

MINNESOTA WORKERS' COMPENSATION COURT OF APPEALS
STATEMENT OF NEED AND REASONABLENESS

**Proposed Permanent Rules Governing
Workers' Compensation Court of Appeals
Rules of Procedure, Chapter 9800, R-04804**

INTRODUCTION

The Minnesota Workers' Compensation Court of Appeals ("WCCA") was created as an independent agency of the executive branch of state government by Chapter 175A of the Minnesota Statutes. The court consists of five judges appointed to six-year terms by the Governor and confirmed by the state Senate. The Governor designates one of the five as the Chief Judge. The Chief Judge is responsible for the administration of the court.

The WCCA has exclusive, statewide authority to review workers' compensation cases decided by compensation judges at the Office of Administrative Hearings (the office), certain cases decided by the Workers' Compensation Division at the Minnesota Department of Labor and Industry (MDLI), and cases decided by arbitrators under collective bargaining agreement programs approved by MDLI. A panel of three or five judges decides each appeal by a written decision. The judges review the evidentiary record created at the initial hearing, preside over oral arguments, conduct legal research, decide the legal and factual issues appealed by the parties, and issue written orders, decisions, and memoranda. Decisions of the WCCA are appealable directly to the Minnesota Supreme Court.

In carrying out the WCCA's functions, documents are filed and hearings are held in which parties present argument regarding disputes over entitlement to benefits in the workers' compensation system. The manner in which cases are opened, documents are filed, and arguments are heard is governed by procedural rules. The WCCA has general rulemaking authority under Minnesota Statutes, section 175A.07, subd. 4, to "prescribe rules of practice before it in appellate matters." Using this authority, the WCCA adopted Minn. R. Chap. 9800, setting out the standards for filing documents, engaging in motion practice, obtaining extensions of time, and conducting oral argument.

The WCCA has experienced significant changes in how disputes are litigated since the last changes to Minn. R. Chap. 9800, which occurred in 1994. Chief among these is implementation of electronic filing through the case management system developed with the Minnesota Department of Labor and Industry. The WCCA accepts filings and conducts electronic service of process through this system, named CAMPUS, as directed by Minn. Stat. §§ 176.2611, subd. 7,

and 176.2612, subd. 1(b)(8). The WCCA proposes to amend its existing rule by making the following changes:

1. Establish processes for accepting filings electronically.
2. Modify the existing filing rules to eliminate redundancy.
3. Allow parties to electronically serve documents filed with the WCCA.
4. Impose page limits on briefs.
5. Reorganize the rules to render them easier to understand.
6. Codify practices that have improved efficiency and accommodated difficulties experienced by some litigants.

This document, the Statement of Need and Reasonableness ("SONAR"), has been prepared to establish the statutory authority of, need for, and reasonableness of the proposed rules. The SONAR is submitted pursuant to Minnesota Statutes, section 14.23, and Minnesota Rules part 1400.2070. A Request for Comments was published in the State Register on October 2, 2023, and posted on the WCCA website. The Request for Comments was sent to all persons and entities identified in the agency's additional notice plan, described below. No comments were received during the subsequent 60-day comment period, which has continued to remain open. The WCCA is committed to carefully consider all comments received.

ALTERNATIVE FORMAT

Upon request, this Statement of Need and Reasonableness can be made available in an alternative format, such as large print, Braille, or audio file. To make a request, contact either:

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STATUTORY AUTHORITY

As set forth above, the WCCA has general rulemaking authority under Minnesota Statutes, section 175A.07, subd. 4, to “prescribe rules of practice before it in appellate matters.” Using this authority, the WCCA has adopted Minnesota Rules chapter 9800, setting out the standards for filing documents, engaging in motion practice, obtaining extensions of time, and conducting oral argument. The WCCA’s rules were last modified in 1994. In addition to this general authority, the legislature has granted specific authority for the following rulemaking:

Attorney fees (Minn. Stat. § 176.081, subd. 6) (enacted 1981).

Digitized signatures (Minn. Stat. §§ 176.281 (d) and 176.285, subd. 2a) (enacted 1995).

Intervention (Minn. Stat. § 176.361, subd. 1) (extant by 1983).

Electronic filing in CAMPUS (Minn. Stat. § 176.2611, subd. 7) (enacted 2018).

Under these statutes the WCCA has the necessary statutory authority to adopt the proposed rules. The WCCA’s statutory authority was either adopted and effective prior to January 1, 1996, or explicitly exempted from the application of Minnesota Statutes, section 14.125. See Minnesota Laws 1995, chapter 233, article 2, section 58, and Minnesota Laws 2024, chapter 97, section 36. For these proposed rules, Minnesota Statutes, section 14.125, does not preclude their adoption.

REGULATORY ANALYSIS

As required by Minnesota Statutes, section 14.131, the WCCA considered the eight factors regarding the impact of the proposed rules. The factors and the WCCA analysis of their impact is as follows:

(1) “[A] description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.” The classes of persons who will likely be affected by the proposed rules include attorneys, intervenors, and pro se litigants participating in appeals and petitions to vacate before the WCCA, and by extension the persons and entities that are responsible to pay benefits under the workers compensation system, including insurance companies and self-insured employers. The WCCA has not identified any specific additional costs that will be imposed on any of these persons due to the proposed rule changes. Those

individuals and entities are required to use the CAMPUS system adopted by the Minnesota Department of Labor and Industry (MDLI), with the exception of pro se employees. See Minnesota Statutes, sections 176.2611 and 176.2612. The costs of participation in the system, which are primarily training costs for staff, are already incurred for the litigants prior to filing an appeal or petition to vacate. The WCCA has identified a number of efficiencies incorporated into the rules that will significantly reduce the cost of litigation before the court, particularly in the area of filing and service of process.

