FORUM 3

ARTICLE 1
General

§ ~~10300-10304~~ 10300. ~~Adoption, Amendment or Rescission of Rules~~ Construction of Rules.

~~(a) Notices required by Labor Code sections 5307 and 5307.4 shall be served by the Appeals Board by regular mail, fax, electronic mail or any similar technology, not less than thirty days prior to the date of hearing on those who have filed with the Secretary of the Workers' Compensation Appeals Board a written request for notification. Notice of action taken shall be served on the same persons by regular mail within thirty (30) days following the filing of any order pertaining to the rules with the Secretary of State.~~

~~(b)~~(a) The provisions of these ~~R~~rules are severable. If any provision of these ~~R~~rules, or the application thereof to any person or circumstances, is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

(b) Article and section headings shall not be deemed to limit or modify the meaning or intent of the provisions of any rule hereof.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Section 5307, Labor Code.

Commented [A1]: Notice of rule-making action and construction of rules are separate subjects and have been moved into separate rules.

Commented [A2]: Moved to new rule 10302.

Commented [A3]: Capitalization removed to conform to style.

Commented [A4]: Capitalization removed to conform to style.

Commented [A5]: Current rule 10304.

§ ~~10300~~ 10302. Rulemaking Notices.

~~(a)~~ Notices required by Labor Code sections 5307 and 5307.4 shall be served by the Appeals Board by regular mail, fax, electronic mail or any similar technology~~, not less than thirty days prior to the date of hearing~~ on those who have filed a written request for notification with the Secretary of the Workers' Compensation Appeals Board. ~~a written request for notification~~. ~~Notice of action taken shall be served on the same persons by regular mail within thirty (30) days following the filing of any order pertaining to the rules with the Secretary of State.~~

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 5307, 5307.4 and 5309, Labor Code.

Commented [A6]: We propose that rule 10300(a) become rule 10302 with the changes tracked below. Because the rule references Labor Code sections 5307 and 5307.4, it is not necessary to repeat the content of those Labor Code sections.

§ ~~10301~~ 10305. Definitions.

As used in this subchapter:

(a) "Administrative Director" means the Administrative Director of the Division of Workers' Compensation or ~~his or her~~ their designee.

~~(b) "Adjudication file" or "ADJ file" means a case file in which the jurisdiction of the Workers' Compensation Appeals Board has been invoked and which is maintained by the Division of Workers' Compensation in paper format, electronic format, or both, including a temporary paper case file.~~

(~~c~~b) "Appeals Board" means the commissioners and deputy commissioners of the Workers' Compensation Appeals Board acting en banc, in panels~~,~~ or individually.

(c) "Appear" means to act on behalf of any party.

~~(d)~~ (d) "Applicant" or "injured employee" or "injured worker" or "dependent" means any person asserting a right to relief under the provisions of Labor Code ~~S~~section 5300.

(e) "Claims administrator" means an entity that reviews or adjusts workers' compensation claims on behalf of either (1) an insurer or (2) an employer that has secured a certificate of consent to self-insure from the Department of Industrial Relations, whether employed directly or as a third party.

~~(e) "Application for Adjudication" or "application" means the initial pleading that asserts a right to relief under the provisions of Labor Code Section 5300.~~

~~(f) "Carve-out case" means a workers' compensation case that, in accordance with the criteria specified in Labor Code sections 3201.5 through 3201.9, is subject to an alternative dispute resolution (ADR) system that supplements or replaces all or part of the dispute resolution processes contained in Division 4 of the Labor Code.~~

~~(g) "Case opening document" means any document that creates an adjudication case and invokes the jurisdiction of the Workers' Compensation Appeals Board for the first time.~~

~~(h) "Cost" means any claim for reimbursement of expense or payment of service that is not allowable as a lien against compensation under Labor Code section 4903. "Costs" include, but are not limited to:~~

~~(1) Expenses and fees under Labor Code section 5710;~~

~~(2) Costs under Labor Code section 5811;~~

Commented [A7]: In keeping with Assembly Concurrent Resolution (ACR) 260, which encourages state agencies "to use gender-neutral pronouns and avoid the use of gendered pronouns when drafting policies, regulations, and other guidance," we have adopted the singular they as a gender-neutral pronoun throughout these Rules.

Commented [A8]: Defined by rule 10205(a); language deleted.

Commented [A9]: Comma deleted to conform to style.

Commented [A10]: Capitalization removed to conform to style.

Commented [A11]: Based loosely on 10 Cal. Code Regs. 2592.01 definitions for claims adjuster training.

Commented [A12]: Defined by Labor Code section 5300; language deleted.

Commented [A13]: Defined by Labor Code sections 3201.5 to 3201.9; language delated.

Commented [A14]: Replaced with rule 10450; language deleted.

Commented [A15]: Defined Labor Code sections 4600, 4620, 4903. 5710, 5811; language deleted.

~~(3) Any amount payable under Labor Code section 4600 that would not be subject to a lien against the employee's compensation, including but not limited to any amount payable directly to the injured employee for reasonable transportation, meal, and lodging expenses and for temporary disability indemnity for each day of lost wages; and~~

~~(4) Any amount payable as a medical-legal expense under Labor Code section 4620 et seq. Except as otherwise provided in section 10451.3, the inclusion of medical-legal expenses within the definition of "cost" does not permit them to be claimed through a petition for costs; however, medical-legal expenses may be sought through a claim of costs in the form of a lien.~~

~~(f h) "Declaration of Readiness to Proceed" or "Declaration of Readiness" means a request for a hearing at a district office.~~

~~(j) (i) "Declaration of Readiness to Proceed to Expedited Hearing" means a request for a hearing at a district office pursuant to Labor Code section 5502(b).~~

(~~k~~)(f) "Defendant" means any person against whom a right to relief is claimed.

~~(l)~~ (g) "Director" means the Director of Industrial Relations or ~~his or her~~ their designee.

~~(m)~~(h) "District office" means a location of a trial court of the Workers' Compensation Appeals Board and includes a permanently staffed satellite office.

~~(n) "Document" is a pleading, petition, medical report, record, declaration, exhibit, or another filing submitted by a party or lien claimant, including an electronically filed document or a scanned version of a document that was filed in paper form. Each medical report or other record having a different author and/or a different date is a separate "document."~~

~~(o) "Document cover sheet" means the form adopted under section 10205.13, which is placed on top of a document or set of documents being filed at one time in a specific case.~~

~~(p) "Document separator sheet" means the form adopted under section 10205.14, which is placed on top of each individual document, when one or more documents are being filed at the same time in the same case, and which is placed on top of each individual attachment to each document being filed, when a document has one or more attachments.~~

(~~q~~ i) "Electronic Adjudication Management System" or "EAMS" means the computerized case management system used by the Division of Workers' Compensation to electronically store and maintain adjudication files and to perform other case management functions.

~~(r~~ o) ~~"Electronic filing" means the electronic transmission of a document into EAMS for purposes of filing it with the Workers' Compensation Appeals Board, in accordance with the provisions of these rules and the rules of the Administrative Director.~~

~~(s) "Fax" means a document that has been electronically served by a facsimile (fax) machine or other fax technology.~~

Commented [A16]: Defined by rule 10742; language deleted.

Commented [A17]: Defined by rule 10782 and Labor Code section 5502(b); language deleted.

Commented [A18]: Changed to conform to style per ACR 260.

Commented [A19]: Propose adding to definition of district office to clarify that a Declaration of Readiness (DOR) may be filed at a satellite office.

Commented [A20]: Defined by rule 10205(m); language deleted.

Commented [A21]: Defined by rule 10205(o); language deleted.

Commented [A22]: Defined by rule 10205(n); language deleted.

Commented [A23]: Defined by rule 10205(q); language deleted.

Commented [A24]: Definition unnecessary, not a term of art and potentially confusing as the word fax is used as both a noun and a verb throughout these rules.

~~(t) "To file" a document means:~~

~~(1) To deliver a document or cause it to be delivered to the district office with venue or to the Appeals Board for the purpose of having it included in the adjudication file; or~~

~~(2) To electronically transmit a document to EAMS for the purpose of having it included in the adjudication file.~~

(j) "En Banc decision" means a decision of the Appeals Board as a whole, issued in order to achieve uniformity of decision or in a case presenting novel issues, that is binding on panels of the Appeals Board and workers' compensation judges as legal precedent under the principle of stare decisis.

(k) "Entity" means a corporation, limited liability company, limited partnership, general partnership, limited liability partnership, sole proprietorship or any other organizational structure.

(~~u~~) (l) "Hearing" means any trial, mandatory settlement conference, ~~rating mandatory settlement conference,~~ status conference, lien conference~~,~~ or priority conference at a district office or before the Appeals Board.

~~(v) "Lien" and "lien claim" shall include any claim of costs filed utilizing a lien claim form, even though a claim of costs is not allowable as a lien against the injured employee's compensation.~~

~~(w) "Lien activation fee" or "activation fee" is the fee payable under Labor Code section 4903.06(a)(1) for a medical treatment and/or medical-legal cost lien filed prior to January 1, 2013, unless the lien claimant:~~

~~(1) Is exempted from the fee by Labor Code section 4903.06(b); or~~

~~(2) Provides proof of having paid a filing fee as previously required by former Labor Code section 4903.05 as added by Chapter 639 of the Statutes of 2003.~~

(~~x~~ m) "Lien claimant" means any person or entity claiming payment under the provisions of Labor Code section 4903 et seq., including a claim of costs filed as a lien.

~~(y) "Lien filing fee" or "filing fee" is the fee payable under Labor Code section 4903.05(c) for a section 4903(b) lien and/or claim of costs lien filed on or after January 1, 2013, unless the lien claimant is exempted from the fee by Labor Code section 4903.05(c)(7).~~

~~(z) "Lien issue(s)" shall include any issue(s) relating to a claim of costs filed as a lien claim.~~

~~(aa) "Lien conference" means a proceeding, including a proceeding following an order of consolidation, held in accordance with section 10770.1 for the purpose of assisting the parties in resolving their disputes or, if the dispute cannot be resolved, to frame the issues and stipulations and to list witnesses and exhibits in preparation for a trial.~~

Commented [A25]: Defined by rule 10610; language deleted.

Commented [A26]: Proposed new definition of en banc decision based upon Labor Code section 115.

Commented [A27]: Proposed new definition of entity to address issues of non-attorney representation

Commented [A28]: Definition not necessary.

Commented [A29]: Defined by Labor Code section 4903.06; language deleted.

Commented [A30]: Defined by Labor Code section 4903.05; language deleted.

Commented [A31]: Definition not necessary.

Commented [A32]: Defined by rule 10875; language deleted.

~~(bb) "Mandatory settlement conference" means a proceeding to assist the parties in resolving their dispute or, if the dispute cannot be resolved, to frame the issues and stipulations and to list witnesses and exhibits in preparation for a trial~~.

~~(cc) "Optical character recognition form" or "OCR form" means a paper form designed to be scanned so that its information is automatically extracted and stored in EAMS.~~

(n) "Non-attorney representative" means a person who is not licensed to practice law by the State of California who acts on behalf of a party in proceedings before the Workers' Compensation Appeals Board as allowed by Labor Code sections 5700 and 4907.

~~(dd)~~(o) "Party" means any person or entity joined in a case, including but not limited to:

(1) An applicant; ~~a person claiming to be an injured employee or the dependent of a deceased employee~~;

(2) A defendant;

~~(3) An appellant from an independent medical review or independent bill review decision or an injured employee or provider seeking to enforce such a decision;~~

~~(4) A medical-legal provider involved in a medical-legal dispute not subject to independent bill review;~~

~~(5) An interpreter filing a petition for costs in accordance with section 10451.3;~~ or

(~~6~~3) A lien claimant. ~~where either:~~

~~(A) The underlying case of the injured employee or the dependent(s) of a deceased employee has been resolved or~~

~~(B) The injured employee or the dependent(s) of a deceased employee choose(s) not to proceed with his, her, or their case.~~

~~(ee) "Petition" means any request for action by the Workers' Compensation Appeals Board other than an Application for Adjudication, an Answer or a Declaration of Readiness to Proceed.~~

~~(ff) "Priority conference" means a proceeding in which the applicant is represented by an attorney and the issues in dispute at the time of the proceeding include employment and/or injury arising out of and in the course of employment.~~

~~(gg) "Rating mandatory settlement conference" means a mandatory settlement conference conducted to facilitate determination of the existence and extent of permanent disability through the use of informal ratings issued by the Disability Evaluation Unit, where the only unresolved issues are permanent disability and the need for future medical treatment.~~

Commented [A33]: Defined by Labor Code section 5502 and rule 10759.

Commented [A34]: Defined by rule 10205(z); language deleted.

Commented [A35]: Proposed definition of non-attorney representative as part of 4907 rules.

Commented [A36]: Applicant is defined above in subdivision (d).

Commented [A37]: We propose simplifying the definition of party and allowing certain non-parties to file petitions and obtain limited purpose hearings in the rules that directly address those petitions/hearings.

Commented [A38]: Comma deleted to conform to style.

Commented [A39]: We propose defining a lien claimant as a party even when the case in chief is not yet resolved. This is consistent with the provisions of the rules that require lien claimants to appear at certain hearings before the case in chief is resolved. We will continue to allow lien claimants to file DORs only after the case in chief is resolved.

Commented [A40]: Defined in Article 7; language deleted.

Commented [A41]: Defined by Labor Code section 5502; language deleted.

Commented [A42]: Deleted because we no longer have these proceedings.

~~(hh) "Regular hearing" means a trial.~~

(~~ii~~ p) "Section 4903(b) lien" means a lien claim filed in accordance with Labor Code section 4903(b) for medical treatment expenses incurred by or on behalf of the injured employee, as provided by Article 2 (commencing with Labor Code section 4600), including but not limited to expenses for interpreter services, copying and related services, and transportation services incurred in connection with medical treatment. It shall not include any amount payable directly to the injured employee.

~~(jj) "To serve" a document means to personally deliver a copy of the document, or to send it in a manner permitted by these rules or the rules of the Administrative Director, to a party, lien claimant, or attorney who is entitled to a copy of the document.~~

(q) "Significant panel decision" means a decision of the Appeals Board that has been designated by all members of the Appeals Board as of significant interest and importance to the workers' compensation community. Although not binding precedent, significant panel decisions are intended to augment the body of binding appellate and en banc decisions by providing further guidance to the workers' compensation community.

(~~k~~ r) "Status conference" means a proceeding set for the purpose of ascertaining if there are genuine disputes requiring resolution, of providing assistance to the parties in resolving disputes, of narrowing the issues, and of facilitating preparation for trial if a trial is necessary.

~~(ll)~~(s)"Submission" means the closing of the record to the receipt of further evidence or argument.

~~(mm)(x) "Trial" means a proceeding set for the purpose of receiving evidence.~~

~~(nn)~~ (y) ~~"Venue" means the district office, as established by Labor Code section 5501.5 or 5501.6, at which any trial level proceedings will be conducted and from which any trial level orders, decisions, or awards will be issued.~~

(t) "Walk-through document" means a document that is presented to a workers' compensation judge for immediate action where no notice of hearing has issued.

(~~o~~ u) "Workers' Compensation Appeals Board" means the ~~Appeals Board,~~ commissioners~~,~~ and deputy commissioners of the Appeals Board, presiding workers' compensation judges and workers' compensation judges.

(v) "Workers' Compensation Judge" means "workers' compensation administrative law judge" (formerly, "referee") and includes pro tempore judges appointed pursuant to section 10350.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 20, 110(a), 5300, 5307, 5309, 5500, 5500.3, 5501, 5501.5, 5501.6, 5502, 5700 and 5701, Labor Code.

Commented [A43]: Not necessary.

Commented [A44]: Defined by rule 10610; language deleted.

Commented [A45]: Proposed new definition codifying caselaw (*Larch v. Workers' Comp. Appeals Bd.* (1999) 64 Cal.Comp.Cases 1098, 1099-1100; *Elliott v. Workers' Comp. Appeals Bd.* (2010) 182 Cal.App.4th 355, 361 & FN3 [75 Cal.Comp.Cases 81].)

Commented [A46]: Rule 10787 concerns trials; definition is unnecessary.

Commented [A47]: Defined by Labor Code section 5501.5 & 5501.6; language deleted.

Commented [A48]: Added new definition to address unique Workers' Compensation Appeals Board (WCAB) proceeding.

Commented [A49]: In (b) of this rule, we define "Appeals Board" as "the commissioners and deputy commissioners of the Workers' Compensation Appeals Board acting en banc, in panels or individually." We have therefore rephrased the definition of "Workers' Compensation Appeals Board" to avoid redundant language.

Commented [A50]: Based on prior rule 10302.

Commented [A51]: Added reference to statute.

ARTICLE 2
Powers, Duties~~,~~ and Responsibilities

§ ~~10340~~10320. Appeals Board Decisions and Orders.

~~In accordance with Labor Code Section 115, t~~The following orders, decisions and awards shall be issued only by ~~the~~ a panel of the Appeals Board or the Appeals Board acting en banc:

(a) Any order, including a final, interim~~,~~ or interlocutory order, made more than 15 days after a petition for reconsideration is filed unless allowed by Rule 10861.

(b)~~(a)~~ All orders dismissing, denying ~~and~~ or granting petitions for reconsideration. ~~and decisions thereon.~~

(c)(~~b~~) All decisions after reconsideration that terminate proceedings on reconsideration, including, but not limited to, findings, orders, awards, orders approving or disapproving a ~~c~~Compromise and ~~r~~Release, orders allowing or disallowing a lien~~,~~ and orders for dismissal.

(d) All orders dismissing, denying or granting petitions for removal and all orders pertaining to removal.

(e) ~~(d) Except for sanctions and contempt, orders in disciplinary proceedings against attorneys or other agents.~~ All orders in disciplinary proceedings pursuant to Labor Code section 4907.

(f)~~(e)~~ Decisions on remittitur.

(g)~~(f)~~ Orders disqualifying a workers' compensation judge under Labor Code ~~S~~section 5311.

Authority: Sections 133 and 5307, Labor Code.
Reference: Sections 115, 4907 and 5311, Labor Code.

Commented [A52]: We will renumber rule 10340 as 10320 with the tracked changes reflected below.

Commented [A53]: Currently, "Appeals Board" is defined as "the commissioners and deputy commissioners of the Workers' Compensation Appeals Board acting en banc, in panels, or individually." The orders decisions and awards discussed in this rule may not be issued by an individual deputy commissioner. Therefore, we will amend the rule for accuracy.

Commented [A54]: Current subdivision (c) is moved to (a) to emphasize that after a petition for reconsideration is filed, a Workers' Compensation Judge (WCJ) may not issue any orders unless allowed by new rule 10861 (formerly rule 10859). We proposed rewording subdivision (c) for clarity.

Commented [A55]: Current section a ~~c~~hanged "and" to "or" for clarity.

Commented [A56]: Current section b.

Commented [A57]: Capitalization added to reflect correct full name of the form.

Commented [A58]: Pursuant to Labor Code section 5310, the Appeals Board may "refer, remove to itself~~,~~ or transfer to a workers' compensation administrative law judge the proceedings on any claim. "

Commented [A59]: Labor Code section 4907 provides that the Appeals Board may remove the privilege of any non-attorney representative to appear before the WCAB. However, the Appeals Board does not have the same power with respect to attorneys. Accordingly, we will amend (d) to reflect current law.

Commented [A60]: Capitalization removed to conform to style.

Commented [A61]: Referenced statute added.

§ ~~10341~~10325. En Banc and Significant Panel Decisions.

(a) En banc decisions of the Appeals Board are assigned by the chairperson on a majority vote of the commissioners and are binding on panels of the Appeals Board and workers' compensation judges as legal precedent under the principle of *stare decisis*.

(b) Significant panel decisions of the Appeals Board involve an issue of general interest to the workers' compensation community but are not binding precedent. The Appeals Board may designate a panel decision as "significant" on a majority vote of the commissioners.

Authority: Sections 133 and 5307, Labor Code.
Reference: Section 115, Labor Code.

Commented [A62]: We will move rule 10341 to rule10325 and add (b) to define significant panel decisions as decisions involving an issue of general interest and to clarify that significant panel decisions are not binding precedent.

§ ~~10348~~ 10330. Authority of Workers' Compensation Judges.

In any case that has been regularly assigned to a workers' compensation judge, the judge shall have full power, jurisdiction and authority to hear and determine all issues of fact and law presented and to issue any interim, interlocutory and final orders, findings, decisions and awards as may be necessary to the full adjudication of the case, including the fixing of the amount of the bond required in Labor Code section 3715. Orders, findings, decisions and awards issued by a workers' compensation judge shall be the orders, findings, decisions and awards of the Workers' Compensation Appeals Board unless reconsideration is granted.

~~A workers' compensation judge or a deputy commissioner may issue writs or summons, warrants of attachment, warrants of commitment and all necessary process in proceedings for direct and hybrid contempt in a like manner and to the same extent as courts of record.~~

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 3715, 5309 and 5310, Labor Code.

Commented [A63]: Rule 10348 will become rule 10330. The portion of the rule dealing with contempt will be moved to a new rule in Article 4 "conduct of parties, attorneys and representatives."

Commented [A64]: This language has been deleted to clarify that, as reflected in rule 10344(d), current practice is for only the Appeals Board, commissioners, deputy commissioners, and Presiding Judges (PJs) – and not WCJs – to issue these types of orders.

§ ~~10342~~ 10338. ~~Appeals Board, Member Orders.~~ Authority of Commissioners of the Appeals Board.

The following orders may be issued only by ~~the Appeals Board or a member~~ a commissioner ~~thereof~~:

(a) Approving undertakings on stays of proceedings on reconsideration and petitions for writ of review; and

(b) Directing exhumation or autopsy.

Authority: Sections 133 and 5307, Labor Code.
Reference: Sections 115, 5706, 5707 and 6002, Labor Code.

Commented [A65]: We propose renumbering this rule with only non-substantive wording changes.

§ 10344. ~~Appeals Board,~~ Authority of Commissioners, Deputy Commissioners and Presiding Workers' Compensation Judges. ~~Orders.~~

Commented [A66]: We propose minor changes to the title and language for clarity.

The following orders may be issued only by the Appeals Board, a commissioner, a deputy commissioner or a presiding workers' compensation judge:

(a) Orders issuing certified copies of orders, decisions or awards except that a certified copy may be issued by a presiding workers' compensation judge only if the time for seeking reconsideration and judicial review has expired, and no proceedings are pending on reconsideration or judicial review;

(b) Orders staying, quashing and recalling writs of execution and fixing and approving undertaking thereon;

(c) Orders directing entry of satisfaction of judgment; and

(d) Orders issuing, recalling, quashing, discharging and staying writs of attachment and fixing and approving undertakings thereon.

Authority: Sections 133, 5307, Labor Code.
Reference: Sections 115, 5706, 5707 and 6002, Labor Code.

§ 10346. ~~Assignment or Transfer of Cases.~~ Authority of Presiding Workers' Compensation Judge to Assign or Transfer Cases.

(a) The presiding workers' compensation judge has full responsibility for the assignment of cases to the workers' compensation judges of each office and~~. The presiding workers' compensation judge~~ may utilize EAMS to assign cases. ~~The presiding workers' compensation judge~~

(b) ~~Shall transfer to another workers' compensation judge the proceedings on any case in~~ In the event of the death, extended absence, unavailability~~,~~ retirement, or disqualification of the workers' compensation judge, the presiding workers' compensation judge may reassign a case to another workers' compensation judge. Where testimony has been received, the new workers' compensation judge shall recommence the proceeding unless the parties agree to waive the requirements of Labor Code section 5700. t~~o whom it has been assigned, and may otherwise reassign those cases if no oral testimony has been received therein, or if the requirements of Labor Code Section 5700 have been waived.~~

(c) To the extent practicable and fair, supplemental proceedings shall be assigned to the workers' compensation judge who heard the original proceedings.

~~(b)~~(d) Any conflict that may arise between presiding workers' compensation judges of different offices respecting assignment of a case, venue~~,~~ or priority of hearing where there is conflict in calendar settings will be resolved by a deputy commissioner of the Appeals Board.

~~(c)~~(e) If a ~~c~~Compromise and ~~r~~Release or ~~s~~Stipulations with ~~r~~Request for ~~a~~Award have not been approved, disapproved~~,~~ or noticed for trial on the issue of adequacy and other disputed issues within 45 days after filing, the file shall be transferred to the presiding judge for review.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 5309, 5310 and 5700, Labor Code.

Commented [A67]: We will maintain the same number with non-substantive changes tracked below. We will change the title of the rule for consistency with other titles in this article.

Commented [A68]: Added per suggestion of State Bar workers' compensation section to address reasons WCJ may be unavailable.

Commented [A69]: We propose splitting subdivision (c) from subdivision (b) for emphasis.

Commented [A70]: Capitalization added to reflect correct full name of the form.

Commented [A71]: Capitalization added to reflect correct full name of the form.

Commented [A72]: Referenced statute added.

§ ~~10350, 10351 and 10352.~~ 10355. Appointment and Authority of Pro Tempore Workers' Compensation Judges.

A presiding workers' compensation judge may appoint a pro tempore workers' compensation judge to any conference hearing calendar including mandatory settlement conferences or status conferences.

(a) A pro tempore workers' compensation judge shall have the same power as a workers' compensation judge and shall be bound by the Rules of Practice and Procedure of the Workers' Compensation Appeals Board.

(b) Any order, decision or award filed by a pro tempore workers' compensation judge shall be subject to reconsideration or removal in the same manner as any order, decision, or award filed by a workers' compensation judge.

Authority: Sections 133 and 5307, Labor Code.
Reference: Sections 121, 123.7, 5309, 5310 and 5900-5911, Labor Code.

Commented [A73]: Combine~~d~~ rules 10350, 10351 and 10352. Because arbitration is available for parties that want to stipulate to have a matter decided by a particular attorney, we deleted the provisions of the rule related to pro tempore judges hearing trials by stipulation. We deleted the requirement that notice of the name of the pro tempore judge be provided prior to the conference to conform with current practice.

§ ~~10593~~10360. Testimony of Judicial or Quasi-Judicial Officers.

(a) No judicial or quasi-judicial officer of the Workers' Compensation Appeals Board or of the Division of Workers' Compensation may be subpoenaed or ordered to testify regarding either:

(1) The reasons for or basis of any decision or ruling ~~he or she has~~ they have made; or

(2) ~~His or her~~ Their opinion regarding any statements, conduct~~,~~ or events occurring in proceedings before them ~~him or her~~, except ~~as follows:~~

(A) The judicial or quasi-judicial officer may be ordered to testify where ~~his or her~~ their testimony is necessary on an issue of disqualification under Labor Code section 5311 and Code of Civil Procedure section 641.

(B) The judicial or quasi-judicial officer may be ordered to testify where ~~his or her~~ their testimony is necessary on an issue of an alleged ex parte communication.

(C) The judicial or quasi-judicial officer may be subpoenaed or ordered to testify as a percipient witness to statements, conduct~~,~~ or events that occurred in the proceedings before them ~~him or her~~, to the same extent as any other percipient witness.

(b) The testimony of a judicial or quasi-judicial offer shall be given only on the terms and conditions ordered by the presiding workers' compensation judge of the district office having venue, or by the Appeals Board, after the filing of a "Petition to Compel the Testimony of a Judicial or Quasi-Judicial Officer."

(1) The petition to compel shall set forth with specificity the facts (or alleged facts) and law that support the petition.

(2) The petition to compel shall be verified under penalty of perjury.

(3) The petition to compel shall be served on all other parties, on all lien claimants whose liens are presently pending in issue in the underlying claim to which the petition relates~~,~~ and on the Legal Unit of the Division of Workers' Compensation (DWC-Legal Unit), together with a proof of service. ~~[As of the effective date of this rule, the street address of the DWC-Legal Unit is 1515 Clay Street, 18th Floor, Oakland, CA 94612-1402 and the Post Office Box of the DWC-Legal Unit is P.O. Box 420603, San Francisco, CA 94142. However, current information regarding the street address and Post Office Box of the DWC-Legal Unit may be obtained by calling the Headquarters of the Division of Workers' Compensation, whose number, as of the effective date of this rule, is (510) 286-7100.]~~

(4) A petition to compel that does not meet all of the foregoing requirements may be summarily dismissed or denied.

Commented [A74]: Rule 10593 will become rule 10360 with changes tracked below.

Commented [A75]: Changed to conform to style per ACR 260.

Commented [A76]: Changed to conform to style per ACR 260.

Commented [A77]: Changed to conform to style per ACR 260.

Commented [A78]: Language deleted to conform to style.

Commented [A79]: Changed to conform to style per ACR 260.

Commented [A80]: Changed to conform to style per ACR 260.

Commented [A81]: Changed to conform to style per ACR 260.

Commented [A82]: Because addresses are subject to change, deleted address.

(c) The other parties, lien claimants, and the DWC-Legal Unit shall have 15 days within which to file any objection to the petition to compel.

(d) The petition to compel shall be determined:

(1) By the presiding workers' compensation judge of the district office having venue; or

(2) By a ~~D~~deputy ~~C~~commissioner of the Appeals Board, if the petition to compel relates to the presiding workers' compensation judge of the district office having venue; or

(3) By the Appeals Board, if the petition to compel relates to a ~~pending or impending~~ petition for reconsideration, removal or disqualification. ~~The petition may be determined on the pleadings submitted or, in the discretion of the presiding workers' compensation judge or the Appeals Board, the petition may be set for a hearing.~~

(e) The petition may be determined on the pleadings submitted or, in the discretion of the presiding workers' compensation judge, the deputy commissioner or the Appeals Board, the petition may be set for a hearing. In determining whether to grant the petition to compel, ~~(and, if granted, in determining the terms and conditions upon which the testimony of the judicial or quasi-judicial officer may be given),~~ the presiding workers' compensation judge, the deputy commissioner or the Appeals Board may consider, among other things:

(1) Whether the testimony of the judicial or quasi-judicial officer is reasonably necessary, taking into consideration:

(A) Whether statements in the judicial or quasi-judicial officer's opinion on decision, report on reconsideration, removal~~,~~ or disqualification, or other similar statements are sufficient to resolve any allegation by a party ~~or lien claimant~~; and

(B) If not, whether the judicial or quasi-judicial officer's factual statements may be fairly provided by an affidavit or declaration under penalty of perjury.

(2) Whether the testimony of the judicial or quasi-judicial officer under the "percipient witness" exception would be cumulative to the testimony of other percipient witnesses.

(f) For purposes of this ~~section~~ rule, the term "judicial or quasi-judicial officer of the Workers' Compensation Appeals Board or of the Division of Workers' Compensation" shall include, but shall not be limited to:

(1) Any ~~C~~commissioner;

(2) Any ~~D~~deputy ~~C~~commissioner;

(3) Any presiding workers' compensation judge or workers' compensation judge;

(4) Any pro tempore workers' compensation judge;

Commented [A83]: Capitalization removed to conform to style.

