires to change attorneys, the attorney assuming representation shall file a substitution of attorney and consent form signed by the client, the previous attorney, and the new attorney, together with a copy of the new retainer agreement. The new notice of representation must be filed within 20 calendar days of the signing of a retainer agreement if a claim petition has been filed or if the original notice of representation has been served by the preceding attorney.

Subp. 3. **Appearance without attorney.** If a party is not represented by an attorney at legal proceedings conducted by the division or the office, the presiding official shall advise the party of the right to representation by an attorney and ask if the party wishes to proceed without an attorney.

**Statutory Authority:** *MS s 14.51; 176.83*

**History:** 9 SR 333

**1415.0900 NOTICE OF CLAIM FOR WORKERS' COMPENSATION BENEFITS.**

Subpart 1. **Notice required.** Prior to the filing of a claim petition for workers' compensation benefits, the employee, dependent, or heir or the claimant's attorney shall notify the parties against whom the claim is made, including all employers and insurers that will be named as parties and the special compensation fund if it will be named as a party, of the claim pursuant to Minnesota Statutes, section 176.271, subdivision 2.

Subp. 2. **Supporting documentation.** The employee, dependent, or heir must attach to the notice of claim, if applicable, all medical reports, medical bills, if available, and other bills supporting the claim.

Subp. 3. **Defective notice.** If the division determines that the notice of claim is defective, the employee, dependent, or heir will be notified of the deficiency. The claim petition is not considered filed until the deficiency is corrected. However, the claim petition will be considered filed absent the correction where compliance with this part would result in the claim being barred by Minnesota Statutes, section 176.151 or other statutes.

**Statutory Authority:** *MS s 14.51; 176.83*

**History:** 9 SR 333

**1415.1000 COMMENCEMENT OF PROCEEDINGS.**

Subpart 1. **Commencement of proceedings.** All proceedings for adjudication of claims for personal injuries or occupational diseases are instituted by petition addressed to the division, and must be on forms prescribed by the division, containing:

- A. the name, address, and social security number of the employee;
- B. the name and address of each employer at the time an injury or disease is alleged to have occurred;
- C. the name of each employer's workers' compensation insurer;
- D. the date of each injury or occupational disease claimed;
- E. the position held by the employee at the time of the alleged injury or disease;

F. the weekly wage at the time of injury or disease;

G. the nature of the injury or disease;

H. a statement that the injury or disease arose out of and in the course of the employment and that the employer had knowledge or notice of the injury or disease;

I. an itemization of all benefits claimed, including the type of disability and the time period for which coverage is claimed;

J. an itemization of medical benefits claimed;

K. the name, address, and claim or policy number of any third party who has paid medical, disability, welfare, or unemployment benefits, or rehabilitation benefits provided by DVR; and

L. the name, address, telephone number, and Minnesota Supreme Court license number of the petitioner's attorney.

**Subp. 2. Service of petition, filing.** The petitioner shall serve a copy of the petition on each adverse party personally or by first class mail. "Adverse party" includes all employers, insurers, potential intervenors, and the fund director, if the employer is uninsured or the special compensation fund is named. The original petition, together with the copy of the notice of claim required by Minnesota Statutes, section 176.271, subdivision 2 and any medical or other supporting documentation not filed with the notice of claim, must be filed with the division with proof of service.

**Subp. 3. Defects in petition.** If the division or office notifies the petitioner or the petitioner's attorney of any defect in the petition, the defect must be corrected and the corrected petition served on the other parties. If the party fails to correct a substantial defect, the claim will be stricken from the active calendar.

**Subp. 4. Amended petitions.** A party may file an amended petition. Amended petitions must be served on the other parties. If a new claim is raised and an adverse party objects to it, the judge shall grant a continuance for the portion of the case involving new issues if the adverse party has insufficient time to prepare for a proceeding before the office or division regarding new issues raised in the amended petition.

**Statutory Authority:** *MS s 14.51; 176.83*

**History:** *9 SR 333*

#### **1415.1100 NOTICE TO POTENTIAL INTERVENORS.**

**Subpart 1. Responsibilities of attorneys.** All attorneys, whether representing employees, employers, or any other parties to a workers' compensation proceeding, shall ask their clients whether a third party, other than the workers' compensation insurer, has paid monetary benefits or treatment expense to the employee or on the employee's behalf. Attorneys shall specifically ask their clients whether the DVR has provided rehabilitation services to the employee.

**Subp. 2. Notice to third parties.** If inquiry discloses that a third party has made a payment, the attorney discovering that fact then has the duty to promptly place the third party on written notice of its right to petition for intervention and reimbursement. The DVR must be given notice if inquiry discloses that the DVR provided rehabilitation services to the employee. The attorney shall attach to the notice a copy of part 1415.1200, a copy of all pleadings in the case, and a copy of all notices and orders served in the case to date. The notice must specifically advise:

A. that the petitioner has commenced a proceeding to recover workers' compensation benefits, and that under Minnesota Statutes, section 176.361 and part 1415.1200 the third party has the right to petition for intervention and reimbursement of payments of monetary benefits, treatment expenses, or rehabilitation services;

B. the name and address of parties to the proceeding and the name and address of their attorney;

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

D. that the failure of a third party to comply with part 1415.1200 will result in a denial of the claim for reimbursement unless the judge determines that the error or omission is merely technical.

Subp. 3. **Time to notify.** Attorneys shall comply with this part within 30 days after the filing of an answer, or within 60 days of receipt of a petition if no answer is required. Attorneys shall promptly notify a potential intervenor whose interest arises upon payment made or services rendered after the claim petition or answer was filed.

**Statutory Authority:** *MS s 14.51; 176.83*

**History:** *9 SR 333*

### 1415.1200 INTERVENTION.

Subpart 1. **Motion.** A person desiring to intervene in a workers' compensation case as a party shall submit a timely motion to intervene to the compensation or settlement judge to whom the case has been assigned. If the case has not yet been assigned, the motion shall be made to the calendar judge if the case has been certified to the office, or to the division if the case has not been certified to the office.

A. The motion must be served on all parties either personally or by first class mail. A motion to intervene must be served and filed within 60 days after a person has received notice that a petition has been filed as provided in part 1415.1100. An untimely motion is subject to denial under subpart 6. In any other situation, timeliness will be determined by the judge in each case based on circumstances at the time of filing.

B. The motion must show how the moving party's interests may be determined or affected by the case; state the reasons for which intervention is sought; and indicate the moving party's statutory right to intervene. The commissioner may intervene by showing an interest in administering, enforcing, or defending the rule or law which is being challenged in the proceeding. The motion must be accompanied by the following, if applicable:

(1) an itemization of disability payments showing the period during which the payments were or are being made; the weekly or monthly rate of the payments; and the amount of reimbursement claimed;

(2) a summary of the medical or treatment payments, or rehabilitation services provided by DVR, broken down by creditor, showing the total bill submitted, the period of treatment or rehabilitation covered by that bill, the amount of payment on that bill, and to whom the payment was made;

(3) copies of all medical or treatment bills on which some payment was made;

(4) copies of the work sheets or other information stating how the payments on medical or treatment bills were calculated;

(5) a copy of the relevant policy or contract provisions upon which the claim for reimbursement is based;

(6) a proposed order allowing intervention with sufficient copies to serve on all parties;

(7) the name and telephone number of the person representing the intervenor who has authority to reach a settlement of the issues in dispute;

(8) proof of service;

(9) at the option of the intervenor, a proposed stipulation which states that all of the payments for which reimbursement is claimed are related to

the injury or condition in dispute in the case and that, if the petitioner is successful in proving the compensability of the claim, it is agreed that the sum be reimbursed to the intervenor; and

(10) if represented by an attorney, the name, address, telephone number, and Minnesota Supreme Court license number of the attorney.

**Subp. 2. Stipulation.** If the person serving the motion for intervention has included a proposed stipulation, all parties shall either execute and return the signed stipulation to the intervenor who must file it with the division or office or serve upon the intervenor and all other parties and file with the division or office specific and detailed objections to any payments made by the intervenor which are not conceded to be correct and related to the injury or condition the petitioner has asserted is compensable. If a party has not returned the signed stipulation or filed objections within 30 days of service of the motion, the intervenor's right to reimbursement for the amount sought is established provided that the petitioner's claim is determined to be compensable.

**Subp. 3. Attendance by intervenor.** Unless a stipulation has been signed and filed or the intervenor's right to reimbursement has otherwise been established, the intervenor shall attend all settlement or pretrial conferences and shall attend the regular hearing if ordered to do so by the compensation judge.

**Subp. 4. Order.** If an objection to intervention remains following settlement or pretrial conferences, the calendar judge shall rule on the intervention and the order is binding on the compensation judge to whom the case is assigned for hearing.