(2) “[T]he probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.” The WCCA does not anticipate any increased costs due to the proposed changes. The proposed changes are not expected to increase costs for any other agencies or units of local government. There will be no effect on state revenues. The WCCA’s adoption of efficiencies in filing and service of process are likely to decrease costs for state agencies and local units of government that participate in litigation before the WCCA.

(3) [A] determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.” There are no less costly or intrusive methods for achieving the purpose of the proposed rule changes. The purposes of the proposed rule changes are to improve the structure of existing rules, make editorial and grammatical changes, adjust internal references, repeal obsolete provisions, and authorize litigants to use electronic filing and service for pursuing litigation. The only areas in which the rule could impose an additional cost to a litigant is in the imposition of page limits on briefs, as more time could be required to edit a brief exceeding the page limit, and verification of the record, as time is required to accomplish the review of the documents transmitted on appeal from the office. The cost from the brief page limits is expected to be minimal as these limits are more lenient than those in other Minnesota courts and litigants can be expected to incorporate efficiencies in the initial drafting process to comply with the page limits. The cost from the verification process is expected to be minimal as the parties themselves submitted the documents into the hearing record and comparing the documents for accuracy and completeness is not complicated.

(4) “[A] description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule.” There is no reasonable alternative method for achieving the purposes of the proposed rule changes.

(5) “[T]he probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected

parties, such as separate classes of governmental units, businesses, or individuals.” The WCCA anticipates no additional costs of complying with the proposed rule changes.

(6) “[T]he probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals.” The WCCA has not identified any specific probable costs of not adopting the proposed rule. The particular mechanisms of using the CAMPUS electronic filing program, verifying the appeal record, and accommodating pro se employees who are unable to use the CAMPUS system have been developed in practice without having adopted rules. Probable consequences of not adopting the proposed rule are that the methods developed out of necessity will not have the benefit of being adopted as rules, and therefore be less routinized and less well-understood by litigants.

(7) “[A]n assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.” No federal regulations apply to any of the proposed rule changes.

(8) “[An] assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule... ‘Cumulative effect’ means the impact that results from incremental impact of the proposed rule in addition to other rules, regardless of what state or federal agency has adopted the other rules. Cumulative effects can result from individually minor but collectively significant rules adopted over a period of time.” The WCCA rules are a single set of rules that apply throughout the state of Minnesota. The cumulative effect of the proposed rules has no impact on state or federal regulations that apply to any subject of the proposed rule changes.

PERFORMANCE-BASED RULES

In drafting the proposed rules, the WCCA followed the statutory mandate that where feasible, rules must balance the needs of the agency in meeting its objectives, while maintaining flexibility for the affected parties. The WCCA’s primary objective in pursuing these rule changes is to update, clarify, and simplify the existing procedural rules so that litigants can present their arguments in the most effective and least costly manner available.

ADDITIONAL NOTICE

The WCCA's Additional Notice Plan was reviewed by the Office of Administrative Hearings and approved on August 29, 2023, by order of Administrative Law Judge Kimberly Middendorf.

The Additional Notice Plan consists of issuing notice to the workers' compensation litigation community via the WCCA Listserv, and sending notice by mail or electronic mail to the Workers' Compensation Advisory Council, Minnesota Association for Justice, Minnesota Defense Lawyers Association, League of Minnesota Cities, Association of Minnesota Counties, the Minnesota State Bar Association's Workers' Compensation Section, Union Construction Workers' Compensation Program, Minnesota School Board Association, and the Commissioner of Labor and Industry.

The WCCA also posted the Request for Comments in this rulemaking on the agency website located at:

<https://mn.gov/workcomp/rulemaking/>

The Additional Notice Plan also includes giving notice required by statute. The WCCA will mail the rules and Notice of Intent to Adopt to everyone who has registered to be on the agency rulemaking mailing list under Minnesota Statutes, section 14.14, subdivision 1a. The WCCA will also give notice to the Legislature as set out in Minnesota Statutes, section 14.116.

CONSULT WITH MINNESOTA MANAGEMENT AND BUDGET ON LOCAL GOVERNMENT IMPACT

As required by Minnesota Statutes, section 14.131, the WCCA has consulted with the Commissioner of the Minnesota Management & Budget Department "to help evaluate the fiscal impact and fiscal benefits of the proposed rule changes on units of local government." The WCCA has submitted the draft SONAR and a copy of the proposed rules to the Commissioner of Minnesota Management & Budget and invited comment. To date, there has been no comment received in return. Any comment received from that agency will be included in the rulemaking record.

DETERMINATION ABOUT RULES REQUIRING LOCAL IMPLEMENTATION

Minnesota Statutes, section 14.128 requires the WCCA to determine whether a local government will have to adopt or amend an ordinance or other regulation to comply with the proposed rule changes. The WCCA has assessed whether a local government will be required to adopt or amend an ordinance or other regulation to comply with the rule changes and has determined that local government is not affected by these rules. The proposed rule would not require any local government to adopt or amend an ordinance or regulation to comply with the rule changes.

COST OF COMPLYING FOR SMALL BUSINESS OR CITY

Minnesota Statutes, section 14.127, requires the WCCA to determine if the cost of complying with proposed rules in the first year after the rules take effect will exceed \$25,000 for any small business or small city. A small business is defined as a business (either for profit or nonprofit) with less than 50 full-time employees and a small city is defined as a city with less than ten full-time employees.

The WCCA has considered whether the cost of complying with the proposed rules in the first year after the rules take effect will exceed \$25,000 for any small business or small city and has determined that the cost of complying with the proposed rules in the first year after the rules take effect will not exceed \$25,000 for any small business or small city. The costs of complying with these rules for these entities is negligible because the proposed changes regarding filing and service of process are anticipated to result in savings and no additional costs. There is the potential for small increases in costs, estimated at less than \$1,000 per appeal, as the cost of review of the hearing record for verification of that record and compliance with the limitations on brief size. Historically, no small business or small city had more than one appeal per year before the WCCA. Other changes to the rule involve primarily editorial and grammatical changes.