Commented [A84]: Moved the last sentence of (d)(3) to (e) because the subject matter more properly fits with (e).

Commented [A85]: Superfluous language deleted.

Commented [A86]: Redundant language deleted.

Commented [A87]: Deleted to conform to definition of party.

Commented [A88]: "Section" replaced with "rule" to conform to style.

Commented [A89]: Capitalization removed to conform to style.

(5) Any special master appointed by the Workers' Compensation Appeals Board;

(6) The Administrative Director and ~~his or her~~ the Administrative Director's designee;

(7) Any workers' compensation consultant of the Retraining and Return to Work Unit; and

(8) Any arbitrator or mediator; and

(9) The Director of Industrial Relations and ~~his or her~~ the Director of Industrial Relations' designee.

(g) For the purposes of this ~~section~~ rule, the term "testify" shall include testimony in either oral or written form (e.g., affidavits, declarations~~,~~ or interrogatories) and shall include all testimony, whether given at a deposition or a hearing.

(h) This ~~section~~ rule shall apply solely to testimony sought in connection with a matter within the jurisdiction of the Workers' Compensation Appeals Board, and it shall not apply to testimony sought pursuant to the authority of any other forum.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 5300, 5301, 5309, 5311, 5700, 5701 and 5708, Labor Code; Section 641, Code of Civil Procedure; and Section 703.5, Evidence Code.

Commented [A90]: ACR 260 also notes that "One grammatical technique to avoid gendered pronouns is to reuse the noun in lieu of a pronoun."

Commented [A91]: Changed to conform to style per ACR 260.

Commented [A92]: "Section" replaced with "rule" to conform to style.

Commented [A93]: Comma deleted and language revised to conform to style.

Commented [A94]: "Section" replaced with "rule" to conform to style.

§ 10370. Extensions Of Time During Public Emergencies.

(a) Notwithstanding rule 10390 or any other rule in this title, in the event of a public emergency, including but not limited to an earthquake, fire or the destruction of or danger to a district office, the Chief Workers' Compensation Judge, the designee of the Chief Workers' Compensation Judge or the Appeals Board may:

(1) extend by no more than 14 additional days the time to perform any act required or permitted under these rules, except for those acts subject to a statute of limitations or a jurisdictional time limitation, including but not limited to the filing of Petitions for Reconsideration or Removal, Petitions to Reopen, Applications for Adjudication of Claim or lien claim forms; or

(2) authorize the Presiding Workers' Compensation Judge of a specific district office, or the Presiding Workers' Compensation Judge's designee, to extend by no more than 30 additional days the time to perform any act required or permitted under these rules, except for those acts subject to a statute of limitations or a jurisdictional time limitation, including but not limited to the filing of Petitions for Reconsideration or Removal, Petitions to Reopen, Applications for Adjudication of Claim or lien claim forms; or

(3) authorize any district office to accept for filing those documents required by statute or regulation to be filed in a district office that is closed due to a public emergency.

(b) Any order under (a)(1), (a)(2) or (a)(3) must specify the nature of the emergency and the district office or offices to which it applies. Any order under (a)(2) must also specify the length of the authorized extension and the reason for the extension.

(c) If made necessary by the nature or extent of the public emergency, the Chief Workers' Compensation Judge, the designee of the Chief Workers' Compensation Judge or the Appeals Board may extend or renew an order issued under (a)(1) or (a)(2) for no more than 30 days.

Authority: Sections 133, 5307 and 5309, Labor Code.
Reference: Section 10390, title 8, Code of Regulations.

Commented [A95]: In the past two years, natural disasters and other public emergencies have necessitated the closure of several district offices throughout the State. We propose adding a new rule to allow otherwise jurisdictional timelines to be extended in public emergencies, modeled on California Rule of Court 8.66, which provides:

Rule 8.66. Extending time because of public emergency

(a) Emergency extensions of time
If made necessary by the occurrence or danger of an earthquake, fire, or other public emergency, or by the destruction of or danger to a building housing a reviewing court, the Chair of the Judicial Council, notwithstanding any other rule in this title, may:
(1)Extend by no more than 14 additional days the time to do any act required or permitted under these rules; or
(2)Authorize specified courts to extend by no more than 30 additional days the time to do any act required or permitted under these rules.

(b) Applicability of order
(1)An order under (a) must specify whether it applies throughout the state, only to specified courts, or only to courts or attorneys in specified geographic areas, or applies in some other manner.
(2)An order of the Chair of the Judicial Council under (a)(2) must specify the length of the authorized extension.

(c) Additional extensions
If made necessary by the nature or extent of the public emergency, the Chair of the Judicial Council may extend or renew an order issued under (a) for an additional period of:
(1)No more than 14 days for an order under (a)(1); or
(2)No more than 30 days for an order under (a)(2).

ARTICLE 3
Parties, Joinder and Consolidation

§ ~~10360~~10380. Necessary Parties.

Any applicant other than the injured employee shall join the injured employee as a party. In such instances the Application for Adjudication of Claim shall include the injured employee's address ~~if known~~ or, if not known, a statement of that fact.

Authority: Sections 133 and 5307, Labor Code.
Reference: Sections 126, 5307.5 and 5503, Labor Code.

Commented [A96]: Added consolidation to Article 3.

Commented [A97]: Rule 10360 will become rule 10380 with only minor changes in language.

Commented [A98]: Language added to reflect correct full name of the form.

Commented [A99]: Superfluous language deleted.

§ ~~10380, 10364~~ 10382. Joinder of Parties.

~~After the filing of an Application for Adjudication, t~~ The Appeals Board or a workers' compensation judge may order the joinder of additional parties not named in the Application for Adjudication of Claim, whose presence is necessary for the full adjudication of the case. A party ~~not present or represented at the time of joinder~~ shall not be joined ~~be served with~~ until 10 days after service of ~~copies of~~ either a petition for joinder by a party or ~~the~~ a notice of intention to order joinder issued by a workers' compensation judge, unless the party to be joined waives its right to this notice period.~~, the application, minutes of hearing and summary of evidence, medical reports and other documents, as directed in the order of joinder.~~ The Workers' Compensation Appeals Board may designate the party or parties who are to make service.

(a) Any person in whom any right to relief is alleged to exist may appear, or be joined, as an applicant in any case or controversy before the Workers' Compensation Appeals Board. ~~A lien claimant may become a party where the applicant's case has been settled by way of a compromise and release, or where the applicant chooses not to proceed with his or her case.~~

(b) Any person against whom any right to relief is alleged to exist may be joined as a defendant.

(c) In death cases, all persons who may be dependents shall either join or be joined as applicants so that the entire liability of the employer or the insurer may be determined in one proceeding.

(d) If an objection is received within 10 days of service of a petition for joinder or a notice of intention to order joinder, the workers' compensation judge shall consider the objection before joining the party and, if requested in the objection, shall provide the objector the opportunity to be heard before ordering joinder.

Authority: Sections 133 and 5307, Labor Code.
Reference: Sections 5300, 5303, 5307.5, 5316, 5500 and 5503, Labor Code.

Commented [A100]: We propose rewording this paragraph to improve clarity and ease of application.

Commented [A101]: Deleted to conform with new proposed definition of "party."

Commented [A102]: We propose the addition of subsection (d), and the changes to the opening paragraph, to address concerns raised by the State Bar Committee in response to Forum 1 that the joinder rule does not provide adequate due process. We agree that when the party to be joined has not been otherwise provided notice of the proposed joinder, the interests of due process are furthered by providing notice and an opportunity to respond prior to joinder.

§ ~~10550~~ 10390. Proper Identification of ~~the~~ Parties ~~and Lien Claimants~~.

~~Whenever a~~Any party that appears at a hearing or files a pleading, document or lien shall: ~~or lien claimant (or any attorney or other representative for a party or lien claimant) either~~

~~(i) Files any Application for Adjudication, Answer, stipulated Findings and Award, Compromise and Release, lien claim, petition or other pleading with the Workers' Compensation Appeals Board or~~

~~(ii) States its appearance on the record at any hearing before the Workers' Compensation Appeals Board (including but not limited to stating its appearance on any pretrial conference statement, appearance sheet, or minutes of hearing), or lien claimant, the party or its attorney or other representative, shall comply with the following requirements:~~

(a) ~~Each party or lien claimant shall set forth its full legal name and each attorney or other representative shall set forth the full legal name(s) of the party or parties he, she, or it is representing;~~ Set forth the party's full legal name on the record of proceedings, pleading, document or lien;

(b) ~~If an adjusting agent or third-party claims administrator is appearing, it shall disclose:~~

~~(1) Whether it is appearing on behalf of an employer, an insurance carrier, or both;~~

~~(2) The identity or identities of the party or parties it is representing; and~~

~~(3) If it is representing an insurance carrier, whether the policy includes a high self-insured retention, a large deductible, or any other provision that affects the identity of the entity or entities actually liable for the payment of compensation;~~ File a notice of representation if a party is represented and the attorney or non-attorney representative has not previously filed a notice of representation or an Application for Adjudication of Claim; and

(c) ~~If an insurance carrier is appearing, it shall disclose:~~

~~(1) Whether it is appearing solely on its behalf, or also on behalf the insured employer~~; ~~and~~

~~(2) Whether its policy includes a high self-insured retention, a large deductible, or any other provision that affects the identity of the entity actually liable for the payment of compensation; and~~ Identify the insurer and/or employer as the party or parties and not identify a third party administrator as a party. The third party administrator shall be included on the official address record and case caption if identified as such.

~~(d) If a lien claim is being filed or amended, or if a lien claimant is appearing, the lien claimant shall state whether it is the original owner of the alleged debt or whether it has purchased the alleged debt from the original owner or some subsequent purchaser~~.

Commented [A103]: We propose redrafting this rule for clarity and moving it into the section regarding parties. (See *Coldiron v. Compuware Corporation* (2002) 67 Cal.Comp.Cases 289 (Appeals Board en banc) *(Coldiron)*.)

Since the *Coldiron* case, third party administrators have become more prevalent and continue to be improperly identified as parties. By simplifying and clarifying this rule, we hope to eliminate such misidentification.

Commented [A104]: Deleted to conform to proposed definition of party.

Commented [A105]: Language simplified and moved to subdivision (c).

Commented [A106]: Currently, most representatives of parties file notices of representation. By requiring a notice of representation before appearing before the WCAB, we will enable efficient administration of cases. We note that current rule 10774.5 imposes specific requirements with respect to notices of representation of lien claimants.

Commented [A107]: Requiring the third party administrator to be listed on the official address record and case caption allows proper identification of the identities directly involved in the case.

Commented [A108]: Labor Code section 4903.8 requires attachment of a true and correct copy of any loan assignment; failure to comply results in the lien being deemed invalid. We therefore propose eliminating the requirement to affirmatively state whether there has been an assignment.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 3755-3759, 4903.1(c), 5001, 5002, 5003, 5004, 5500, 5502, 5503, 5505, 5702 and 5709, Labor Code.

§ ~~10589.~~10396. Consolidation of Cases.

(a) Consolidation of two or more related cases, involving either the same injured employee or multiple injured employees, rests in the sound discretion of the Workers' Compensation Appeals Board. In exercising that discretion, the Workers' Compensation Appeals Board shall take into consideration any relevant factors, including but not limited to the following:

(1) Whether there are common issues of fact or law;

(2) The complexity of the issues involved;

(3) The potential prejudice to any party, including but not limited to whether granting consolidation would significantly delay the trial of any of the cases involved;

(4) The avoidance of duplicate or inconsistent orders; and

(5) The efficient utilization of judicial resources.

Consolidation may be ordered for limited purposes or for all purposes.

(b) Consolidation may be ordered by the Workers' Compensation Appeals Board on its own motion, or may be ordered based upon a petition filed by one of the parties. A petition to consolidate shall:

(1) List all named parties in each case;

(2) Contain the adjudication case numbers of all the cases sought to be consolidated, with the lowest numbered case shown first;

(3) Be filed in each case sought to be consolidated; and

(4) Be served on all attorneys or ~~other~~ non-attorney representatives of record and on all non-represented parties in each case sought to be consolidated.

(c) Any order regarding consolidation shall be filed in each case to which the order relates.

(d) If consolidation is ordered, the Workers' Compensation Appeals Board, in its discretion, may designate one case as the master file for exhibits and pleadings. If a master file is designated, any subsequent exhibits and pleadings filed by the parties and lien claimants during the period of consolidation shall be filed only in the master case~~.~~. ~~h~~However, all pleadings and exhibit cover sheets filed shall include the caption and case number of the master file case, followed by the case numbers of all of the other consolidated cases.

(e) If a master file has been designated and the consolidated cases are tried, all relevant documentary evidence previously received in an individual case shall be deemed admitted in

Commented [A109]: Rule 10589 will become rule 10396 with minor non-substantive change in language.

Commented [A110]: Revised to conform to proposed definition of non-attorney representatives in new rule 10305(n).

Commented [A111]: Amended for ease of reading.

evidence in the consolidated proceedings under the master file and shall be deemed part of the record of each of the several consolidated cases. Evidence received subsequent to the designation of the master file shall be similarly received with like force and effect.

(f) When cases are consolidated, joint minutes of hearing, summaries of evidence, opinions, decisions, orders, findings~~,~~ or awards may be used~~,~~; however, copies shall be filed in the record of proceedings of each case.

Commented [A112]: Comma replaced with a semi-colon to conform to style.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 5300, 5301, 5303 and 5708, Labor Code.

§ ~~10592~~ 10398. Assignment of Consolidated Cases.

(a) Any request or petition to consolidate cases that are assigned to different workers' compensation judges in the same district office, or that have not been assigned but are venued at the same district office, shall be referred to the presiding workers' compensation judge of that office, whether the cases involve the same injured worker or multiple injured workers.

(b) Any request or petition to consolidate cases involving the same injured worker that are assigned to workers' compensation judges at different district offices, or that have not been assigned but are venued at different district offices, shall first be referred to the presiding workers' compensation judges of the district offices to which the cases are assigned. If the presiding workers' compensation judges are unable to agree on where the cases will be assigned for hearing, the conflict shall be resolved by the Chief Judge of the Division of Workers' Compensation or by the Chief Judge's ~~his or her~~ designee upon referral by one of the presiding workers' compensation judges.

(c) Any request or petition to consolidate cases involving multiple injured workers that are assigned to workers' compensation judges at different district offices, or that have not been assigned but are venued at different district offices, shall be referred to the Chief Judge or the Chief Judge's ~~his or her~~ designee.

(d) In resolving any request or petition to consolidate cases under subdivision (b) or (c), the Chief Judge or the Chief Judge's ~~his or her~~ designee shall set the request or petition for a conference regarding the place of hearing. At or after the conference, the Chief Judge or the Chief Judge's ~~his or her~~ designee shall determine the place of hearing and may determine the workers' compensation judge to whom the cases will be assigned, giving consideration to the factors set forth in ~~section~~ rule ~~10589~~ 10396. In reaching any determination, the Chief Judge or the Chief Judge's ~~his or her~~ designee may assign a workers' compensation judge to hear any discovery motions and disputes ~~relevant to discovery~~ in the action and to report their findings and recommendations to the Chief Judge or the Chief Judge's ~~his or her~~ designee.

(e) Any party aggrieved by the determination of the Chief Judge or the Chief Judge's ~~his or her~~ designee may request proceedings pursuant to Labor Code section 5310, except that an assignment to a particular workers' compensation judge shall be challenged only in accordance with the provisions of ~~sections 10452 and 10453~~ rules 10788 and 10960.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 5300, 5301, 5303, 5310 and 5708, Labor Code; and Sections 10396, 10788 and 10960, title 8, California Code of Regulations.

Commented [A113]: Rule 10592 will become rule 10398 with stylistic changes.

Commented [A114]: Changed to conform to style per ACR 260.

Commented [A115]: Changed to conform to style per ACR 260.

Commented [A116]: Changed to conform to style per ACR 260.

Commented [A117]: Changed to conform to style per ACR 260.

Commented [A118]: Changed "section" to "rule" to conform to style.

Commented [A119]: Cross-reference updated to reflect new rule number.

Commented [A120]: Changed to conform to style per ACR 260.

Commented [A121]: Superfluous language deleted.

Commented [A122]: Changed to conform to style per ACR 260.

Commented [A123]: Changed to conform to style per ACR 260.

Commented [A124]: Changed "sections" to "rules" to conform to style and cross-references updated to reflect new rule numbers.

Commented [A125]: Referenced statutes and rules added.

ARTICLE 4
Conduct of Parties, Attorneys~~,~~ and Non-Attorney Representatives

§ ~~10773, 10774.5, 10779~~ 10400. ~~Law Firm Employees.~~ Non-Attorney Representatives.

(a) A non-attorney representative may act on behalf of a party in proceedings before the Workers' Compensation Appeals Board if the party has been informed that the non-attorney representative is not licensed to practice law by the State of California.

(b) A non-attorney representative shall be held to the same professional standards of conduct as an attorney.

(c) An attorney who has been disbarred or suspended by the Supreme Court for reasons other than nonpayment of State Bar fees, or who has been placed on involuntary inactive enrollment status by the State Bar, or who has resigned while disciplinary action is pending shall be deemed unfit to appear as a non-attorney representative of any party before the Workers' Compensation Appeals Board during the time that the attorney is precluded from practicing law in this state.

(d) A non-attorney representative shall file and serve a notice of representation before filing a document or appearing on behalf of a party unless the information required to be included in the notice of representation is set forth on an opening document.

(1) If the non-attorney representative is appearing pursuant to an agreement between a law firm or other entity that provides non-attorney representatives and a party, the notice of representation shall include:

(A) the name of the represented party;

(B) the legal name, address, telephone number and form of the law firm or other entity;

(C) the name and address of the law firm or other entity's agent for service of process;

(D) the name of the person who entered into an agreement on behalf of the law firm or other entity with the party to provide non-attorney representatives; and

(E) the name of the non-attorney representative responsible for assuring that appearances are made on behalf of the party.

(2) If a non-attorney representative is appearing as an individual pursuant to an agreement between the non-attorney representative and a party, the notice of representation shall include the name of the represented party and the non-attorney representative's name, address and telephone number.

(e) The name of the non-attorney representative and any entity responsible for providing a party with the non-attorney representative shall be set forth on the record of proceedings at all appearances and on any pleading, document or lien prepared or filed by a non-attorney representative.

Commented [A126]: Revised to conform to proposed definition of non-attorney representatives in new rule 10305(n).

Commented [A127]: Subsection (a) of this rule is taken from former rule 10773, which states, in pertinent part, that law firm employees who are not current active members of the State Bar may appear on behalf of the law firm if "the client has been fully informed of the involvement of the law firm employee and that the person is not a current active member of the State Bar of California[.]"

Commented [A128]: Subsection (b) of this rule reflects the changes codified in Labor Code § 4907(b).

Commented [A129]: Subsection (c) of this rule is current rule 10779 with minor language changes to conform to proposed definition of non-attorney representatives in new rule 10305(n).

Commented [A130]: Revised to conform to proposed definition of non-attorney representatives in new rule 10305(n).

Commented [A131]: Subsection (d) of this rule sets forth a new procedure, adapted from current rule 10774.5, for all non-attorney representatives, not just those representing lien claimants, to identify themselves and give notice of their representation of a party.

We propose two procedures. Subsection (d)(1) sets forth the requirements for giving notice of representation when the non-attorney representative is employed by a law firm. Subsection (d)(2) sets forth the requirements for giving notice of representation when the non-attorney representative is self-employed.

Commented [A132]: Subsection (e) of this rule attempts to ensure greater accountability for the attorneys supervising non-attorney representatives.

(f) If an attorney is responsible for supervising a non-attorney representative, the attorney shall be identified in all documents. The supervising attorney's specific written authorization must be included with all Compromise and Release agreements and Stipulations with Request for Award.

(g) A non-attorney representative whose name is not on the notice of representation must file a notice of appearance as provided in rule 10751 before appearing before the Workers' Compensation Appeals Board.

Authority: Sections 133, 5307, 5700 Labor Code.
Reference: Section 4907, Labor Code; and Section 6126, Business and Professions Code.

Commented [A133]: Subsection (f) of this rule attempts to ensure greater accountability for the attorneys supervising non-attorney representatives.

Commented [A134]: Subsection (g) contemplates the common scenario in which a party has contracted with an entity for representation, but each appearance may not be staffed by the same non-attorney representative. In this situation, the entity is not required to file a new notice of representation each time a new non-attorney representative appears; the new non-attorney representative can simply file the more streamlined notice of appearance as provided in rule 10751.

§ 10401. Complaints Regarding Violations of Labor Code Section 4907.

(a) Any person may submit to the Secretary of the Appeals Board a written complaint that a non-attorney representative has violated the provisions of Labor Code section 4907. The complaint shall not be filed at any district office or in EAMS.

(b) The complaint shall be made under penalty of perjury and shall state in detail the acts and omissions of the non-attorney representative alleged to be in violation of the provisions of Labor Code section 4907, and shall identify relevant case numbers and documents.

(c) Upon receipt of a complaint, the Secretary shall review it for form and content.

(d) The non-attorney representative shall be served with notice of the complaint as part of any investigation by the Secretary and shall be provided with an opportunity to respond.

(e) Upon the conclusion of any investigation, the Secretary shall serve the complainant and the non-attorney representative with a written Notice of Determination.

(f) Nothing in this rule shall preclude the Appeals Board from initiating proceedings under Labor Code section 4907 in the absence of a complaint.

(g) Information gathered as part of any investigation under this rule and records of deliberation generated as part of any investigation under this rule shall be confidential and not subject to public disclosure under any law of this state pending the issuance of a Notice of Determination.

Authority: Sections 4907, 5307, Labor Code.
Reference: Section 4907, Labor Code.

Commented [A135]: We propose adding new rules 10401 and 10402 to create a process for effectuating Labor Code § 4907, which states:

(a) The privilege of any person, except attorneys admitted to practice in the Supreme Court of the state, to appear in any proceeding as a representative of any party before the appeals board, or any of its workers' compensation administrative law judges, may, after a hearing, be removed, denied, or suspended by the appeals board for either of the following:

(1) For a violation of this chapter, the Rules of the Workers' Compensation Appeals Board, or the Rules of the Administrative Director.

(2) For other good cause, including, but not limited to, failure to pay final order of sanctions, attorney's fees, or costs issued under Section 5813 .

(b) For purposes of this section, nonattorney representatives shall be held to the same professional standards of conduct as attorneys.

Commented [A136]: We have modeled our proposed process for removing, denying, or suspending a non-attorney representative's privilege to appear before the WCAB on the State Bar's procedure for disciplining attorneys. We also considered the procedures set forth at Gov't Code §§ 11500 et seq. for revoking, suspending, limiting, or conditioning civil service employment ("Skelly hearings"), as well as several county or city procedures for Skelly hearings. The process set forth in subsections (a)-(f) contemplates the filing of a complaint, review of the complaint by the Secretary of the Appeals Board, the opportunity for the Secretary to undertake an investigation, and notice to the complainant and the non-attorney representative of any determination at the conclusion of an investigation.

Commented [A137]: Subsection (g) is modeled on Labor Code §§ 3201.5(i), 3201.7(h), and 3201.9(d), which pertain to collective bargaining and labor-management agreements and provide: "The data obtained by the administrative director pursuant to this section shall be confidential and not subject to public disclosure under any law of this state."

§ 10402. Suspension and Removal of a Non-Attorney Representative's Privilege to Appear before the Workers' Compensation Appeals Board under Labor Code Section 4907.

(a) Upon motion of the Appeals Board, a non-attorney representative may have the privilege to appear before the Workers' Compensation Appeals Board removed or suspended for good cause after a hearing.

(b) Good cause includes, but is not limited to, serious or repeated violations of the Appeals Board Rules of Practice and Procedure, failure to comply with rule 10400 or failure to pay a final order of sanctions, attorney's fees or costs issued under Labor Code section 5813 within 60 days.

(c) The Appeals Board shall designate a hearing officer to conduct the hearing and make initial rulings on all issues and objections. The hearing officer is subject to disqualification as provided in Labor Code section 5311 and rule 9721.12. A Petition for Disqualification of a Hearing Officer shall be filed with the Appeals Board as provided in rule 10960.

(d) The Appeals Board shall initiate proceedings by issuing a Notice of Proposed Action setting forth:

(1) the acts or omissions that constitute good cause for removal or suspension and any statutes and rules that the non-attorney representative is alleged to have violated;

(2) the intended action, whether removal or suspension, and the length of time of any proposed suspension;

(3) the date on which the hearing regarding suspension or removal of the non-attorney representative's privilege to appear will take place and the identity of the hearing officer; and

(4) the right to submit a written response to the Notice of Proposed Action within the time specified in the Notice of Proposed Action.

(e) The Appeals Board shall serve the non-attorney representative with the Notice of Proposed Action and copies of materials relied upon.

(f) Any pleadings, response, correspondence, requests and other documents shall be submitted in writing only to the Appeals Board and not filed at any district office or in EAMS.

(g) All hearings regarding the removal or suspension of a non-attorney representative's privilege to appear shall be held at the office of the Appeals Board, or at a District Office of the Workers' Compensation Appeals Board as designated by the Appeals Board.

(h) If the non-attorney representative does not testify on their own behalf, their testimony may be taken as if under cross-examination.

(i) After considering the evidence and any response submitted by the non-attorney representative, the hearing officer shall issue a recommended decision and findings of fact addressing all issues

Commented [A138]: We propose adding new rules 10401 and 10402 to create a process for effectuating Labor Code § 4907, which states:

(a) The privilege of any person, except attorneys admitted to practice in the Supreme Court of the state, to appear in any proceeding as a representative of any party before the appeals board, or any of its workers' compensation administrative law judges, may, after a hearing, be removed, denied, or suspended by the appeals board for either of the following:

(1) For a violation of this chapter, the Rules of the Workers' Compensation Appeals Board, or the Rules of the Administrative Director.

(2) For other good cause, including, but not limited to, failure to pay final order of sanctions, attorney's fees, or costs issued under Section 5813 .

(b) For purposes of this section, nonattorney representatives shall be held to the same professional standards of conduct as attorneys.

Commented [A139]: Subsection (a) of this rule makes clear that the Appeals Board may, on its own motion and without a complaint from an outside party, begin the process of removing, denying, or suspending a non-attorney's privilege to appear before the WCAB.

Commented [A140]: Subsection (b) of this rule clarifies the standard for removal, denial, or suspension of a non-attorney's privilege to appear before the WCAB.

Commented [A141]: Subsection (c) provides for the appointment of a hearing officer to conduct a hearing to determine whether good cause exists to remove, deny, or suspend a non-attorney's privilege to appear before the WCAB.

Commented [A142]: This reflects the cross-references for disqualification standards and the procedure to seek disqualification.

and objections and setting forth the recommended action to be taken. The recommended decision shall be submitted to the Appeals Board.

(j) The Appeals Board, acting en banc, may (1) adopt and incorporate the recommended decision of the hearing officer as its own in whole or in part; (2) review the record and increase or decrease the recommended action; or (3) take further or other action, including directing the conduct of a new hearing on one or more of the issues presented, as deemed just and appropriate. The Appeals Board shall serve the non-attorney representative and hearing officer with copies of its final decision as well as the hearing officer's recommended decision.

(k) Once the Appeals Board has served its final decision, any person may request a copy of all or a portion of the record, subject to any assertions of privilege, protective orders or provisions of law prohibiting disclosure. The complete record includes the pleadings, all notices and orders issued by the Appeals Board, any proposed decision by the hearing officer, the final decision, all exhibits whether admitted or rejected, the written evidence and any other papers in the case, except as provided by law.

(l) A non-attorney representative whose privilege to appear has been removed or suspended may petition the Appeals Board for reinstatement of the privilege after a period of not less than one year has elapsed from the date on which the decision of the Appeals Board took effect, or from the date of the denial of a similar petition.

Authority: Sections 4907, 5307, Labor Code.
Reference: Sections 4907, 5311, Labor Code. Section 9721.12, title 8, California Code of Regulations.

Commented [A143]: Subsections (d)-(i) of this rule set forth the procedure for conducting a hearing to determine whether good cause exists to remove, deny, or suspend a non-attorney's privilege to appear before the WCAB.

Commented [A144]: Once the hearing officer has issued a recommended decision, it will be submitted to the Appeals Board. Acting en banc, the Appeals Board has three options: adopt and incorporate the recommended decision; increase or decrease the recommended action set forth in the recommended decision; or some other action.

Commented [A145]: Only after service of the final decision on the non-attorney representative and the hearing officer may a member of the public request a copy of all or a portion of the record. This is based on several exceptions to the Public Records Act as well as the general practice across the city and county merit systems protection boards that we surveyed in drafting rules 10401 and 10402.

Commented [A146]: Subsection (l) of this rule has been included to make clear that a removal, denial, or suspension of the privilege to appear before the WCAB is not permanent and may, after a period of time, be reinstated after the filing of a petition.

§ ~~10774~~ 10405. Substitution or Dismissal of Attorneys and Non-Attorney Representatives.

(a) Substitution or dismissal of attorneys must be made in the manner provided by Code of Civil Procedure ~~S~~sections 284, 285 and 286. ~~Dismissal of agents may shall be made by serving and filing a statement of dismissal~~.

(b) A non-attorney representative or entity providing non-attorney representatives pursuant to an agreement with a party shall continue to provide representation until the party consents to termination of representation or withdrawal is permitted by the Workers' Compensation Appeals Board.

(1) A party that consents to termination of representation shall serve and file a "Substitution of Non-attorney Representative" that includes the information required for a notice of representation filed pursuant to rule 10400 or that identifies the party as self-represented and the name, address, telephone number and signature of the person authorized to consent to the substitution on behalf of the party.

(2) If a party does not consent to termination of representation, representation shall continue until the Appeals Board or the worker's compensation judge issues an order allowing withdrawal for good cause.

Authority: Sections 133, 5307, Labor Code.
Reference: Sections 4903, 4906, Labor Code.

Commented [A147]: Revised to conform to proposed definition of non-attorney representatives in new rule 10305(n).

Commented [A148]: Capitalization removed to conform to style.

Commented [A149]: Deleted to reflect current practice.

Commented [A150]: In keeping with new rule 10400(b), subsection (b) of this rule provides a procedure for withdrawal or termination of representation by a non-attorney representative.

§ ~~10324.~~ 10410. Ex Parte Communications.

(a) No document, including letters or other writings, shall be filed by a party ~~or lien claimant~~ with the Workers' Compensation Appeals Board unless service of a copy thereof is made on all parties together with the filing of a proof of service as provided for in ~~R~~rule ~~10505~~ 10625.