**Subp. 5. Presentation of evidence by intervenor.** Unless a stipulation has been signed and filed or the intervenor's right to reimbursement has otherwise been established, the intervenor shall present evidence in support of the claim at the hearing unless otherwise ordered by the compensation judge.

**Subp. 6. Effects of noncompliance.** Failure to comply with this part will result in a denial of the claim for reimbursement unless the compensation judge determines that the noncompliance is merely technical.

**Statutory Authority:** *MS s 14.51; 176.83*

**History:** 9 SR 333

#### **1415.1300 JOINDER OF PARTIES.**

**Subpart 1. Motion.** Upon a motion of a party or upon a judge's own motion, a judge may order the joinder of additional parties necessary for the full adjudication of the case.

**Subp. 2. Service.** A party requesting joinder of additional parties shall serve a copy of the motion on all existing parties, and the party to be joined, and file the original with proof of service with the judge no later than the date the pretrial statement is due. The party to be joined must also be served with copies of all pleadings and notice of the date, time, and place set for a settlement or pretrial conference.

**Subp. 3. Late joinder.** When a party requests joinder after the date the pretrial statement was due, the motion must be accompanied by an affidavit of the moving party stating why joinder at a later date should be allowed. The judge shall allow joinder at a later date when the moving party has shown that the party to be joined is a necessary party; that the moving party was unable, through due diligence, to previously ascertain the name of or necessity of joining the party; and that the joinder is necessary for a full and final determination of the rights or liabilities of the parties.

**Subp. 4. Delay.** If joinder is ordered less than ten days before the hearing date, the judge shall continue the matter to allow the parties sufficient preparation time.

If the judge has denied the joinder because of the moving party's failure to

## 1415.1300 LITIGATION PROCEDURES

420

meet the time requirements, the case will not be stricken, continued, or otherwise delayed for the purpose of joinder, unless the attorney for the petitioner consents to it.

**Subp. 5. Contents of motion.** All motions for joinder must include:

- A. the party to be joined and its insurer, if any;
- B. the date and nature of the claimed personal injury or impairment;
- C. the detailed circumstances, in affidavit form, showing that the party to be joined is a necessary party;
- D. the supporting medical opinions relied upon, if applicable; and
- E. if the party to be joined is the special compensation fund, the detailed circumstances, in affidavit form, showing the specific basis claimed for joinder, including the date of registration of prior impairment or injury where applicable.

**Subp. 6. Order.** The judge shall issue an order granting or denying the joinder.

**Statutory Authority:** *MS s 14.51; 176.83*

**History:** *9 SR 333*

## 1415.1400 ANSWER.

**Subpart 1. Service, filing.** An answer must be served and filed with the division within 20 days after service of the petition unless an extension has been obtained under Minnesota Statutes, section 176.321, subdivision 3. The answer must be accompanied by proof of service upon the petitioner, petitioner's attorney, and other parties to the proceedings.

**Subp. 2. Form of answer.** The answer must include:

A. specific responses to all material allegations regarding the date and nature of injury, the employment status, notice, wage, relationship of the injury to employment, insurance, benefits paid, medical issues raised, matters in dispute, affirmative defenses, and additional matters deemed necessary by the answering party;

B. medical reports upon which the answer is based, if available;

C. the date, time, and place for a medical examination by the employer's or insurer's doctor. If the medical examination has already taken place, the answer must so state. A request for an extension of time for scheduling the examination will be subject to the approval of the division or a compensation or settlement judge; and

D. the name, address, telephone number, and Minnesota Supreme Court license number of the attorney representing the answering party.

**Subp. 3. Failure to answer.** If a party fails to answer a petition within the 20-day period, an opposing party may apply for a default award under part 1415.1500.

**Subp. 4. Refusal.** The division shall not accept an answer which does not comply with subpart 2.

**Statutory Authority:** *MS s 14.51; 176.83*

**History:** *9 SR 333*

## 1415.1500 DEFAULT AWARD.

**Subpart 1. Filing.** If a party against whom an award is sought has failed to answer within the time allowed, the party entitled to an award by default shall serve the other parties and file with the division or the office if the matter has been certified to the office:

A. a notice of motion and motion for default award with proof of service;

B. an affidavit of no appearance and no answer; and

C. an affidavit stating the essential facts.

**Subp. 2. Response to motion.** The defaulting party must respond to the motion within 20 days. If an answer is filed within the 20-day response period, a default will not be awarded unless the employee shows substantial prejudice due to the delay.

**Subp. 3. Hearing, order.** If the judge requires proof of the facts alleged in the claim petition, a hearing on the motion will be scheduled. If a hearing is scheduled, the parties must be served with notice of the hearing at least 20 days before the hearing. The parties may present the issues fully, including the right to introduce evidence and cross-examine adverse witnesses. Whether or not a hearing is held, the judge shall issue an order or award based upon the facts presented.

**Statutory Authority:** *MS s 14.51; 176.83*

**History:** *9 SR 333*

#### **1415.1600 AWARD ON THE PLEADINGS.**

After the answer is filed, a party may move for an award on the pleadings if the hearing will not be delayed because of the motion. If the parties to a proceeding stipulate to an award being entered on the pleadings, the chief administrative law judge shall immediately assign the matter to a compensation judge for determination on the pleadings. If, on a motion for an award on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the court on its own motion shall assign the matter for hearing on those issues on which testimony is necessary.

**Statutory Authority:** *MS s 14.51; 176.83*

**History:** *9 SR 333; L 1984 c 640 s 32*

#### **1415.1700 DISMISSAL.**

**Subpart 1. Voluntary dismissal.** If contested matters are resolved by voluntary agreement between the parties, and a stipulation for settlement is not necessary, the parties may request that the petition commencing proceedings be dismissed. Unless otherwise stated in the order of dismissal, the dismissal is without prejudice.

**Subp. 2. Involuntary dismissal.** The judge may, on the judge's own motion or upon motion of a party with notice to the parties, dismiss an action or claim for failure to prosecute; or to substantially comply with this chapter, the act, or an order of a judge.

**Statutory Authority:** *MS s 14.51; 176.83*

**History:** *9 SR 333*

#### **1415.1800 SETTLEMENT CONFERENCE BY DIVISION.**

**Subpart 1. Purpose.** A settlement conference is for the primary purpose of assisting the parties in resolving disputes and for the secondary purpose of narrowing the issues and preparing for hearing.

**Subp. 2. Time limits.** Within ten days after a claim petition is filed, the commissioner shall refer the matter to a settlement judge. If the judge determines that a settlement conference is appropriate, the judge shall schedule the settlement conference within 60 days of receipt of the matter from the commissioner. The parties must be notified of the date, time, and place of the settlement conference.

If the judge determines that a settlement conference is not appropriate, the judge shall certify the matter to the chief administrative law judge within 60 days of receipt of the matter from the commissioner. If a settlement conference is held, the judge shall retain jurisdiction if settlement is reached or upon consent of the parties so long as progress is being made toward a settlement. A party may bring a motion at any time to have the matter certified to the office on the grounds that no progress is being made.

Subp. 3. **Attendance.** All parties, including intervenors unless otherwise excused, shall attend any settlement conference conducted by a judge. A representative of a party shall be prepared to engage in meaningful settlement negotiations and shall have authority to reach a full settlement on the issues in dispute or have immediate access by telephone to a person having authority to reach a full settlement.

Subp. 4. **Preconference discussions.** The parties shall discuss the possibility of settlement before a settlement conference if they believe that a reasonable basis for settlement exists.

Subp. 5. **Information provided.** At the settlement conference, the parties shall provide the information required by part 1415.1900, subpart 5.

Subp. 6. **Settlement not reached.** If, following a settlement conference, a settlement has not been reached but the parties have reached an agreement on any facts, legal or medical issues, or level of benefits, the judge presiding over the settlement conference shall, if he or she approves of those matters agreed upon, issue an order confirming and approving those matters agreed upon. The order is binding on the compensation judge who is subsequently assigned to hear the case.

If a settlement is not reached at the settlement conference, the settlement judge shall certify the matter to the chief administrative law judge.

**Statutory Authority:** *MS s 14.51; 176.83*

**History:** *9 SR 333; L 1984 c 640 s 32*

#### 1415.1900 PRETRIAL PROCEDURES.

Subpart 1. **Independent medical evaluation.** If the claim is disputed and the employer and insurer require an independent medical evaluation, it must schedule the evaluation within 30 days of the filing of the claim petition and complete the evaluation within 120 days of the filing of the claim petition.