The WCCA has made this determination based on the probable costs of complying with the proposed rule, as described in the Regulatory Analysis section of this SONAR. In making this analysis the WCCA assumed that small businesses and cities that currently participate in appeals utilize the CAMPUS system and therefore have already incurred the staff costs for training in the use of CAMPUS system for electronic filing and service.

LIST OF WITNESSES

The WCCA does not anticipate calling any witnesses in the event that a public hearing is required. WCCA staff will be available to present a summary on the rules and answer any questions from participants, should a hearing be held.

RULE-BY-RULE ANALYSIS

These rules are proposed to address changes in the technology and process by which appeals and petitions to vacate are heard at the WCCA. In addition to the normal changes that occur over a period of decades, MDLI has developed an electronic case management system, CAMPUS, that provides injured employees, employers, insurers, intervenors, and other interested persons the ability to file and serve documents without resorting to paper documents and the need to mail or deliver those documents. The WCCA has participated in the development process of the CAMPUS system and integrated the system's capabilities into the WCCA's procedures. This participation was recognized in the enabling legislation for the CAMPUS system, which integrates

the WCCA's processes with those of MDLI. See Minnesota Statutes, sections 176.2611 and 176.2612.

The following is an analysis of the proposed changes to the existing rules. Minnesota Statutes, Chapter 14, requires the WCCA to explain the facts establishing the need for and reasonableness of the rules as proposed. "Need" means that a problem exists which requires attention. "Reasonableness" means that there is a rational basis for the WCCA's proposed action, in light of the circumstances present and the impacts, both positive and negative, on all those affected by the rules.

The amendments to Minnesota Rules, Chapter 9800 are needed because many of the existing rules do not reflect current WCCA practices and it is important that litigants know what is required in pursuing an appeal or a petition to vacate.

The amendments to Minnesota Rules, Chapter 9800 are reasonable because they are consistent with current agency procedures, result in more efficient and less costly litigation, and promote greater participation by pro se litigants.

The rule-by-rule analysis is organized around the rules as currently numbered. As the existing rules are being extensively reorganized to place similar processes in the same rule part, a renumbering of rules is set out in the form of a Revisor's instruction at the end of the proposed rules. There is no analysis provided regarding a rule that is textually unchanged but moved to another part or renumbered in its existing rule part.

9800.0100 DEFINITIONS.

Subp. 2. Assistant Administrator.

The proposed amendment to Minnesota Rules, part 9800.0100, subp. 2, reflects changes in the position of, and the duties assigned to, the assistant administrator. The rule is stated broadly to permit the chief judge maximum flexibility as needed in carrying out the authority granted by Minnesota Statutes, section 175A.02, subd. 1.

Subp. 3b. CAMPUS.

The proposed new Minnesota Rules, part 9800.0100, subp. 3b, defines CAMPUS, the MDLI content management system developed under Minnesota Statutes, sections 176.2611 and 176.2612, for the purpose of the rule. The rule is needed and reasonable to clarify what system is to be used for filing and electronic service of documents in matters before the WCCA.

Subp. 3c. Case.

The proposed new Minnesota Rules, part 9800.0100, subp. 3c, defines case, which is needed to specify for users of the CAMPUS system how individual proceedings are brought before the WCCA and where in the system any particular filing must be made.

Subp. 4a. Demonstrative aids.

In presenting oral argument, parties have previously used some form of video, reflected in the existing Minnesota Rules, part 9800.0100, subp. 8, defining motion pictures. The existing rule is replaced by proposed subpart 4a, to extend the reach of the rule to mechanisms beyond motion pictures. This change encompasses video and audio used by litigants as part of an oral argument before the WCCA. The definition is needed to clarify that both audio and visual aids are appropriate for use in this manner.

Subp. 6. Filed.

The existing Minnesota Rules, part 9800.0100, subp. 6, defines filed, which is a term specific to documents formally received by the WCCA and often the event that triggers the start of a time period for another action. The definition is needed to specify for users what constitutes filing as the WCCA now receives documents electronically through the CAMPUS system. See Minnesota Statutes, sections 176.275 and 176.2612.

9800.0110 COMPUTATION OF TIME.

The proposed new part 9800.0110 adopts the methodology for calculation of time from various sources, including Minnesota Rule of Civil Procedure 6.01, Minnesota Rule of General Practice 503.01, and Minnesota Statutes, section 645.15. The calculation method is set out for periods of seven days or more, or less than seven days, as those are the two periods used in setting deadlines in the WCCA rules.

Subp. 1. Time computation – seven days or longer.

The proposed new subpart 1 defines the period of seven days or more to include counting Saturday, Sunday, and holidays, but when the period ends on one of those three, the deadline for the period extends to the first business day following the ending day. The methodology is consistent with the methodology used in the sources set out above. The proposed rule is designed to simplify the application of the time computation to the deadlines set out in workers' compensation proceedings before the WCCA.

Subp. 2. Time computation – fewer than seven days.

The proposed new subpart 2 defines the period of fewer than seven days to exclude counting Saturday, Sunday, and holidays. The methodology is consistent with the methodology

used in the sources set out above. The proposed rule is designed to simplify the application of the time computation to the deadlines set out in workers' compensation proceedings before the WCCA.

9800.0200 EXAMINATION OF DATA.

The existing rule part 9800.0200 is modified to clarify the extent of the access allowed a person seeking to access data in the custody of the WCCA, eliminate reference to the division file as obsolete, and update cross-references to reflect a rule change. These modifications in the rule reflect current standards of access and impose no significant burden on litigants.