(b) When the Appeals Board or a workers' compensation judge receives an ex parte letter or other document from any party ~~or lien claimant~~ in a case pending before the Appeals Board or the workers' compensation judge, the Appeals Board or the workers' compensation judge ~~he, she, or it~~ shall serve copies of the letter or document on all other parties to the case with a cover letter explaining that the letter or document was received ex parte in violation of this rule.

(c) No party ~~or lien claimant~~ shall discuss with the Appeals Board or a workers' compensation judge the merits of any case pending before the Appeals Board or that judge without the presence of all necessary parties to the proceeding, except when submitting a walk-through document in accordance with rule 10789. ~~as provided by these rules~~.

(d) All correspondence concerning the examination by and the reports of a physician appointed by a workers' compensation judge or the Appeals Board pursuant to Labor Code sections 5701, 5703.5, 5706~~,~~ or 5906 shall be made, respectively, through the workers' compensation judge or the Appeals Board, and no party, attorney or non-attorney representative shall communicate with that physician regarding the merits of the case unless ordered to do so.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 5701, 5703.5, 5706, 5708 and 5906, Labor Code; and Sections 10625 and 10789, title 8, California Code of Regulations.

Commented [A151]: Rule 10324 will become rule 10410 without change in language.

Commented [A152]: Deleted to conform to definition of party.

Commented [A153]: Capitalization removed to conform to style. Cross-reference updated to reflect new rule number.

Commented [A154]: Deleted to conform to definition of party.

Commented [A155]: Changed to conform to style per ACR 260.

Commented [A156]: Deleted to conform to definition of party.

Commented [A157]: We propose amending this rule to provide a precise cross-reference to the rule that permits ex parte communications in limited circumstances.

Commented [A158]: Revised to conform to proposed definition of non-attorney representatives in new rule 10305(n).

§ ~~10561~~ 10421. Sanctions.

(a) On its own motion or upon the filing of a petition pursuant to ~~R~~rule ~~10450~~ 10510, the Workers' Compensation Appeals Board may order payment of reasonable expenses, including attorney's fees and costs and, in addition, sanctions as provided in Labor Code section 5813. Before issuing such an order, the alleged offending party or attorney must be given notice and an opportunity to be heard. In no event shall the Workers' Compensation Appeals Board impose a monetary sanction pursuant to Labor Code section 5813 where the one subject to the sanction acted with reasonable justification or other circumstances make imposition of the sanction unjust.

(b) Bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay include actions or tactics that result from a willful failure to comply with a statutory or regulatory obligation, that result from a willful intent to disrupt or delay the proceedings of the Workers' Compensation Appeals Board, or that are done for an improper motive or are indisputably without merit. Violations subject to the provisions of Labor Code section 5813 shall include but are not limited to the following:

(1) Failure to appear or appearing late at a conference or trial where a reasonable excuse is not offered or the offending party has demonstrated a pattern of such conduct.

(2) Filing a pleading, petition or legal document unless there is some reasonable justification for filing the document.

(3) Failure to timely serve documents (including but not limited to medical reports and medical-legal reports) as required by the rules of the Workers' Compensation Appeals Board, or the Administrative Director, where the documents are within the party's ~~or lien claimant's~~ possession or control, unless that failure resulted from mistake, inadvertence or excusable neglect.

(4) Failing to comply with the Workers' Compensation Appeals Board's Rules of Practice and Procedure, with the regulations of the Administrative Director, or with any award or order of the Workers' Compensation Appeals Board, including an order of discovery, which is not pending on reconsideration, removal or appellate review and which is not subject to a timely petition for reconsideration, removal or appellate review, unless that failure results from mistake, inadvertence, surprise or excusable neglect.

(5) Executing a declaration or verification to any petition, pleading or other document filed with the Workers' Compensation Appeals Board:

(A) That:

(i) Contains false or substantially false statements of fact;

(ii) Contains statements of fact that are substantially misleading;

(iii) Contains substantial misrepresentations of fact;

Commented [A159]: Rule 10561 will become rule 10421 with subdivision (c) deleted to conform to the new definition of party. We also propose eliminating subdivision (f) due to the passage of time.

Commented [A160]: Capitalization removed to conform to style.

Commented [A161]: Cross-reference updated to reflect new rule number.

Commented [A162]: Deleted to conform to definition of party.

(iv) Contains statements of fact that are made without any reasonable basis or with reckless indifference as to their truth or falsity;

(v) Contains statements of fact that are literally true, but are intentionally presented in a manner reasonably calculated to deceive; and/or

(vi) Conceals or substantially conceals material facts; and

(B) Where a reasonable excuse is not offered or where the offending party has demonstrated a pattern of such conduct.

(6) Bringing a claim, conducting a defense~~,~~ or asserting a position:

(A) That is:

(i) Indisputably without merit~~,~~;

(ii) Done solely or primarily for the purpose of harassing or maliciously injuring any person~~,~~; and/or

(iii) Done solely or primarily for the purpose of causing unnecessary delay or a needless increase in the cost of litigation; and

(B) Where a reasonable excuse is not offered or where the offending party has demonstrated a pattern of such conduct.

(7) Presenting a claim or a defense, or raising an issue or argument, that is not warranted under existing law -- unless it can be supported by a non-frivolous argument for an extension, modification or reversal of the existing law or for the establishment of new law -- and where a reasonable excuse is not offered or where the offending party has demonstrated a pattern of such conduct. In determining whether a claim, defense, issue or argument is warranted under existing law, or if there is a reasonable excuse for it, consideration shall be given to:

(A) Whether there are reasonable ambiguities or conflicts in the existing statutory, regulatory~~,~~ or case law, taking into consideration the extent to which a litigant has researched the issues and found some support for its theories; and

(B) Whether the claim, defense, issue or argument is reasonably being asserted to preserve it for reconsideration or appellate review.

This subdivision is specifically intended not to have a "chilling effect" on a party's ~~or lien claimant's~~ ability to raise and pursue legal arguments that reasonably can be regarded as not settled.

Commented [A163]: Deleted to conform to definition of party.

(8) Asserting a position that misstates or substantially misstates the law, and where a reasonable excuse is not offered or where the offending party has demonstrated a pattern of such conduct.

(9) Using any language or gesture at or in connection with any hearing, or using any language in any pleading or other document:

(A) Where the language or gesture:

(i) Is directed to the Workers' Compensation Appeals Board, to any of its officials or staff~~,~~ or to any party ~~or lien claimant~~ (or the attorney or ~~other~~ non-attorney representative for a party ~~or lien claimant~~); and

(ii) Is patently insulting, offensive, insolent, intemperate, foul, vulgar, obscene, abusive or disrespectful; or

(B) Where the language or gesture impugns the integrity of the Workers' Compensation Appeals Board or its ~~C~~commissioners, judges or staff.

~~(e)(c) Notwithstanding any other provision of these rules, for purposes of this rule and Labor Code section 5813:~~

~~(1) A lien claimant may be deemed a "party" at any stage of the proceedings before the Workers' Compensation Appeals Board; and~~

~~(2) An "attorney" includes a lay representative of a party or lien claimant.~~

~~(f) This rule shall apply only to applications filed on or after January 1, 1994.~~

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 5701, 5703.5, 5706, 5708, 5813 and 5906, Labor Code; and Section 10510, title 8, California Code of Regulations.

Commented [A164]: Colon added to conform to style.

Commented [A165]: Revised to conform to proposed definition of non-attorney representatives in new rule 10305(n).

Commented [A166]: Deleted to conform to definition of party.

Commented [A167]: Semi-colon added to conform to style.

Commented [A168]: Capitalization removed to conform to style.

Commented [A169]: Deleted to conform to definition of party.

Commented [A170]: Referenced statutes and rules added.

§ ~~10782.~~ 10430. Vexatious Litigants.

(a) For purposes of this rule, "vexatious litigant" means:

(1) A party ~~or lien claimant~~ who, while acting in propria persona ~~(i.e., while representing himself or herself)~~ in proceedings before the Workers' Compensation Appeals Board, repeatedly relitigates, or attempts to relitigate, an issue of law or fact that has been finally determined against that party ~~or lien claimant~~ by the Workers' Compensation Appeals Board or by an appellate court;

(2) A party ~~or lien claimant~~ who, while acting in propria persona in proceedings before the Workers' Compensation Appeals Board, repeatedly files unmeritorious motions, pleadings~~,~~ or other papers, repeatedly conducts or attempts to conduct unnecessary discovery, or repeatedly engages in other tactics that are in bad faith, are frivolous~~,~~ or are solely intended to cause harassment or unnecessary delay; or

(3) A party ~~or lien claimant~~ who has previously been declared to be a vexatious litigant by any state or federal court of record in any action or proceeding based upon the same or substantially similar facts, transaction(s)~~,~~ or occurrence(s) that are the subject, in whole or in substantial part, of the party's ~~or lien claimant's~~ workers' compensation case.

For purposes of this rule, the phrase "finally determined" shall mean:

(i) That all appeals have been exhausted or the time for seeking appellate review has expired; and

(ii) The time for reopening under Labor Code sections 5410 or 5803 and 5804 has passed or, although the time for reopening under those sections has not passed, there is no good faith and non-frivolous basis for reopening.

(b) Upon the petition of a party ~~or lien claimant~~, or upon the motion of any workers' compensation judge or the Appeals Board, a presiding workers' compensation judge of any district office having venue or the Appeals Board may declare a party ~~or lien claimant as~~ to be a vexatious litigant.

(c) No party ~~or lien claimant~~ shall be declared a vexatious litigant without being given notice and an opportunity to be heard. If a hearing is requested, the presiding workers' compensation judge or the Appeals Board, in ~~his, her or its~~ their discretion, either may take and consider both oral and documentary evidence or may take and consider solely documentary evidence, including affidavits or other written declarations of fact made under penalty of perjury.

(d) If a party ~~or lien claimant~~ is declared to be a vexatious litigant, a presiding workers' compensation judge or the Appeals Board may enter a "prefiling order," i.e., an order which prohibits the vexatious litigant from filing, in propria persona, any Application for Adjudication of Claim, Declaration of Readiness to Proceed, petition~~,~~ or other request for action by the Workers' Compensation Appeals Board without first obtaining leave of the presiding workers' compensation judge of the district office where the request for action is proposed to be filed or, if the matter is pending before the Appeals Board on a petition for reconsideration, removal or disqualification,

Commented [A171]: Rule 10782 will become rule 10430 with minor non-substantive changes in language tracked below.

Commented [A172]: Deleted to conform to definition of party.

Commented [A173]: Superfluous language deleted.

Commented [A174]: Deleted to conform to definition of party.

Commented [A175]: Deleted to conform to definition of party.

Commented [A176]: Deleted to conform to definition of party.

Commented [A177]: Deleted to conform to definition of party.

Commented [A178]: Deleted to conform to definition of party.

Commented [A179]: Deleted to conform to definition of party.

Commented [A180]: Amended for ease of reading.

Commented [A181]: Deleted to conform to definition of party.

Commented [A182]: Deleted to conform to definition of party.

Commented [A183]: Language added to reflect the correct full name of the form.

without first obtaining leave from the Appeals Board. For purposes of this rule, a "petition" shall include, but not be limited to, a petition to reopen under Labor Code sections 5410, 5803 and 5804, a petition to enforce a medical treatment award, a penalty petition~~,~~ or any other petition seeking to enforce or expand the vexatious litigant's previously determined rights.

(e) If a vexatious litigant proposes to file, in propria persona, any Application for Adjudication of Claim, Declaration of Readiness to Proceed, petition~~,~~ or other request for action by the Workers' Compensation Appeals Board, the request for action shall be conditionally filed. Thereafter, the presiding workers' compensation judge, or the Appeals Board if the petition is for reconsideration, removal~~,~~ or disqualification, shall deem the request for action to have been properly filed only if it appears that the request for action has not been filed in violation of subdivision (a). In determining whether the vexatious litigant's request for action has not been filed in violation of subdivision (a), the presiding workers' compensation judge, or the Appeals Board, shall consider the contents of the request for action and the Workers' Compensation Appeals Board's existing record of proceedings, as well as any other documentation that, in its discretion, the presiding workers' compensation judge or the Appeals Board asks to be submitted. Among the factors that the presiding workers' compensation judge or the Appeals Board may consider is whether there has been a significant change in circumstances (such as new or newly discovered evidence or a change in the law) that might materially affect an issue of fact or law that was previously finally determined against the vexatious litigant.

(f) If any in propria persona Application for Adjudication of Claim, Declaration of Readiness to proceed, petition or other request for action by the Workers' Compensation Appeals Board from a vexatious litigant subject to a prefiling order is inadvertently accepted for filing (other than conditional filing in accordance with subdivision (e)~~,~~ above), then any other party ~~or lien claimant~~ may file (and shall concurrently serve on the vexatious litigant and any other affected parties ~~or lien claimants~~) a notice stating that the request for action is being submitted by a vexatious litigant subject to a prefiling order as set forth in subdivision (d). The filing of the notice shall automatically stay the request for action until it is determined, in accordance with subdivision (e), whether the request for action should be deemed to have been properly filed.

(g) A copy of any prefiling order issued by a presiding workers' compensation judge or by the Appeals Board shall be submitted to the Secretary of the Appeals Board, who shall maintain a record of vexatious litigants subject to those prefiling orders and who shall annually disseminate a list of those persons to all presiding workers' compensation judges.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Article XIV, section 4, California Constitution; Sections 5410, 5803 and 5804, Labor Code; and Sections 391, 391.2 and 391.7, Code of Civil Procedure.

Commented [A184]: Language added to reflect the correct full name of the form.

Commented [A185]: Language added to reflect the correct full name of the form.

Commented [A186]: Comma deleted to conform to style.

Commented [A187]: Deleted to conform to definition of party.

Commented [A188]: Referenced statutes added.

§10440. Contempt.

(a) A workers' compensation judge or a deputy commissioner may issue writs or summons, warrants of attachment, warrants of commitment and all necessary process in proceedings for direct and hybrid contempt as defined by Labor Code section 5309(c) in a like manner and to the same extent as courts of record.

(b) The Appeals Board may issue writs or summons, warrants of attachment, warrants of commitment and all necessary process in proceedings for direct, hybrid, or indirect contempt in a like manner and to the same extent as the courts of record.

Authority: Sections 133, 134 and 5307, Labor Code.
Reference: Sections 4550, 4551, 4552, 4553, and 4553.1 and 5309(c), Labor Code; Sections 1209-1222, Code of Civil Procedure.

Commented [A189]: Propose new rule on contempt. Subdivision (a) was originally part of rule 10348. Pursuant to Labor Code section 5309(c) a WCJ may conduct proceedings for direct and hybrid contempt. Labor Code section 5309(c) also defines "hybrid contempt" and by implication defines direct contempt. Labor Code section 134 provides that the Appeals Board may conduct proceedings for contempt and is not limited to direct or hybrid contempt. California Code of Civil Procedure sections 1209-1222 describes the process for conducting contempt proceedings.

Commented [A190]: Referenced and authorizing statutes added.

§ ~~10779.~~ 10445. Disbarred and Suspended Attorneys.

An attorney who has been disbarred or suspended by the Supreme Court for reasons other than nonpayment of State Bar fees, or who has been placed on involuntary inactive enrollment status by the State Bar or who has resigned while disciplinary action is pending shall be deemed unfit to appear as a non-attorney representative of any party before the Workers' Compensation Appeals Board during the time that the attorney is precluded from practicing law in this state.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Section 4907, Labor Code; and Section 6126, Business and Professions Code.

Commented [A191]: Rule 10779 will become rule 10445 with changes in language tracked below.

Commented [A192]: Revised to conform to proposed definition of non-attorney representatives in new rule 10305(n).

ARTICLE 5
Applications and Answers

§ ~~10403, 10400.~~ 10450. Invoking the Jurisdiction of the Workers' Compensation Appeals Board.

(a) Except as provided by ~~sections~~ rules ~~10865~~ 10990 and ~~10953~~ 10590, proceedings for the adjudication of rights and liabilities before the Workers' Compensation Appeals Board shall be initiated and jurisdiction of the Workers' Compensation Appeals Board invoked by the filing of an Application for Adjudication of Claim, a case opening Compromise and Release Agreement, a case opening Stipulations with Request for Award or a Request for Findings of Fact under ~~section 10405~~ rule 10460.

(b) Until an application or other case opening document has been filed, the Workers' Compensation Appeals Board may not conduct hearings, issue orders or authorize the commencement of formal, compelled discovery, including the use of subpoenas to obtain records or sworn testimony.

~~(c) A case opening Compromise and Release Agreement, a case opening Stipulations with Request for Award and a Request for Findings of Fact under section rule 10405 are each an application for purposes of invoking the jurisdiction of the Workers' Compensation Appeals Board, but none of these documents shall be deemed an application for purposes of Labor Code section 4064(c).~~

~~(d)~~ (c) The pre-application assignment of a non-adjudication EAMS case number by any ancillary unit of the Division of Workers' Compensation (e.g., the Disability Evaluation Unit, the Information and Assistance Office):

(1) Does not establish the jurisdiction of the Workers' Compensation Appeals Board and, therefore, does not permit it to conduct any hearings or to issue any orders;

(2) Does not toll the statute of limitations (except as provided in Labor Code section 5454 for submissions to the Information and Assistance Unit); and

(3) Does not authorize the commencement of formal, compelled discovery.

Nothing in this ~~section~~ rule shall be construed to preclude any non-compelled pre-application medical evaluations or investigations.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 126, 5300, 5301, 5316, 5454, 5500 and 5501, Labor Code; Sections 10460, 10590 and 10990, title 8, California Code of Regulations.

Commented [A193]: Rule 10403 will be combined with rule 10400.

Commented [A194]: Cross-references updated to reflect new rule numbers.

Commented [A195]: Language added to reflect correct full name of the form.

Commented [A196]: "Section" replaced with "rule" to conform to style; cross-reference updated to reflect new rule number.

Commented [A197]: This rewords rule 10403(a) and (c)

Commented [A198]: Pursuant to *Donna Yee-Sanchez v. Permanente Medical Group* (2002) 68 Cal.Comp.Cases 638 (Appeals Board Significant Panel Decision), while non-compelled pre-application discovery is permissible, discovery cannot be compelled until an application is filed.

Commented [A199]: From rule 10400(b).

Commented [A200]: The State Bar Committee noted that LC 4064(c) was amended and the fee shifting provision does not reference or depend on the filing of an application. The Committee recommended that this subsection can and probably should be deleted in its entirety. We agreed with their recommendation.

Commented [A201]: From rule 10403.

Commented [A202]: "Section" replaced with "rule" to conform to style.

Commented [A203]: Referenced statutes and rules added

§ ~~10400, 10401, 10402.~~ 10455. Applications.

A separate Application for Adjudication of Claim shall be filed for each separate injury for which benefits are claimed. All applications shall conform to the following requirements:

(a) Only one application shall be filed for each injury. Duplicative applications are subject to summary dismissal.

(b) Upon filing an Application for Adjudication of Claim, the filing party ~~or lien claimant~~ shall concurrently serve a copy of the application and any accompanying documents on all other parties ~~and lien claimants~~.

(c) When filing an amended application, the applicant shall indicate on the box set forth on the application form that it is an amended application.

(d) If the applicant is a minor or incompetent, the Application for Adjudication of Claim shall be accompanied by a Petition for Appointment of ~~a~~ Guardian ad Litem and Trustee. ~~In those instances where the minor has the right of nomination, the nomination shall be included in the petition.~~

(e) An applicant is not required to disclose ~~his or her~~ their social security number. If an applicant discloses ~~his or her~~ their Social Security number on the application, the Social Security number will be used solely for identification and verification purposes in order to administer the workers' compensation system except with the consent of the applicant, or as permitted or required by statute, regulation~~,~~ or judicial order.

(f) Upon the filing of an initial application, the Workers' Compensation Appeals Board shall assign an adjudication case number and a venue. The case number and venue shall be indicated on a conformed copy of the application.

(1) If the party ~~or lien claimant~~ filing the application is unrepresented, the Workers' Compensation Appeals Board shall serve a conformed copy of the application on all parties and lien claimants on the proof of service to the application.

(2) If the party ~~or lien claimant~~ filing the application is represented, the Workers' Compensation Appeals Board shall serve a conformed copy of the application on the filing party or lien claimant. Upon receipt of the conformed copy of the application, the filing party ~~or lien claimant~~ shall forthwith serve a copy of the conformed application on all other parties and lien claimants.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 126, 3208.2, 5307.5, 5316, 5500 and 5501, Labor Code.

Commented [A204]: Portions of rules 10400, 10401 and 10402 were combined to create a general rule on applications. We have included most of the content of these three rules, but have tracked some changes and comments regarding the portions of the rules we decided to simplify or eliminate.

Commented [A205]: Language added to reflect correct full name of the form.

Commented [A206]: Language added to reflect correct full name of the form.

Commented [A207]: Deleted to conform to definition of party.

Commented [A208]: Deleted to conform to definition of party.

Commented [A209]: Language added to reflect correct full name of the form.

Commented [A210]: Unnecessary article deleted to conform to style.

Commented [A211]: Probate Code section 8503 provides that an administrator of an estate may be removed from office on the petition of the surviving spouse or relative if is such a person is higher in priority than the administrator. However, death benefits do not go through probate (see e.g. Labor Code section 4700). Therefore, it appears that a minor's nomination is not necessary for the administration of death benefits. Accordingly, it need not be included with the application.

Commented [A212]: Reworded rule 10400(h). Non-substantive language change.

Commented [A213]: Changed to conform to style per ACR 260.

Commented [A214]: Changed to conform to style per ACR 260.

Commented [A215]: Deleted to conform to definition of party.

Commented [A216]: Deleted to conform to definition of party.

Commented [A217]: Deleted to conform to definition of party.

§ ~~10405.~~ 10460. Request for Findings of Fact.

A request for findings of fact under Government Code sections 21164, 21166, 21537, 21538, 21540 or 21540.5 or under Labor Code sections 4800.5(d), 4801, 4804.2, 4807 or 4851 is a proceeding separate from a claim for workers' compensation benefits even though it arises out of the same incident, injury or exposure. The request for findings of fact shall be filed separately and a separate file folder and record of the proceeding will be maintained, but the request for findings of fact may be consolidated for hearing with a claim for workers' compensation benefits ~~under the provisions of Section 10590 of these Rules~~.

Authority: Sections 133 and 5307, Labor Code.
Reference: Sections 21164, 21166, 21537, 21538, 21540 and 21540.5, Government Code; Sections 4800.5(d), 4801, 4804.2, 4807 and 4851, Labor Code.

Commented [A218]: Rule 10405 will become rule 10460 with only minor change in language.

Commented [A219]: Rule 10590 was repealed in 2008.

§ ~~10940, 10946.~~ 10462. Subsequent Injuries Benefits Trust Fund Application.

(a) All claims against the Subsequent Injuries Benefits Trust Fund shall be by an application in writing setting forth the date and nature of the industrial injury, together with all factors of disability alleged to have pre-existed ~~said~~ the injury. ~~Allegations of additional factors must be by amended application.~~

(b) All such applications ~~against the Subsequent Injuries Benefits Trust Fund~~ shall be filed with the ~~Appeals Board~~ Workers' Compensation Appeals Board district office having venue or in EAMS, and a copy shall be served by mail on the Division of Workers' Compensation, Subsequent Injuries Benefits Trust Fund, in accordance with ~~Sections 10505 and 10507~~ rules 10530 and 10540. Where joinder of the Subsequent Injuries Benefits Trust Fund has been ordered ~~by the workers' compensation judge or the Appeals Board~~, the applicant shall forthwith file and serve an application as provided herein.

(c) After ~~When~~ such an application is filed ~~against the Subsequent Injuries Benefits Trust Fund~~, any party who has previously filed medical reports shall ~~forthwith~~ serve copies on the Division of Workers' Compensation, Subsequent Injuries Benefits Trust Fund~~, and in no case~~ no later than ~~thirty (30)~~ days prior to the mandatory settlement conference or other hearing, unless service is waived by the Division of Workers' Compensation, Subsequent Injuries Benefits Trust Fund.

Authority: Sections 133 and 5307, 5309 and 5708, Labor Code.
Reference: Sections 4750, 4751, 4753, 4753.5 and 4754.5, Labor Code; Sections 10530 and 10540, title 8, California Code of Regulations.

Commented [A220]: Combined rules 10940 and 10946.

Commented [A221]: Subdivision (a) is the first paragraph of former rule 10940 with changes tracked to conform to style and as noted.

Commented [A222]: In practice, an allegation of an additional factor of disability may be made by raising the issue prior to trial.

Commented [A223]: Subdivision (b) is the second paragraph of former rule 10940 with changes tracked to conform to style and as noted.

Commented [A224]: Changed to clarify where application should be filed.

Commented [A225]: Added correct name.

Commented [A226]: "Section" replaced with "rule" to conform to style; cross-references updated to reflect new rule numbers.

Commented [A227]: Added correct name.

Commented [A228]: Unnecessary language deleted.

Commented [A229]: Former rule 10946 with stylistic changes tracked below.

Commented [A230]: Unnecessary language deleted.

Commented [A231]: "Thirty" deleted to conform to style.

Commented [A232]: Referenced rules added.

§ ~~10480 10484.~~ 10465. Answers.

An Answer to each Application for Adjudication of Claim shall be filed and served no later than the shorter of either: ~~ten (~~10~~)~~ days after service of a Declaration of Readiness to Proceed, or 90 days after service of the Application for Adjudication of Claim ~~required by rule 10414 or 10415~~.

(a) The Answer used by the parties shall conform to a form prescribed and approved by the Appeals Board. Additional matters may be pleaded as deemed necessary by the answering party. A general denial is not an answer within this rule.

(b) The Answer shall be accompanied by a proof of service upon the opposing parties.

(c) Evidence upon matters and affirmative defenses not pleaded by Answer will be allowed only upon such terms and conditions as the Appeals Board or workers' compensation judge may impose in the exercise of sound discretion.

Authority: Sections 133 and 5307, Labor Code.
Reference: Section 5500 and 5505, Labor Code.

Commented [A233]: Rules 10480 and 10484 will be combined and become rule 10465 with the changes tracked in below. The initial sentence of the rule is former rule 10480. Subdivisions (a) through (c) are former rule 10484 with no change in language other than the addition of subdivisions.

The Answer is a "Required Pleading" pursuant to Labor Code section 5500. However, Declarations of Readiness are not required pleadings. Labor Code section 5505 allows for the filing of an answer within 10 days after the service of the application, but also allows acceptance of "evidence upon matters not pleaded" in the answer "upon the terms and conditions imposed by the appeals board or referee holding the hearing." This provision therefore vests discretion in the WCAB to determine on what conditions an answer may be accepted beyond the 10-day period provided for by statute.

The 10-day period provided by Labor Code section 5505 is seldom long enough for the defendant to meaningfully assess the applicant's claim and file a useful response. Accordingly, we propose altering the response timeline to require the filing of an Answer within either 10 days of the service of a Declaration of Readiness, or within 90 days of the service of the Application for Adjudication itself, whichever is shorter.

Commented [A234]: Language added to reflect correct full name of the form.

§ ~~10404.~~ 10470. Labor Code Section 4906~~(g~~h~~)~~ Statement.

(a) The employee, insurer, employer and the attorneys for each party shall comply with Labor Code section 4906~~(g~~h~~)~~. ~~by filing a statement under penalty of perjury wherein it is declared that the party on whose behalf the declaration is made has not violated Labor Code Section 139.3, has not offered, delivered, received, or accepted any unlawful rebate, refund, commission, preference, patronage dividend, discount or other consideration, whether in the form of money or otherwise, as compensation or inducement for any referred examination or evaluation by a physician. Except as otherwise provided herein,~~ ~~f~~

(b) Failure to ~~comply with this rule~~ file the statement required by Labor Code section 4906(h) shall result in refusal to file ~~or process~~ that party's Application for Adjudication of Claim or answer.

(c) If any of the above parties are not available, cannot be located or are unwilling to sign a declaration under penalty of perjury setting forth in specific detail the reasons that the party is not available, cannot be located or is unwilling to sign as well as good faith efforts to locate the party may be filed with the application or answer. If the presiding workers' compensation judge or designee determines from the facts set forth in the declaration that good cause has been established, ~~he or she~~ the presiding workers' compensation judge or designee may accept the application or answer for filing. For the purpose of this rule, a ~~c~~Compromise and ~~r~~Release agreement or ~~s~~Stipulations with ~~r~~Request for ~~a~~Award shall not be treated as an ~~a~~Application for ~~a~~Adjudication of Claim.

Authority: Sections 133 and 5307, Labor Code.
Reference: Section 4906(g), Labor Code.

Commented [A235]: Rule 10404 will become rule 10470 with the changes tracked below. We deleted language that is duplicative of Labor Code section 4906(h) and deleted the reference to (g) as recent amendments relettered the subdivisions. We added subdivisions to our rule for ease of reading and citation. In new subdivision (b) we clarified that failure to file the statement required by Labor Code section 4906(h) rather than failure to follow the rule shall result in refusal to file a party's application or answer.

Commented [A236]: Language added to reflect correct full name of the form.

Commented [A237]: Changed to conform to style per ACR 260.

Commented [A238]: Capitalization added to reflect correct full name of the form.

Commented [A239]: Language and capitalization added to reflect correct full name of the form.

ARTICLE 6
Venue

§ ~~10409~~ 10480. Venue.

~~(a) The person or entity filing an initial Application for Adjudication (or other case opening document)~~ When filing a case opening document, the filer shall designate venue and shall specify the basis for venue in accordance with Labor Code section 5501.5. ~~whether venue is based upon: (1) the place of the employee or dependent's residence at the time of filing (Lab. Code, § 5501.5(a)(1) or (d)); (2) the place where the injury allegedly occurred or, for cumulative trauma or industrial disease claims, where the last alleged injurious exposure occurred (Lab. Code, § 5501.5(a)(2) or (d)); or (3) the place where the employee's attorney maintains his or her principal place of business (Lab. Code, § 5501.5(a)(3)).~~

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 5500 and 5501.5, Labor Code.

Commented [A240]: Rule 10409 will become rule 10480 with the tracked changes reflected below. We deleted material that is duplicative of Labor Code section 5501.5. A portion of rule 10409 will become rule 10482.

§ ~~10409~~ 10482. Venue When Applicant is Employee of Division of Workers' Compensation.

~~(~~b~~)~~ When a Division of Workers' Compensation employee files ~~his or her own~~ an Application for Adjudication of Claim or other case opening document~~, the following provisions shall apply:~~

~~(1) R~~regardless of the venue designated by the employee, venue shall be determined as follows:

(~~A~~a) The parties may agree on a venue, subject to the approval of the presiding workers' compensation judge of the agreed-upon venue.