Subp. 2. **Conference.** All cases are subject to a pretrial conference with a calendar or compensation judge at which all parties shall attend or be represented, unless a calendar or compensation judge orders otherwise. A compensation judge shall order that a pretrial conference be conducted for the purpose of settlement, narrowing of the issues, or trial preparation, if any party requests that one be conducted. The chief administrative law judge or compensation judge may set a pretrial conference on his or her own motion once the matter has been received from the commissioner. If parties are represented by attorneys, the attorneys shall bring with them their appointment calendars. If a party is not represented by an attorney, the party shall appear personally and be prepared to set a date for the hearing. Parties or their attorneys attending a pretrial conference shall be prepared to participate in meaningful settlement discussions and must have authority to reach a full settlement on the issue in dispute or have immediate access by telephone to a person having authority to reach a full settlement.

Subp. 3. **Location, notice of conference.** A pretrial conference must be conducted by telephone if the set location would require a party to travel more than 50 miles to attend, unless the party prefers to be physically present. If a telephone conference is scheduled, the parties not in attendance must be available by telephone at the time of the conference. Written notice of the pretrial conference must be given at least 20 days before the conference.

Subp. 4. **Settlement discussions.** Prior to a pretrial conference, the parties shall discuss the possibility of settlement if they believe a reasonable basis for settlement of all or some of the issues exists. Parties or attorneys appearing at pretrial conferences shall be prepared to participate in meaningful settlement discussions and shall have authority to reach a full settlement on the issues in dispute or have immediate access by telephone to a person having authority to reach a full settlement.

Subp. 5. **Conference procedures.** At the pretrial conference:

# MINNESOTA RULES 1991

423

## LITIGATION PROCEDURES 1415.1900

A. Parties shall be prepared to state the issues.

B. Parties shall state the names, and addresses, if known, of all witnesses they intend to call.

C. Parties shall give notice of amendments to pleadings that may still be necessary.

D. Parties shall file copies of all medical reports not already on file. Reports of medical examinations completed after settlement or pretrial conferences must be filed as soon as available before the hearing.

E. Each party shall state what exhibits, including photographs, motion picture films, video tapes, and documentary evidence, are intended to be used at the hearing. Copies of these exhibits must be made available to opposing counsel no later than ten days before the hearing. If any party requests showing of motion picture films or video tapes before the hearing, it shall pay the expense for the showing and may tax this expense as a disbursement.

F. If the petitioner plans to introduce hospital records into evidence, the petitioner or petitioner's attorney shall provide written authorizations allowing opposing counsel to examine those records if the authorizations have not previously been provided.

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

H. If the petitioner is claiming temporary total disability, the petitioner or attorney shall state the dates of time lost from work.

I. If the petitioner is claiming temporary partial disability, the petitioner or attorney shall state the dates of the claim, the approximate amount of the claim, and the names and addresses of the employers for whom the employee worked during the period of the claim. Authorizations to permit opposing counsel to confirm wages earned in those employments must be furnished, if requested, at least ten days before the pretrial conference. An itemized breakdown of the claim for temporary partial disability must be submitted to the compensation judge and opposing counsel at least ten days before the hearing.

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

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

L. Unless previously filed, the attorney for the petitioner shall give the calendar or compensation judge a copy of the retainer agreement with the petitioner and state the amount of retainer fee paid.

**Subp. 6. Pretrial statement.** At the time a case is first set for a pretrial conference or before setting the date for a hearing, the calendar or compensation judge may order the parties to file a pretrial statement containing items in subpart 5 which the judge deems appropriate. In determining whether to require a pretrial statement, the judge shall consider the number of parties involved in the case, the nature, and extent of the medical issues, and the nature, extent, and type of disability claimed. When a pretrial statement is ordered, the petitioner shall serve the statement on the other parties and file it within 20 days of the order. The responding parties shall serve and file their statement within 30 days of the order.

Thereafter, a petitioner may serve and file an amended pretrial statement based solely on information presented in the responding parties' statements and not on new issues. The amended statement must be filed within 40 days of the order.

In a petition or objection to discontinuance proceeding, each party if so ordered must file a pretrial statement within ten days of the pretrial order. Thereafter, a party may serve and file an amended pretrial statement based solely on information presented in another party's statement and not on new issues. The amended pretrial statement must be filed within 15 days of the pretrial order.

**Subp. 7. Evidence not disclosed at conference.** Evidence, or other matters listed in subpart 5 which have not been disclosed at a settlement or pretrial conference or in a pretrial statement except impeachment or rebuttal witnesses, may not be presented at the hearing unless it is shown to the compensation judge that:

A. the evidence or other matters offered were discovered subsequent to the filing of a pretrial statement or pretrial conference, whichever occurs last;

B. the evidence or other matters offered were not discoverable through the exercise of due diligence before that time; and

C. the other parties have been advised of the evidence or other matters before the hearing and have had an opportunity to review them.

**Subp. 8. Matters agreed upon.** If, following a pretrial conference, a settlement has not been reached but the parties have reached an agreement on any facts, legal or medical issues, or levels of benefits, the judge presiding over the pretrial conference shall, if he or she approves of those matters agreed upon, issue an order confirming and approving those matters agreed upon. Issues once agreed upon and approved may be reopened by the compensation judge only upon motion of a party on the basis of newly discovered evidence which was not reasonably discoverable at the earlier time.

**Subp. 9. Medical, treatment issues.** If the petition includes a claim for medical or other health care treatment or supplies under Minnesota Statutes, section 176.135, the issues will be determined as provided in part 1415.2900, subpart 3, item F. If a claim petition raises medical or health care issues over which a judge has no jurisdiction together with other issues over which the judge does have jurisdiction, the claim petition will be referred first to the office for a determination of the nonmedical issues and then it will be returned to the division for a determination on the medical or health care issues.

**Statutory Authority:** *MS s 14.51; 176.83*

**History:** *9 SR 333; L 1984 c 640 s 32*

### 1415.2000 SETTLEMENTS.

**Subpart 1. Stipulations.** Stipulations for settlement are allowed under Minnesota Statutes, sections 176.081, subdivision 7a, and 176.521 and must conform to those sections and to the requirements of this part.

**Subp. 2. Filing.** All stipulations for settlement must be filed within 30 days of the date the settlement was negotiated. Stipulations must be filed with the division unless the matter has been certified to the office, in which case the stipulation must be filed with the office.

**Subp. 3. Approval.** Stipulations for settlement are subject to approval by a compensation judge or settlement judge except in cases filed under Minnesota Statutes, section 176.081, subdivision 7a, or where all parties are represented by attorneys and the settlement does not include a final and complete settlement of the employee's right to medical compensation or rehabilitation benefits. If the stipulation includes a final and complete settlement of medical or rehabilitation benefits, those issues are subject to approval by a judge under part 1415.2900, subpart 3, item F.

If a settlement is made under Minnesota Statutes, section 176.081, subdivision 7a, the offer and acceptance when filed, must include findings of fact, conclu-

sions, and an award on all issues, including attorney's fees and costs. It must be filed with the division or the office which must immediately issue the agreed upon award. If approval is not required under Minnesota Statutes, section 176.521, the award shall be immediately signed by the compensation judge or settlement judge, served on all parties, and filed with the commissioner.

**Subp. 4. Contents.** Stipulations for settlement must contain, if applicable:

A. A brief statement of the admitted material facts.

B. A detailed statement of the matters in dispute, stating the positions of the parties and supported by medical reports or other documents.

C. The weekly wage and compensation rate of the employee.

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

E. A statement that all medical, rehabilitation, or treatment expenses have been paid by the employer and insurer, or an itemization of the expenses which have not been paid by the employer and insurer, indicating which payments, if any, have been made by insurer, and which payments, if any, have been made by the employee. The stipulation must specifically state whether a third party has paid expenses, monetary benefits, or whether DVR has provided rehabilitation services. If so, the stipulation must list the name and address of the third party, relevant claim or policy numbers, and indicate whether the third party has petitioned to intervene.

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

G. A statement that the employee has been fully advised of the provisions of Minnesota Statutes, sections 176.132 and 176.645, and the effect of the settlement upon any future claims for supplementary benefits or adjustment of benefits.

H. A statement that the petitioner is claiming or waiving the right to make application for an award of attorney's fees against the employer or insurer under Minnesota Statutes, section 176.081, subdivision 7 or 8, 176.135, or 176.191.

I. Where rehabilitation, retraining, or medical benefits are closed out, a statement in which the claims and contentions of the parties are sufficiently specific to provide a basis for the judge's determination that the settlement as a whole is fair, reasonable, and in conformity with the act.

**Subp. 5. Attorney's fees detailed.** Stipulations for settlement of cases in which the petitioner has engaged the services of an attorney must be accompanied by a statement of attorney's fees on a form prescribed by the commissioner and an itemization of the costs incurred, specifying who will be responsible for payment of each cost. The statement must provide sufficient information to show the reasonableness of the requested fees and costs under Minnesota Statutes, section 176.081, if approval is required. If no fees are requested, the stipulation must so state.