9800.0210 NOTICE OF REPRESENTATION.

Previously, there has been no notice of representation required to be filed by attorneys in cases before the WCCA. As the adoption of the CAMPUS system requires WCCA staff to designate access to the case in the system, requiring an attorney who has not already been providing representation to file a notice allows the WCCA and the parties to the case the opportunity to update the service list and ensure proper notice is given. The newly proposed part 9800.0210 requires an attorney who is not currently representing a litigant to file a notice of representation upon entering into representation in a case before the WCCA. The burden imposed by the rule on attorneys is minimal, particularly as a notice of representation is currently required in other courts. See Minnesota General Rules of Practice 5.04 (b).

9800.0300 FORM OF LEGAL DOCUMENTS.

The existing rule part 9800.0300 is extensively amended to address the change from filings made through paper documents to those made electronically. The modifications eliminate references to paper and set out minimum text size to ensure documents can be efficiently read. These modifications in the rule reflect current practices of parties appearing before the court and are expected to impose no significant burden on litigants.

Where the document is submitted electronically, the proposed rule requires that document be in a format compatible with the CAMPUS system, which is primarily portable document format (PDF). Based on existing practices, there does not appear to be any significant burden placed on litigants by this requirement.

To ensure that parties are aware of the distinction between the CAMPUS system and electronic mail, the rule allows documents to be submitted by email only with prior approval by WCCA staff. The newly added requirement for captioning documents is needed to ensure that parties' filings are in the appropriate case. There have been instances of misfiling of documents

in the CAMPUS system, particularly when a party files the document to an employee's workers' compensation claim. That portion of the CAMPUS system is under the control of MDLI and does not automatically notify WCCA staff that a document is filed in the system. The proposed rule is needed to ensure proper filing and imposes no significant burden on litigants.

9800.0310 SERVICE BY PARTIES.

The existing rule part 9800.0310 is extensively amended to clarify the methods of service available to parties. The requirement of serving the employee in a proceeding is incorporated from Minnesota Statutes, section 176.285. The rule requirement to file an affidavit of service is retained where any portion of the service is made outside of the CAMPUS system. This new language is consistent with the affidavit language in Minnesota Statutes, section 176.275, as the ability to file without an affidavit of service is limited to those instances where all the parties are served via the CAMPUS system. The rule also clarifies that the CAMPUS system-produced affidavit must be supplemented where that document does not accurately reflect how service was accomplished. This rule requirement is needed to ensure that the service of filings with the WCCA is accurately documented. Failure to provide correct service of process can have serious effects on the rights of parties and result in deleterious effects on the provision of benefits and efficiently resolving disputes between parties. See Briones Parral v. The Cleaning Authority, No. WC22-6496 (W.C.C.A. Mar. 21, 2024). The modifications to the rule do not increase the burden on litigants from the existing rule governing service.

9800.0315 SERVICE BY THE COURT.

The newly proposed rule part 9800.0315 sets out the standards for service by the WCCA on the parties to a proceeding. This rule is needed to conform court practices to the statutory provisions governing service, specifically service on an employee. Minnesota Statutes, section 176.285, subd. 2b (c), allows electronic service on an employee only where the employee has opened an account in the CAMPUS system and agreed to receive electronic service. The requirement for a written authorization in item A allows the WCCA to document the employee's agreement and thereby demonstrate compliance with the statute.

Item B of proposed rule 9800.0315 implements the authority granted under Minnesota Statutes, section 176.281 (d), for use of digitized signatures. The rule provides a mechanism for efficiently applying digital signatures and certifying each signature. The new language in the rule does not place any significant burden on litigants.

9800.0320 FACSIMILE TRANSMISSION.

The existing rule part 9800.0320 is amended to increase the number of pages that can be transmitted to the WCCA and adjust the wording of the rule. The only increased burden on litigants is to require the documents submitted by facsimile transmission to be filed, either electronically or as a paper filing, within five days of the original submission. This follow-up filing is a means to ensure that the WCCA received the entire document being filed and that the document was served on the other parties to the case. This new requirement is expected to have minimal impact on litigants as the use of facsimile transmission is waning and the filing process through the CAMPUS system is accomplishes service on the other parties to the case much more efficiently.

9800.0330 ELECTRONIC FILING.

The adoption of the CAMPUS system has transformed how cases are opened and how documents can be served and filed. The newly proposed rule part 9800.0330 sets out the standards for electronic filing of documents with the WCCA by parties to a case.

Subp. 1. Documents accepted; date and time of filing; acknowledgment.

Subpart 1 reflects the obligation of the WCCA to accept documents using the CAMPUS system. See Minnesota Statutes, section 176.2611, subd. 7. The rule language regarding the date and time of filing incorporates the statutory standards adopted for CAMPUS filings. See Minnesota Statutes, section 176.285, subd. 2 (c).

Subp. 2. Filing format; how filed.

Subpart 2 requires filers to review documents for accuracy and completeness prior to filing. While not a requirement, filers are encouraged to use searchable PDF format for their documents as this increases the efficiency in locating information inside these documents. The prohibition of duplicate filings ensures that there is no confusion over the contents of the case record. The WCCA has experienced situations where multiple filings of the same document have been submitted, both through the CAMPUS system and on paper. This practice causes confusion amongst parties to the case and needless work by both the parties and by WCCA staff. Deletion of duplicate filings is authorized by Minnesota Statutes, section 176.275, subd. 1.

Subp. 3. Signature.

The mechanism by which a signature is affixed to a digital document is set out in subpart 3. The rule clarifies that an electronically produced document need not be printed out for signature. The rule is needed to reflect the practices of attorneys submitting documents, while affording a no-cost option for complying with the rule and Minnesota Statutes, section 176.285, subd. 2a (a).

Subp. 4. Electronic mail.