(~~B~~b) If the parties are unable to agree on a suitable venue, or for any other good cause shown, the presiding workers' compensation judge of the district office designated on the application or other case opening document shall consult with the Secretary or other ~~D~~deputy ~~C~~commissioner of the Appeals Board to determine the appropriate venue, with the secretary or other deputy commissioner issuing the appropriate venue order.

(~~2~~c) The S~~s~~ecretary or other deputy commissioner of the Appeals Board shall assign the case to a workers' compensation judge unfamiliar with the employee. When appropriate, a workers' compensation judge from a region other than the employee's region shall be assigned.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 5500 and 5501.5, Labor Code.

Commented [A241]: Rule 10482 is a new rule containing the portion of rule 10409 related to venue where an employee of DWC has filed an application. We separated this from the general rule on venue because it is a specific situation that only applies to a limited number of applicants.

Commented [A242]: Changed to conform to style per ACR 260.

Commented [A243]: Capitalization removed to conform to style.

Commented [A244]: Capitalization removed to conform to style.

§ ~~10410.~~ 10488. Objection to Venue Based on an Attorney's Principal Place of Business. ~~Under Labor Code Section 5501.5(c).~~

Pursuant to Labor Code section 5501.5(c), any employer or insurance carrier listed on an initial Application for Adjudication of Claim may file an objection to a venue selection, based on the employee's attorney's principal place of business under Labor Code section 5501.5(a)(3), within 30 days after notice of the adjudication case number and venue is received by the employer or insurance carrier. The objecting employer or insurance carrier shall state under penalty of perjury the date when the notice of the adjudication case number and venue was received. A timely objection shall result in venue being assigned in accordance with Labor Code section 5501.5(a)(1) or (a)(2).

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Section 5501.5, Labor Code.

Commented [A245]: Rule 10410 will become rule 10488 with changes to the article title to remove an unnecessary reference to the Labor Code and clarify that the objection is based on an attorney's principal place of business. We will also add a sentence to clarify that a timely objection results in automatic reassignment.

Commented [A246]: Language added to reflect correct full name of the form.

Commented [A247]: Added sentence to clarify that a timely objection automatically results in mandatory venue reassignment in accordance with Labor Code section 5501.5.

§ ~~10411.~~ 10490. Petition for Change of Venue for Good Cause. ~~Under Labor Code Section 5501.6.~~

A petition for change of venue pursuant to Labor Code section 5501.6 shall be filed at the district office or permanently staffed satellite office ~~with~~ having venue. Any objection to a petition for a change of venue shall be filed within 10 days of the filing of the petition. The presiding workers' compensation judge of the district office having venue, or the judge of the permanently staffed satellite office having venue, or ~~his or her~~ their designee, shall grant or deny the petition for change of venue, or serve notice of a status conference concerning the petition, within 30 days of the filing of the petition.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Section 5501.6, Labor Code.

Commented [A248]: Rule 10411 will become rule 10490 with changes to the article title to remove an unnecessary reference to the Labor Code and the addition of language to clarify that, when a case is venued at a permanently staffed satellite office, a WCJ at the satellite office may take action on the petition.

Commented [A249]: Changed to conform to style per ACR 260.

ARTICLE 7
Petitions, Pleadings, and Forms

§ ~~10408.~~10500. ~~Application for Adjudication of Claim Form and Other Forms~~ Form Pleadings.

(a) No workers' compensation administrative law judge and no district office of the Workers' Compensation Appeals Board shall require the parties to use a form other than that prescribed and approved by the Appeals Board.

(b) Each of the following documents shall be on a form prescribed and approved by the Appeals Board:

(1) An ~~a~~Application for ~~a~~Adjudication of ~~c~~Claim for compensation benefits or death benefits;

(2) A lien;

(3) A ~~d~~Declaration of ~~r~~Readiness to Proceed ~~(including for an expedited hearing)~~;

(4) A ~~p~~Pre-~~t~~Trial ~~c~~Conference ~~s~~Statement ~~(including for a lien conference)~~;

(5) Minutes of Hearing ~~(~~except Minutes of Hearing prepared by a court reporter~~)~~;

(6) A ~~c~~Compromise and ~~r~~Release ~~(including for dependency and third-party claims)~~;

(7) Stipulations with ~~r~~Request for ~~a~~Award ~~(including death cases)~~;

(8) A petition to terminate liability for temporary disability indemnity;

(9) A special notice of lawsuit; and

(10) Any other form the Appeals Board, in its discretion, determines should be uniform and standardized.

(c) Any form prescribed and approved by the Appeals Board may be printed ~~(i.e., hard copy)~~ by the Division of Workers' Compensation for distribution at district offices of the Workers' Compensation Appeals Board. In addition, the Division may create:

(1) Electronic versions of the prescribed and approved forms (i.e., e-forms); and/or

(2) Optical character recognition versions of those forms (i.e., OCR forms), either in fillable format or otherwise, for posting on the Division's Forms webpage. Any hard copy, e-form, or OCR form for proceedings before the Workers' Compensation Appeals Board created by the Division shall

Commented [A250]: Rule 10408 will become rule 10500 with the changes reflected below. The title was changed to "Form Pleadings" to better reflect the content of the article. Subdivision (c) became (a), (a) became (b) and (b) became (c).

Commented [A251]: Moved from (c).

Commented [A252]: Moved from (a).

Commented [A253]: Capitalization added to reflect correct full name of the form.

Commented [A254]: Language added to reflect the correct full name of the form.

Commented [A255]: Capitalization added and formatting changed to reflect correct full name of the form.

Commented [A256]: Unnecessary language deleted.

Commented [A257]: Capitalization added to reflect correct full name of the form.

Commented [A258]: Capitalization added to reflect correct full name of the form.

Commented [A259]: Unnecessary language and parentheses deleted.

Commented [A260]: The requirements for a petition to terminate liability for continuing temporary disability are set forth in new rule 10540.

Commented [A261]: Moved from (b).

be presumed to have been prescribed and approved by the Appeals Board unless the Appeals Board issues an order or a formal written statement to the contrary.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 3716, 4903.5, 5500, 5500.3, 5501.5 and 5502, Labor Code.

§ ~~10450~~.10510. Petitions and Answers to Petitions.

(a) After jurisdiction of the Workers' Compensation Appeals Board is invoked pursuant to rule 10450, ~~A~~ a request for action by the Workers' Compensation Appeals Board, other than a rule 10500 form pleading, ~~an Application for Adjudication, an Answer, or a Declaration of Readiness,~~ shall be made by petition. The caption of each petition shall contain the case title and adjudication case number and shall indicate the type of relief sought.

(b) All petitions and answers shall be filed in accordance with rule 10615 and served on all parties in accordance with rule 10625. ~~to the case and on any other person, entity, or lien claimant whose rights or liabilities are specifically questioned by the petition or answer.~~ A failure to concurrently file a proof of service with a petition or answer constitutes a valid ground for summarily dismissing or denying the petition or summarily rejecting the answer.

(c) ~~Unless otherwise provided by statute or rule, a~~An answer may be filed within 10 days after the ~~filing~~ service of a petition unless otherwise provided. ~~Unless otherwise provided by statute or rule, t~~The time limit for filing any ~~petition or any~~ answer shall be extended in accordance with ~~sections~~ rule 10605 unless otherwise provided.

(d) All petitions and answers shall be verified under penalty of perjury in the manner required for verified pleadings in courts of record. A failure to comply with the verification requirement constitutes a valid ground for summarily dismissing or denying a petition or summarily rejecting an answer.

(e) A document cover sheet and a document separator sheet shall be filed with each petition or answer. The appropriate title for the petition or answer shall be entered into the document title field of the document separator sheet.

(f) Any previously filed document shall not be attached to a petition or answer; any such document attached to a petition or answer may be discarded.

~~(h) Except as provided in sections 10840, 10865, 10953, and 10959, petitions shall be filed as follows:~~

~~(1) If a case opening document was previously filed, the petition, unless e-filed, shall be filed only with the district office having venue;~~

~~(2) If no case opening document was previously filed:~~

~~(A) An application shall be filed together with the petition, and venue shall be designated and determined in accordance with Labor Code section 5501.5 and section 10409; and~~

~~(B) Unless e-filed, the petition and application shall be filed only with the district office where venue is being asserted.~~

Commented [A262]: Rule 10450 will become rule 10510 with the changes tracked below. The subdivisions have been reordered.

Commented [A263]: Former rule 10450(f).

Commented [A264]: Subsections (b) and (c) combined and reworded to improve clarity. We propose limiting this subdivision to answers and clarifying that the 10 days (extended depending on method of service) runs from the date of service rather than filing.

Commented [A265]: "Section" replaced with "rule" to conform to style; cross-references updated to reflect new rule numbers.

Commented [A266]: Former rule 10450(g).

Commented [A267]: Former rule 10450(d).

~~(i) If the petition is filed by a person or entity who is not already a party or lien claimant of record, the petitioner shall be added to the official participant record for each listed adjudication case number, and the petitioner shall be served with notices of all hearings.~~

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 126 and 5905, Labor Code; Sections 10450, 10500, 10605, 10615 and 10625, title 8, California Code of Regulations.

Commented [A268]: By amending subdivision (a) to state after jurisdiction has been invoked, these subdivisions become unnecessary.

The State Bar Committee commented: "The Committee is not certain how (h)(1) and (i) are made superfluous by amending (a) to state after jurisdiction has been invoked. Would not the petition still have to be filed at the office that has venue? And would not the petitioner who is not already a party still have to be added to the OAR?"

Response to Committee: Added additional cross references to filing and service rules to clarify that filing of petition must conform with general filing requirements.

§ ~~10490.~~10515. Demurrer, Judgment on the Pleadings~~,~~ and Summary Judgment Not Permitted.~~; Unintelligible Pleadings~~

Commented [A269]: Deleted rule regarding unintelligible pleadings because does not necessarily reflect current practice with respect to such pleadings.

Demurrers, petitions for judgment on the pleadings~~,~~ and petitions for summary judgment are not permitted. ~~A continuance may be granted upon timely request and upon such terms as may be reasonable under the circumstances or may be ordered by the Workers' Compensation Appeals Board on its own motion if: (a) a pleading is so uncertain, unintelligible or ambiguous as to render it impossible for the Workers' Compensation Appeals Board to understand or act upon it; or (b) any party is prejudiced by omission or ambiguity of necessary allegations sufficient to prevent that party from adequately presenting a cause of action or defense.~~

Authority: Sections 133 and 5307, Labor Code.
Reference: Sections 5500 and 5708, Labor Code.

§ ~~10492.~~10517. When Pleadings Deemed Amended.

~~The p~~ Pleadings shall be deemed amended to conform to the stipulations and statement of issues agreed to by the parties on the record. Pleadings may be amended by the Workers' Compensation Appeals Board to conform to proof.

Authority: Sections 133 and 5307, Labor Code.
Reference: Section 5702, Labor Code.

Commented [A270]: Rule 10492 will become rule 10517 with no change in language except removal of an unnecessary article.

§ ~~10498~~ 10520. Special Requirements for Pleadings Filed or Served by Representatives. ~~Attorneys or by Non-Attorney Employees of an Attorney or Law Firm.~~

(a) Where a party ~~or lien claimant~~ is represented by an attorney, all pleadings filed with the Workers' Compensation Appeals Board or served on any party~~, lien claimant,~~ or other person shall include the name, State Bar number, law firm, if any, business address~~,~~ and business telephone number of the attorney.

(b) If a non-attorney employee of an attorney or law firm is executing the pleading being filed or served, the pleading shall include a heading containing the non-attorney's name and the name, State Bar number, law firm, if any, business address~~,~~ and business telephone number of the attorney primarily responsible for supervising the non-attorney.

~~For purposes of this section, "pleading" shall include, but is not limited to, any petition, answer, application for adjudication, declaration of readiness, subpoena, or subpoena duces tecum, but shall not include any pleading on a form approved by the Workers' Compensation Appeals Board and/or created by the Division of Workers' Compensation if there is no designated space on the form for the requisite information.~~

(c) If a non-attorney representative who is not an employee of an attorney or law firm is executing the pleading being filed or served, the pleading shall include a heading containing the non-attorney representative's name followed by the words "Non-Attorney Representative," the name of the entity, if any, that employs the non-attorney representative, business address and business telephone number.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 5000, 5501, 5505 and 5900 et seq., Labor Code; 10205.12, title 8, California Code of Regulations; and Rules 2.111(1) and 8.204(b)(10)(D), California Rules of Court.

Commented [A271]: We propose renumbering 10498 as 10520 with minor changes tracked below.

Commented [A272]: Added subsections.

Commented [A273]: Deleted to conform to definition of party.

Commented [A274]: Deleted to conform to definition of party.

Commented [A275]: Comma deleted to conform to style.

Commented [A276]: Comma deleted to conform to style.

Commented [A277]: Comma deleted to conform to style.

Commented [A278]: Unnecessary language deleted; "pleading" is a defined term of art not specific to this rule.

Commented [A279]: As part of the procedures for removing, denying, or suspending a non-attorney representative's privilege to appear before the WCAB pursuant to Labor Code § 4907, we propose adding a requirement that non-attorney representatives include pertinent information in pleadings to maintain consistency with other requirements of attorneys.

§ ~~10440.10445.~~ 10525. ~~Pleadings~~ Petition for Increased or Decreased Compensation -- Serious and Willful Misconduct.

(a) Any claim(s) that an injury was caused by either the serious and willful misconduct of the employee or of the employer must be separately pleaded and must set out in sufficient detail the specific basis upon which a claim is founded. When a claim of serious and willful misconduct is based on more than one theory, the petition shall set forth each theory separately.

(b) Whenever a claim of serious and willful misconduct is predicated upon the violation of a particular safety order, the petition shall set forth the correct citation or reference and all of the particulars required by Labor Code section 4553.1.

Authority: Sections 133 and 5307, Labor Code.
Reference: Sections 4550, 4551, 4552, 4553 and 4553.1, Labor Code.

Commented [A280]: Rules 10440 and 10445 are combined into a single rule. We changed "charge" and "allegation" to claim throughout the rule for consistency. We did not include language about the purpose of the requirement that each theory be set forth separately. ("so that the adverse parties and the Workers' Compensation Appeals Board may be fully advised") Although that is one reason that the each theory must be set forth separately, the language is superfluous. The language of the current rules is set forth in the endnote.

§ ~~10447.~~10528. ~~Pleadings~~ – – Petition for Increased Compensation –Discrimination under Labor Code Section 132a.

Commented [A281]: Rule 10447 will become rule 10528 with changes tracked below. We will change the title to conform with the other titles in this article.

Any person seeking to initiate proceedings under Labor Code section 132a other than prosecution for misdemeanor must file a petition ~~therefor~~ setting forth specifically and in detail the nature of each violation alleged, ~~and~~ facts relied upon, ~~to show the same~~ and the relief sought. Each alleged violation must be separately pleaded. ~~so that the adverse party or parties and the Workers' Compensation Appeals Board may be fully advised of the specific basis upon which the charge is founded.~~

Commented [A282]: Unnecessary language deleted.

The Workers' Compensation Appeals Board may refer, or any worker may complain of, suspected violations of the criminal misdemeanor provisions of Labor Code section 132a to the Division of Labor Standards Enforcement or directly to the Office of the Public Prosecutor.

Authority: Sections 133 and 5307, Labor Code.
Reference: Section 132a, Labor Code.

§ ~~10470.~~10530. Emergency Petition for Stay.

(a) A party may present to the presiding workers' compensation judge of the district office having venue or the judge of the permanently staffed satellite office having venue a petition to stay an action by another party pending a hearing. Each district office will have a designee of the presiding judge available to assign petitions for stay from 8:00 a.m. to 11:00 a.m. and 1:00 p.m. to 4:00 p.m. on court days.

(b) A party who walks through a petition to stay an action shall provide notice by fax or e-mail to the opposing party or parties no later than 10:00 a.m. of the immediately preceding court day. This notice shall state with specificity the nature of the relief to be requested by the petition to stay and the date, time and place that the petition to stay will be presented. A copy of the petition to stay shall be attached to the notice. If notice by fax or e-mail fails, or if an opposing party's fax number or e-mail address are unknown, notice shall be given in the manner best calculated to expeditiously provide the party or parties with notice including notice by phone or by overnight mail or delivery service. First-class mail shall not be utilized for notice of a petition to stay an action.

(c) A petition to stay an action shall be accompanied by a declaration regarding notice stating under penalty of perjury:

(1) The notice given, including the date, time, manner and name of the party informed;

(2) the relief sought; and

(3) whether opposition is expected. In addition, if the petitioner was unable to give timely notice to the opposing party, the declaration under penalty of perjury ~~also~~ shall state that the petitioner in good faith attempted to inform the opposing party but was unable to do so, ~~specifying~~ and shall specify the efforts made to inform the opposing party.

(d) A petition to stay an action shall be accompanied by a declaration regarding notice stating under penalty of perjury:

(1) The notice given, including the date, time, manner~~,~~ and name of the party informed;

(2) The relief sought; and

(3) Whether opposition is expected. In addition, if the petitioner was unable to give timely notice to the opposing party, the declaration under penalty of perjury also shall state that the petitioner in good faith attempted to inform the opposing party but was unable to do so, specifying the efforts made to inform the opposing party.

(e) Upon the receipt of a proper petition to stay an action, the presiding judge or ~~his or her~~ the presiding judge's designee shall, in ~~his or her~~ their discretion, either:

(1) Deny the petition;

Commented [A283]: Rule 10470 will become rule 10530 with changes in language tracked below.

Commented [A284]: A permanently staffed satellite office does not have a PJ but a case may be venued there.

Commented [A285]: Language revised for consistency and clarity.

Commented [A286]: Changed to conform to style per ACR 260.

Commented [A287]: Changed to conform to style per ACR 260.

(2) Grant a temporary stay and set the petition for a ~~formal~~ hearing; or

(3) Set the petition for a ~~formal~~ hearing, without either denying the petition or granting a temporary stay.

Authority: Sections 133 and 5307, Labor Code.
Reference: Sections 4053, 4054, 4902, 5001, 5002, 5702 and 5710, Labor Code.

Commented [A288]: Redundant language deleted.

Commented [A289]: Redundant language deleted.

§~~10455.~~10534. Petition to Reopen.

Commented [A290]: Rule 10455 will become rule 10534 without change in language.

Petitions invoking the continuing jurisdiction of the Workers' Compensation Appeals Board under Labor Code section 5803 shall set forth specifically and in detail the facts relied upon to establish good cause for reopening.

Authority: Sections 133 and 5307, Labor Code.
Reference: Section 5803, Labor Code.

§ ~~10458.~~10536. Petition for New and Further Disability.

The jurisdiction of the Workers' Compensation Appeals Board under Labor Code section 5410 shall be invoked by a petition setting forth specifically and in detail the facts relied upon to establish new and further disability.

If no prior Application for Adjudication of Claim has been filed, jurisdiction shall be invoked by the filing of an original Application for Adjudication of Claim.

Authority: Sections 133 and 5307, Labor Code.
Reference: Section 5803, Labor Code.

Commented [A291]: Rule 10458 will become rule 10536 without change in language.

Commented [A292]: Language added to reflect correct full name of the form.

Commented [A293]: Language added to reflect correct full name of the form.

§ ~~10462~~ ~~10464.10466.~~10540. ~~Contents of~~ Petition to Terminate Liability for Continuing Temporary Disability.

(a) A petition to terminate liability for temporary total disability indemnity under a findings and award, decision or order of the Workers' Compensation Appeals Board shall be filed at least one week prior to termination of temporary disability ~~within 10 days of the termination of payments or other compensation~~ and shall conform substantially to the form provided by the Appeals Board and shall include:

(1) A statement, in ~~underlined~~ capital letters, that an order terminating liability for temporary total disability indemnity may issue unless objection thereto is made on behalf of the employee within 14 days after service of the petition, and

(2) All medical reports in the possession of the petitioner that have not previously been served and filed;

(b) If written objection to the petition to terminate is not received within 14 days of its proper filing and service, the Workers' Compensation Appeals Board may order temporary disability compensation terminated, in accordance with the facts as stated in the petition or in such other manner as may appear appropriate on the record. If the petition to terminate is not properly completed or executed in accordance with ~~section 10464~~ this rule, the Workers' Compensation Appeals Board may summarily deny or dismiss the petition.

(c) Objection to the petition by the employee shall be filed in writing within 14 days of service of the petition, and shall state the facts in support of the employee's contention that the petition should be denied, and shall be accompanied by a Declaration of Readiness to Proceed to Expedited Hearing. All supporting medical reports shall be attached to the objection. The objection shall also show that service of the objection and the reports attached thereto has been made upon petitioner or counsel and a proof of service showing service of the objection upon petitioner.

(d) Upon the filing of a timely objection, where it appears that the employee is not or may not be working and is not or may not be receiving disability indemnity, the petition to terminate shall be set for expedited hearing not less than ~~ten (~~10~~)~~ nor more than ~~(~~30~~)~~ days from the date of the receipt of the objection.

(e) If complete disposition of the petition to terminate cannot be made at the hearing, the workers' compensation judge assigned thereto, based on the record, including the allegations of the petition, the objection thereto and the evidence (if any) at said hearing, shall forthwith issue an interim order directing whether temporary disability indemnity shall or shall not continue during the pendency of proceedings on the petition to terminate. Said interim order shall not be considered a final order, and will not preclude a complete adjudication of the petition to terminate or the issue of temporary disability or any other issue after full hearing of the issues.

Authority: Sections 133 and 5307, Labor Code.
Reference: Sections 4650 and 4651.1, Labor Code.

Commented [A294]: Rules 10462, 10464 and 10466 will be combined into a single rule. While a petition to terminate liability for temporary disability is rarely used after the cap on temporary disability was instituted for injuries after April 19, 2004, there are limited circumstances where a defendant may still need to file a petition to terminate. By combining the three sections into a single rule, we will maintain the procedure without overemphasizing its importance. This petition is contemplated in new rule 10500 (Form Pleadings), subsection (b)(8).

Commented [A295]: Labor Code section 4651.1 provides that: "Where a petition is filed with the appeals board concerning a continuing award of [disability]…there shall be a rebuttable presumption that such temporary disability continues for at least one week following the filing of such petition."

Commented [A296]: The form Petition to Terminate Liability for Continuing Temporary Disability has capital letters that are not underlined.

Commented [A297]: Begin rule 10466.

Commented [A298]: "Section" replaced with "rule" to conform to style and internal reference updated.

§ ~~10451.3.~~10545. Petition for Costs.

(a) A petition for costs is a petition seeking reimbursement of an expense or payment for service that is not allowable as a lien against compensation under Labor Code section 4903. A petition for costs may be filed only by:

(1) An employee or the dependent of a deceased employee~~,~~ ;

(2) A defendant~~,~~ ; or

(3) An interpreter for services other than those rendered at a medical treatment appointment or medical-legal examination.

(b) The caption of the petition shall identify it as a "Petition for Costs."

(c) A petition for costs filed by an employee or a dependent may include, but is not limited to, a claim for reimbursement of payment(s) previously made directly to a provider for medical-legal goods or services, subject to any applicable official fee schedule.

(d) A petition for costs filed by an interpreter shall contain, in addition to the general factual allegations of the petition:

(1) A statement of the name(s) of any interpreter(s) who performed the services;

(2) A statement that the services were actually performed; and

(3) Either:

(A) A statement of the certification number of the interpreter(s); or

(B) If not certified, a statement that specifies why a certified interpreter was not used and that sets forth the qualifications of the interpreter, including any qualifications for a non-certified interpreter established by the ~~R~~rules of the Administrative Director.

(e) A petition for costs shall not be filed or served until at least 60 days after a written demand for the costs has been served on the defendant or the person or entity from whom the costs are claimed. The petition shall append:

(1) A copy of the written demand, together with a copy of its proof of service; and

(2) A copy of the response, if any. A petition that fails to comply with these provisions may be dismissed.

Commented [A299]: Changed comma to semi-colon to conform to style.

Commented [A300]: Changed comma to semi-colon to conform to style.

Commented [A301]: Capitalization removed to conform to style.

(f) A petition for costs submitted by any person or entity not listed in subdivision (a) shall be deemed dismissed by operation of law and shall not toll or extend any statute of limitations.

(g) ~~(1) A petition for costs may be placed on calendar:~~

~~(A) On the filing of a declaration of readiness by an employee, a dependent, or a defendant, or a petitioning interpreter that lists the petition as an issue; or~~

~~(B) On the Workers' Compensation Appeals Board's own motion.~~

~~(2) Notwithstanding subdivision (g)(1), t~~The Workers' Compensation Appeals Board may, at any time, issue a notice of intention to allow or disallow the costs sought by the petition, in whole or in part. The notice of intention shall give the petitioner and any adverse party no less than 15 calendar days to file written objection showing good cause to the contrary. If no timely objection is filed, or if the objection on its face fails to show good cause, the Workers' Compensation Appeals Board, in its discretion, may:

(A) Issue an order regarding the petition for costs, consistent with the notice of intention; or

(B) Set the matter for hearing.

(h) If the filing of a petition for costs, or the failure to promptly make good faith payments on the costs sought by the petition, was the result of bad faith actions or tactics, the Workers' Compensation Appeals Board may impose monetary sanctions and allow reasonable attorney's fees and costs, if any, under Labor Code section 5813 and ~~section 10561~~rule 10421. The amount of the attorney's fees, costs~~,~~ and sanctions payable shall be determined by the Workers' Compensation Appeals Board; however, for bad faith actions or tactics occurring on or after the effective date of this ~~section~~ rule, the monetary sanctions shall not be less than $ 500.00.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 4600, 4903 et seq., 5710, 5811 and 5813, Labor Code.

Commented [A302]: We propose allowing these petitions to be dealt with on a walk through basis rather than requiring a DOR.

Commented [A303]: Comma deleted to conform to style.

Commented [A304]: "Section" replaced with "rule" to conform to style; cross-references updated to reflect new rule numbers.

Commented [A305]: Comma deleted to conform to style.

Commented [A306]: "Section" replaced with "rule" to conform to style.

Commented [A307]: Added for consistency.

§ 10547. Petition for Labor Code Section 5710 Attorney's Fees.

(a) A petition for attorney's fees pursuant to Labor Code section 5710 is a petition seeking attorney fees for representation of the applicant at a deposition allowable under Labor Code section 5710(b) as well as any other benefits listed under Labor Code section 5710(b)(1)-(5).

(b) The caption of the petition shall identify it as a "Petition for Attorney's Fees Pursuant to Labor Code Section 5710."

(c) A petition for attorney's fees pursuant to Labor Code section 5710 shall be verified upon oath in the manner required for verified pleadings in courts of record.

(d) A petition for attorney's fees pursuant to Labor Code section 5710 shall not be filed or served until at least 30 days after a written demand for the fees has been served on the defendant(s). The petition shall append:

(1) A copy of the written demand, together with a copy of the proof of service;

(2) A copy of the response, if any;

(3) A proof of service showing service on the injured worker and the defendant alleged to be liable for paying the fees; and

(4) A verification.

(e) Failure to comply with subdivisions (c) and (d)(1)-(4) of this rule shall constitute a valid ground for dismissing the petition.

(f) The petition shall contain the name of the attorney who attended the deposition along with the attorney's State Bar number.

(g) If the filing of a petition for costs, or the failure to promptly make good faith payments on the costs sought by the petition, was the result of bad faith actions or tactics, the Workers' Compensation Appeals Board may impose monetary sanctions and allow reasonable attorney's fees and costs, if any, under Labor Code section 5813 and rule 10421. The amount of the attorney's fees, costs and sanctions payable shall be determined by the Workers' Compensation Appeals Board; however, for bad faith actions or tactics occurring on or after the effective date of this rule, the monetary sanctions shall not be less than $500.00.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 4600, 4903 et seq., 5710, 5811 and 5813, Labor Code; and Section 10421, title 8, California Code of Regulations.

Commented [A308]: Labor Code § 5710 provides for attorney's fees for depositions:

"(a) The appeals board, a workers' compensation judge, or any party to the action or proceeding, may, in any investigation or hearing before the appeals board, cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in the superior courts of this state under Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure. To that end the attendance of witnesses and the production of records may be required. Depositions may be taken outside the state before any officer authorized to administer oaths. The appeals board or a workers' compensation judge in any proceeding before the appeals board may cause evidence to be taken in other jurisdictions before the agency authorized to hear workers' compensation matters in those other jurisdictions.

(b) If the employer or insurance carrier requests a deposition to be taken of an injured employee, or any person claiming benefits as a dependent of an injured employee, the deponent is entitled to receive in addition to all other benefits:

(1) All reasonable expenses of transportation, meals, and lodging incident to the deposition.

(2) Reimbursement for any loss of wages incurred during attendance at the deposition.

(3) One copy of the transcript of the deposition, without cost.

(4) A reasonable allowance for attorney's fees for the deponent, if represented by an attorney licensed by the State Bar of this state. The fee shall be discretionary with, and, if allowed, shall be set by, the appeals board, but shall be paid by the employer or his or her insurer. The administrative director shall, on or before July 1, 2018, determine the range of reasonable fees to be paid.

(5) If interpretation services are required because the injured employee or deponent does not proficiently speak or understand the English language, upon a request from either, the employer shall pay for the services of a language interpreter certified or deemed certified pursuant to Article 8 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of, or Section 68566 of, the Government Code . The fee to be paid by the employer shall be in accordance with the fee schedule adopted by the administrative director and shall include any other deposition-related events as permitted by the administrative director."

We propose adding the following new rule to create a procedure for obtaining the fees permitted under Labor Code § 5710 in the event that the parties dispute whether the fees are appropriate.

§ ~~10582~~ 10550. Petition to Dismiss Inactive Case.

(a) Unless a case is activated for hearing within one year after the filing of the Application for Adjudication of Claim or the entry of an order taking off calendar, the case may be dismissed after notice and opportunity to be heard. Such dismissals may be entered at the request of an interested party or upon the Workers' Compensation Appeals Board's own motion for lack of prosecution.

(b) At least ~~thirty (~~30~~)~~ days before filing a petition to dismiss, the defendant seeking to dismiss the case shall send a letter to the applicant, and, if represented, to the applicant's attorney or non-attorney representative, stating the defendant's intention to file a "Petition to Dismiss Inactive Case" ~~thirty (~~30~~)~~ days after the date of that letter, unless the applicant or ~~his~~ applicant's attorney or non-attorney representative objects in writing, demonstrating good cause for not dismissing the case.

(c) A petition to dismiss shall be filed with the district office having venue or in EAMS and the petition shall be served on all parties and lien claimants pursuant to rule ~~10530~~ 10625.