**Subp. 6. Medical reports.** Stipulations for settlement must be accompanied by copies of all relevant medical reports in the possession of the parties which have not previously been filed.

**Subp. 7. Award.** The parties involved in the settlement must submit an award on stipulation prepared for signature by a judge.

**Subp. 8. Copy to client.** The attorney representing the petitioner shall give a copy of the stipulation for settlement to the client when the client signs the stipulation.

**Subp. 9. Signatures.** Stipulations for settlement shall be signed by all parties as required by Minnesota Statutes, section 176.521.

**Subp. 10. Payment.** The employer and insurer shall make payments under an award on stipulation within 14 days from the date the award on stipulation is filed with the commissioner.

Statutory Authority: *MS s 14.51; 176.83*

History: *9 SR 333*

#### 1415.2100 OBJECTIONS TO DISCONTINUANCE AND PETITIONS TO DISCONTINUE COMPENSATION PAYMENTS.

**Subpart 1. Hearing.** When either an objection to discontinuance of compensation payments or a petition to discontinue benefits has been filed and the matter has been referred to the chief administrative law judge, it must be set for hearing on a priority basis not less than 30 days nor more than 75 days from the date of the receipt of the matter from the commissioner.

**Subp. 2. Objection to discontinuance as claim petition.** Any objection filed more than 120 days after service of a notice of intention to discontinue, a notice of discontinuance, or an administrative decision of the commissioner allowing the discontinuance, whichever is latest, will be treated as a claim petition for purposes of scheduling a hearing and will not be heard on a priority basis.

**Subp. 3. Petitions for discontinuance after administrative conference.** After an administrative conference on a notice of intention to discontinue, a petition to discontinue under Minnesota Statutes, section 176.242, subdivision 5, filed more than 120 days following the issuance of the commissioner's administrative decision disallowing the discontinuance will not be given priority status for the purpose of scheduling a hearing.

Statutory Authority: *MS s 14.51; 176.83*

History: *9 SR 333; L 1984 c 640 s 32*

#### 1415.2200 DISCOVERY.

**Subpart 1. Demand.** Each party shall, within 30 days of a demand by another party, unless a shorter time is indicated by this part, disclose or furnish the following:

A. The names and addresses of all known witnesses that a party intends to call at the hearing, including doctors by cross-examination or who will testify by report only. All witnesses unknown at the time of the disclosure must be disclosed within 15 days after they become known if a prior demand has been made.

B. Relevant written or recorded statements made by witnesses on behalf of a party. The demanding party must be permitted to inspect and reproduce such statements at the demanding party's expense. A party unreasonably failing upon demand to make the disclosure required by this part, upon proper motion made to the compensation judge at the hearing, may be foreclosed from presenting evidence at the hearing through witnesses not disclosed or through witnesses whose statements are not disclosed.

C. Medical privilege is waived as to the injuries or conditions alleged in the petition by the filing of the petition alleging injury or occupational disease. Medical authorizations must be furnished within 30 calendar days of an adverse party's demand. All medical reports must be provided, upon demand to adverse parties. The petitioner shall disclose the names and addresses of all persons who have treated the employee in the past for injuries or conditions identical or related to those alleged in the petition, the dates of the treatment, and provide medical authorization for each.

**Subp. 2. Depositions.** Under Minnesota Statutes, section 176.411, subdivision 2, depositions may be taken in the manner which the law provides for depositions in civil actions in the district courts for the state, except where a judge orders otherwise.

A. When a party has objected to the taking of a deposition, the party

requesting the deposition shall bring a motion before the judge, before whom the case is pending at the time of the motion, who shall determine whether the deposition should proceed. The motion must state, with specificity, the facts or other reasons supporting the need for the deposition. The judge shall order the deposition to proceed if the judge finds that:

- (1) the deposition is needed for the proper presentation of a party's case;
- (2) the deposition is not for purposes of delay;
- (3) unusual or extraordinary circumstances exist which compel extensive discovery; or
- (4) the issues or amounts in controversy are significant enough to warrant extensive discovery.

B. Depositions to preserve testimony or to present testimony due to the unavailability of the witness are allowed. The deposition must be taken sufficiently in advance of the hearing so that the deposition is filed before or at the commencement of the hearing, unless, for good cause shown, the party taking the deposition has the permission of the calendar judge or compensation judge to whom the case has been assigned for hearing to take or file the deposition subsequent to the hearing.

C. Under Minnesota Statutes, section 176.155, subdivision 5, the cross-examination of a physician or health care provider before a hearing is specifically allowed. When a deposition for the purpose of cross-examination of a physician or health care provider is taken under this item, redirect examination is allowed. Unless ordered otherwise by a compensation judge, the cross-examination deposition must be completed and the original filed with the office at or before the hearing.

D. The original deposition taken for purposes of presenting testimony in the case must be filed with the office if the matter has been referred to the chief administrative law judge for assignment, or with the division if the matter has not been certified to the chief administrative law judge for hearing. The original deposition taken solely for purposes of discovery must be sealed and filed as in the case of evidentiary depositions but will not be reviewed or used in any fashion by the compensation judge unless the deposition is formally entered as evidence in the case.

E. The party initiating the taking of any deposition, including a cross-examination deposition under Minnesota Statutes, section 176.155, subdivision 5, is responsible for all costs of the deposition, including witness fees and court reporter fees.

**Subp. 3. Motions for additional discovery.** Upon the motion of a party, the judge having jurisdiction at the time of the motion may order discovery of other relevant material or information, recognizing all privileges recognized at law. The judge may order discovery available under the rules of civil procedure for the district courts of Minnesota provided that the discovery:

- A. is needed for the proper presentation of a party's case;
- B. is not for purposes of delay; and
- C. the issues or amounts in controversy are significant enough to warrant extensive discovery.

**Subp. 4. Motion for direct testimony by physician or health care provider.** A motion for full testimony of a physician or health care provider must comply with part 1415.2900, subpart 3.

**Subp. 5. Penalties.** Upon the failure of a party to reasonably comply with discovery or a judge's order under this part, the following orders of the compensation judge are allowed upon a party's motion:

- A. an order that the subject matter of the order for discovery or other relevant facts is established in accordance with the moving party's claim; or

B. an order prohibiting the party failing to comply to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence.

**Subp. 6. Proprietary information.** When a party is asked to reveal material which that party considers proprietary information or trade secrets, he or she may bring the matter to the attention of the appropriate judge, who shall make protective orders as are reasonable and necessary or as otherwise provided by law.

**Subp. 7. Employment expert examinations.** If an employee claims that his or her ability to earn has been substantially reduced because of the injury in combination with other factors, the employee must submit to a physical and oral examination by the employer's or insurer's expert, if requested by the employer or insurer. The employee shall provide appropriate authorizations relating to wages and employment to adverse parties, upon demand. Expert reports must be provided, upon demand, to adverse parties. A party who objects to the scope of the requested examination may bring a motion for protection. The motion must be served on the parties and filed with the division, or the office if the matter has been certified to the office. The judge shall issue an order allowed by Rule 26.03 of the rules of civil procedure for the district courts.

**Statutory Authority:** *MS s 14.51; 176.83*

**History:** *9 SR 333; L 1984 c 640 s 32*

#### 1415.2300 TEMPORARY ORDERS.

**Subpart 1. Payment of benefits by insurer or self-insurer.** If an insurer or self-insurer voluntarily agrees to pay benefits under Minnesota Statutes, section 176.191, subdivision 1, it shall file a formal petition for a temporary order.

A. The petition must contain:

(1) the name of the employer and its insurer or self-insurer consenting to payment;

(2) the dispute involved, including the name and address of any other employer and insurer, if known, that may be liable for workers' compensation benefits and the date of the alleged injury while working for that employer;

(3) the beginning date of the employee's present disability, and the compensation rate that the insurer or self-insurer will pay; and

(4) a statement of whether an intervenor or potential intervenor has paid or is paying the employee or the employee's dependents substitute wage benefits such as group disability benefits, general assistance, or aid to families with dependent children (AFDC).

B. The original petition for a temporary order, with proof of service on necessary parties, must be filed with the division, the office, or the court of appeals, depending upon where the matter is pending.

C. Attorney fees for the employee's attorney must be withheld from the periodic payments made to the employee under the temporary order unless the employee's attorney waives the withholding of attorney fees, or the employee has no attorney.

D. The petition for temporary order must be accompanied by a prepared formal order in substantially the following form:

"I (name) have examined the petition for temporary order and the compensation files and records in this case. It appears that a temporary order for payment of compensation benefits should be issued pending a final determination under Minnesota Statutes, section 176.191, subdivision 1;

NOW, THEREFORE, IT IS ORDERED that (name of insurer or self-insurer), having consented to payment of compensation benefits under Minnesota Statutes, section 176.191, shall pay to (name), the employee, compensation

# MINNESOTA RULES 1991

429

## LITIGATION PROCEDURES 1415.2300

at the weekly rate of \$(amount), during the period of the employee's disability, beginning (date) and shall also pay reasonable medical expenses and rehabilitation benefits related to this disability of the employee.