Since the roll out of the CAMPUS system, some pro se litigants have demonstrated an inability to use the filing and service functionality of the CAMPUS system. To accommodate these persons, the WCCA has established a system of receiving documents for electronic filing from the litigant by electronic mail. Staff of the WCCA has then filed and electronically served that document in the CAMPUS system on behalf of the litigant. Subpart 4 establishes the standards for a litigant to obtain this assistance and clarify the responsibilities of the litigant and the court when use of the process is approved.

9800.0400 TEMPORARY ORDERS.

The existing rule part 9800.0400 is amended to update a rule citation that has changed. This modification imposes no burden on litigants.

9800.0410 VERIFICATION OF RECORD.

With the adoption of electronic filing of workers' compensation cases at the office, transmittal of the appeal record changed from delivery of a physical box of documents to transmittal of digital files containing electronic exhibits and other documents. In several instances, WCCA staff determined that the transmitted record was incomplete. To prevent recurrence of this situation, the office now provides an index and certifies that the record is complete. The WCCA instituted a process by which the parties could review the index of the case and verify that the record was complete. The newly proposed rule part 9800.0410 sets out the protocol for verification of the record transmitted to the WCCA by parties to the case.

Subp. 1. Notice of record received.

Subpart 1 reflects the obligation of WCCA staff to inquire of the parties whether the record received from the office, MDLI, or the arbitrator is accurate and complete. The deadline to receive responses is the conclusion of the briefing schedule. The deadline is set to conform to the court's obligation to determine whether oral argument is to be heard on the appeal. The rule sets out that a failure to object to the contents of the record constitutes acceptance of the record as transmitted. The rule is needed to ensure that the WCCA is deciding an appeal based on the entire record developed before the finder of fact. The verification process aids the WCCA in meeting its obligation to certify the record when a WCCA decision is appealed to the Minnesota Supreme Court. See Minnesota Statutes, section 176.471, subds. 8, 9. As the parties submitted the documents for inclusion in the record before the compensation judge, the parties are in the best position to confirm the accuracy and completeness of the record transmitted for the appeal. The experience with the existing process demonstrates that the proposed rule does not impose an undue burden on litigants.

Subp. 2. Resolution of disputes.

Subpart 2 sets out the process when a potential discrepancy in the record is identified by a party. The new language reflects the current court practice when a problem with the transmitted record is identified.

9800.0500 CONTINUANCES OF ORAL ARGUMENTS.

The existing rule part 9800.0500, setting out the mechanism for obtaining a continuance of a scheduled oral argument, is amended to conform the calculation of time to the newly adopted language for time in the proposed rule. The actual period of time for requesting a continuance is not changed from the existing rule. To improve clarity, this subpart will be renumbered 9800.1000, subp. 2, after adoption by means of a Revisor instruction. The renumbering will put the rules governing oral arguments in the same rule part.

9800.0700 STIPULATIONS FOR SETTLEMENT.

The existing rule part 9800.0700, controlling how settlements are to be approved, is extensively modified. A settlement may resolve underlying issues that relate to the provision of benefits. That form of settlement must be approved by a compensation judge with the office before the WCCA can act. The proposed rule sets out this process in detail, as there have been numerous instances where parties have demonstrated confusion over the requirements. The parties are required to indicate whether any issues remain to be heard, to ensure the court is not dismissing a matter still in controversy. While the changes impose modest burdens on litigants, the benefits arising from the elimination of confusion and improved consistency in handling of settlements render the rule needed and reasonable.

9800.0800 REVIEW OF ATTORNEY FEES.

The existing rule part 9800.0800, providing for a review of attorney fees, is extensively modified. The term "file" is used consistent with the wording throughout the proposed rules. The reference to an application form is deleted, as requests under this part have not used a form. The requesting party is now obligated to set out the reasons for the dispute and whether oral argument is required. These obligations are imposed to assist the court in making a reasoned decision whether to hold oral argument on the dispute. The rule language clarifies that the court will serve the parties to the proceeding, as an attorney fee dispute may involve prior counsel who have placed liens on the record. These lienholders may not have been included in the existing service list for the proceeding. Under the rule as proposed, court staff will examine the records in CAMPUS to ensure that all interested parties are provided notice. The burdens imposed by the

rule are needed to ensure that the parties are provided adequate notice of the issues underlying the dispute concerning attorney fees.

9800.0900 BRIEFS ON APPEAL.

A critical portion of the appeal process is written briefs. The practices governing submission of written briefs has changed significantly since part 9800.0900 was first adopted. The updated practices are reflected in the newly proposed language. Some of the language in this part is unchanged from the existing rule. The changes are individually discussed below.

Subp. 1. Appellant brief; transcript required.

Subpart 1 is modified to specify the process to be followed where an appeal is taken from a proceeding in which a transcript is required to be prepared. The presence of the transcript determines the starting date for the appeal brief filing deadline. The new language adopts a 65-page brief length limit, subject to waiver by the court. The rule clarifies that attachments are not permitted, absent permission of the court. The new language arises from two practices that have been observed by the court. The court has received a number of filings that are extraordinarily long, but not due to any particular complexity in the issues in the case. In addition, litigants have appended documents to the brief, seeking to include this information in the record. As this information was not before the compensation judge, the information cannot be considered for the first time on appeal.

Regarding the proposed page length, the WCCA has drawn on the current standards in other courts, which appear to be around 50 pages (see e.g. Minnesota Rule of Appellate Procedure 132.01, subd. 3 (45 pages for principal brief)). In arriving at a 65-page limit, the court seeks to give litigants leeway from the more stringent limits, while at the same time ensuring that the resulting brief efficiently presents the litigant's position.