(d) A petition to dismiss shall be captioned "Petition to Dismiss Inactive Case [assigned ADJ number]."

(e) The following documents shall be filed with a petition to dismiss:

(1) A copy of the letter required by subdivision (a) of this rule; and

(2) Any reply to the letter required by subdivision (a) of this rule.

(f) A case may be dismissed after issuance of a ~~ten (~~10~~)~~ day notice of intention to dismiss and an opportunity to be heard, but not by an order with a clause rendering the order null and void if an objection showing good cause is filed.

~~This rule applies to injuries occurring before January 1, 1990 and on or after January 1, 1994. An Application for Adjudication filed without an accompanying Declaration of Readiness to Proceed will be placed in inactive status.~~

~~Cases set for hearing may be removed from the active calendar by an order taking off calendar. Cases in off calendar status may be restored to the active calendar upon the filing and serving of a properly executed Declaration of Readiness to Proceed.~~

~~Unless a case is activated for hearing within one year after the filing of the Application for Adjudication or the entry of an order taking off calendar, the case may be dismissed after notice and opportunity to be heard. Such dismissals may be entered at the request of an interested party or upon the Workers' Compensation Appeals Board's own motion for lack of prosecution. A case may be dismissed after issuance of a ten day notice of intention to dismiss and an opportunity to be heard, but not by an order with a clause rendering the order null and void if an objection showing good cause is filed.~~

Commented [A309]: This is a revised version of rule 10582, currently titled Inactive Cases, Procedure, Subsequent Action. It will go in article 7 (Petitions).

Commented [A310]: New subdivision (a) was the first two sentences in the last paragraph of current rule 10582. No substantive changes to language.

Commented [A311]: Language added to reflect correct full name of the form.

Commented [A312]: The final paragraph of rule 10582 states,

"A petition by a defendant to dismiss the case must be accompanied by a copy of a letter mailed to the applicant and, if represented, to the applicant's attorney or representative, more than thirty (30) days before the filing of the petition to dismiss. This letter must state that it is the intention of the persons signing the letter to file a petition for dismissal thirty (30) days after the date of that letter unless the applicant or his attorney or representative shows in writing some good reason for not dismissing the case. A copy of the reply, if any, must be attached to the petition to dismiss. A copy of the petition must be served on all parties and all lien claimants."

We propose breaking this up into subsections to clarify the process for practitioners, with minimal substantive changes.

Commented [A313]: Changed "more than" (in 10582) to "at least" for improved precision and to provide clearer guidance to practitioners.

Commented [A314]: Revised to conform to proposed definition of non-attorney representatives in new rule 10305(n).

Commented [A315]: Changed to conform to style per ACR 260.

Commented [A316]: Revised to conform to proposed definition of non-attorney representatives in new rule 10305(n).

Commented [A317]: Cross-reference updated to reflect new rule number.

Commented [A318]: New subdivision (f) was the last sentence in the last paragraph of current rule 10582. No substantive changes to language.

Commented [A319]: "Ten" deleted to conform to style; added hyphen.

Commented [A320]: Due to passage of time, removing window period language.

Commented [A321]: This language is no longer needed.

Commented [A322]: Added hyphen because off-calendar is used as an adjective here.

Commented [A323]: Moved to new subdivision (a).

Commented [A324]: Moved to new subdivision (f).

Authority: Sections 133 and 5307, Labor Code.
Reference: Sections 5405 and 5406, Labor Code; Section 10625, title 8, California Code of Regulations.

Commented [A325]: Referenced rule added.

§ 10555. Petition for Credit.

(a) An employer shall not take a credit for any payments or overpayments of benefits pursuant to Labor Code section 4909 unless ordered or awarded by the Workers' Compensation Appeals Board. A petition for credit shall include:

(1) A description of the payments made by the employer;

(2) A description of the benefits against which the employer seeks a credit; and

(3) The amount of the claimed credit.

(b) An employer shall not take a credit for an employee's third party recovery pursuant to Labor Code section 3861 unless ordered or awarded by the Workers' Compensation Appeals Board. A petition for credit shall include:

(1) A copy of the settlement or judgment; and

(2) An itemization of any credit applied to expenses and attorneys' fees pursuant to Labor Code sections 3856, 3858 and 3860.

Authority: Sections 133 and 5307, Labor Code.
Reference: Sections 3856, 3858, 3860, 3861 and 4909, Labor Code.

Commented [A326]: We propose adding a new rule that clarifies the procedure for an employer claiming a credit. Pursuant to Labor Code section 4909, "[a]ny payment…received by the injured employee during the period of his incapacity…which by the terms of this division was not then due and payable or when there is any dispute or question concerning the right to compensation, shall not, in the absence of any agreement, be an admission of liability for compensation on the part of the employer…"

When, however, an employer owes an employee benefits but believes there has been an overpayment and unilaterally takes credit without first obtaining an order from the WCAB, the employer risks a 5814 penalty. (*Rohrback v. Workers' Comp. Appeals Bd.* (1983) 144 Cal.App.3d 896 [employer subject to section 5814 penalty for unilaterally withholding awarded permanent disability due to alleged overpayment of vocational rehabilitation benefits]; *California Comp. Ins. Co., et al. v. Workers' Comp. Appeals Bd.* (2001) 66 Cal.Comp.Cases 1076 (writ den.) [unilateral ceasing of permanent disability awarded for alleged credit due to civil recovery resulted in section 5814 penalty where credit amount did not exceed permanent disability owed]).

Per settled case law, this rule makes clear that an employer must not unilaterally take credit for alleged overpayment of benefits, but must file a petition for credit with the WCAB to have the issue adjudicated.

ARTICLE 8
Petitions Related to Administrative Orders

§ ~~10950.~~10560. Petitions ~~Appealing~~ Related to Orders Issued by the Division of Workers' Compensation Administrative Director or the Director of Industrial Relations.

(a) Where the Labor Code provides that the Workers' Compensation Appeals Board has jurisdiction over appeals from or enforcement of an order, any aggrieved party may appeal or seek to enforce an order issued by the Division of Workers' Compensation Administrative Director or the Director of Industrial Relations by filing a petition, and an Application for Adjudication of Claim if one has not already been filed.

(b) Any petition that fails to comply with any of the following requirements shall be subject to summary dismissal:

(1) The petition must be timely filed with the Workers' Compensation Appeals Board within the timeframe set forth in the applicable statutes and rules.

(2) The petition shall be filed in accordance with rule 10615.

(3) The petition shall be served on all adverse parties, the employee and the Administrative Director or the Director as specified in the relevant rule.

(c) The petition shall set forth specifically and in full detail the factual and/or legal grounds upon which the petitioner considers the determination of the Administrative Director or the Director to be unjust or unlawful, and every issue to be considered. The petitioner shall be deemed to have finally waived all objections, irregularities and illegalities concerning the determination other than those set forth in the petition.

(d) The petition~~s~~ shall be ~~filed~~ adjudicated by a workers' compensation judge at the trial level of the Workers' Compensation Appeals Board utilizing the same procedures applicable to claims for ordinary benefits, including but not limited to the setting of a mandatory settlement conference and trial.

(e) Where a workers' compensation judge has issued a final decision, order or award, any aggrieved party may file a petition for reconsideration with the Workers' Compensation Appeals Board.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 129, 4603, 4604, 5300, 5301 and 5302, Labor Code.

Commented [A327]: This is an expanded rule. We have attempted to encompass the requirements common to petitions appealing orders issued by the AD/Director, in order to remove repetitive verbiage from each rule in this Article.

Commented [A328]: Similar language repeated in each rule now encapsulated in subdivision (b).

Commented [A329]: Similar language repeated in each rule now encapsulated in subdivision (c).

Commented [A330]: There are actually two rules involving petitions that are filed with us rather than the trial level. In subdivision (a), we have referenced only petitions that are filed at the trial level.

Commented [A331]: Added new language for improved precision.

§ 10565. Petition Appealing Denial of Return-to-Work Supplement.

(a) An injured worker may file a "Petition Appealing Denial of Return-to-Work Supplement" with the district office having venue or in EAMS.

(b) The petition shall be filed within 20 days of service of the decision denying the return-to-work supplement, in accordance with Director of Industrial Relations' rule 17309 and Workers' Compensation Appeals Board rule 10615.

(c) The petition and any additional documents or pleadings related to the petition shall be served on the Department of Industrial Relations Return-to-Work Supplement Program in accordance with Workers' Compensation Appeals Board rule 10632.

(d) The petition shall be captioned "Petition Appealing Denial of Return-to-Work Supplement" and shall include the assigned ADJ number.

(e) The petition shall be based upon one or more of the grounds as prescribed for petitions for reconsideration in Labor Code section 5903.

(f) The Director may file an answer to the petition within 20 days of the date of service of the petition. A document cover sheet and a document separator sheet shall be filed with the answer, and "Return-to-Work Supplement Program Answer to Appeal" shall be entered into the document title field of the document separator sheet.

(g) The petition shall not be placed on calendar unless a Declaration of Readiness to Proceed is filed. The Declaration of Readiness to Proceed may not be filed until 30 days have elapsed from the service of the petition.

(h) If the Director of Industrial Relations acts under Director of Industrial Relations' rule 17309 to amend, modify or rescind the decision being appealed, the resulting order by the Director shall be served on the parties within 15 days following the date the appeal was filed and shall be filed with the district office having venue or in EAMS.

Authority: Sections 133, 139.48, 5307, 5309 and 5708, Labor Code.
Reference: Section 5903, Labor Code; and Sections 10615, 10632 and 17309, title 8, California Code of Regulations.

Commented [A332]: In passing Senate Bill 863 (Statutes of 2012, Chapter 363), the Legislature created a return-to-work program to be administered by the Director of Industrial Relations. Labor Code section 139.48(b) provides: "Eligibility for payments and the amount of payments shall be determined by regulations adopted by the director…Determinations of the director shall be subject to review at the trial level of the appeals board upon the same grounds as prescribed for petitions for reconsideration."

The Director adopted rule 17309 (set forth below) regarding the appeal process.

We propose adopting rule 10565 to set forth the requirements for a petition appealing the denial of a return to work supplement and the process for adjudication of such a petition.

17309. Appeal to the WCAB
An individual dissatisfied with any final decision of the Director on his or her application for the Return-to-Work Supplement may file an appeal at the Workers' Compensation Appeals Board (WCAB) District Office. The appeal must contain the name of the individual, the ADJ number of the case in which a voucher was provided, and a clear and concise statement of the facts constituting the basis for the appeal. A copy of the appeal shall be served on the Return-to-Work Program located at 1515 Clay Street, 17th Floor, Oakland, California, 94612. Any appeal must be filed with the WCAB within 20 days of the service of the decision. After an appeal has been timely filed, the Return-to-Work Program may, within the period of fifteen (15) days following the date of filing of that appeal, amend or modify the decision or rescind the decision and take further action. Further action shall be initiated within 30 days from the order of rescission. The time for filing an appeal will run from the filing date of the new, amended or modified decision. Any such appeal will be subject to review at the trial level of the WCAB upon the same grounds as prescribed for petitions for reconsideration.

§ ~~10957.~~ 10567. Petition Appealing Independent Bill Review Determination ~~of the Administrative Director~~.

(a) An aggrieved party may file a petition appealing an independent bill review (IBR) determination of the Administrative Director~~ (AD)~~. For purposes of this ~~section~~ rule, a "determination" includes a decision regarding the amount payable to the provider, if any, and a decision that a dispute is not subject to independent bill review.

(b) Any petition that fails to comply with any of the following requirements shall be subject to summary dismissal:

(1) The petition shall be limited to raising one or more of the five grounds specified in Labor Code section 4603.6(f).

(2) The petition shall set forth specifically and in full detail the factual and/or legal grounds upon which the petitioner considers the IBR determination to be incorrect, and every issue to be considered by the Workers' Compensation Appeals Board. The petitioner shall be deemed to have finally waived all objections, irregularities and illegalities concerning the IBR determination other than those set forth in the petition.

~~(b)~~(c) The petition shall be filed in accordance with rule 10615 ~~with the Workers' Compensation Appeals Board~~ no later than 20 days after service of the IBR determination. ~~An untimely petition may be summarily dismissed.~~

(d) In addition to service as required by Workers' Compensation Appeals Board rule 10625 the petition and any additional documents or pleadings related to the petition shall be served on the IBR Unit in accordance with Workers' Compensation Appeals Board rule 10632.

~~(c)~~(e) The ~~caption of the~~ petition shall be captioned ~~identify it as a~~ "Petition Appealing Administrative Director's Independent Bill Review Determination~~.~~" and shall include the assigned ADJ number and the IBR case number assigned by the Administrative Director.

~~(d) The caption of the petition shall include:~~

~~(1) The injured employee's first and last names;~~

~~(2) The name(s) of the defendant(s) involved in the IBR dispute;~~

~~(3) The case number assigned by the AD to the IBR determination; and~~

~~(4) The adjudication case number, if any, assigned by the Workers' Compensation Appeals Board to any related application for adjudication of claim(s) previously filed.~~

Commented [A333]: Rule 10957 will become rule 10567 with the changes tracked below.

Commented [A334]: Changed to conform to style.

Commented [A335]: Some of the content of former subdivision (f) has been moved to current subdivision (b) with stylistic changes.

Commented [A336]: Added reference to filing rule.

Commented [A337]: This is covered by rule 10500.

Commented [A338]: Content of (d) is based on former subdivision (g)(3) with updated cross-references.

Commented [A339]: Subdivision (e) requires the ADJ number and IBR case number. This should be sufficient to identify the correct case.

~~(e)~~(f) The petition shall include a copy of the IBR determination and proof of service ~~to~~ of that determination.

~~(f) The petition shall comply with each of the following provisions. Any petition that fails to comply with any of the following requirements shall be subject to summary dismissal.~~

~~(1) The petition shall be limited to raising one or more of the five grounds specified in Labor Code section 4603.6(f).~~

~~(2) The petition shall set forth specifically and in full detail the factual and/or legal grounds upon which the petitioner considers the IBR determination to be unjust or unlawful, and every issue to be considered by the Workers' Compensation Appeals Board. The petitioner shall be deemed to have finally waived all objections, irregularities, and illegalities concerning the IBR determination other than those set forth in the petition appealing.~~

~~(3) The petition shall comply with the requirements of sections 10842(a) & (c), 10846, and 10852. It shall also comply with the provisions of section 10845, including but not limited to the 25-page restriction.~~

~~(4) Any failure to comply with the provisions of this subdivision shall constitute valid ground for summarily dismissing or denying the petition.~~

~~(g) A copy of the petition shall be concurrently served on:~~

~~(1) The adverse party(ies) or provider(s) or, if represented, their attorney or non-attorney representatives;~~

~~(2) The injured employee or, if represented, the employee's attorney; and~~

~~(3) The Division of Workers' Compensation, Independent Bill Review Unit (IBR Unit).~~

~~(h)~~(g) Upon receiving notice of the petition, the IBR Unit may download the record of the independent bill review organization into EAMS, in whole or in part. The Workers' Compensation Appeals Board, in its discretion, may:

(1) Admit all or any part of the downloaded IBR record into evidence; and/or

(2) Permit the parties to offer in evidence documents that are duplicates of ones already existing in the downloaded IBR record.

~~(i)~~(h) The petition shall not be placed on calendar unless a ~~d~~Declaration of ~~r~~Readiness to Proceed is filed and served on the Administrative Director, all adverse parties and the applicant. ~~The~~

Commented [A340]: Relettered.

Commented [A341]: Moved to subdivision (b)(1) of this rule.

Commented [A342]: Moved – content now in subdivision (b) of this rule.

Commented [A343]: Included in 10500.

Commented [A344]: Content moved to subdivision (d) of this rule.

Commented [A345]: Relettered.

Commented [A346]: Relettered; unnecessary language regarding Declaration of Readiness to Proceed deleted.

Commented [A347]: Language added to reflect the correct full name of the form.

~~declaration of readiness may be either concurrently filed with the petition or subsequently filed. Any declaration of readiness shall be concurrently served on the adverse party(ies) or provider(s) and on the IBR Unit.~~

~~(j) The petition shall be adjudicated by a workers' compensation judge at the trial level of the Workers' Compensation Appeals Board utilizing the same procedures applicable to claims for ordinary benefits, including but not limited to the setting of a mandatory settlement conference, except that the IBR determination shall be presumed correct and shall be set aside only upon proof by clear and convincing evidence of one or more of the Labor Code section 4603.6(f) statutory grounds for appeal.~~

~~(k) Any party aggrieved by a final decision, order, or award of the workers' compensation judge may file a petition for reconsideration with the Appeals Board. within the same time and in the same manner specified for petitions for reconsideration. The workers' compensation judge shall prepare a report on the petition for reconsideration in accordance with section 10860, unless the judge acts on a timely filed petition for reconsideration in accordance with section 10859.~~

~~(l)~~(i) If the IBR determination is ~~reversed~~ not affirmed by the workers' compensation judge or the Appeals Board, ~~the dispute~~ it shall be ~~remanded~~ rescinded and the dispute returned to the ~~AD~~Administrative Director with an order specifying the basis for the rescission, and an order to resubmit the dispute to IBR in accordance with Labor Code section 4603.6(g).

~~(m)~~(j) If a final decision of the Workers' Compensation Appeals Board affirms the Administrative Director's IBR determination and results in the defendant being liable for any payment to the provider, the amount for which the defendant is liable shall be paid to the provider forthwith. If the defendant fails to pay forthwith, the provider need not file a lien claim and may file a petition to enforce under ~~section 10451.4~~ rule 10570.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 4603.6, 5500, 5501, 5502, 5700 et seq., 5800 et seq. and 5900 et seq., Labor Code; and Sections 10570, 10615, 10625 and 10632, title 8, California Code of Regulations.

Commented [A348]: Deleted because now part of 10500.

Commented [A349]: Now part of 10500.

Commented [A350]: Relettered.

Commented [A351]: Amended to clarify and more specifically direct WCJs and parties regarding procedure after a determination is rescinded.

Commented [A352]: Amended subdivision to clarify that only a decision affirming the IBR determination results in an immediate requirement that defendant pay the provider and to cross reference new rule number.

Commented [A353]: "Section" replaced with "rule" to conform to style; cross-reference updated to reflect new rule number.

Commented [A354]: Referenced rules added and unreferenced rules deleted.

Commented [A355]: Moved from end of sentence

§ ~~10451.4.~~ 10570. Petition to Enforce an Administrative Director Determination. ~~Independent Bill Review Determination.~~

(a) An aggrieved party may file a "Petition to Enforce an Administrative Director Determination" after the Workers' Compensation Appeals Board has issued a final order affirming an IBR, IMR, or other determination issued by the administrative director or after the time to appeal the determination to the Workers' Compensation Appeals Board has expired. ~~A petition to enforce an independent bill review (IBR) determination and/or the recovery of an IBR fee under Labor Code section 4603.6(c) may be filed if:~~

~~(1) The Administrative Director has issued an IBR determination and order requiring payment and either:~~

~~(A) A petition appealing this determination and order is not filed with the Workers' Compensation Appeals Board; or~~

~~(B) The Workers' Compensation Appeals Board has issued a final order affirming this determination and order; and~~

~~(2) The defendant has not paid the full amount allowed, including any penalties and interest payable under Labor Code section 4622(a) and/or any IBR fee reimbursement payable under Labor Code section 4603.6(c), within 20 days of finality of the determination and order, as extended by sections 10507 and 10508.~~

~~(b) Where the conditions of subdivision (a) are claimed, the medical treatment or medical-legal provider is not required to file a section 4903(b) lien or a claim of costs lien and is not required to pay a lien filing or activation fee.~~

~~(c)~~(b) The ~~caption of the~~ petition shall ~~identify~~ be captioned ~~it~~ as a "Petition to Enforce ~~IBR~~ an Administrative Director Determination~~.~~" and shall include the assigned ADJ number and

~~(d) The petition~~ shall append a copy of Administrative Director's ~~IBR~~ determination. ~~and order requiring payment and, if an appeal was filed, a copy of the Workers' Compensation Appeals Board's final order affirming this determination and order~~.

~~(e) If the petition to enforce is filed by a person or entity who is not already a party or lien claimant of record, the petition shall be accompanied by a notice of representation, even if the petitioner is self-represented.~~

~~(f) The petition to enforce may include a request for penalties and interest in accordance with Labor Code section 4603.2(b) and/or section 4622(a). For purposes of penalties and interest, a final decision of the Workers' Compensation Appeals Board that affirms a determination of the Administrative Director requiring payment shall be deemed an "award."~~

Commented [A356]: We propose condensing the requirements of new rule 10570 substantially in light of our proposal to adopt new rule 10560. New rule 10560 attempts to encompass the requirements common to petitions appealing orders issued by the Administrative Director, in order to remove repetitive verbiage from each rule in this Article. Because many of the basic requirements of petitions to enforce an Administrative Director determination have been moved to the general new rule 10560, they have been deleted from new rule 10570. Additionally, we have broadened new rule 10570 to govern any administrative director determination, not just an independent bill review determination.

(c) The petition shall be served on all parties in accordance with Workers' Compensation Appeals Board rule 10628.

~~(c)~~(d) Within 15 days of the filing of the petition to enforce, the Workers' Compensation Appeals Board shall issue a notice of intention to grant or deny the petition, in whole or in part. The notice of intention shall give the petitioner and any adverse party no ~~less~~ fewer than 15 calendar days to file written objection showing good cause to the contrary. If no timely written objection is filed, or if the written objection on its face fails to show good cause, the Workers' Compensation Appeals Board, in its discretion, may:

(1) Issue an order regarding the petition to enforce, consistent with the notice of intention; or

(2) Set the matter for hearing.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 4603.6, 4622, 4903.05 and 4903.06, Labor Code; and Section 10628, title 8, California Code of Regulations.

Commented [A357]: Corrected grammar.

Commented [A358]: Referenced rule added.

§ ~~10957.1.~~ 10575. Petition Appealing Independent Medical Review Determination. ~~of the Administrative Director~~.

~~(a) This section shall apply only to petitions appealing an independent medical review (IMR) determination of the Administrative Director (AD).~~ ~~regarding treatment for:~~

~~(1) An injury occurring on or after January 1, 2013; and~~

~~(2) An injury occurring on or before December 31, 2012, if the decision is communicated to the requesting physician on or after July 1, 2013. This section shall not apply where the injured employee asserts that a defendant's utilization review is untimely or otherwise invalid unless, as an alternative challenge, the employee is also appealing the IMR determination.~~

~~(b)~~(a) An aggrieved party may file a petition appealing the ~~AD's~~ Administrative Director's independent medical review (IMR) determination. For purposes of this ~~section~~ rule, a "determination" includes a decision regarding medical necessity and/or a decision that a dispute is not ~~subject to~~ eligible for independent medical review.

(b) Any petition that fails to comply with any of the following requirements shall be subject to summary dismissal:

(1) The petition shall be limited to raising one or more of the five grounds specified in Labor Code section 4610.6(h).

(2) The petition shall set forth specifically and in full detail the factual and/or legal grounds upon which the petitioner considers the IMR determination to be incorrect, and every issue to be considered by the Workers' Compensation Appeals Board. The petitioner shall be deemed to have finally waived all objections, irregularities and illegalities concerning the IMR determination other than those set forth in the petition.

(c) The petition shall be filed in accordance with Workers' Compensation Appeals Board rule 10615 ~~with the Workers' Compensation Appeals Board~~ no later than 30 days after service ~~by mail~~ of the IMR determination. ~~An untimely petition may be summarily dismissed.~~

(d) The petition and any additional documents or pleadings related to the petition shall be served on the IMR Unit in accordance with Appeals Board rule 10632.

~~(d)~~(e) The ~~caption of the~~ petition shall ~~identify it as a~~ be captioned "Petition Appealing Administrative Director's Independent Medical Review Determination~~.~~" and shall include the assigned ADJ number and the IMR case number assigned by Administrative Director.

~~(e) The caption of the petition shall include:~~

Commented [A359]: An IMR determination will only issue in the cases involving these factual circumstances. Accordingly, if there is an IMR determination, this happened.

Commented [A360]: Language changed to conform to rule 9792.10.3(a).

Commented [A361]: Moved – content from former subdivision (g) is now subdivision (b).

Commented [A362]: Superfluous language deleted.

Commented [A363]: Included in general rule 10500.

Commented [A364]: Relettered.

~~(1) The injured employee's first and last names;~~

~~(2) The name(s) of the defendant(s) involved in the IMR dispute;~~

~~(3) The case number assigned by the AD to the IMR determination; and~~

~~(4) The adjudication case number, if any, assigned by the Workers' Compensation Appeals Board to any related application for adjudication of claim(s) previously filed.~~

Commented [A365]: Subdivision (e) requires the ADJ number and IBR case number. This should be sufficient to identify the correct case.

(f) The petition shall include a copy of the IMR determination and proof of service ~~to~~ of that determination.

~~(g) The petition shall comply with each of the following provisions Any petition that fails to comply with any of the following requirements shall be subject to summary dismissal.~~

~~(1) The petition shall be limited to raising one or more of the five grounds specified in Labor Code section 4610.6(h).~~

~~(2) The petition shall set forth specifically and in full detail the factual and/or legal grounds upon which the petitioner considers the IMR determination to be unjust or unlawful, and every issue to be considered by the Workers' Compensation Appeals Board. The petitioner shall be deemed to have finally waived all objections, irregularities, and illegalities concerning the IMR determination other than those set forth in the petition.~~

~~(3) The petition shall comply with the requirements of sections 10842(a) & (c), 10846, and 10852. It shall also comply with the provisions of section 10845, including but not limited to the 25-page restriction.~~

Commented [A366]: Moved – content from subdivisions (g)(1) & (2) now in subdivision (b), and subdivision (g)(3) now in general rule 10500.

~~(4) Any failure to comply with the provisions of this subdivision shall constitute valid ground for summarily dismissing or denying the petition.~~

~~(h) A copy of the petition shall be concurrently served on:~~

~~(1) The adverse party(ies) or provider(s) or, if represented, their attorney or non-attorney representatives;~~

~~(2) The injured employee or, if represented, the employee's attorney; and~~

~~(3) The Division of Workers' Compensation, Independent Medical Review Unit (IMR Unit).~~

Commented [A367]: This repeats content found in rule 10560, the general rule regarding petitions involving the Administrative Director, and elsewhere.

~~(i)~~(g) Upon receiving notice of the petition, the IMR Unit may download the record of the independent medical review organization into EAMS, in whole or in part. The Workers' Compensation Appeals Board, in its discretion, may:

(1) Admit all or any part of the downloaded IMR record into evidence; and/or

(2) Permit the parties to offer in evidence documents that are duplicates of ones already existing in the downloaded IMR record.

~~(j)~~(h)(1) The petition shall not be placed on calendar unless a ~~d~~Declaration of ~~r~~Readiness to Proceed is filed. ~~The declaration of readiness may be either concurrently filed with the petition or subsequently filed. Any declaration of readiness shall be concurrently served on the adverse party(ies) or provider(s) and on the IMR Unit.~~

(2) Notwithstanding the filing of a ~~d~~Declaration of ~~r~~Readiness to Proceed, a petition appealing an IMR determination shall be deferred if at the time of the determination the defendant is also disputing liability for the treatment for any reason besides medical necessity.

~~(k) The petition shall be adjudicated by a workers' compensation judge at) the trial level of the Workers' Compensation Appeals Board utilizing the same procedures applicable to claims for ordinary benefits, including but not limited to the setting of a mandatory settlement conference unless an expedited hearing is being conducted in accordance with Labor Code section 5502(b). However, the IMR determination shall be presumed correct and shall be set aside only upon proof by clear and convincing evidence of one or more of the Labor Code section 4610.6(h) statutory grounds for appeal.~~

~~(l) Any party aggrieved by a final decision, order, or award of the workers' compensation judge may file a petition for reconsideration with the Appeals Board within the same time and in the same manner specified for petitions for reconsideration. The workers' compensation judge shall prepare a report on the petition for reconsideration in accordance with section 10860, unless the judge acts on a timely filed petition for reconsideration in accordance with section 10859.~~

~~(m)~~(i) If the IMR determination is ~~reversed~~ rescinded by the workers' compensation judge or the Appeals Board, ~~the dispute shall be remanded rescinded and~~ the medical treatment dispute shall be returned to the Administrative Director with an order specifying the basis for the rescission and an order to submit the dispute to IMR ~~for a new IMR~~ in accordance with Labor Code section 4610.6(i).

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 4610.6, 5500, 5501, 5502, 5700 et seq., 5800 et seq. and 5900 et seq., Labor Code; and Sections 10205, 10615, 10632, title 8, California Code of Regulations.

Commented [A368]: Relettered.

Commented [A369]: Language added to reflect the correct full name of the form.

Commented [A370]: Unnecessary language deleted.

Commented [A371]: Language added to reflect the correct full name of the form.

Commented [A372]: Included in general rule 10560.

Commented [A373]: Relettered.

Commented [A374]: Used more precise language to assist practitioners.

Commented [A375]: Amended to clarify procedure after IMR determination is rescinded.

Commented [A376]: Moved from end of sentence

~~§ 10959.~~ 10580. Petition Appealing Medical Provider Network Determination of the Administrative Director.

(a) Any aggrieved person or entity may file a petition appealing a determination of the Administrative Director to:

(1) Deny a medical provider network (MPN) application;

(2) Revoke or suspend an MPN plan;

(3) Place an MPN plan on probation;

(4) Deny a petition to revoke or suspend an MPN plan; or

(5) Impose administrative penalties relating to an MPN.

(b) The petition shall be filed only as follows:

(1) The petition shall be filed no later than 20 days after the date of service of the Administrative Director's determination. An untimely petition may be summarily dismissed.

(2) Notwithstanding any other provision of these rules or of Administrative Director ~~R~~rules 9767.8(i), 9767.13(f)~~,~~ and 9767.14(f), the petition shall be filed solely in paper ~~(hard copy)~~ form directly with the Office of the Commissioners of the Workers' Compensation Appeals Board. ~~at either its P.O. Box or street address. Up-to-date P.O. Box and street address information may be obtained at the website of the Department of Industrial Relations, Workers' Compensation Appeals Board (currently, at http://www.dir.ca.gov/wcab/WCAB.PetitionforReconsideration.htm) or by telephoning the Office of the Commissioners (currently, (415) 703-4550).~~

(3) The petition shall not be submitted to any district office of the Workers' Compensation Appeals Board, including the San Francisco D~~d~~istrict O~~o~~ffice, and it shall not be submitted electronically.

(4) A petition submitted in violation of this subdivision shall neither be accepted for filing nor deemed filed and shall not be acknowledged or returned to the submitting party.

(c) The caption of the petition shall identify it as a "Petition Appealing Administrative Director's Medical Provider Network Determination."