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

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

COMPENSATION JUDGE OR  
COURT OF APPEALS

By \_\_\_\_\_"

The original and enough copies of the order to serve necessary parties and attorneys representing them must be filed.

**Subp. 2. Payment of benefits by special compensation fund.** An employee seeking payment of benefits by the special compensation fund or the fund requesting to pay benefits under Minnesota Statutes, section 176.191, subdivision 2, shall file a formal petition for temporary order with the commissioner.

A. The petition shall contain:

(1) evidence that all parties agree that benefits are payable under the act;

(2) a statement that written demand for payment under Minnesota Statutes, section 176.191, subdivision 1, has been made against all employers and insurers party to the claim and that the payment demand has been refused;

(3) the names and addresses of all employers and insurers or self-insurers who are parties to the claim;

(4) a statement as to the dispute involved and the dates of all alleged injuries while working for each employer;

(5) the beginning date of the employee's present disability, the compensation rate applicable for each injury date, the proposed compensation rate to be paid by the special compensation fund, and an itemization of all medical expenses and rehabilitation benefits requested to be paid under the temporary order;

(6) copies of medical reports supporting the claimed period of disability and the causal relationship of that disability to the petitioner's employment; and

(7) a statement of whether an intervenor or potential intervenor has paid or is paying the employee or the employee's dependents substitute wage benefits such as group disability benefits, general assistance, or aid to families with dependent children (AFDC).

B. The original of the petition for temporary order, with proof of service on necessary parties, must be filed with the division, the office, or the court of appeals, depending upon where the matter is pending.

C. Attorney fees for the employee's attorney must be withheld from the periodic payments made to the employee under the temporary order unless the employee's attorney waives the withholding of attorney fees or the employee has no attorney.

D. The petition for temporary order must be accompanied by a prepared formal order in substantially the following form:

"I, (name), have examined the petition for temporary order and the compensation files and records in this case. It appears that a temporary order for payment of compensation benefits should be issued pending a final determination, as provided by Minnesota Statutes, section 176.191, subdivision 2;

NOW, THEREFORE, IT IS ORDERED that the State Treasurer, as custodian of the special compensation fund shall, under Minnesota Statutes, section 176.191, subdivision 2, pay to (name), the employee, compensation at the weekly rate of \$(amount), during the period of employee's disability beginning (date), and shall also pay reasonable medical expenses and rehabilitation benefits related to this disability of the employee.

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

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

WORKERS' COMPENSATION  
DIVISION

\_\_\_\_\_  
Commissioner of  
Labor and Industry"

The original and enough copies of the order to serve necessary parties and attorneys representing them must be filed.

**Subp. 3. Necessary parties.** For the purpose of this part, the following are necessary parties:

- A. the employee, dependent, or heir;
- B. insurers or self-insurers named in the petition for temporary order;
- C. an employer who is uninsured or whose insurer for the date of the alleged injury in that employment is unknown;
- D. the fund director, if the petition is made under Minnesota Statutes, section 176.191, subdivision 2; and
- E. intervenors and potential intervenors.

**Subp. 4. Answer.** Within ten days after being served with a copy of the petition for temporary order and proposed order, employers or their insurers, an intervenor, or the fund director may file a verified answer to the petition stating objections to the proposed order.

**Subp. 5. Circumstances of nonapproval of temporary order.** A temporary order will not be approved if made contingent upon the employee's waiver of the right to claim an additional award under Minnesota Statutes, section 176.225, or waiver of the right to have attorney fees assessed against the employer and insurer in addition to compensation under Minnesota Statutes, section 176.081, subdivision 8, or if it would prejudice an intervenor's claim for reimbursement.

**Subp. 6. Effect of filing.** A hearing date will not be assigned upon filing of a petition for temporary order unless it is accompanied by a petition for contribution or reimbursement.

**Statutory Authority:** *MS s 14.51; 176.83*

**History:** *9 SR 333*

**1415.2400 PETITIONS FOR CONTRIBUTION OR REIMBURSEMENT.**

**Subpart 1. Contents.** Petitions for contribution or reimbursement in cases pending before the office must describe in detail the basis of the claim for contribution or reimbursement against the additional employer, insurer, or the state treasurer, custodian of the special compensation fund. The petition must be supported by medical evidence, signed, and verified. If a claim petition is currently pending, and the party from whom contribution or reimbursement is sought is not a party, the petition for contribution or reimbursement must be accompanied by either a petition for joinder of the party from whom reimbursement or contribution is sought, or a petition for consolidation under part 1415.2500. The two actions may be combined on a joint petition.

**Subp. 2. Filing.** A petition for contribution or reimbursement must be filed no later than ten days before a pretrial conference or within 20 days of receipt of a pretrial order if a pretrial conference is not automatically set. Copies of all pleadings, including a notice of pretrial conference must be served upon the additional employers or insurers by the party bringing the petition.

**Subp. 3. Answer.** Within 20 days after being served with a copy of a petition for contribution or reimbursement, employers or their insurers, other than the petitioning party, shall file a verified answer to the petition under Minnesota Statutes, section 176.321 and, if not already set for a pretrial conference, the matter may be set for a pretrial conference under part 1415.1900.

**Statutory Authority:** *MS s 14.51; 176.83*

**History:** *9 SR 333*

**1415.2500 CONSOLIDATION.**

**Subpart 1. Authorization.** Consolidation of two or more related cases may be ordered for the purpose of receiving evidence. Consolidation may be ordered upon motion by a party to the calendar or compensation judge or upon the calendar or compensation judge's own motion if the judge determines:

A. that separate cases present substantially the same issues of fact and law;

B. that a holding in one case would affect the rights of the parties in the other case; and

C. that the consolidation would not substantially prejudice the rights of any party.

Notwithstanding the requirements of this part, the parties may stipulate to consolidation.

**Subp. 2. Receipt of evidence.** After consolidation, documentary evidence previously received in an individual case must be reintroduced in the consolidated proceedings under a master file if the compensation judge assigned to try the case designates one file as a master file. When so combined, the evidence becomes part of the record of each of the several consolidated cases. Evidence received after the order of consolidation is a part of the record of each case.

**Subp. 3. Notice of order.** Following an order for consolidation, the calendar or compensation judge shall promptly serve the order on the parties. The order must contain:

A. a description of the cases for consolidation;

B. the reasons for consolidation; and

C. notification of a consolidated pretrial conference if one has been requested.

**Subp. 4. Objection to consolidation.** A party may object to consolidation or move for severance by filing with the calendar judge or compensation judge, if one is assigned, and serving upon all parties at least seven days before the hearing, a motion for severance from consolidation which includes reasons for the motion.

If the judge finds that justice will be best served by granting severance, the judge shall grant the motion for severance.

**Subp. 5. Service of pleadings and decisions.** Separate pleadings must be filed and separate findings, orders, decisions, and awards will be made and filed in each case consolidated for hearing.

**Statutory Authority:** *MS s 14.51; 176.83*

**History:** 9 SR 333

#### 1415.2600 DISQUALIFICATION.

**Subpart 1. By judge.** A compensation judge shall withdraw from participation in a case at any time if the judge deems himself or herself disqualified, prejudiced, or biased for any reason.

**Subp. 2. By a party.** A party or his attorney may file an affidavit of prejudice if the party reasonably believes that a hearing before the assigned judge cannot be fair due to the judge's prejudice or bias. The affidavit must be served on opposing parties and filed with the chief administrative law judge not more than ten days after the filing party has received notice of the assigned judge or has knowledge of the grounds for disqualification, whichever occurs last. Each party is allowed one filing per case under this subpart. Upon filing of the affidavit with proof of service, the chief administrative law judge shall assign the case to another judge.

A party or the party's attorney may file a motion to disqualify a compensation judge for a cause other than or in addition to that described in an affidavit of prejudice. The motion must be supported by an affidavit detailing the facts establishing the grounds for disqualification and filed with the chief administrative law judge not more than ten days after the moving party has received notice of the assigned judge or has knowledge of the grounds for disqualification, whichever occurs last. The motion will be decided by the chief administrative law judge or a designee.

**Subp. 3. Continuances.** Unless required because of the unavailability of a compensation judge to hear the case, no continuance will be granted because of a disqualification under this part. If a continuance is necessary, another hearing will be scheduled as early as possible.