The rule provision regarding attachments reflects the occasional need to incorporate information that is important to resolving the appeal, but which does not violate the prohibition against expanding the record to include information not considered by the compensation judge. The most frequent occurrence demonstrating this need is where the compensation judge has incorporated a prior order by reference, but not included a copy of that order in the record transmitted to the WCCA. Whether a particular document will be included in the appeal record will be determined on a case-by-case basis.

Subp. 1a. Duplicative filings.

Subpart 1a is entirely new language clarifying that the electronically filed document is the official record document where there are multiple filings of the same document. This new language is needed to address the problems caused when litigants repeat filings in different

formats, sometimes with differences between the documents being filed. The difficulties posed in version control support the designation of one record version of a document. As multiple filings do not assist the court in resolving disputes, the proposed rule authorizes disposal of paper copies of documents that are electronically filed. This approach is consistent with the modification to existing part 9800.0900, subp. 5a, eliminating the original and four copies language for filing briefs.

Subp. 2. Appellant brief; no transcript required.

Subpart 2 is modified in the same manner and for the same reasons as subpart 1. The absence of a transcript sets the starting date for the appeal brief filing deadline as the date of filing of the notice of appeal.

Subp. 3. Respondent brief.

Subpart 3 is modified in the same manner and for the same reasons as subparts 1 and 2. The new language also clarifies that a party may combine a response brief into the appellant or cross-appellant brief, so long as the brief meets the appellate brief timeline.

Subp. 5. Reply brief.

Subpart 5 is modified in the same manner and for the same reasons as subparts 1, 2 and 3. The new language also clarifies that the reply brief can be filed within 10 days of the response brief filing, or 10 days after a response brief was due to be filed. This language addresses the situation where multiple response briefs may be filed, but one or more of the parties does not do so. The new language is needed to clarify how the due date set in that circumstance. The page limitation proposed for a reply brief is 40 pages, following the lead of other courts while providing litigants leeway in the limit (see e.g. Minnesota Rule of Appellate Procedure 132.01, subd. 3 (20 pages for reply brief)).

Subp. 5a. Filing and service of briefs.

Subpart 5a is amended by explicitly requiring a written brief for all cases. This is needed to clarify what issues are to be addressed by the court and provide the responding parties the opportunity to address the appellant's issues. The other substantive change to the subpart is to eliminate the requirement of an original brief and four copies, as this no longer reflects the court's practice in receiving documents. Deletion of the multiple copy requirement is reasonable to reduce costs on those litigants that continue to file documents outside of the CAMPUS system.

Subp. 6. Extension of time for briefs.

Subpart 6 is modified by minimally altering the grammar of the rule and deleting the reference to the dismissal process in part 9800.1710. The referenced provision remains effective, but the language in this subpart is deleted as duplicative.

9800.0910 UNRETAINED DECISIONS.

The existing rule part 9800.0910, reflected the prior practice of publishing some of the court's decisions in a reporter, Workers' Compensation Decisions. The publication of the reporter was discontinued a few years ago. In place of paper publication, the court publishes decisions through a searchable electronic archive, accessed via the court's website (<http://mn.gov/workcomp>). Over time, the court has become aware that some decisions were not included in either the Workers' Compensation Decisions publication or the searchable archive of decisions. In the event a party is in possession of one of these otherwise unavailable decisions, the rule is proposed to allow the decision to be provided to the court and the other parties. Where the decision was not provided with the briefing, the decision must be provided prior to the oral argument. The proposed rule changes the prior notification period from ten days to five days. Five days is sufficient for parties and the court to verify the decision as authentic and allows more time to litigants in deciding whether to rely on an unretained decision.

9800.0920 BRIEF OF AMICUS CURIAE.

The existing rule part 9800.0920, providing for the filing of amicus curiae briefs, is mostly unchanged. The language incorporating the part 9800.0900 standards for briefs is modified to reinforce that the length, filing, and service provisions are applicable to amicus briefs. The modifications do not impose an undue burden on the filer of an amicus brief, as these standards must be met by all litigants in a proceeding.

9800.1000 ORAL ARGUMENTS.

A review of the existing rule determined that portions of various rule parts are related to the scheduling and conduct of oral arguments before the court. To improve clarity, these various parts are incorporated into part 9800.1000. Much of the language in this part is unchanged from the existing rule. The changes are individually discussed below. The renumbered rule parts are set out in the Revisor's renumbering instruction as follows:

Existing Number	Renumbered As
9800.0500, subpart 1	9800.1000, subpart 2
9800.1000, subpart 1a	9800.1000, subpart 3
9800.1000, subpart 2	9800.1000, subpart 4
9800.0510	9800.1000, subpart 5
9800.1720	9800.1000, subpart 6
9800.1000, subpart 3	9800.1000, subpart 7

Subp. 1. Criteria considered in granting oral argument.

Subpart 1 is modified only to delete the reference to the 15-minute limit for a party's presentation at oral argument. The 15-minute limit is retained in another portion of the rule. The deletion from subpart 1 is reasonable to eliminate redundancy.

Subp. 1a. Time allotted for oral argument.

Subpart 1a sets out the 15-minute limit for a party's presentation at oral argument. The subpart is modified to clarify that the 15-minute period includes the time available for rebuttal and the use of demonstrative aids unless the court approves a different period. The new language conforms to other changes in the rules but does not impose any new burden on parties presenting oral argument. In practice, the 15-minute oral argument period has proven ample for most oral arguments. The court has exercised discretion in particular cases to allow more time to respond to specific arguments.

Subp. 2. Demonstrative aids.