(d) The caption of the petition shall include:

(1) The name of the MPN or MPN applicant;

Commented [A377]: Rule 10959 will become 10580 with stylistic changes tracked below.

Commented [A378]: Capitalization removed to conform to style.

Commented [A379]: Comma deleted to conform to style.

Commented [A380]: Redundant language deleted.

Commented [A381]: Because addresses are subject to change, deleted address.

Commented [A382]: District Office is capitalized to conform to style.

(2) The identity of the petitioner; and

(3) The case number assigned by the Administrative Director to the MPN determination.

(e) The petition shall include a copy of the Administrative Director's determination and proof of service ~~to~~ of that determination.

(f) The petition shall comply with each of the following provisions:

(1) The petition may appeal the Administrative Director's determination upon one or more of the following grounds and no other:

(A) The determination was without or in excess of the Administrative Director's powers;

(B) The determination was procured by fraud;

(C) The evidence does not justify the determination;

(D) The petitioner has discovered new material evidence ~~material to him or her~~, which ~~he or she~~ the petitioner could not, with reasonable diligence, have discovered and presented to the Administrative Director prior to the determination; and/or

(E) The Administrative Director's findings of fact do not support the determination.

(2) The petition shall set forth specifically and in full detail the factual and/or legal grounds upon which the petitioner considers the determination of the Administrative Director to be unjust or unlawful, and every issue to be considered by the Workers' Compensation Appeals Board. The petitioner shall be deemed to have finally waived all objections, irregularities~~,~~ and illegalities concerning the Administrative Director's determination other than those set forth in the petition appealing.

(3) The petition shall comply with the requirements of ~~sections~~ rules ~~10842~~10945(a) ~~&~~ and (c), ~~10846,~~ and 10972 ~~and 10852~~. It shall also comply with the provisions of ~~section 10845~~rule 10940, including but not limited to the 25-page restriction.

(4) Any failure to comply with the provisions of this subdivision shall constitute valid ground for summarily dismissing or denying the petition.

(g) A copy of the petition shall be concurrently served on the Division of Workers' Compensation, Medical Provider Network Unit (MPN Unit).

(h) The petition shall be assigned to a panel of the Appeals Board in accordance with Labor Code section 115.

Commented [A383]: Language revised to conform to style.

Commented [A384]: Changed to conform to style per ACR 260.

Commented [A385]: Changed to conform to style per ACR 260.

Commented [A386]: Comma deleted to conform to style.

Commented [A387]: Ampersand deleted to conform to style.

Commented [A388]: Comma deleted to conform to style.

Commented [A389]: We propose repealing 10852.

Commented [A390]: "Sections" replaced with "rules" to conform to style; cross-references updated to reflect new rule numbers.

(i) Within 30 days after the filing of an answer or the lapse of the time allowed for filing one, the Appeals Board shall issue a notice for an evidentiary hearing regarding the petition. The evidentiary hearing shall be set for the purposes of specifying the issue(s) in dispute and any stipulations, taking testimony, and listing and identifying any documentary evidence offered. The proceedings shall be transcribed by a court reporter, which the Appeals Board in its discretion may order the petitioner to provide. The Appeals Board also may order the petitioner to pay the costs of the transcript(s) of the evidentiary hearing.

(j) In its discretion, the Appeals Board may provide that the evidentiary hearing shall be conducted by:

(1) One or more ~~C~~commissioners of the Appeals Board; or

(2) A workers' compensation judge appointed under Labor Code section 5309(b) for the sole purpose of holding hearings and ascertaining facts necessary to enable the Appeals Board to render a decision on the petition; a judge appointed for this purpose shall not render any factual determinations, but may make a recommendation regarding the credibility of any witness(es) presented.

The time, date, length~~,~~ and place of the evidentiary hearing shall be determined by the Appeals Board in its discretion.

(k) The assigned panel of the Appeals Board shall determine when the petition is submitted for decision. Within 60 days after submission, the panel shall render a decision on the petition ~~appealing~~ unless, within that time, the panel orders that the time be extended so that it may further study the facts and relevant law.

(l) ~~Special Procedures if Timely Request Made to Administrative Director to Re-Evaluate Initial MPN Determination:~~

~~Nothing in this section shall preclude a person or entity aggrieved by an MPN determination of the AD from making a~~ Where a timely request to the ~~AD~~ Administrative Director for a re-evaluation of an initial MPN determination is filed ~~to re-evaluate that initial determination~~ in accordance with ~~Administrative Director~~ rules 9767.8(f), 9767.13(c)~~,~~ and 9767.14(c) or any similar current or future regulation or statute~~.~~, the following procedures shall apply:

(1) If a request for re-evaluation is made to the Administrative Director prior to filing a petition with the Office of the Commissioners of the Appeals Board, the time for filing such a petition shall be tolled until the Administrative Director files and serves a decision and order regarding the request for re-evaluation.

Commented [A391]: Capitalization removed to conform to style.

Commented [A392]: Comma deleted to conform to style.

Commented [A393]: Unnecessary language deleted.

Commented [A394]: Comma deleted to conform to style; superfluous language deleted.

Commented [A395]: Unnecessary language deleted.

(2) If a request for re-evaluation is made to the ~~AD~~ Administrative Director after a petition appealing the Administrative Director's initial determination is filed with the Office of the Commissioners of the Appeals Board, the petitioner shall file a copy of the re-evaluation request with the Office of the Commissioners in accordance with subdivisions (b)(2) and (b)(3), together with a cover letter requesting that its petition be dismissed without prejudice. A copy of the cover letter and request for re-evaluation shall be concurrently served on the Division of Workers' Compensation MPN Unit.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 4616 et seq., 5300(f), 5309 and 5900 et seq., Labor Code; and Sections 9767.8, 9767.13, 9767.14. 10945, 10972 and 10940, title 8, California Code of Regulations.

Commented [A396]: Abbreviation spelled out to conform to style.

Commented [A397]: Referenced statute and rules added.

§ ~~10953.~~ 10590. Petition Appealing Audit Penalty Assessment–Labor Code Section 129.5(g).

(a) An insurer, self-insured employer~~,~~ or third-party administrator may appeal a civil penalty assessment issued pursuant to subdivision (g) of Labor Code section 129.5 by filing a petition only with the Office of the Commissioners of the Workers' Compensation Appeals Board ~~with any district office or with the Appeals Board in San Francisco,~~ in the same time and manner as ~~provided by the Labor Code and the Rule 10840 et seq. for the filing of~~ a petition for reconsideration, except that a copy of the petition ~~also~~ shall be served on the Administrative Director. The petition shall be accompanied by a completed document cover sheet.

(b) The Administrative Director may answer the petition in the same time and manner provided for the filing of an answer to a petition for reconsideration.

(c) After the filing of a petition appealing a civil penalty assessment issued pursuant to Labor Code section 129.5(g), an adjudication case will be created and an adjudication case number will be assigned. The adjudication case number will be served by the Appeals Board on the Administrative Director and on the parties and attorneys listed on the proof of service to the petition.

(d) Within 15 days after the Administrative Director receives a copy of petition appealing a civil penalty assessment issued pursuant to Labor Code section 129.5(g), the Administrative Director shall submit to the Appeals Board ~~in San Francisco~~ a certified copy of the complete record of proceedings created by the Administrative Director in accordance with Article 6 of the Administrative Director's rules (Cal. Code Regs., tit. 8, § 10113 et seq.) The certified copy of the record shall include, but shall not necessarily be limited to:

(1) The Order to Show Cause Re: Assessment of Civil Penalty and Notice of Hearing;

(2) The ~~A~~answer to the Order to Show Cause;

(3) Any amended complaint or supplemental Order to Show Cause that may have been issued, and any Amended Answer filed in response thereto;

(4) Any pre-hearing written statement filed by the claims administrator;

(5) Any pre-hearing Minutes and pre-hearing Orders;

(6) The Minutes of any Hearing, a transcript or summary of any oral testimony offered at the hearing, any documentary evidence or affidavits offered at the hearing; and

(7) The Administrative Director's written Determination and statement of the basis for the Determination. The original record of the proceedings conducted pursuant to Labor Code section 129.5(g) shall not be filed.

Commented [A398]: Rule 10953 will become rule 10590 with stylistic changes tracked below.

Commented [A399]: Comma deleted to conform to style.

Commented [A400]: This clarifies that this type of petition is not filed at the trial level.

Commented [A401]: Superfluous language deleted.

Commented [A402]: Capitalization removed to conform to style.

Commented [A403]: Capitalization removed to conform to style.

Commented [A404]: Capitalization removed to conform to style.

Commented [A405]: Capitalization removed to conform to style.

(e) The Appeals Board may scan the appeal, any answer, and the photocopied record of the Administrative Director's proceedings into the adjudication file within EAMS. Upon scanning, the paper documents may be destroyed.

(f) The Appeals Board shall determine the appeal using the record created by the Administrative Director in accordance with Article 6 of the Administrative Director's rules (Cal. Code Regs., tit. 8, § 10113 et seq.). The Administrative Director's record shall be deemed part of the Workers' Compensation Appeals Board's record of proceedings.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Section 129.5(g), Labor Code; and Sections 10113 et seq., title 8, California Code of Regulations.

Commented [A406]: Comma deleted to conform to style.

Commented [A407]: Period added to conform to style.

Commented [A408]: Referenced rules added.

ARTICLE 9
Filing and Service of Documents.

§ ~~10508.~~ 10600. ~~Extension of Time for Weekends and Holidays~~ Time for Actions.

(a) The time in which any act provided by these rules is to be performed is computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday or other legal holiday, and then it is also excluded.

(b) If the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Section 5316, Labor Code; Sections 6700, 6701 and 6707, Government Code; and Sections 10, 12, 12a, 12b, 13 and 135, Code of Civil Procedure.

Commented [A409]: Based on California Rule of Court 1.10.

Rule 1.10. Time for actions
(a) Computation of time. The time in which any act provided by these rules is to be performed is computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday or other legal holiday, and then it is also excluded.

(b) Holidays. Unless otherwise provided by law, if the last day for the performance of any act that is required by these rules to be performed within a specific period of time falls on a Saturday, Sunday or other legal holiday, the period is extended to and includes the next day that is not a holiday.

(c) Extending or shortening time. Unless otherwise provided by law, the court may extend or shorten the time within which a party must perform any act under the rules.

By adding a subdivision regarding computation of time, we will clarify how days are calculated for all service and filing rules. This rule reflects current law as discussed in *Messele v. Pitco Foods, Inc.* (2011) 76 Cal.Comp.Cases 956 (Appeals Board en banc).

§ ~~10507~~10605. Time Within Which to Act When a Document is Served by Mail, Fax~~,~~ or E-Mail.

(a) ~~If a~~ When any document is served by mail, fax, e-mail~~,~~ or any method other than personal service, the period of time for exercising or performing any right or duty to act or respond shall be extended by:

(1) Five calendar days from the date of service, if the physical address of the party, lien claimant, attorney~~,~~ or other agent of record being served is within California;

(2) Ten calendar days from the date of service, if the physical address of the party, lien claimant, attorney~~,~~ or other agent of record being served is outside of California but within the United States; and

(3) Twenty calendar days from the date of service, if the physical address of the party, lien claimant, attorney~~,~~ or other agent of record being served is outside the United States.

(b) For purposes of this ~~section~~ rule, "physical address" means the street address or Post Office Box of the party, lien claimant, attorney~~,~~ or other agent of record being served, as reflected in the Official Address Record at the time of service, even if the method of service actually used was fax, e-mail~~,~~ or other agreed-upon method of service.

~~(c) This rule applies whether service is made by the Workers' Compensation Appeals Board, a party, a lien claimant, or an attorney or other agent of record.~~

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Section 5316, Labor Code.

Commented [A410]: Rule 10507 will become rule 10605 with minor changes in language outlined below. In *Messele v. Pitco Foods, Inc.* (2011) 76 Cal.Comp.Cases 956 (Appeals Board en banc) we discussed the rationale for the 2008 amendment to this rule and our deviation from the Code of Civil Procedure section 1013 pertaining to service by methods other than mail.

Commented [A411]: Comma deleted to conform to style.

Commented [A412]: Clarifies that this rule applies to all documents served by any method except personal service.

Commented [A413]: Comma deleted to conform to style.

Commented [A414]: Comma deleted to conform to style.

Commented [A415]: Comma deleted to conform to style.

Commented [A416]: Comma deleted to conform to style.

Commented [A417]: Comma deleted to conform to style.

Commented [A418]: Comma deleted to conform to style.

Commented [A419]: Opening sentence now clarifies that this applies "when any" document is served, rendering this language unnecessary.

§ 10610. Filing and Service of Documents.

Commented [A420]: We propose adding a new rule defining filing and service of documents. This will provide a single reference point for an issue that frequently comes before the Appeals Board, and will provide clarity and ease of reference for practitioners.

Unless a statute or rule provides for a different method for filing or service, a requirement to "file and serve" a document means that a copy of the document must be served on the attorney or non-attorney representative for each party separately represented, on each self-represented party and on any other person or entity when required by statute, rule or court order, and that the document and a proof of service of the document must be filed with the Workers' Compensation Appeals Board.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Section 5500.3, Labor Code.

§ ~~10390, 10391, 10392~~ 10615. Filing of Documents.

Except as otherwise provided by these rules or ordered by the Workers' Compensation Appeals Board, after the filing and processing of an initial ~~a~~Application for ~~a~~Adjudication of ~~c~~Claim or other case opening document, all documents required or permitted to be filed under the rules of the Workers' Compensation Appeals Board shall be filed only in EAMS or with the district office having venue.

(a) Except as provided by ~~section 10603(a)~~rule 10677(a), no "original" business records, medical records or other documentary evidence shall be filed with the Workers' Compensation Appeals Board. Only a photocopy or other reproduction of an original document shall be filed. All paper documents that are scanned into EAMS are destroyed after filing pursuant to ~~section~~ rule 10205.10.

(b) A document is deemed filed on the date it is received, if received prior to 5:00 p.m. on a court day (i.e., Monday through Friday, except designated State holidays). An electronically transmitted document shall be deemed to have been received by EAMS when the electronic transmission of the document into EAMS is complete. A document received after 5:00 p.m. of a court day shall be deemed filed as of the next court day.

(c) When a paper document is filed by mail or by personal service, the Workers' Compensation Appeals Board shall affix on it an appropriate endorsement as evidence of receipt. The endorsement may be made by handwriting, hand-stamp, electronic date stamp or by other means. The endorsement shall serve as confirmation of successful filing unless ~~in accordance with this subdivision ,~~ the Administrative Director returns the document to the filer and notifies the filer, through the service of a Notice of Document Discrepancy, that the document has not been accepted for filing and the filer fails to correct the discrepancy within 15 days.

(d) When a document is filed electronically, confirmation of successful filing shall be made in the manner described by rule 10206.3.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 126, 5500.3, 5501.5 and 5501.6, Labor Code; and Sections 10205.10, 10206.3 and 10677, title 8, California Code of Regulations.

Commented [A421]: This paragraph is current rule 10390 in its entirety.

Commented [A422]: Capitalization added to reflect correct full name of the form.

Commented [A423]: "Section" replaced with "rule" to conform to style; cross-reference updated to reflect new rule number.

Commented [A424]: "Section" replaced with "rule" to conform to style.

Commented [A425]: Language from subdivisions (a) and (c) of rule 10392.

Commented [A426]: From rule 10392(b).

Commented [A427]: When a document is filed in hard-copy, the filer receives a Notice of Document Discrepancy via U.S. mail if the document is rejected. This can occur even after a document is stamped in and accepted for filing at the window, and may take some time. If the parties resubmit the corrected document within 15 days of the Notice of Document Discrepancy, the document will be filed and the date of filing refers back to the original filing attempt. If the parties resubmit the document more than 15 days after the Notice of Document Discrepancy, the document will be filed and the date of filing will be the date on which the document is actually received.

When a document is filed electronically, it is given a batch ID or an L3 automatically. If the filing time is before 5:00 pm, it is deemed filed that day. If the filing time is after 5:00 pm, it is deemed filed the next day. If the document is rejected after the EAMS batch is run (every 2 hours or overnight), the party filing the document receives a resubmission ID that is good for 15 days. The filing party may submit a corrected version of the document within the 15-day period to receive a filing date and date stamp that relates back to the original filing date.

Commented [A428]: Confirmation of successful filing of document submitted electronically is made in accordance with rule 10206.3, which states:

§ 10206.3. Time of Filing of Documents
(a) An electronically transmitted document shall be deemed to have been received by EAMS when the electronic transmission of the document into EAMS is complete. A document received electronically after 5:00 pm of a court day (i.e., Monday through Friday, except designated State holidays) shall be deemed filed as of the next court day.
(b) When an e-form is filed electronically, the party filing the document shall verify completion of filing pursuant to the procedures set forth in the EAMS E-Form Filing Reference Guide. In the absence of following the procedures set forth in the EAMS E-Form Filing Reference Guide, there is no presumption that EAMS received the document.
(c) When a document is filed using jet filing, the party filing the document shall verify completion of filing pursuant to the EAMS JET File Business Rules and Technical Specifications, Version 4.1. In the absence of a confirmation of successful filing, there is no presumption that EAMS received the document.

§ ~~10397~~. 10617. Restrictions on the Rejection for Filing of Documents Subject to a Statute of Limitations or a Jurisdictional Time Limitation.

(a) An ~~a~~Application for ~~a~~Adjudication of ~~c~~Claim, a petition for reconsideration, a petition to reopen, or any other petition or other document that is subject to a statute of limitations or a jurisdictional time limitation shall not be rejected for filing solely on the basis that:

Commented [A429]: Capitalization added to reflect correct full name of the form.

(1) The document is not filed in the proper office of the Workers' Compensation Appeals Board;

(2) The document has been submitted without the proper form, or it has been submitted with a form that is either incomplete or contains inaccurate information; or

(3) The document has not been submitted with the required document cover sheet and/or document separator sheet(s), or it has been submitted with a document cover sheet and/or document separator sheet(s) not containing all of the required information.

(b) A document that is subject to a statute of limitations or a jurisdictional time limitation may be rejected for filing if it does not contain a combination of information sufficient to establish the case or cases to which the document relates or, if it is a case opening document, sufficient information to open an adjudication file. If a document is rejected in accordance with this subdivision, the Administrative Director shall return the document to the filer and shall notify the filer, through the service of a Notice of Document Discrepancy, that the document has not been accepted for filing. The Notice of Document Discrepancy shall specify the nature of the discrepancy(ies) and the date of the attempted filing, and it shall state that the filer shall have 15 days from the service of the Notice within which to correct the discrepancy(ies) and resubmit the document for filing. If the document is corrected and resubmitted for filing within 15 days, or at a later date upon a showing of good cause, it shall be deemed filed as of the original date the document was submitted.

(c) Nothing in this ~~section~~ rule shall preclude the discretionary or conditional acceptance for the filing of a document that is subject to a statute of limitations or a jurisdictional time limitation, even if it does not contain a combination of information sufficient to establish the case or cases to which the document relates or, if it is a case opening document, sufficient information to open an adjudication file.

(d) Where a document that is subject to a statute of limitations or a jurisdictional time limitation has been accepted for filing in accordance with this rule, but the document nevertheless cannot be processed by EAMS, the Administrative Director may serve a copy of the filed document on the filing party ~~or lien claimant~~, together with a Notice of Document Discrepancy. The notice may specify the nature of the discrepancy(ies) and request that the party correct the discrepancy(ies) within 15 days after service of the Notice, however, a failure to timely correct the discrepancy(ies) shall not nullify the acceptance of the document for filing.

Commented [A430]: Deleted to conform to definition of party.

(e) Nothing in this ~~section~~ rule shall be deemed to excuse non-compliance with any of other provisions of the rules of the Workers' Compensation Appeals Board or non-compliance with the rules of the Administrative Director. Any such non-compliance may still be a basis for the imposition of sanctions under Labor Code section 5813 and ~~R~~rule ~~10561~~ 10421.

Authority: Article XIV, Section 4, California Constitution; and Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 126, 5316, 5500, 5501 and 5813, Labor Code.

Commented [A431]: "Section" replaced with "rule" to conform to style.

Commented [A432]: Capitalization removed to conform to style

Commented [A433]: Cross-reference updated to reflect new rule number.

Commented [A434]: Added "and"

§ ~~10393~~ 10620. Filing ~~of Medical Reports, Medical-Legal Reports, and Various Records~~ Proposed Exhibits.

Any document that a party proposes to offer into evidence at a trial or expedited hearing shall be filed with the Workers' Compensation Appeals Board at least 20 days prior to the trial unless otherwise ordered by the Workers' Compensation Appeals Board.

~~(a) Except as provided by section 10603, medical reports, medical-legal reports, medical records, and other records and documents shall be filed only in accordance with the following provisions.~~

~~(b) This subdivision shall apply where a declaration of readiness (other than a declaration of readiness for an expedited hearing) is being filed, including a walk-through declaration of readiness.~~

~~(1) When filing a declaration of readiness, the filing party or lien claimant shall file the report of any agreed medical evaluator, any qualified medical evaluator, and any treating physician that: (A) are then in its possession or control; (B) are relevant to the issue being raised by the declaration of readiness; and (C) have not been filed previously. No other medical reports, medical-legal reports, medical records, or other documents shall be filed at that time, unless otherwise ordered by the Workers' Compensation Appeals Board.~~

~~(2) When filing an objection to a declaration of readiness, or within ten days of the filing of the declaration of readiness if no objection is timely filed, each opposing party or lien claimant shall file the report of any agreed medical evaluator, any qualified medical evaluator, and any treating physician that: (A) are then in its possession or control; (B) are relevant to the issue being raised by the declaration of readiness; and (C) have not been filed previously. No other medical reports, medical-legal reports, medical records, or other documents shall be filed at that time, unless otherwise ordered by the Workers' Compensation Appeals Board.~~

~~(c) This subdivision shall apply where a declaration of readiness for an expedited hearing is being filed.~~

~~(1) When filing a declaration of readiness for an expedited hearing, the filing party or lien claimant shall file the report of any agreed medical evaluator, any qualified medical evaluator, and any treating physician that: (A) are then in its possession or control; (B) are relevant to the issue being raised by the declaration of readiness; and (C) have not been filed previously. No other medical reports, medical-legal reports, medical records, or other documents shall be filed at that time.~~

~~(2) When filing an objection to a declaration of readiness for an expedited hearing, or within ten days of the filing of the declaration of readiness if no objection is timely filed, each opposing party or lien claimant shall file the report of any agreed medical evaluator, any qualified medical evaluator, and any treating physician that: (A) are then in its possession or control; (B) are relevant~~

Commented [A435]: Current rule 10393, (former Court Administrator Rule 10233) requires that medical reports, medical-legal reports, and various records be filed together with a declaration of readiness to proceed, together with a settlement, or at the mandatory settlement conference. We propose a blanket rule provide clarity regarding the filing of documents and to enable WCJs to review proposed exhibits prior to trial. In addition, it is impractical and wasteful of existing resources to require parties to file documents prior to this time.

~~to the issue being raised by the declaration of readiness; and (C) have not been filed previously. No other medical reports, medical-legal reports, medical records, or other documents shall be filed at that time.~~

~~(3) All other medical reports, medical-legal reports, medical records, or other documents that are being proposed as exhibits with respect to the issue being raised by the declaration of readiness, and that have not been filed previously, shall be filed at the time of trial, unless otherwise ordered by the Workers' Compensation Appeals Board.~~

~~(d) This subdivision shall apply where a compromise and release or a stipulations with request for award is being filed, with the exception that this subdivision shall not apply when the compromise and release or the stipulations with request for award is being filed on a walk-through basis in accordance with section 10417.~~

~~(1) When filing a compromise and release or a stipulations with request for award, the filing party shall file all agreed medical evaluator reports, qualified medical evaluator reports, treating physician reports, and any other medical records or other records (e.g., wage statements) that: (A) are relevant to a determination of the adequacy of the compromise and release or stipulations with request for award; and (B) have not been filed previously.~~

Commented [A436]: Language simplified and moved to new rule 10700(a).

~~(2) If the compromise and release or the stipulations with request for award is not approved, and the matter is set for a hearing on the adequacy of the proposed settlement, any additional reports, records, or other documents not previously filed that are being proposed as exhibits shall be filed at the time of the adequacy hearing, unless otherwise ordered by the Workers' Compensation Appeals Board.~~

~~(3) If the compromise and release or the stipulations with request for award is not approved at or after the adequacy hearing, and the matter is set for a mandatory settlement conference or trial, then any additional medical reports, medical-legal reports, medical records, or other documents that are being proposed as exhibits shall be filed in the same manner as set forth in subdivisions (g) and (h).~~

~~(e) Excerpted portions of relevant physician, hospital or dispensary records shall be filed in accordance with section 10205.12.~~

~~(f) Excerpted portions of relevant personnel records, wage records and statements, job descriptions, and other business records shall be filed in accordance with section 10205.12.~~

~~(g) At a mandatory settlement conference, rating mandatory settlement conference, priority conference or lien conference, all other medical reports, medical-legal reports, medical records, or other documents that are being proposed as exhibits with respect to the issue being raised by the declaration of readiness, and that have not been filed previously, shall be filed, but only if the~~

~~matter is being set for trial, unless otherwise ordered by the Workers' Compensation Appeals Board.~~

~~(h) At trial, any additional medical reports, medical-legal reports, medical records, or other documents that are being proposed as exhibits with respect to the issue being raised by the declaration of readiness shall be filed, unless otherwise ordered by the Workers' Compensation Appeals Board.~~

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 126, 5316, 5500, 5501 and 5813, Labor Code.

§ ~~10510, 10505, 10608.5~~ 10625. Service.

(a) Except as otherwise provided by these rules at 10300 et seq., service shall be made on the attorney or agent of record of each affected party unless that party ~~or lien claimant~~ is unrepresented, in which event service shall be made directly on the party ~~or lien claimant~~.

(b) A document may be served using the following methods:

(1) Personal service;

(2) First class mail; or

(3) An alternative method that will effect service that is equivalent to or more expeditious than first class mail, limited to either:

(~~I~~ A) The use of express (overnight) or priority mail; or

(~~ii~~ B) The use of a bona fide commercial delivery service or attorney service promising delivery within two business days, as shown on the service's invoice or receipt; or

(4) A party's ~~or lien claimant's~~ preferred method of service if a method has been designated in accordance with rule 10205.6; or

(5) Another method if the serving and receiving parties have previously agreed to some other method of service.

(c) "Proof of service" means a dated and verified declaration identifying the document(s) served, the parties ~~and/ or lien claimants~~ who were served and stating that service has been made. If the proof of service names attorneys for separately represented parties, it must also state which party or parties each of the attorneys served is representing.

(d) Where a party ~~or lien claimant~~ receives notification that the service to one or more parties ~~or lien claimants~~ failed, the server shall promptly re-serve the document on the intended recipient(s) and execute a new proof of service.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Article XIV, Section 4, California Constitution; Sections 4906, 5307.9 and 5316, Labor Code; Section 250, Evidence Code; and Sections 10205.6 and 10300 et seq., title 8, California Code of Regulations.

Commented [A437]: The definitions in this combined new rule come from Cal. Rules of Court, Rule 1.21. Service:
(a) "Service on a party or attorney" Whenever a document is required to be served on a party, the service must be made on the party's attorney if the party is represented.

(b) "Serve and file" As used in these rules, unless a statute or rule provides for a different method for filing or service, a requirement to "serve and file" a document means that a copy of the document must be served on the attorney for each party separately represented, on each self-represented party, and on any other person or entity when required by statute, rule, or court order, and that the document and a proof of service of the document must be filed with the court.

(c) "Proof of service" As used in these rules, "proof of service" means a declaration stating that service has been made as provided in (a) and (b). If the proof of service names attorneys for separately represented parties, it must also state which party or parties each of the attorneys served is representing.

Commented [A438]: From rule 10510(b). Designated service is covered in a different rule rendering subdivision (a) unnecessary in the general rule. Deleted the following portions of subdivision (b) and subdivision (c):

"Except as provided in section 10500, or as otherwise ordered by a workers' compensation judge or the Appeals Board, no party or lien claimant shall be required to serve any document on the injured employee or any dependent(s) of a deceased employee, if the employee or dependent is represented by an attorney or other agent of record.
(c) Nothing in this rule shall preclude more comprehensive service, either as ordered by the Workers' Compensation Appeals Board or in the discretion of the Workers' Compensation Appeals Board or the parties."

Commented [A439]: Deleted to conform to definition of party.

Commented [A440]: Deleted to conform to definition of party.

Commented [A441]: From Rule 10505(b).

Commented [A442]: Numbering changed to conform to style.

Commented [A443]: Deleted to conform to definition of party.

Commented [A444]: Definition of proof of service from Cal. Rules of Court Rule 1.21(c).

Commented [A445]: Deleted to conform to definition of party.

Commented [A446]: From rule 10505(h). Shortened for clarity.

Commented [A447]: Deleted to conform to definition of party.

Commented [A448]: Deleted to conform to definition of party.

§ ~~10500, 10506~~ 10628. Service by the Workers' Compensation Appeals Board.

~~(a) Except as provided in subdivision (b) below Rule _____, the Workers' Compensation Appeals Board may, in its discretion, designate a party or lien claimant, or their attorney or agent of record, to make service of notices of the time and place of hearing, orders approving compromise and release, awards based upon stipulations with request for award and any interim or procedural orders. In deciding whether to exercise this discretion, the Workers' Compensation Appeals Board may consider whether service by it would be more efficient and cost-effective because most or all of the parties, lien claimants, attorneys, or agents of record to be served have specified e-mail or fax as their preferred method of service. If discretion is exercised so as to require designated service, the party, lien claimant, or attorney or agent of record designated to make service shall retain the proof of service and shall not file it unless ordered to do so by the Workers' Compensation Appeals Board.~~

~~(b)~~(a) The Workers' Compensation Appeals Board shall serve the injured employee or any dependent(s) of a deceased employee, whether or not the employee or dependent is represented, and all parties ~~and lien claimants~~ of record with ~~notice of~~ any final order, decision~~,~~ or award issued by it on a disputed issue after submission. The Workers' Compensation Appeals Board shall not designate a party ~~or lien claimant~~, or their attorney or agent of record, to serve any final order, decision~~,~~ or award relating to a submitted ~~disputed~~ issue.

~~(c)~~(b) If the Workers' Compensation Appeals Board effects personal service of a document at a hearing or at a walk-through proceeding, the proof of personal service shall be made by endorsement on the document, setting forth legibly ~~the fact of personal service,~~ the name(s) of the person(s) served, ~~and~~ the date of service and the fact of personal service. The endorsement shall bear the legibly printed name and signature of the person making the service.