**Subp. 4. Consolidated cases.** Consolidated cases are considered one case under this part.

**Subp. 5. Settlement and pretrial conferences.** This part is not applicable to settlement or pretrial conferences.

**Statutory Authority:** *MS s 14.51; 176.83*

**History:** 9 SR 333; L 1984 c 640 s 32

#### 1415.2700 SUBPOENAS.

Subpoenas may be obtained without charge from the office or the division. The name, address, and telephone number of the party or attorney requesting service of the subpoena must be included on the subpoena before service is tendered in accordance with Minnesota Statutes, section 357.22.

The settlement or calendar judge, or compensation judge, if the case has been assigned for hearing, shall quash or modify a subpoena upon a party's motion if the judge finds that it is unreasonable or oppressive. The motion must be promptly made, no later than the date specified in the subpoena for compliance.

**Statutory Authority:** *MS s 14.51; 176.83*

**History:** 9 SR 333

#### 1415.2800 CONTINUANCES.

**Subpart 1. Continuances not favored.** Requests for continuances are inconsis-

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

**Subp. 2. Request.** When a continuance is requested before the hearing date, the party requesting the continuance shall first contact all other parties to determine whether mutual agreement to the continuance can be reached and, if the continuance is granted, the availability of all parties for hearing at future specific dates. When all parties are in agreement with the request for continuance and have agreed to a date for a future hearing, which date has been approved by the compensation or calendar judge before whom the matter is pending, and when the continuance request is made no less than ten working days before the hearing date, the continuance will be granted.

**Subp. 3. Motion.** If all parties have not agreed to a continuance, requests for continuances must be made to the compensation or calendar judge before whom the matter is pending. When made more than ten working days before the hearing date, the request must be in writing in the form of a motion for continuance and served on all parties. If less than ten working days remain before the hearing date, notice of the motion must be made orally. A hearing on the motion will be conducted only if ordered by the compensation or calendar judge to whom the motion is made.

**Subp. 4. Good cause.** Good cause does not include:

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

B. when a law firm consists of more than one member who practice in the field of workers' compensation law, and counsel assigned to the case is unavailable because of engagement in another court or otherwise, unless all the counsel are committed elsewhere;

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

D. unavailability of a medical or other witness if the deposition of the witness could have been taken after receipt of the notice of hearing date and before the hearing.

**Statutory Authority:** *MS s 14.51; 176.83*

**History:** 9 SR 333

#### **1415.2900 THE HEARING.**

**Subpart 1. Notice.** A place, date, and time certain will be assigned to each case. Written notice of the hearing will be given as soon as the assigned date is known, but must be given at least 30 days in advance of the hearing, except:

A. when notice is waived by the parties;

B. when a different time is expressly agreed to by the parties; or

C. when the notice is governed by contrary law or rule.

The notice must include the place of hearing, the amount of time allowed for the hearing, and the name of the compensation judge assigned, if known. Oral or written notice of the date, time, and place of the hearing given to the parties by a judge at a settlement or pretrial conference is sufficient notice. An attorney who receives notice of the hearing date at the settlement or pretrial conference

must notify his or her client. Cases will be set for one location only, that most convenient for the petitioner. Adequate time will be allowed so that the case may be completely heard in one sitting. If an additional hearing date is required, it must be agreed to by all parties and the compensation judge. If the parties cannot agree, the compensation judge shall set the date and time.

**Subp. 2. Availability of witnesses.** As soon as the parties know the hearing date, they shall immediately notify all witnesses in writing and arrange for their presence or for the taking of their deposition under part 1415.2200.

**Subp. 3. Medical evidence.** Rules governing medical evidence are as follows:

**A.** If a party believes that the oral testimony of a physician or health care provider is crucial to the accurate determination of the employee's disability, the party shall prepare, serve on all other parties, and file with the office a written motion and supporting affidavits, requesting a written finding from a judge on the cruciality of the oral testimony. An affidavit must contain facts sufficient upon which the judge can make a determination; a mere statement that the attorney believes that the testimony is crucial is insufficient without a further factual basis. The motion must be served and filed no later than 25 days prior to the scheduled hearing date. Any party may file an objection to the motion. Objections must be filed within ten calendar days of service of the motion. A compensation judge shall, after waiting for objections to be filed, issue an order granting or denying the motion, stating the reasons for the order.

**B.** Whether or not a motion has been filed, the judge shall issue an order requiring that the full testimony be presented in person or by oral deposition if the judge finds that the oral testimony of a physician or health care provider may be crucial to the accurate determination of the employee's disability.

**C.** If, during the course of a hearing, or within 25 days before the hearing, a judge determines, on a party's or the judge's motion, that the appearance of the physician or health care provider is crucial to the accurate determination of the employee's disability, the judge shall either continue the hearing to a date, time, and place for the testimony to be taken, or order that the testimony be taken in full by oral deposition.

**D.** The production of medical evidence in the form of written reports is required by Minnesota Statutes, section 176.155, subdivision 5. These reports must include, in the following order:

- (1) the date of the examination;
- (2) the history of the injury;
- (3) the patient's complaints;
- (4) the source of all facts in the history and complaints;
- (5) findings on examination;
- (6) opinion as to the extent of disability and work limitations, if any;
- (7) the cause of the disability and, if applicable, whether the work injury was a substantial contributing factor toward the disability;
- (8) the medical treatment indicated;
- (9) if permanent disability is an issue, an opinion as to whether or not the permanent disability has resulted from the injury and whether or not the condition has stabilized. If stabilized, a description of the disability with a complete evaluation;
- (10) if a permanent partial disability is a result of two or more injuries or occurrences; or if part of the permanent disability is a result of a preexisting disability that arises from a congenital condition, traumatic injury, or incident, whether or not compensable under Minnesota Statutes, chapter 176; the physician or health care provider shall apportion the disability between the injuries, occurrences, or conditions;

(11) if future medical care or treatment is anticipated, a statement of the nature and extent of treatment recommended and, if possible, the anticipated results;

(12) the reason for each opinion; and

(13) if applicable, a statement that the physician or health care provider has read the rules concerning determination of permanent partial disability, understands them, and has applied those rules in making the determination.

E. Medical reports to be used at the hearing must be served on the parties and filed with the office, with proof of service, sufficiently in advance of the hearing to allow other parties the opportunity to cross-examine the physician or health care provider, if desired, unless the delay in filing the report was caused by a failure of the employee to report for an adverse medical examination or to provide medical support for the claim on a timely basis, or other good cause. If the report is filed too late to allow the cross-examination, the record will be held open to allow other parties to cross-examine the physician or health care provider after the hearing.

F. If the claim petition includes a claim for medical or other health care treatment or supplies under Minnesota Statutes, sections 176.103, 176.135, and 176.136, and the parties agree at or before the hearing to the reasonableness and necessity of the treatment or supplies, the judge shall approve or disapprove the agreement to settle that portion of the claim provided the agreement is placed in the record of the proceeding. If the parties are unable to reach agreement on the issues of medical or other health care treatment or supplies, that portion of the claim must be referred back to the division upon conclusion of the hearing for a determination under Minnesota Statutes, sections 176.103, 176.135, and 176.136. The parties may, however, present medical evidence at the hearing for later use by the division in determining medical issues. A party has the right, even if another party objects, to present medical evidence at the hearing. An intervenor who has paid health care benefits and whose claim remains unsettled is a real party in interest with an independent right to pursue its claim under Minnesota Statutes, section 176.103.

**Subp. 4. Rights of parties.** All parties have the right to present evidence, to cross-examine witnesses, and to present rebuttal testimony.

**Subp. 5. Witnesses.** A party may be a witness and present other witnesses at the hearing. Oral testimony at the hearing must be under oath or affirmation. At the request of a party or upon the judge's motion for good cause, the compensation judge may exclude witnesses other than parties from the hearing room so that they cannot hear the testimony of other witnesses.

**Subp. 6. Rules of evidence.** Rules of evidence are as follows:

A. Except as provided by the act and parts 1415.0100 to 1415.3500 the compensation judge is not bound by the common law, statutory rules of evidence, or technical or formal rules of pleading or procedure.

B. All evidence to be considered in the case, including records and documents in the possession of a party, or an accurate photocopy, must be offered and made a part of the record in the case. An independent investigation by the compensation judge under Minnesota Statutes, section 176.391, subdivision 1, is part of the record if the parties are aware of the investigation and have had an opportunity to participate in it.

C. Documentary evidence in the form of copies of excerpts from books, documents, or records may be received or incorporated by reference upon agreement of the parties or if ordered by the compensation judge.

D. The compensation judge may take administrative notice of general, technical, or scientific facts within the judge's specialized knowledge under Minnesota Statutes, section 14.60, subdivision 4, but shall do so on the record and with the opportunity for any party to contest the facts so noticed.