Subpart 2 sets out the notice requirement for any litigant seeking use some form of audio or video as part of their oral argument. The language of the existing rule is modified to incorporate the new term "demonstrative aids" in lieu of motion pictures and alters the notification requirement to provide parties more time to decide on the use of such aids. The time period, in practice, will begin at the end of the briefing period, as most hearings with oral argument are scheduled for hearing on a date approximately one month after the briefing period concludes. The rule also clarifies that the party using the demonstrative aids is responsible for bringing, operating, and removing any equipment required as part of the presentation. These modifications are needed and reasonable to ensure that the person familiar with the technology is responsible for its use, thereby reducing the risk of delays through unfamiliarity.

Subp. 3. Withdrawal of oral argument request.

Subpart 3 consists of entirely new language. The subpart addresses the rare circumstance where a party wishes to inform the court that oral argument is no longer desired. The subpart specifies the written mechanism for transmitting the withdrawal request. The time limit for submitting the request, the end of the reply period, is set to provide consistency with the time that the court determines whether the case will be heard on oral argument.

9800.1050 REFERRAL FOR FACT-FINDING.

As an appellate court, the WCCA does not conduct evidentiary hearings. When such a hearing is required, the court refers the case to the office, where a compensation judge conducts a hearing to develop the evidence and arrive at findings to address the issue compelling the hearing. The existing rule part 9800.1050 provides for cases to be referred to the office for this purpose. The part is modified to clarify that a further hearing is only to be conducted were needed and to provide a more specific citation for the statute governing the process. An additional sentence has been added to ensure that parties understand that the findings and order coming from a referral is itself an appealable order. There have been instances where the parties have expressed confusion over this point of procedure. Where such an appeal is taken, the court practice has been to consolidate the appeals and resolve them together. The new language is needed and reasonable to routinize the process and ensure that disputes from referrals are resolved efficiently.

9800.1100 APPLICATION TO SET AWARD ASIDE.

A substantial portion of the cases resolved by the court are petitions to set aside orders. These applications, also known as petitions to vacate, are typically submitted due to a change in medical condition that may entitle an employee to benefits that were resolved in an earlier award. The practices governing submission of a petition to vacate have changed significantly since part 9800.1100 was adopted. The updated practices are reflected in the newly proposed language. Some of the language in this part is unchanged from the existing rule. The changes are individually discussed below.

Subp. 1. Applications.

Subpart 1 is amended for grammar and incorporating the page limit for an appeal brief set out in proposed part 9800.0900, subps. 1 and 2. The proposed page limit is needed and reasonable to ease the burden imposed by unduly wordy briefs, while providing ample opportunity for a party to set forward its positions regarding the legal issues in dispute. The proposed language informs a party filing an application and desiring to use the electronic filing and service functions in the CAMPUS system how to accomplish these goals. This language is

needed as the functionality in the CAMPUS system to allow a filer to create this type of case is not functional. The direction to filers to contact court staff is expected to be necessary for some time, as there is no current schedule for providing the file-opening functionality in the CAMPUS system. Providing a mechanism for a party to file the application electronically is reasonable to provide the efficiencies in time spent and reduction in cost incurred to both the parties and the court available through the CAMPUS system.

Subp. 2. Cause.

Subpart 2 retains the existing language requiring a party to state the basis for the application. The court has encountered filers who have their application denied and follow that denial with refiling the application with the court, thereby initiating an entirely new proceeding. New language is proposed requiring a filer in that situation to identify the different circumstances supporting the latest application. This rule language is necessary to prevent abuse of the application process by creating an obligation to respond where the matter has already been decided. While the overall number of these filings is not large, the potential for abuse has already been realized and the costs incurred by responding parties can be significant. The burden on a filing party is minimal, as the application should already have the information required. The obligation for concise statement ensures that court staff can readily identify whether the application is complete and can be accepted as filed.

Subp. 3. Responsive pleadings.

Subpart 3 is amended for grammar and incorporating the page limit for a response brief set out in proposed part 9800.0900, subp. 3. The proposed page limit is needed and reasonable for the same reasons as in that part.

Subp. 4. Reply memoranda.

Subpart 4 is amended for grammar and incorporating the page limit for a reply brief set out in proposed part 9800.0900, subp. 5. The proposed page limit is needed and reasonable for the same reasons as in that part.

Subp. 5. Hearing.

Subpart 5 is amended for grammar and clarifies that oral argument may be requested by any party to the proceeding. A deadline is added to the request for an oral argument, consistent with the practices of the court in determining whether to hear oral argument in a case. The last two sentences of the subpart are deleted as being inconsistent with the court's discretion in whether to hear a case in oral argument. See Minn. Stat. § 176.421, subd. 6 (1) (oral argument in appeals discretionary).

Subp. 6. Determination.

Subpart 6 is proposed for deletion as the entire rule is duplicative of the statutory provision cited in the rule. See Minn. Stat. § 176.461.

9800.1400 APPLICATIONS, PETITIONS, AND MOTIONS.

The resolution of preliminary and procedural issues is accomplished through motion practice. Part 9800.1400 sets out the mechanisms for the filing, response, and resolution of these requests. The existing rules are largely unchanged. The most significant change is the addition of a process for a party to obtain a case number to use the electronic filing and service functions of the CAMPUS system. The changes are individually discussed below.

Subp. 1. Scope.

Subpart 1 modifies the existing language to incorporate the service by a party provision in the proposed part 9800.0310. This ensures that parties, particularly pro se litigants, are informed of the obligation to serve such documents on the other parties to the particular case. The new language does not impose an undue burden on any party.

Subp. 2. Procedures for filing.

Subpart 2 retains the existing language requiring a party to seek relief in writing, stating the relief sought and providing supporting documentation. The time for requesting relief is altered to “as soon as practicable” to encourage litigants to promptly seek relief, rather than delay the filing. The deadline anchor for the ten-day period to seek relief is altered to any responsive pleading, rather than the existing reference to the respondent’s brief. This reflects the WCCA’s experience that motions to strike are sometimes directed at the contents of the reply brief. The new structure of the deadline would allow for such motions, while not burdening any party.