~~(d)~~(c) If the Workers' Compensation Appeals Board serves a document by mail, the proof of mail service shall be made by endorsement on the document, setting forth the fact of mail service on the persons or entities listed on the O~~o~~fficial A~~a~~ddress R~~r~~ecord who have not designated e-mail or fax as their preferred method of service. The endorsement shall state the date of mail service and it shall bear the legibly printed name and the signature of the person making the service.

~~(e)~~(d) If the Workers' Compensation Appeals Board electronically serves a document through EAMS on persons or entities listed on the official address record who have designated e-mail or fax as their preferred method of service, the proof of e-mail or fax service shall be made by endorsement on the document, setting forth the fact of e-mail or fax service on the persons or entities listed. ~~the record of electronic service maintained in EAMS shall constitute proof of service on such persons or entities by the Workers' Compensation Appeals Board.~~

~~(d)~~(e) Where a district office of the Workers' Compensation Appeals Board maintains mailboxes for outgoing documents and allows consenting parties, lien claimants and attorneys to obtain their

Commented [A449]: Moved to a new rule on designated service.

Commented [A450]: Imported from 10510. Language deleted to conform to definition of party.

Commented [A451]: Comma deleted to conform to style.

Commented [A452]: Deleted to conform to definition of party.

Commented [A453]: Comma deleted to conform to style.

Commented [A454]: Superfluous language deleted.

Commented [A455]: Added a requirement that name be legibly printed because of problem with illegible handwriting.

Commented [A456]: Capitalized to conform to style.

Commented [A457]: Added a requirement that name be legibly printed because of problem with illegible handwriting.

Commented [A458]: Amended to parallel subdivision (c) of this rule.

Commented [A459]: Rule 10506 is included in new rule with no change in language.

documents from their mailboxes, documents so obtained shall be deemed to have been served on the party, lien claimant or attorney by mail on the date of service specified on the document.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 5316 and 5504, Labor Code.

§10629. Designated Service.

(a) The Workers' Compensation Appeals Board may, in its discretion, designate a party or their attorney or agent of record, to serve any order that is not required to be served by the Workers' Compensation Appeals Board in accordance with Workers' Compensation Appeals Board rule 10628.

(b) In addition to the service required by rule 10615, service shall also be made on the injured employee or any dependent(s) of a deceased employee, whether or not the employee or dependent is represented.

(c) Within 10 days from the date on which designated service is ordered, the person designated to make service shall serve the document and shall file the proof of service.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 5316 and 5504, Labor Code; and Sections 10615 and 10628, title 8, California Code of Regulations.

Commented [A460]: We propose adding a new rule containing a portion of the content of former rule 10500 related to designated service. The changes are mostly non-substantive, except the change noted below in subdivision (c).

Commented [A461]: We propose adding a requirement that the proof of service be filed with the WCAB. While designated service provides a valuable cost savings to the Board, it also creates issues regarding whether and when service occurred. These due process issues can be ameliorated by requiring the POS to be filed.

~~§10501, 10942.~~ 10632. Service on the Division of Workers' Compensation and the Director of Industrial Relations. ~~in Death Cases.~~

(a) When an Application for Adjudication of Claim, ~~s~~Stipulations with ~~r~~Request for ~~a~~Award or ~~c~~Compromise and ~~r~~Release is filed in a death case in which there is a bona fide issue as to partial or total dependency, the filing party shall serve copies of the documents on the Department of Industrial Relations, Death Without Dependents Unit.

(b) Service of all documents on the Subsequent Injuries Benefits Trust Fund shall be made on the Division of Workers' Compensation, Subsequent Injuries Benefits Trust Fund.

(c) Service of documents on the Uninsured Employers Benefits Trust Fund shall be made as follows:

(1) Service shall be made on the Division of Workers' Compensation, Uninsured Employers Benefits Trust Fund – Oakland if the employee's case is venued in one of the following District Offices: Bakersfield, Eureka, Fresno, Oakland, Oxnard, Redding, Riverside, Sacramento, Salinas, San Diego, San Francisco, San Jose, San Luis Obispo, Santa Ana, Santa Rosa, Stockton or Van Nuys.

(2) Service shall be made on the Division of Workers' Compensation, Uninsured Employers Benefits Trust Fund – Los Angeles if the employee's case is venued in one of the following District Offices: Anaheim, Los Angeles, Long Beach, Marina del Rey, Pomona or San Bernardino.

(d) Service of all documents on the Return-to-Work Supplement Program shall be made on the Director of Industrial Relations, Return-to-Work Supplement Program.

(e) Service of all documents on the Independent Bill Review Unit shall be made on the Division of Workers' Compensation, Independent Bill Review Unit.

(f) Service of all documents on the Independent Medical Review Unit shall be made on the Division of Workers' Compensation, Independent Medical Review Unit.

Authority: Sections 133 and 5307, Labor Code.
Reference: Sections 4706.5 and 5501.5, Labor Code.

Commented [A462]: Expanded rule to include additional divisions of the Department of Industrial Relations.

Commented [A463]: Original text of rule 10501 in its entirety.

Commented [A464]: Language added to reflect correct full name of the form.

Commented [A465]: Capitalization added to reflect correct full name of the form.

Commented [A466]: Capitalization added to reflect correct full name of the form.

Commented [A467]: From rule 10942

Commented [A468]: This subdivision provides for service on the UEBTF, using language that mirrors the subdivision regarding service on the SIBTF.

Commented [A469]: This subdivision provides for service on the RTW Supplement Program, using language that mirrors the subdivision regarding service on the SIBTF.

Commented [A470]: This subdivision provides for service on the IBR Unit, using language that mirrors the subdivision regarding service on the SIBTF.

Commented [A471]: This subdivision provides for service on the IMR Unit, using language that mirrors the subdivision regarding service on the SIBTF.

§~~10601, 10607,10608, 10615, 10616~~ 10635. Duty to Serve Documents.

(a) Where documents, including electronic media, are to be offered into evidence, copies shall be served on all adverse parties no later than the mandatory settlement conference, unless good cause is shown.

(b) If a party requests that a defendant provide a computer printout of benefits paid, the defendant shall provide the requesting party with a current computer printout of benefits paid within 20 days. The printout shall include the date and amount of each payment of temporary disability indemnity, permanent disability indemnity, the period covered by each payment, and the date, payee and amount of each payment for medical treatment. This request may not be made more frequently than once in a 120-day period unless there is a change in indemnity payments.

(c) During the continuing jurisdiction of the Workers' Compensation Appeals Board, the parties have an ongoing duty to serve within 10 calendar days of receipt:

(1) Each other with any medical reports received; and

(2) A lien claimant who has requested service of medical reports with any medical reports received unless the lien claimant is not defined as a "physician" by Labor Code section 3209.3 and is not an entity described in Labor Code sections 4903.05(c)(7) and 4903.06(b); and

(3) Any written communication from a physician containing information listed in rule ~~10606~~ 10682 that is maintained in the employer's capacity as an employer. Records from an employee assistance program are not required to be filed or served unless ordered by the Workers' Compensation Appeals Board.

Authority: Sections 133, 4903.6(d), 5307, 5309 and 5708, Labor Code.
Reference: Sections 3209.3, 4600, 4903.05, 4903.06. 4903.6(d), 5001, 5502, 5502(e), 5703 and 5708, Labor Code; Sections 56.05 and 56.10, Civil Code; and Section 10682, title 8, California Code of Regulations.

Commented [A472]: Rule 10601 states that "Where documents, including videotapes, are to be offered into evidence, copies shall be served on all adverse parties no later than the mandatory settlement conference, unless a satisfactory showing is made that all the documents were not available for service by that time." This rule will become subdivision (a) with the words "electronic media" substituted for "videotapes" to include other forms of electronic recording contemplated by Evidence Code section 1551.

Commented [A473]: Subdivision (b) is the portion of current rule 10607 that relates to service of benefit print outs, with minor non-substantive changes in language. The portion of rule 10607 that relates to the requirement that a defendant have a current computer printout of benefits paid available at a Mandatory Settlement Conference (MSC) will be moved to the article regarding hearings.

Commented [A474]: From 10615 with superfluous language omitted and the word "ongoing" substituted for the word "continuing" regarding the duty to serve.

Commented [A475]: From rule 10608(b)(1)-(2) and (c)

Commented [A476]: From 10608(b) & (c) and 10615.

Commented [A477]: From 10616.

Commented [A478]: "Section" replaced with "rule" to conform to style; cross-references updated to reflect new rule numbers.

~~§10608(c)~~ 10637. Service of Medical Reports, Medical-Legal Reports, and other Medical Information on a Non-Physician Lien Claimant.

The provisions of this ~~subdivision~~ rule shall apply to the service of medical reports, medical-legal reports, or other medical information on a non-physician lien claimant.

(~~1~~ a) If a party ~~or lien claimant~~ is requested by a non-physician lien claimant to serve a copy of any medical report, medical-legal report, or other medical information relating to the claim, the party ~~or lien claimant~~ receiving the request shall not serve a copy on the non-physician lien claimant unless ordered to do so by the Workers' Compensation Appeals Board.

(~~2~~ b) A non-physician lien claimant shall not subpoena any medical information. Any subpoena that, in whole or in part, requests medical information shall be deemed quashed in its entirety by operation of law.

(~~3~~ c) A non-physician lien claimant shall not seek to obtain any medical information using a waiver, release, or other authorization signed by the employee. Any such waiver, release, or other authorization shall be deemed invalid by operation of law.

(4 d) A non-physician lien claimant may petition the Workers' Compensation Appeals Board for an order directing a party or other lien claimant in possession or control of any medical report, medical-legal report, or other medical information to serve a copy of that report or information, or a particular portion thereof, on the non-physician lien claimant.

(~~5~~ e) For each document, or a portion thereof, containing medical information that is sought, the petition shall specify each of the following:

(~~A~~ 1) The name of the issuing physician, medical organization (e.g., a group medical practice or hospital), or other entity and the date of the document containing medical information, if known, or if not known, sufficient information that the party ~~or lien claimant~~ from whom it is sought may reasonably be expected to identify it; and

(~~B~~ 2) The specific reason(s) why the non-physician lien claimant believes that the document containing medical information, or a portion thereof, is or is reasonably likely to be relevant to its burden of proof on its lien claim or its petition for costs.

(~~6~~ f) When the petition is filed, a copy shall be concurrently served on the injured employee (or the dependent(s) of a deceased injured employee) and the defendant(s) or, if represented, their attorney or non-attorney of record. In addition, if the medical information is alleged to be in the possession or control of a non-party or another lien claimant, a copy of the petition shall be concurrently served on that non-party or other lien claimant or, if represented, its attorney or non-attorney of record.

Commented [A479]: Subsection c will become rule 10637, with unnecessary and/or redundant language deleted because it is covered by our new rule regarding notices of intention.

Commented [A480]: "Subdivision" replaced with "rule" to conform to style.

Commented [A481]: Deleted to conform to definition of party.

Commented [A482]: Deleted to conform to definition of party.

Commented [A483]: Deleted to conform to definition of party.

(~~7~~ g) The caption of the petition shall identify it as a "Petition by Non-Physician Lien Claimant for Medical Information."

Authority: Sections 133, 4903.6(d), 5307, 5309 and 5708, Labor Code.
Reference: Sections 4903.6(d), 5001, 5502, 5703 and 5708, Labor Code; and Sections 56.05 and 56.10, Civil Code.

ARTICLE 10
Subpoenas

§ ~~10530~~. 10640. Subpoenas.

The Workers' Compensation Appeals Board shall issue subpoenas and subpoenas duces tecum upon request in accordance with the provisions of Code of Civil Procedure sections 1985 and 1987.5 and Government Code section 68097.1. Subpoenas and subpoenas duces tecum shall be on forms prescribed and approved by the Workers' Compensation Appeals Board and shall contain an ADJ number.~~, and for injuries occurring on or after January 1, 1990, shall contain, in addition to the requirements of Code of Civil Procedure 1985, an affidavit that a claim form has been duly filed pursuant to Labor Code section 5401, subdivision (c).~~

Authority: Sections 133 and 5307, Labor Code.
Reference: Sections 130 and 5401, Labor Code; Sections 1985 and 1987.5, Code of Civil Procedure; and Section 68097.1, Government Code.

Commented [A484]: Rule 10530 will become rule 10640 with the changes reflected below.

Commented [A485]: Propose requirement that case number be included. Because only post-application subpoenas are permissible, this will not be burdensome and will assist in the administration of the workers' compensation system.

Commented [A486]: Deleted reference to window period cases.

Commented [A487]: Corrected reference to statutes.

§ ~~10532~~. 10642. Notice to Appear or Produce.

A notice to appear or produce in accordance with Code of Civil Procedure ~~S~~section 1987 is permissible in proceedings before the Workers' Compensation Appeals Board.

Authority: Sections 133 and 5307, Labor Code.
Reference: Section 132, Labor Code; and Section 1987, Code of Civil Procedure.

Commented [A488]: Rule 10532 will become rule 10642 with no changes.

Commented [A489]: Capitalization removed to conform to style.

Commented [A490]: Delete comma, add "and."

Commented [A491]: Referenced statute added.

§ ~~10534.~~10644. ~~Microfilm~~ Subpoenas of Electronic Records.

Where records or other documentary evidence have been recorded or reproduced using the methods described in ~~S~~section 1551 of the Evidence Code and the original records destroyed, the film, legible print thereof or electronic recording shall be produced in response to a subpoena duces tecum. A party offering a film or electronic recording in evidence may be required to provide legible prints thereof or reproductions from the electronic recording.

~~The expense of:~~

~~(a) Inspecting reproductions shall be paid by the party making the inspection; and~~

~~(b) Obtaining microfilm prints shall be borne by the party requiring the same.~~

Authority: Sections 133 and 5307, Labor Code.
Reference: Section 130, Labor Code; and Section 1551, Evidence Code.

Commented [A492]: Rule 10534 will become rule 10554 and will be expanded to cover electronic records in general rather than microfilm.

Commented [A493]: Evidence code section 1551 addresses photographic records of destroyed originals and films in general and not specifically microfilm. Given that electronic records are currently kept in many forms, broadening the rule to accommodate subpoenas for other types of electronic records will clarify that copies of electronic records may be provided in lieu of a destroyed original and that costs of obtaining and inspecting reproductions shall be paid by the subpoenaing party.

Commented [A494]: Because the language of this rule has been broadened, it will encompass more forms of electronic media/records and the deleted language may not reflect current practice.

§ ~~10536.~~ 10647. Witness Fees and Subpoenas.

Medical examiners appointed by the Workers' Compensation Appeals Board or agreed to by the parties when subpoenaed for cross-examination at the Workers' Compensation Appeals Board or deposition shall be paid by the party requiring the attendance of the witness in accordance with the ~~R~~rules of the Administrative Director.

Failure to serve the subpoena and tender the fee in advance based on the estimated time of the trial or deposition may be treated by the Workers' Compensation Appeals Board as a waiver of the right to examine the witness. Service and payment of the fee may be made by mail if the witness so agrees.

Authority: Sections 133 and 5307, Labor Code.
Reference: Sections 130, 131, 4621 and 5710, Labor Code; and Section 2034(i)(2), Code of Civil Procedure.

Commented [A495]: Rule 10536 will become rule 10647 with no change in language.

Commented [A496]: Capitalization removed to conform to style.

§ ~~10537~~10650. Subpoena for Medical Witness.

A subpoena requiring the appearance of a medical witness before the Workers' Compensation Appeals Board must be served not less than ~~ten (~~10~~)~~ days before the time the witness is required to appear and testify.

Authority: Sections 133 and 5307, Labor Code.
Reference: Section 132, Labor Code.

Commented [A497]: Rule 10537 will become rule 10650 with a minor change in language to conform to style.

Commented [A498]: Deleted parenthesis and word "ten" to conform to style.

Commented [A499]: Added language to conform to style.

§ ~~10538~~ 10655. Subpoenas for Medical Information by Non-Physician Lien Claimants.

A lien claimant that is not either a "physician" as defined in Labor Code section 3209.3 or an entity described in Labor Code sections 4903.05(c)(7) and 4903.06(b) shall not issue any subpoena or subpoena duces tecum that seeks to obtain any medical information about an injured worker, but shall instead follow the procedure set forth in ~~section~~ rule 10637. ~~10608(c).~~

Authority: Sections 133, 4903.6(d), 5307, 5309 and 5708, Labor Code.
Reference: Sections 130, 4903.6(d) and 5710(a), Labor Code; and Sections 56.05 and 56.10, Civil Code.

Commented [A500]: Rule 10538 will become rule 10655 without change in language except for a renumbered cross-reference.

Commented [A501]: "Section" replaced with "rule" to conform to style; cross-reference updated to reflect new rule number.

§ ~~10618.~~ 10660. X-Rays.

~~On order of the Appeals Board or workers' compensation judge, a party shall forthwith transmit all X-rays to the person designated in the order.~~

~~X-rays shall be subpoenaed only when they are relevant to pending issues and there is a present and bona fide intent to offer them in evidence. X-rays produced in violation of this rule will be ordered returned to their original custodian at the expense of the party causing them to be produced.~~

Upon reasonable request of a party, X-rays in the possession of, or subject to the control of, an adverse party ~~or lien claimant~~ shall be made available for examination by the requesting party or persons designated by that party at a time or place convenient to the persons to make the examination.

Authority: Sections 133 and 5307, Labor Code.
Reference: Sections 4600 and 5708, Labor Code.

Commented [A502]: Rule 10618 will become rule 10660.

Commented [A503]: Language deleted because parties need greater discretion with electronic records and other methods of providing copies of X-rays and other medical imaging studies.

Commented [A504]: Deleted to conform to definition of party.

ARTICLE 11
Evidence

§ ~~10393, 10600, 10604, 10622, 10634.~~ 10670. ~~Evidence and Reports~~ Documentary Evidence.

The filing of a document does not signify its receipt in evidence and, except for the documents listed in Workers' Compensation Appeals Board rule ~~10750~~ 10803, only those documents that have been received in evidence shall be included in the record of proceedings on the case.

(a) Certified copies of reports or records of any governmental agency, division or bureau shall be admissible in evidence in lieu of the original reports or records.

(b) The Workers' Compensation Appeals Board may decline to receive in evidence:

(1) Any document not listed on the Pre-Trial Conference Statement.

(2) Any document not served prior to the mandatory settlement conference, unless good cause is shown.

(3) Any document not filed 20 days prior to trial or expedited hearing, unless otherwise ordered by a judge or good cause is shown.

(4) Any physician's report that does not comply with Labor Code section 4628 unless good cause has been shown for the failure to comply and, after notice of non-compliance, compliance takes place within a reasonable period of time or within a time prescribed by the workers' compensation judge.

(5) Any report that does not comply with the verification requirements of Labor Code section 5703(a)(2)or 5703(j)(2) .

(c) Where a willful suppression of evidence is shown to exist, it shall be presumed that the evidence would be adverse, if produced.

(d) The remedies in this rule are cumulative to others authorized by law.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 126, 4628, 5316, 5500, 5501, 5703, 5708 and 5813, Labor Code; and Section 10803, title 8, California Code of Regulations.

Commented [A505]: Current rule 10600 with stylistic changes in language.

Commented [A506]: Cross-reference updated to reflect new rule number.

Commented [A507]: Subdivision (a) is rule 10604 with stylistic changes in language.

Commented [A508]: Labor Code section 5502(d)(3) states: If the claim is not resolved at the mandatory settlement conference, the parties shall file a pretrial conference statement noting the specific issues in dispute, each party's proposed permanent disability rating, and listing the exhibits, and disclosing witnesses. Discovery shall close on the date of the mandatory settlement conference. Evidence not disclosed or obtained thereafter shall not be admissible unless the proponent of the evidence can demonstrate that it was not available or could not have been discovered by the exercise of due diligence prior to the settlement conference.

Commented [A509]: Labor Code section 4628(e) states:

Failure to comply with the requirements of this section shall make the report inadmissible as evidence and shall eliminate any liability for payment of any medical-legal expense incurred in connection with the report.

Commented [A510]: Labor Code section 5307(j)(2) states that "Reports are admissible under this subdivision only if the vocational expert has further stated in the body of the report that the contents of the report are true and correct to the best knowledge of the vocational expert. The statement shall be made in compliance with the requirements applicable to medical reports under subdivision (a).

Commented [A511]: Labor Code section 5703(a)(2) states that physician reports "are admissible under this subdivision only if the physician has further stated in the body of the report that there has not been a violation of Section 139.3 and that the contents of the report are true and correct to the best knowledge of the physician. The statement shall be made under penalty of perjury."

Commented [A512]: Subsections (c) and (e) are the last two paragraphs of rule 10622 broadened to include any kind of evidence. Evidence Code section 413 states: "In determining what inferences to draw from the evidence or facts in the case against a party, the trier of fact may consider, among other things, the party's failure to explain or to deny by his testimony such evidence or facts in the case against him, or his willful suppression of evidence relating thereto, if such be the case. "

This has been applied as a non-tort remedy to punish/deter the destruction of evidence. See *Cedars-Sinai Medical Center v. Superior Court* (1998) 18 Cal.4th 1, 11 ("the evidentiary inference that evidence which one party has destroyed or rendered unavailable was unfavorable to that party").

§ ~~10580.~~ 10672. Evidence Taken Without Notice.

Commented [A513]: Rule 10580 will become rule 10672 with no change in language.

Transcripts or summaries of testimony taken without notice and copies of all reports and other matters added to the record, otherwise than during the course of an open hearing, shall be served upon the parties to the proceeding. Unless it is otherwise expressly provided, the parties shall be allowed 10 days after service of the testimony and reports within which to produce evidence in explanation or rebuttal or to request further proceedings before the case shall be deemed submitted for decision.

Authority: Sections 133 and 5307, Labor Code.
Reference: Section 5704, Labor Code.

§ ~~10602.~~ 10675. Formal Permanent Disability Rating Determinations.

Commented [A514]: Rule 10602 will become rule 10675 without change in language.

The Workers' Compensation Appeals Board may request the Disability Evaluation Unit to prepare a formal rating determination on a form prescribed for that purpose by the Administrative Director. The request may refer to an accompanying medical report or chart for the sole purpose of describing measurable physical elements of the condition that are clearly and exactly identifiable. In every instance the request shall describe the factors of disability in full.

The report of the Disability Evaluation Unit in response to the request shall constitute evidence only as to the percentage of the permanent disability based on the factors described, and the report shall not constitute evidence as to the existence of the permanent disability described.

The report of the Disability Evaluation Unit shall be filed and served on the parties and shall include or be accompanied by a notice that the case shall be submitted for decision seven (7) days after service unless written objection is made within that time.

Authority: Sections 133 and 5307, Labor Code.
Reference: Sections 4660 and 5708, Labor Code.

§ ~~10603.~~ 10677. Oversized Exhibits, Diagnostic Imaging, Physical Exhibits~~,~~ and Exhibits on Media.

(a) The following exhibits shall be filed only at the time of trial:

(1) Oversized documents, other than medical reports, that are:

(A) Larger than 11 x 17 inches (e.g., maps, diagrams~~,~~ and schematic drawings); and

(B) Over 25 pages in length;

(2) Diagnostic imaging, including but not limited to any X-ray, computed axial tomography (CAT) scan, magnetic resonance imaging (MRI), nuclear medicine, positron emission tomography (PET) scan, mammography, ultrasound~~,~~ or other similar medical imaging that is stored on digital, film~~,~~ or other non-paper media;

(3) Original business or office records;

(4) Physical objects or other tangible things;

(5) Any CD-ROM, DVD~~,~~ or other digital media, including but not limited to:

(A) Digital photographs;

(B) Digital video recordings; and

(C) Digital audio recordings;

(6) Videotapes, audiotapes, films and other non-digital video and/or audio recordings or images; and

(7) Photographs printed on paper.

(b) Unless otherwise ordered by the Workers' Compensation Appeals Board, any exhibit listed in subdivision (a) that is offered into evidence (whether or not admitted into evidence) shall be retained by the filing party (or an agent of the filing party) until the later of either:

(1) Five years after the filing of the initial ~~a~~Application for ~~a~~Adjudication of Claim (or other case opening document); or

(2) At least six months after all appeals have been exhausted or the time for seeking appellate review has expired with respect to the decision on the issue(s) for which the exhibit was offered in

Commented [A515]: Rule 10603 will become rule 10677 without change in language.

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evidence. After expiration of the later of these two time periods, the party may destroy the exhibit, unless the Workers' Compensation Appeals Board has ordered that the exhibit be preserved for a longer period.

(c) Before and during the period of retention, the filing party shall:

(1) Maintain the exhibit under conditions that will protect it against loss, destruction~~,~~ or tampering, and that will preserve its quality and integrity as far as practicable;

Commented [A522]: Comma deleted to conform to style.

(2) At the request of any other party to the action, promptly permit the party to inspect or view the exhibit; and

(3) At the request of any other party to the action, and if practicable, promptly furnish the party a copy of the exhibit or promptly permit the party to make a copy.

For purposes of subsection (c), the term "exhibit" shall include any item listed in subsection (a), whether or not the party ~~or lien claimant~~ in possession or control of that item intends to offer it in evidence.

Commented [A523]: Deleted to conform to definition of party.

(d) Any disputes regarding subdivision (c), including but not limited to issues of timing and costs, may be submitted for determination to the Workers' Compensation Appeals Board.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 5309, 5701, 5703, 5704 and 5708, Labor Code

§ ~~10605.~~ 10680. Reproductions of Documents.

(a) It is presumed a filed photocopy is an accurate representation of the original document. If a party alleges that a filed photocopy is inaccurate or unreliable, the party alleging the document is inaccurate or unreliable shall state the basis for the objection. The filing party must establish that the document is an accurate representation of the original document.

(b) A nonerasable optical image reproduction provided that additions, deletions~~,~~ or changes to the original document are not permitted by the technology, a photostatic, microfilm, microcard, miniature photographic~~,~~ or other photographic copy or reproduction, or an enlargement thereof, of a writing is admissible as the writing itself if the copy or reproduction was made and preserved as a part of the records of a business (as defined by Evidence Code ~~S~~section 1270) in the regular course of that business. The introduction of the copy, reproduction~~,~~ or enlargement does not preclude admission of the original writing if it is still in existence. The Workers' Compensation Appeals Board may require the introduction of a hard copy printout of the document.

(c) A printed representation of images stored on a video or digital medium is presumed to be an accurate representation of the images it purports to represent. This presumption is a presumption affecting the burden of producing evidence. If a party to an action introduces evidence that a printed representation of images stored on a video or digital medium is inaccurate or unreliable, the party introducing the printed representation into evidence has the burden of proving by a preponderance of the evidence, that the printed representation is an accurate representation of the existence and content of the images that it purports to represent.

Authority: Sections 133 and 5307, Labor Code.
Reference: Section 5708, Labor Code; and Section 1270, Evidence Code.

Commented [A524]: Rule 10605 will become rule 10680 with stylistic changes tracked below.

Commented [A525]: From former 10391(b) and (c).

Commented [A526]: Begin rule 10605.

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§ ~~10606.~~ 10682. Physicians' Reports as Evidence.

(a) The Workers' Compensation Appeals Board favors the production of medical evidence in the form of written reports. Direct examination of a medical witness will not be received at a trial except upon a showing of good cause. A continuance may be granted for rebuttal medical testimony subject to Labor Code ~~S~~section 5502.5.

(b) Medical reports should include where applicable:

(1) The date of the examination;

(2) The history of the injury;

(3) The patient's complaints;

(4) A listing of all information received in preparation of the report or relied upon for the formulation of the physician's opinion;

(5) The patient's medical history, including injuries and conditions, and residuals thereof, if any;

(6) Findings on examination;

(7) A diagnosis;

(8) Opinion as to the nature, extent~~,~~ and duration of disability and work limitations, if any;

(9) Cause of the disability;

(10) Treatment indicated, including past, continuing~~,~~ and future medical care;

(11) Opinion as to whether or not permanent disability has resulted from the injury and whether or not it is stationary. If stationary, a description of the disability with a complete evaluation;

(12) Apportionment of disability, if any;

(13) A determination of the percent of the total causation resulting from actual events of employment, if the injury is alleged to be a psychiatric injury;

(14) The reasons for the opinion; and

(15) The signature of the physician.

Commented [A529]: Rule 10606 will become rule 10682 with minor stylistic changes tracked below.

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In death cases, the reports of non-examining physicians may be admitted into evidence in lieu of oral testimony.

(c) All medical-legal reports shall comply with the provisions of Labor Code ~~S~~section 4628. Except as otherwise provided by the Labor Code, including Labor Code ~~S~~sections 4628 and 5703, and the rules of practice and procedure of the Appeals Board, failure to comply with the requirements of this ~~section~~ rule will not make the report inadmissible but will be considered in weighing the evidence.

Authority: Sections 133 and 5307, Labor Code.
Reference: Sections 4628, 5502.5, 5703 and 5708, Labor Code.

Commented [A533]: Capitalization removed to conform to style.

Commented [A534]: Capitalization removed to conform to style.

Commented [A535]: "Section" replaced with "rule" to conform to style.

§ ~~10606.5.~~ 10685. Vocational Experts' Reports as Evidence.

Commented [A536]: Rule 10606.5 will become rule 10685 with no changes in language.

(a) The Workers' Compensation Appeals Board favors the production of vocational expert evidence in the form of written reports. Direct examination of a vocational expert witness will not be received at a trial except upon a showing of good cause. Good cause shall not be found if the vocational expert witness has not issued a report and the party offering the witness fails to demonstrate that it exercised due diligence in attempting to obtain a report. A continuance may be granted for rebuttal testimony if a report that was not served sufficiently in advance of the close of discovery to permit rebuttal is admitted into evidence.

(b) A vocational expert's written report shall meet the following requirements:

(1) The report shall contain a declaration by the vocational expert signing the report stating: "I declare under penalty of perjury that the information contained in this report and its attachments, if any, is true and correct to the best of my knowledge, except as to information that I have indicated I received from others. As to that information, I declare under penalty of perjury that the information accurately describes the information provided to me and, except as noted herein, that I believe it to be true. I further declare under penalty of perjury that there has not been a violation of Labor Code section 139.32." The foregoing declaration shall be dated and signed by the vocational expert and shall indicate the county wherein it was signed.

(2) The report shall disclose the qualifications of the vocational expert signing the report, which may be satisfied by attaching a curriculum vitae.

(3) Except as provided in subdivision (b)(4), the body of the report shall contain a statement, above the declaration under penalty of perjury, that: "No person, other than the vocational expert signing the report, has participated in the non-clerical preparation of the report, including all of the following:

Commented [A537]: Hyphen added.

(i) Taking a history from the employee;

(ii) Reviewing and summarizing medical and/or non-medical records; and

(iii) Composing and drafting the conclusions of the report."