E. A party may call an adverse party and question, contradict, and impeach the party on material matters in all respects as if they had been called by the other party. The adverse party may be examined by counsel according to the rules of civil procedure for the district courts of Minnesota applicable to direct examination, and may be cross-examined, contradicted, and impeached by any party adversely affected by the testimony. An adverse party includes:

- (1) the adverse party's managing agent or employees;
- (2) an officer, director, managing agent, or employee of the state, excluding judges, members of the panel or board, mediators, and other employees of the division designated to conduct conferences or hearings; and
- (3) an officer, director, managing agent, or employee of:
  - (a) a political subdivision of the state;
  - (b) a public or private corporation;
  - (c) a partnership or association; or
  - (d) a political body.

Subp. 7. The record. Record requirements are as follows:

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

B. The record in a compensation case shall contain:

- (1) all pleadings, motions, and orders, including the judgment roll, and the entire record from any previous hearing which is relevant to the issues under consideration;
- (2) evidence received or considered unless, through agreement of the parties or by order of the compensation judge, custody of an exhibit is given to one of the parties;
- (3) those parts of the division's official file on the matter which the compensation judge incorporates;
- (4) offers of proof, objections, and the resulting rulings;
- (5) the compensation judge's order;
- (6) memoranda and data submitted by a party in connection with the case and accepted by the judge;
- (7) a transcript of the hearing, if one was prepared; and
- (8) the audio-magnetic recording tapes used to record the hearing, if any.

C. The chief administrative law judge shall direct that the verbatim record of a hearing be transcribed if requested by any person. If the record is transcribed by the office, persons who request copies of the transcript must pay a reasonable fee. If transcribed by someone other than the office, the person requesting a transcript must pay the person preparing the transcript a reasonable fee.

D. Charges for transcripts prepared by the office shall be set by the chief administrative law judge, with the approval of the department of finance, and all money received for transcripts prepared by the office are payable to the State Treasurer, Office of Administrative Hearings Account.

E. Under Minnesota Statutes, section 176.421, subdivision 4, clause (3), a party may petition the chief administrative law judge for an order directing that a transcript be prepared, for purposes of appeal to the court of appeals, at no cost to the appellant. A petition filed under this provision must include:

- (1) the caption of the case;
- (2) case identification numbers;
- (3) the name, address, and telephone number of the attorney representing the appellant;

# MINNESOTA RULES 1991

437

## LITIGATION PROCEDURES 1415.2900

(4) if appellant is an individual, a sworn affidavit from the appellant which must include:

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

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

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

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

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

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

(5) if appellant is a legal entity not an individual, a sworn affidavit from the legal representative of the appellant must include:

(a) appellant's monthly income from all sources, including income from trust, bonds, and other securities holdings;

(b) a list, at market value, of all stocks, bonds, or other certificates of indebtedness held by appellant;

(c) a statement of the monthly expenses for appellant including salaries, taxes, rent, and insurance;

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

(e) if the appellant owns outright or is purchasing the property in which it is located, a statement showing the market value of the property, the appellant's equity in the property, and the present monthly payments, if any.

**Subp. 8. Continuances during hearing.** If it appears in the interests of justice that further testimony should be received, the compensation judge may continue the hearing to a future date. Oral notice on the record shall be sufficient if given at the time of the original hearing. Otherwise, the notice of the date for the continued hearing must be in writing and served on all parties.

**Subp. 9. Hearing procedure.** The hearing procedure is as follows:

A. The compensation judge shall not communicate, directly or indirectly, with any party concerning issues of fact or law in a pending case, except upon notice and opportunity for all parties to participate. After the first witness is sworn all of the proceedings must be on the record, including motions, objections, offers of proof, rulings of the judge, arguments of the parties, or other comments of the parties, their representative, or the judge. A compensation judge shall not order a court reporter to refrain from recording anything said during the course of a hearing without the consent of the parties present nor shall a compensation judge turn off an audio-magnetic recording device being used to record the proceedings, other than for reasonable breaks, without the consent of the parties present. The judge shall be in complete charge of the hearing. It is the judge's duty to see that the witnesses testify clearly so that the reporter may obtain a clear and transcribable record of all proceedings.

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

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

(2) Stipulations, settlement agreements, or consent orders entered into by the parties before the hearing must be entered into the record.

(3) If the compensation judge requests opening statements, the party with the burden of proof shall proceed first. Other parties shall make opening statements in a sequence determined by the compensation judge.

(4) After opening statements, the party with the burden of proof shall begin the presentation of evidence. That party will be followed by the other parties in a sequence determined by the compensation judge.

(5) Cross-examination of witnesses will be conducted in a sequence determined by the compensation judge.

(6) When the parties and witnesses have been heard and if the compensation judge believes that legal issues remain unresolved, final arguments may be presented in a sequence determined by the compensation judge. Final argument may, in the discretion of the compensation judge, be in the form of written memoranda or oral argument, or both. The compensation judge shall decide when memoranda must be submitted. Final arguments shall be limited to legal issues only.

(7) After final argument, if any, the hearing will end unless it is continued by the compensation judge. If continued, it must either be continued to a time and day announced at the hearing on the record, or continued to a date to be determined later, with at least 15 days written notice to the parties, including those joined at the hearing.

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

**C. These procedures are to be followed in the hearing:**

(1) Counsel offering an objection shall briefly state the specific legal grounds for the objection, unless invited by the judge to argue.

(2) Arguments in opposition to, or in support of, objections must be brief.

(3) Before calling a witness to the stand, counsel shall instruct the witness to be responsive to the questions and to wait until the question is completed and a ruling made on an objection before answering. Counsel shall not instruct a witness while on the stand as to the manner of answering questions but may request the court to instruct the witness.

(4) A party calling a witness for whom an interpreter is required shall advise the court in advance of the need for an interpreter.

(5) Persons in the hearing room shall not converse in a disruptive manner, read newspapers, smoke, chew gum, eat food, or drink liquids other than water while the hearing is in session, and counsel shall so instruct parties they represent, witnesses they call, and persons accompanying them.

**Subp. 10. Disruption of hearing.** No television, newsreel, motion picture, still, or other camera, and no mechanical recording devices, other than those provided by the office may be operated in the hearing room during the course of the hearing unless permission is obtained from the compensation judge. Permission is subject to conditions set by the compensation judge to avoid disruption of the hearing.

Under Minnesota Statutes, section 624.72, no person may interfere with the free, proper, and lawful access to or egress from the hearing room. No person may interfere or threaten interference with a hearing, or disrupt or threaten disruption of a hearing. In the event of interference or disruption or threat of interference

or disruption, the compensation judge shall read this item to those persons causing the interference or disruption and proceed as the judge deems appropriate.

**Statutory Authority:** *MS s 14.51; 176.83*

**History:** *9 SR 333; L 1984 c 640 s 32*

#### **1415.3000 THE COMPENSATION JUDGE'S DECISION.**

**Subpart 1. Basis for decision.** The compensation judge shall not consider factual information or evidence which is not a part of the record.

**Subp. 2. Compensation judge's decision.** Within 60 days after the close of the record, the compensation judge shall prepare a decision and serve it on the parties. The compensation judge's decision must include, in the following order:

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

B. Appearances by parties, if representing themselves, or their attorneys, giving the full name and mailing address, including zip code, of each.

C. The date the record of the hearing was closed.

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

E. A determination of each contested issue of fact or law. In cases involving many issues, the compensation judge may organize the decision by major subissues if the judge determines that organizing the decision in that manner will aid the reader in understanding its contents.

F. A memorandum if necessary to delineate the reasons for the decision or to discuss the credibility of witnesses.

**Subp. 3. Readability.** A decision must be clear, concise, and written in a prose style which can be read and understood by persons of average intelligence. English, rather than Latin terms must be used unless it is necessary to use Latin terms.

**Subp. 4. Proposed decision filed by party.** A party may file a proposed decision with the compensation judge. The proposed decision must conform to this part and be served on the other parties. It must be in a form which would allow the compensation judge to sign and issue the decision if it is acceptable. It must also include a brief memorandum explaining the decision on each issue.

**Subp. 5. Decision, extension of time.** If the parties consent to extend the time for issuance of the decision, the written consent must include a statement of the reasons for the extension. It must be filed with the compensation judge and a copy filed with the chief administrative law judge. If the chief administrative law judge extends the time for issuance of the decision, the extension must be in writing and served on the parties of record.

**Statutory Authority:** *MS s 14.51; 176.83*

**History:** *9 SR 333; L 1984 c 640 s 32*

#### **1415.3100 REHEARING.**

When a compensation judge has issued the findings, conclusions, and decision, the judge's jurisdiction over the case ends, except for taxation of disbursements or awarding of attorney's fees, unless the case is referred to the compensation judge by the court of appeals and the chief administrative law judge for supplemental findings, taking of additional testimony, rehearing, or other action. Compensation judges may correct clerical or mathematical errors in decisions any time before appeal.