The other significant change to this subpart is the addition of the filing mechanism when no case has been opened with the court. For example, a party may seek an extension of time to file the notice of appeal. As no appeal has been filed, no case has been opened and therefore the filing and service functions of the CAMPUS system would not be available to the parties. The new language directs the filer to contact WCCA staff who will open the case, thereby enabling electronic filing and service of the motion and supporting documents. The change is needed and reasonable to afford parties the efficiency and cost savings that accompany electronic service and filing.

Subp. 3. Responses.

Subpart 3 is amended for grammar and substituting “business” days for the existing “working” days language. The new language conforms to the proposed rules governing time and does not affect the need or reasonableness of the rule.

Subp. 4. Replies.

Subpart 4 is amended for grammar and substituting “business” days for the existing “working” days language. Substantively, the period for a reply is reduced from five days to three days. The proposed reduction is needed to afford prompt resolution of the motion request. In practice there are few replies filed in motion disputes. The time afforded is sufficient to respond, particularly where the parties are using electronic filing and service.

9800.1500 INTERVENTION.

The right to intervene in WCCA proceedings is established in Minnesota Statutes, section 176.361, subd. 1. There have been statutory and rule changes since the adoption of part 9800.1500. The proposed changes to this part conform to the new statutory language and rule change and reflect changes in how objections to intervention are addressed. The changes are individually discussed below.

Subp. 2. Potential intervenors.

Subpart 2 retains the existing language obligating parties to provide written notice to potential intervenors, now describing the process as “served with” to avoid potential confusion regarding the form of notice required. The rule reference is updated to reflect the change in rule citation. The person seeking to intervene is afforded 60 days to respond, as that is the statutory period set in Minnesota Statutes, section 176.361, subd. 2.

Subp. 3. Contents of motion.

Subpart 3 is amended to conform with the requirements of Minnesota Statutes, section 176.361, subd. 2. A reference to a repealed rule is deleted. The new language clarifies that no order granting intervenor status is required and provides the mechanism for filers to submit an objection to the intervention. The new language of the subpart reflects existing practices and does not impose a burden on any party.

9800.1600 COMMENCEMENT OF APPEALS.

The existing rule part 9800.1600 is proposed to be renumbered as part 9800.0450 and extensively amended.

Subp. 1. Filing notice of appeal.

Subpart 1 is amended to clarify how notices of appeal are filed. Appeals may be brought from decisions of the office, in which case the process in Minnesota Statutes, section 176.421

controls. When the appeal is brought from a commissioner's determination, the new language clarifies that the notice of appeal is to be filed with the commissioner at MDLI. In both of those instances, there is sufficient frequency in appeals that the responsibility to act on the appeal is well established. The third entity, a collective bargaining agreement arbitrator, rarely encounters the appeal process. Inquiries have been fielded by WCCA staff regarding how an appeal from that dispute resolution process is to be perfected. WCCA staff has had to intervene in some instances to obtain the record of the proceeding before the arbitrator. The proposed amendments set out the mechanism for a party to file a notice of appeal in each case and affords WCCA the opportunity to contact the arbitrator to ensure that the record is delivered so that the appeal may be heard.

The existing language regarding the time limit for filing an appeal is modified to reflect the opportunity for an extension afforded by Minnesota Statutes, section 176.421, subd. 2. The statutory provision is repeated in the rule to clarify that the extension is available to any appeal, regardless of whether the commissioner, a compensation judge, or an arbitrator issued the underlying decision.

Subp. 2. Notice of receipt of transcript.

The language of this subpart has only grammatical changes from the existing rule. The rule is broken into items A and B at the direction of the Revisor of Statutes.

9800.1700 TAXATION OF DISBURSEMENTS.

The existing rule part 9800.1700 sets out the process to a prevailing employee to obtain an award of disbursements under Minnesota Statutes, section 176.511. The proposed changes to the existing rule are grammatical. A detailed description of how to request an award of disbursements is added, as this is a different process from the request for attorney fees. There is no reason for WCCA to serve out the disbursement request as there is no concern regarding the completeness of the service list, in contrast to the process in part 9800.0800 for attorney fees. These changes are intended to make the rule easier to understand. The changes do not reflect any alteration in practice from how the existing rule has been applied.

9800.1710 DISMISSAL OF APPEAL.

The existing rule part 9800.1710 provides for cases to be dismissed where no appellate brief is filed. The only changes to the rule are grammatical and a substitution of the filing period in place of a reference to the rule part governing the filing of an appellant or cross appellant brief. These changes are intended to make the rule easier to understand. The changes do not reflect

any alteration in practice from how the existing rule has been applied. The rule is broken into items A and B at the direction of the Revisor of Statutes.

9800.1800 SUSPENSION OF RULES.

The existing rule part 9800.1800 allows for the procedural rules to be suspended in extraordinary circumstances. The only changes to the rule are grammatical and a substitution of the phrase “sua sponte” for existing language with the same meaning. The scope of the rule part is altered to reflect the numbering in Part 9800. The changes do not reflect any alteration in practice from how the existing rule part has been applied.

RENUMBERING INSTRUCTION.

As part of the comprehensive revision of Part 9800, the order of the existing rule parts is proposed to be modified. The intent behind the ordering is to conform the position of the rule provision with the stage of a proceeding before the court. To that end, three parts are incorporated into the oral argument provision of part 9800.1000. Two other parts (9800.0400 and 9800.1600) are renumbered to place them in the position consistent with the actions governed by those parts. The renumbering does not reflect any alteration in practice from how these rule parts have been applied.

CONCLUSION

Based on the foregoing, the proposed rules are both needed and reasonable.

August 5, 2024

Date

Patricia J. Milun

Patricia J. Milun, Chief Judge
Minnesota Workers' Compensation Court of Appeal