**Statutory Authority:** *MS s 14.51; 176.83*

**History:** *9 SR 333; L 1984 c 640 s 32*

## 1415.3200 LITIGATION PROCEDURES

440

## 1415.3200 ATTORNEY FEES.

Subpart 1. **Controlling statute.** Fees for legal services are governed by Minnesota Statutes, section 176.081.

Subp. 2. **Withholding of attorney fees.** Upon receipt of the notice of representation, the employer and insurer may withhold attorney fees on genuinely disputed portions of claims under Minnesota Statutes, section 176.081. Attorney fees must be withheld on genuinely disputed portions of claims if the employee's attorney so requests.

Subp. 3. **Statement of fees, petition for disputed or excess attorney's fees.** The following procedures must be followed in claiming fees:

A. If the claim for attorney fees does not exceed the fees allowed by Minnesota Statutes, section 176.081, subdivision 1, clause (a), the party claiming fees shall file a statement of attorney's fees on a form prescribed by the commissioner, including:

- (1) the caption of the case;
  - (2) the employee's social security number;
  - (3) the date of injury or disease;
  - (4) a list of benefits which were genuinely in dispute and which would not have been recovered without the attorney's involvement;
  - (5) the amount of retainer received from the employee;
  - (6) the amount the employee advanced for expenses;
  - (7) the amount the employer and insurer are currently withholding as attorney's fees, if known;
  - (8) the amount claimed for attorney's fees;
  - (9) a statement that the attorney is licensed to practice law in the state;
  - (10) a statement of whether or not an application is being made for attorney fees under Minnesota Statutes, sections 176.081, subdivisions 7 and 8, and 176.191;
  - (11) a notice that the employee or insurer has ten calendar days to object to the attorney fees requested;
  - (12) the date the statement was served on the employer and insurer;
- and
- (13) the full address and phone number of the employee's attorney.

The statement must be accompanied by the retainer agreement, if not previously filed, and a copy of the usual billing statement given to the employee. If, at the hearing or in a stipulation for settlement, all parties state on the record or include in the stipulation that they have no objection to the statement of attorney's fees, the judge shall issue an appropriate order without waiting ten calendar days. An oral statement of attorney fees may be presented at the hearing on the record if the case has been tried to a conclusion, no objection is made at the hearing, and a retainer agreement is filed. An oral statement of attorney fees must contain the information in this item.

B. If a party claims fees in excess of the amounts listed in Minnesota Statutes, section 176.081, subdivision 1, clause (a), the party shall file a petition for disputed or excess attorney's fees on a form prescribed by the commissioner, including:

- (1) the caption of the case;
- (2) the employee's social security number;
- (3) the date of the claimed injury or disease;
- (4) an exhibit showing specific legal services performed, the date performed, and the time spent;

# MINNESOTA RULES 1991

441

## LITIGATION PROCEDURES 1415.3200

- (5) the number of hours spent in the employee's representation;
  - (6) a statement of expertise and experience in workers' compensation matters;
  - (7) a brief description of the factual, medical, and legal issues in dispute;
  - (8) the nature of proof required in the case;
  - (9) a list of the benefits which were genuinely in dispute and which would not have been recovered without the attorney's involvement;
  - (10) the amount of the retainer;
  - (11) the amount employee advanced for expenses;
  - (12) the amount claimed in fees;
  - (13) the amount the employer and insurer is currently withholding, if known;
  - (14) a list of the disbursements incurred and if the disbursement has been paid, by whom;
  - (15) a statement that the attorney is licensed to practice law in the state;
  - (16) a statement of whether or not an application is being made for attorney fees under Minnesota Statutes, sections 176.081, subdivisions 7 and 8, and 176.191;
  - (17) whether or not a hearing on attorney fees is requested;
  - (18) the date the statement was served on the employer and insurer;
- and
- (19) the full address and phone number of the employee's attorney.

The petition must be accompanied by a copy of the retainer agreement, if not previously filed, and proof of service.

**Subp. 4. Fees, objection.** If a timely objection to the statement of attorney's fees is filed, the compensation judge or settlement judge shall use Minnesota Statutes, section 176.081, subdivision 5, only as to those issues specifically raised by the objection.

**Subp. 5. Filing.** A statement of attorney's fees or petition for disputed or excess attorney's fees under this part must be filed with the compensation judge assigned to hear the case or a calendar judge if no assignment has been made, or a settlement judge if the matter has not been certified to the office.

**Subp. 6. Settlements.** In cases where an offer or settlement has been made in writing under Minnesota Statutes, section 176.081, subdivision 7a, and the offer has not been accepted, upon receipt of the compensation judge's decision, the following procedure must be followed:

A. The party seeking to impose the sanctions of Minnesota Statutes, section 176.081, subdivision 7a, shall file proof of the offer with the chief administrative law judge and serve the other parties within ten calendar days of the date of the compensation judge's decision. The filing must include an order prepared for signature by the chief administrative law judge amending the compensation judge's decision.

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

C. If no objection is received, the chief administrative law judge shall sign, serve, and file the order within ten calendar days of its filing. If an objection has been received, the chief administrative law judge shall rule within ten calendar days after the filing of the objection. Parties do not have a right to a hearing

## 1415.3200 LITIGATION PROCEDURES

442

on the objection. The chief administrative law judge's determination must be in writing and is appealable to the court of appeals.

**Statutory Authority:** *MS s 14.51; 176.83*

**History:** *9 SR 333; L 1984 c 640 s 32*

## 1415.3300 TAXATION OF COSTS AND DISBURSEMENTS.

**Subpart 1. When allowed.** This part applies to costs in cases which have been heard by a compensation judge. Costs associated with cases settled before hearing may be recovered by agreement in a stipulation or retainer agreement.

**Subp. 2. Informal request.** Before submitting a formal request for payment or reimbursement of costs and disbursements, an informal request should be made by the taxing party on the party from whom reimbursement is sought. If agreement cannot be reached on all items, the taxing party may then proceed formally, including in the formal request an indication of those costs agreed upon.

**Subp. 3. Service of formal request.** Service of the request for taxation of costs and disbursements must be made upon the parties, or their attorneys, by the taxing party.

**Subp. 4. Service of objection.** An opposing party has ten working days from the date of service upon him or her in which to serve and file a formal objection to taxation or allowance, with admission or proof of service upon the other parties.

**Subp. 5. Hearing.** If requested, a time for hearing before the compensation judge to whom the matter has been assigned must be fixed. A notice of hearing must be given to the parties by the compensation judge.

**Statutory Authority:** *MS s 14.51; 176.83*

**History:** *9 SR 333*

## 1415.3400 OTHER HEARINGS.

Under Minnesota Statutes, section 14.50, all hearings not discussed in this chapter but required to be conducted by a compensation judge must be conducted in substantial compliance with this chapter. In a dispute in which an immediate hearing is necessary in order to carry out the purpose and intent of the Minnesota workers' compensation law, the notice of hearing must be given not less than five working days before the hearing. Expedited assignment of judges to these hearings must be in a manner which will allow the compensation judge's decision to be issued immediately upon conclusion of the hearing or as soon after the hearing as is reasonable and practical.

**Statutory Authority:** *MS s 14.51; 176.83*

**History:** *9 SR 333*

## 1415.3500 EXHIBITS; REMOVAL AND RETURN.

**Subpart 1. Requests for removal.** All requests for permission to remove an exhibit or document from the official file must be made to the compensation or settlement judge to whom the file has been assigned or to the supervisor of the docket section of either the office or the division.

**Subp. 2. Return without consent or notice.** Upon the expiration of the time in which to appeal, all exhibits or other documentary evidence may be returned to their source of origin without the consent of the parties or notice to them. A copy of the letter of transmittal of the exhibits or documents must remain in the file as part of the record of the case.

**Subp. 3. Request for return.** Upon expiration of the time in which to appeal, exhibits or other documentary evidence must be returned to their source upon the request of the party which produced or introduced the exhibit or evidence at the hearing. A request for return of exhibits or documents must be made in writ-

# MINNESOTA RULES 1991

443

## LITIGATION PROCEDURES 1415.3600

ing to the compensation judge or the division, include the title and appropriate identification number of the case, and identify the exhibits or documents requested. A telephone number of the person making the request must be included with the request.

**Statutory Authority:** *MS s 14.51; 176.83*

**History:** *9 SR 333*

### **1415.3600 SEVERABILITY.**

If any provision of parts 1415.0100 to 1415.3500 is held to conflict with a governing statute, applicable provisions of the Minnesota Administrative Procedure Act, or other relevant law; to exceed the statutory authority conferred; to lack a reasonable relationship to statutory purposes or to be unconstitutional, arbitrary, or unreasonable; or to be invalid or unenforceable for any other reason; the validity and enforceability of the remaining provisions of the rule shall in no manner be affected.

**Statutory Authority:** *MS s 14.51; 176.83*

**History:** *9 SR 333*