(4) Notwithstanding subdivision (b)(3), it is permissible for a person or persons, other than the vocational expert signing the report, to prepare an initial outline of the employee's history and/or to excerpt prior medical and non-medical records. If this is done, however, the vocational expert signing the report:

(A) Shall review the excerpts and the entire outline and shall make additional inquiries and examinations as are necessary and appropriate to identify and determine the relevant issues;

(B) Shall include in the statement required by subdivision (b)(3) that, as applicable, an initial outline of the employee's history and/or an excerpt of the employee's prior medical and non-medical records were prepared by another person or persons and that the vocational expert signing the report has reviewed any such excerpts and/or outline and has made any additional inquiries and examinations necessary and appropriate to identify and determine the relevant issues; and

(C) Shall comply with subdivision (b)(5), below.

(5) The report shall disclose the name(s) and qualifications of each person who performed any services in connection with the report, including diagnostic studies, other than its clerical preparation.

(c) The vocational expert's report should include, where applicable:

(1) The date(s) of any evaluation(s), interview(s), and test(s);

Commented [A538]: Comma deleted to conform to style.

(2) The history of the injury;

(3) The employee's vocational history;

(4) The injured employee's complaints;

(5) A listing of all information reviewed in preparation of the report or relied upon for the formulation of the vocational expert's opinion;

(6) The injured employee's medical history, including injuries and conditions, and residuals thereof, if any;

(7) Findings and opinion on evaluation;

(8) The reasons for the opinion; and

(9) The signature of the vocational expert.

A failure to comply with the requirements of subdivision (c) will not make the report inadmissible but will be considered in weighing the evidence.

(d) Statements concerning any vocational expert's bill for services are admissible only if they comply with subdivision (b)(1).

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 139.32, 4628, 5502(d)(3) and 5703(j), Labor Code.

ARTICLE 12
Settlements

§ ~~10393, 10870, 10882~~ 10700. Approval of Settlements.

(a) When filing a ~~c~~Compromise and ~~r~~Release or a ~~s~~Stipulations with ~~r~~Request for ~~a~~Award, the filing party shall file all agreed medical evaluator reports, qualified medical evaluator reports, treating physician reports, and any other ~~medical records or other~~ records ~~(e.g., wage statements)~~ that~~: (A)~~ are relevant to a determination of the adequacy of the ~~c~~Compromise and ~~r~~Release or ~~s~~Stipulations with ~~r~~Request for ~~a~~Award~~; and (B)~~ that have not been filed previously.

(b) The Workers' Compensation Appeals Board shall inquire into the adequacy of all ~~c~~Compromise and ~~r~~Release agreements and ~~s~~Stipulations with ~~r~~Request for ~~a~~Award, and may set the matter for hearing to take evidence when necessary to determine whether the agreement should be approved or disapproved, or issue findings and awards.

(c) Agreements that provide for the payment of less than the full amount of compensation due or to become due and undertake to release the employer from all future liability will be approved only where it appears that a reasonable doubt exists as to the rights of the parties or that approval is in the best interest of the parties. ~~No agreement shall relieve an employer of liability for vocational rehabilitation benefits unless the Workers' Compensation Appeals Board makes a finding that there is a good faith issue which, if resolved against the injured employee, would defeat the employee's right to all workers' compensation benefits.~~

Authority: Sections 133 and 5307, Labor Code.
Reference: Sections 4646, 5001, 5100.6, 5002 and 5702, Labor Code.

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Commented [A544]: Former 10882 with no change in language.

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Commented [A546]: Capitalization added to reflect correct full name of the form.

Commented [A547]: Former 10870 with reference to vocational rehabilitation deleted; vocational rehabilitation is no longer a benefit provided to injured workers.

§ ~~10886~~. 10702. Service of Settlements on Lien Claimants.

Where a lien claim is on file with the Workers' Compensation Appeals Board, and a ~~c~~Compromise and ~~r~~Release agreement or ~~s~~Stipulations with ~~r~~Request for ~~a~~Award or order is filed, a copy of the ~~c~~Compromise and ~~r~~Release agreement or ~~s~~Stipulations with Request for Award shall be served on the lien claimant.

No lien claim shall be disallowed or reduced unless the lien claimant has been given notice and an opportunity to be heard.

Authority: Sections 133 and 5307, Labor Code.
Reference: Sections 4903, 4903.05, 4903.1, 4903.4, 4904, 4904.1, 4905 and 4906, Labor Code.

Commented [A548]: Propose renumbering with no change in language.

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§ ~~10875.~~ 10705. Procedures~~s~~—Labor Code Section 3761.

Where the insurer has attached a declaration to the ~~c~~Compromise and ~~r~~Release agreement or ~~s~~Stipulations with ~~r~~Request for ~~a~~Award that it has complied with the provisions of Labor Code ~~S~~sections 3761~~, subdivision~~ (a), and 3761~~, subdivision~~ (b), the Workers' Compensation Appeals Board may approve the ~~c~~Compromise and ~~r~~Release or ~~s~~Stipulations with ~~r~~Request for ~~a~~Award without hearing or further proceedings.

Where a workers' compensation judge or the Appeals Board has approved a ~~c~~Compromise and ~~r~~Release or ~~s~~Stipulations with ~~r~~Request for ~~a~~Award and the insurer has failed to show proof of service pursuant to Labor Code ~~S~~section 3761~~, subdivision~~ (b), the workers' compensation judge or the Appeals Board, after giving notice and an opportunity to be heard to the insurer, shall award expenses as provided in Labor Code ~~S~~section 5813 upon request by the employer.

Any request for relief under Labor Code ~~S~~section 3761~~, subdivision~~ (b)~~,~~ or Labor Code ~~S~~section 3761~~, subdivision~~ (d), shall be made by the filing of a petition pursuant to ~~R~~rule ~~10450~~ 10510, together with a Declaration of Readiness to Proceed.

~~This rule shall apply to injuries on or after January 1, 1994.~~

Authority: Sections 133 and 5307, Labor Code.
Reference: Section 3761, Labor Code; and Section 10510, title 8, California Code of Regulations.

Commented [A553]: Renumbered with minor changes. Labor Code section 3761(b) includes the requirement that an insurer provide notice of facts that would disprove a claim. In relevant part, it states "Failure by the insurer to provide the required notice shall not prohibit the board from approving a compromise and release agreement, or stipulation; however, the board shall order the insurer to pay reasonable expenses as provided by section 5813.

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Commented [A568]: Capitalization removed to conform to style; cross-reference updated to reflect new rule number.

Commented [A569]: Language no longer necessary due to the passage of time.

ARTICLE 13
Hearings

§ ~~10414.~~10742. Declaration of Readiness to Proceed.

(a) Except when a hearing is set on the Workers' Compensation Appeals Board's own motion, no matter shall be placed on calendar unless one of the parties has filed and served a ~~d~~Declaration of ~~r~~Readiness to ~~p~~Proceed in the form prescribed by the Appeals Board. The ~~d~~Declaration of ~~r~~Readiness to ~~p~~Proceed shall be served on all parties ~~and lien claimants~~ in accordance with rule 10610.

(b) A lien claimant shall not file a Declaration of Readiness to Proceed unless:

(1) The underlying case of the injured employee or the dependent(s) of a deceased employee has been resolved or

(2) The injured employee or the dependent(s) of a deceased employee choose(s) not to proceed with their case.

~~Where the declaration of readiness is for a lien conference or lien trial, it shall be served on all parties and lien claimants listed on the official participant record in EAMS at the time of service and, if represented, on their attorney or nonattorney representative(s) of record.~~

~~(c)(1) Except for a lien claimant listed in section 10205.10(c)(5), a declaration of readiness shall not be filed by any person or entity unless it is a "party" as defined by section 10301(dd).~~

~~(2) Where a lien claimant is required to pay a filing or activation fee, it shall not file a declaration of readiness unless it has:~~

~~(A) Paid the requisite fee; and~~

~~(B) Entered a valid confirmation number for that fee in the confirmation number field of the declaration of readiness form. If the lien claimant asserts it is exempted from payment of a fee, it shall indicate the basis for the claimed exemption in the designated field of the lien form.~~

(~~d~~c) All declarations of readiness to proceed shall state under penalty of perjury that the moving party has made a genuine, good faith effort to resolve the dispute before filing the ~~d~~Declaration of ~~r~~Readiness to ~~p~~Proceed, and shall state with specificity ~~the same~~ on the ~~d~~Declaration of ~~r~~Readiness to ~~p~~Proceed the efforts made to resolve those issues. Unless a status or priority conference is requested, the declarant shall also state under penalty of perjury that the moving party has completed discovery and is ready to proceed on the issues specified in the ~~d~~Declaration of ~~r~~Readiness to Proceed.

~~(e)(1) A false declaration or certification by any party, lien claimant, attorney or representative, including a false declaration or certification pertaining to payment of a lien filing or activation fee,~~

Commented [A570]: Language added to reflect the correct full name of the form.

Commented [A571]: Language added to reflect the correct full name of the form.

Commented [A572]: Deleted to conform to definition of party.

Commented [A573]: Reference to general service rule will allow us to avoid restating service rules.

Commented [A574]: We propose defining a lien claimant as a party even when the case in chief is not yet resolved. Therefore, we have added language to provide that adjudication of applicant's case takes priority over lien claimants.

Commented [A575]: We propose covering this in article 16, liens, rule 10877.

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Commented [A577]: Language added to reflect the correct full name of the form.

Commented [A578]: We propose requiring the party filing a DOR to specify the efforts made to resolve the dispute on the DOR.

Commented [A579]: Language added to reflect the correct full name of the form.

Commented [A580]: This is addressed in the lien rules.

~~may give rise to proceedings under Labor Code section 134 for contempt or Labor Code section 5813 for sanctions.~~

~~(2) Except for lien claimants listed in section 10205.10(e)(5), if a declaration of readiness is filed without complying with the provisions of this section, the Workers' Compensation Appeals Board may order the hearing off calendar and may impose sanctions and award attorney's fees and costs in accordance with Labor Code section 5813 and Rule 10561.~~

(~~f~~ d) If a party ~~or lien claimant~~ is represented by an attorney or non-attorney representative any ~~d~~Declaration of ~~r~~Readiness to Proceed filed on behalf of the party shall be executed by the attorney or non-attorney representative.

(e) ~~Except for lien claimants listed in section 10205.10(e)(5), i~~If a ~~d~~Declaration of ~~r~~Readiness to Proceed is filed without complying with the provisions of this section, the Workers' Compensation Appeals Board may order the hearing off calendar and may impose sanctions and award attorney's fees and costs in accordance with Labor Code section 5813 and ~~R~~rule ~~10561~~ 10421.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 4903.05, 4903.06, 5500.3, 5502 and 5813, Labor Code; and Sections 10421 and 10610, title 8, California Code of Regulations.

Commented [A581]: We propose adding these lien claimants to the definition of parties.

Commented [A582]: Deleted to conform to definition of party.

Commented [A583]: Revised to conform to proposed definition of non-attorney representatives in new rule 10305(n).

Commented [A584]: Language added to reflect the correct full name of the form.

Commented [A585]: Revised to conform to proposed definition of non-attorney representatives in new rule 10305(n).

Commented [A586]: Former subdivision (e)(2) of this rule with stylistic changes, language added to reflect the correct full name of the form, and updated cross-reference.

§ ~~10416.~~ 10744. Objection to Declaration of Readiness to Proceed.

(a) Any objection to a ~~d~~Declaration of ~~r~~Readiness to ~~p~~Proceed shall be filed and served within ~~ten~~ 10 calendar days after service of the declaration. The objection shall set forth, under penalty of perjury, the specific reason why the case should not be set or why the requested proceedings are inappropriate.

(b) A false declaration or certification filed under this ~~section~~ rule by any party~~, lien claimant~~, petitioner, attorney or non-attorney representative may give rise to proceedings under Labor Code section 134 for contempt or Labor Code section 5813 for sanctions.

(c) If a party is represented by an attorney or non-attorney representative, any objection to the Declaration of Readiness to Proceed shall be executed by the attorney or non-attorney representative. ~~If a party or lien claimant is represented, the attorney or representative shall execute any objection to the declaration of readiness to proceed on behalf of the party. Declarations of readiness to proceed shall be reviewed by the presiding workers' compensation judge or any workers' compensation judge designated by the presiding judge, who will determine on the basis of the facts stated in the declaration whether the objection should be sustained.~~

(d) If a party has received a copy of the ~~d~~Declaration of ~~r~~Readiness to ~~p~~Proceed and has not filed an objection under this ~~section~~ rule, that party shall be deemed to have waived any and all objections to proceeding on the issues specified in the declaration, absent extraordinary circumstances.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 134, 5500.3, 5502 and 5813, Labor Code.

Commented [A587]: Language added to reflect the correct full name of the form.

Commented [A588]: "Ten" deleted to conform to style.

Commented [A589]: Deleted to conform to definition of party.

Commented [A590]: Revised to conform to proposed definition of non-attorney representatives in new rule 10305(n).

Commented [A591]: Amended language to be identical to proposed rule 10625.

Commented [A592]: Deleted to conform to practice.

Commented [A593]: Language added to reflect the correct full name of the form.

Commented [A594]: "Section" replaced with "rule" to conform to style.

Commented [A595]: Referenced statute added.

§ ~~10420.~~ 10745. Setting the Case.

Commented [A596]: We propose renumbering with no changes in language.

The Workers' Compensation Appeals Board, upon the receipt of a Declaration of Readiness to Proceed, may, in its discretion, set the case for a type of proceeding other than that requested. The Workers' Compensation Appeals Board may on its own motion set any case for conference or trial.

Authority: Sections 133 and 5307, Labor Code.
Reference: Section 5310, Labor Code.

§ ~~10548~~ 10748. Continuances.

Requests for continuances are inconsistent with the requirement that workers' compensation proceedings be expeditious and are not favored. Continuances will be granted only upon a clear showing of good cause. Where possible, reassignment pursuant to ~~section~~ rule 10346 shall be used to avoid continuances.

Authority: Sections 133 and 5307, Labor Code.
Reference: Article XIV, Section 4, California Constitution; Sections 5502 and 5502.5, Labor Code; and Section 10346, title 8, California Code of Regulations.

Commented [A597]: Renumbered with no substantive changes.

Commented [A598]: "Section" replaced with "rule" to conform to style.

§ ~~10544.~~ 10750. Notice of Hearing.

The Workers' Compensation Appeals Board shall either serve or, under rule 10629, cause to be served notice on all parties and their attorneys or non-attorney representatives of record of the time and place of each hearing~~s~~ scheduled, whether or not the hearing affects all parties ~~on all parties and lien claimants, and their attorneys or other agents of record~~, as provided in ~~R~~rule ~~10500~~ 10610.

Notice of hearing shall be given at least ~~ten (~~10~~)~~ days before the date of hearing, except where:

(a) Notice is waived;

(b) A different time is expressly agreed to by all parties and concurred in by the Workers' Compensation Appeals Board.~~; or~~

~~(c) The proceedings are governed by Article 19 pertaining to claims against the Subsequent Injuries Benefits Trust Fund.~~

Authority: Sections 133 and 5307, Labor Code.
Reference: Section 5504, Labor Code; and Section 10610, title 8, California Code of Regulations.

Commented [A599]: Renumbered with stylistic changes, changes to cross-references and elimination of SIBTF as explained below, and to clarify that all parties should receive notice of all hearings.

Commented [A600]: Deleted to conform to definition of party.

Commented [A601]: Capitalization removed to conform to style.

Commented [A602]: Cross-reference updated to reflect new rule number.

Commented [A603]: "Ten" deleted to conform to style.

Commented [A604]: Rule 10944 "Notice of Hearing" in article 19 was repealed, effective 1-1-03. The rule stated: "Where a claim against the Subsequent Injuries Fund is filed subsequent to the filing of an original application, thirty (30) days' notice of hearing shall be given on the Subsequent Injuries Fund application." Since rule 10944 was repealed, it is no longer necessary to provide an exception to the general rule in SIBTF cases.

§ 10751. Appearances by Representatives Not Identified on Notice of Representation.

Commented [A605]: Proposed new rule to assist in regulating appearances by non-attorneys.

(a) An attorney or non-attorney representative may appear on a party's behalf if identified on a notice of representation.

(b) An attorney or non-attorney representative who has not been identified on a notice of representation shall file a notice of appearance that includes the full legal name of the represented party and the name, address and telephone number of the attorney or non-attorney representative and associated entity, if any.

Authority: Sections 133, 5307, Labor Code.
Reference: Sections 4903, 4903.6 and 4906, Labor Code

§ ~~10563, 10563.1.~~ 10752. Appearances Required. ~~of Parties to Case-in-Chief.~~

(a) Each applicant and defendant ~~party~~ ~~as defined by section rule~~ ~~10301(dd)(1) and (2) (i.e., an injured employee, a dependent, or a defendant~~) shall appear or have an attorney or ~~other~~ non-attorney representative appear at all hearings pertaining to the case-in-chief. ~~This section shall not apply to lien conferences or lien trials.~~ Neither a lien conference nor a lien trial is a hearing pertaining to the case-in-chief.

(b) Each required party shall have a person available with settlement authority at all hearings. This person need not be present if the party's attorney or ~~other~~ non-attorney representative is present and can obtain immediate authority ~~by telephone~~.

(c) A represented injured employee or dependent shall personally appear at any mandatory settlement conference. Failure to appear shall not be a basis for dismissal of the application.

(d) A lien claimant need not appear at any mandatory settlement conference or trial in the case-in chief, but shall be immediately available by telephone with full settlement authority and shall notify defendant(s) of the telephone number at which the defendant(s) may reach the lien claimant.

~~(d) Where liability for the claim has been accepted, a lien claimant with liens or claims of cost totaling $25,000.00 or more shall appear in person or by attorney or other representative at all mandatory settlement conferences and trials in the case-in-chief, except expedited hearings. If the lien claimant does not personally appear, the attorney or other representative appearing shall either have full settlement authority or have full settlement authority immediately available by telephone.~~

~~(e) Where liability for the claim has been accepted, a lien claimant with liens or claims of cost totaling less than $25,000.00 need not appear at any mandatory settlement conference or trial in the case-in-chief, but the lien claimant shall be immediately available by telephone with full settlement authority and shall notify defendant(s) of the telephone number at which the defendant(s) may reach the lien claimant.~~

(~~d~~ e) Any appearance required by this rule may be excused by the Workers' Compensation Appeals Board. Any appearance not required by this rule may be ordered by the Workers' Compensation Appeals Board.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 5502 and 5700, Labor Code.

Commented [A606]: We created separate rules 10563 and 10563.1 for lien claimants and parties in the last rulemaking. We received several public comments suggesting that it was unfair for lien claimants to be required to have settlement authority while defendants did not have to appear with settlement authority. We propose combining the rules to clarify that defendants and lien claimants are both required to have settlement authority.

Commented [A607]: If a lien claimant is an applicant, then the case-in-chief has been resolved, or all proceedings are lien proceedings.

Commented [A608]: Changed section to rule to conform to style.

Commented [A609]: Revised to conform to proposed definition of non-attorney representatives in new rule 10305(n).

Commented [A610]: Revised to conform to proposed definition of non-attorney representatives in new rule 10305(n).

Commented [A611]: Given the variety of modern communication options, we propose eliminating the requirement that this be accomplished by telephone.

Commented [A612]: Modification of the prior requirements in former rule 10563.1(d) and (e). At this time, we do not believe it is necessary to differentiate between lien claimants based upon the value of their liens; as long as lien claimants are available immediately with settlement authority, an appearance should not be required by rule.

Commented [A613]: From rule 10563.1(c).

Commented [A614]: From rule 10563.1(d).

§ ~~10562.~~ 10755. Failure to Appear at Mandatory Settlement Conference or Trial.

(a) Where ~~a party~~ an applicant or defendant served with notice of a mandatory settlement conference fails to appear either in person or by attorney or non-attorney representative at the mandatory settlement conference, the workers' compensation judge may:

(1) Dismiss the application after issuing a ~~ten (~~10~~)~~ -day notice of intention to dismiss, or

(2) Close discovery and ~~forward the case to the presiding workers' compensation judge to~~ set the case for trial.

(b) Where a ~~party~~ an applicant or defendant served with notice of trial fails to appear either in person or by attorney or non-attorney representative, the workers' compensation judge may:

(1) Dismiss the application after issuing a ~~ten (~~10~~)~~ -day notice of intention to dismiss, or

(2) Hear the evidence and, after service of the minutes of hearing and summary of evidence that shall include a ~~ten (~~10~~)~~ -day notice of intention to submit, make such decision as is just and proper.

(c) Where a lien claimant served with notice of a mandatory settlement conference or trial ~~fails to appear at the conference either in person or by attorney or representative, and~~ fails to have a person with settlement authority available as required by rule 10752~~ by telephone~~, the workers' compensation judge may:

(1) Dismiss the lien claim after issuing a ~~ten (~~10~~)~~ -day notice of intention consistent with rules 10832 and 10888 to dismiss with or without prejudice, or

(2) Close discovery and ~~forward the case to the presiding workers' compensation judge to~~ set the case for trial on all issues, or

(3) Defer the issue of the lien and set the case for trial on the remaining issues.

~~(c)Where a lien claimant served with notice of a trial fails to appear, the workers' compensation judge may:~~

~~(1) Dismiss the lien claim after issuing a ten (10)-day notice of intention to dismiss with or without prejudice, or~~

~~(2) Hear the evidence and, after service of the minutes of hearing and summary of evidence that shall include a ten (10)-day notice of intention to submit, make such decision as is just and proper, or~~

~~(3) Defer the issue to of the lien and submit the case on the remaining issues.~~

Commented [A615]: Added to clarify that rule only addresses these hearings.

Commented [A616]: Former (b).

Commented [A617]: Deleted to conform to new definition of party.

Commented [A618]: Revised to conform to proposed definition of non-attorney representatives in new rule 10305(n).

Commented [A619]: Colon added.

Commented [A620]: Use numerical; added hyphen.

Commented [A621]: Amended to conform to practice.

Commented [A622]: Former (a).

Commented [A623]: Changed to conform to new definition of party.

Commented [A624]: Revised to conform to proposed definition of non-attorney representatives in new rule 10305(n).

Commented [A625]: Colon added.

Commented [A626]: Use numerical; added hyphen.

Commented [A627]: Use numerical; added hyphen.

Commented [A628]: Former (d).

Commented [A629]: Former (d).

Commented [A630]: Added for clarity

Commented [A631]: To conform to new rule 10752.

Commented [A632]: Colon added.

Commented [A633]: Use numerical; hyphen added.

Commented [A634]: Language added to clarify that dismissal for this reason is subject to the same procedural requirements as any other notice of intent and lien dismissal.

Commented [A635]: This does not reflect current practice.

Commented [A636]: A WCJ may wish to defer the lien issues until after the trial in the case in chief.

(~~f~~ d) If the workers' compensation judge defers a lien issue, upon the issuance of ~~his or her~~ a decision on the remaining issues, the workers' compensation judge shall:

(1) Issue a ~~ten (~~10~~)~~-day notice of intention to order payment of the lien in full or in part, or

(2) Issue a ~~ten (~~10~~)~~-day notice of intention to disallow the lien, or

(3) Continue the lien issue to a lien conference.

(~~g~~ e) Where a required party after notice fails to appear at either a trial or a mandatory settlement conference and good cause is shown for failure to appear, the workers' compensation judge may take the case off calendar or may continue the case to a date certain.

Authority: Sections 133 and 5307, Labor Code.
Reference: Article XIV, Section 4, California Constitution; Sections 5502(e) and 5708, Labor Code; and Section 10752, title 8, California Code of Regulations.

Commented [A637]: Changed to conform to style per ACR 260.

Commented [A638]: Colon added.

Commented [A639]: "Ten" deleted to conform to style; hyphen added.

Commented [A640]: "Ten" deleted to conform to style; hyphen added.

Commented [A641]: Former subsection (c).

Commented [A642]: Added for clarity.

Commented [A643]: Referenced section added.

§ ~~10549.~~10757. Appearances in Settled Cases

When the parties represent to the workers' compensation judge assigned to the case that a case has been settled, the case ~~shall~~ may be taken off calendar ~~and no appearances shall be required~~.

Authority: Sections 133 and 5307, Labor Code.
Reference: Article XIV, Section 4, California Constitution; and Sections 5502 and 5502.5, Labor Code.

Commented [A644]: Propose renumbering with no substantive change in language.

Commented [A645]: We propose changing "Shall" to "may" to give the WCJ more discretion.

§ 10758. Status Conferences.

At the discretion of the workers' compensation judge, any hearing except a trial may be re-designated as a status conference.

Authority: Sections 133 and 5307, Labor Code.
Reference: Article XIV, Section 4, California Constitution; and Sections 5502 and 5502.5, Labor Code.

Commented [A646]: We propose a new rule to clarify that a WCJ may redesignate a hearing as a status conference. Labor Code section 5502(d)(1) requires that if a dispute is not resolved at an MSC, trial be held within 75 days. Labor Code section 5502(c) contemplates regular status conferences when a DOR to a priority conference is filed and discovery is not complete.

§ ~~10353, 10629~~. 10759. Mandatory Settlement Conferences. ~~Authority~~

(a) In accordance with Labor Code section 5502~~, subdivision (e)(2),~~ the workers' compensation judge shall have authority to inquire into the adequacy and completeness, including provision for lien claims, of ~~c~~Compromise and ~~r~~Release agreements or ~~s~~Stipulations with ~~r~~Request for ~~a~~Award or orders, and to issue orders approving ~~c~~Compromise and ~~r~~Release agreements or awards or orders based upon approved stipulations. ~~The workers' compensation judge may make orders and rulings regarding admission of evidence and discovery matters, including admission of offers of proof and stipulations of testimony where appropriate and necessary for resolution of the dispute(s) by the workers' compensation judge, and may submit and decide the dispute(s) on the record pursuant to the agreement of the parties. The workers' compensation judge shall not hear sworn testimony at any conference.~~

~~(b)~~ The workers' compensation judge may temporarily adjourn a conference to a time certain to facilitate a specific resolution of the dispute(s) subject to Labor Code section 5502~~, subdivision (e~~ d)(1).

Subject to the provisions of Labor Code section 5502.5 and rule ~~10416~~ 10744, upon a showing of good cause, the workers' compensation judge may continue a mandatory settlement conference to a date certain, may continue it to a status conference on a date certain, or may take the case off calendar. In such a case, the workers' compensation judge shall note the reasons for the continuance or order taking off calendar in the minutes. The minutes shall be served on all parties ~~and lien claimants,~~ and their representatives.

~~(c)~~(b) Absent resolution of the dispute(s), the parties shall file ~~at the mandatory settlement conference~~ a joint pre-trial statement setting forth the issues and stipulations for trial, witnesses, and a list of exhibits.~~, and the proposed permanent disability rating as provided by Labor Code Section 4065. The parties may modify their proposed ratings only when evidence, relevant to the proposed ratings, and disclosed or obtained after the mandatory settlement conference, becomes admissible pursuant to Labor Code section 5502, subdivision (e)(3).~~

(1) Each exhibit listed must be clearly identified by author/provider, date, and title or type (e.g., "the July 1, 2008 medical report of John Doe, M.D. (3 pages)"). Each medical report, medical-legal report, medical record, or other paper or record having a different author/provider and/or a different date is a separate "document" and must be listed as a separate exhibit, with the exception that the following documents may be listed as a single exhibit, unless otherwise ordered by the Workers' Compensation Appeals Board:

(A) Excerpted portions of physician, hospital or dispensary records, provided that the party offering the exhibit designates each excerpted portion by the title of the record or document, by the date or dates of treatment or other service(s) covered by the record or document, by the author or authors of the record or document, and by any available page number(s) (e.g., Bates-numbered pages of records or documents photocopied and numbered by a legal copy service). Only the relevant excerpts of physician, hospital or dispensary records shall be admitted in evidence;

Commented [A647]: Labor Code section 5502 has been amended. Propose eliminating cross-reference to subdivision as unnecessarily precise.

Commented [A648]: Capitalization added to reflect correct full name of the form.

Commented [A649]: Capitalization added to reflect correct full name of the form.

Commented [A650]: Capitalization added to reflect correct full name of the form.

Commented [A651]: Moved to subdivision (c) of this rule.

Commented [A652]: Citation revised to conform to style.

Commented [A653]: Section 5502(e)(1) used to say "In all cases, a mandatory settlement conference shall be conducted not less than 10 days, and not more than 30 days, after the filing of a DOR..." This language is now 5502(d)(1).

Commented [A654]: Cross-reference updated to reflect new rule number.

Commented [A655]: Deleted to conform to new definition of party.

Commented [A656]: Redundant language deleted.

Commented [A657]: Comma deleted to conform to style.

Commented [A658]: Labor Code section 4065 was repealed. Therefore, the parties are no longer required to file proposed ratings.

Commented [A659]: New subdivision (2) is from 10629(d), without changes to the language.

(B) Excerpted portions of personnel records, wage records and statements, job descriptions, and other business records provided that the party offering the exhibit designates each excerpted portion by the title of the record or document, by the date or dates covered by the record or document, by the author or authors of the record or document, and by any available page number(s) (e.g., Bates-numbered pages of records or documents photocopied and numbered by a legal copy service). Only the relevant excerpts of personnel records, wage records and statements, job descriptions, and other business records shall be admitted in evidence; and

(C) Explanation of Benefits (EOB) letters.

(c) The workers' compensation judge may make orders and rulings regarding admission of evidence and discovery matters, including admission of offers of proof and stipulations of testimony where appropriate and necessary for resolution of the dispute(s) by the workers' compensation judge, and may submit and decide the dispute(s) on the record pursuant to the agreement of the parties. ~~The workers' compensation judge shall not hear sworn testimony.~~

(d) ~~A summary of conference proceedings including~~ ~~t~~ The joint ~~p~~Pre-~~t~~Trial ~~c~~Conference ~~s~~Statement, ~~and~~ the disposition, and any orders shall be filed by the workers' compensation judge in the record of the proceedings on a form prescribed and approved by the Appeals Board and shall be served on the parties.

Authority: Sections 133, 5307 and 5502, Labor Code.
Reference: Sections 5502 and 5502.5, Labor Code; and Section 10744, title 8, California Code of Regulations.

Commented [A660]: Moved from subdivision (a) of this rule.

Commented [A661]: While a WCJ would not ordinarily receive sworn testimony, the parties may consent to convert the hearing into a trial and sworn testimony may be received.

Commented [A662]: Capitalization added to reflect correct full name of the form.

Commented [A663]: It is important that orders be memorialized in the record of proceedings.

§ ~~10541.~~ 10761 Submission at Conference.

(a) A workers' compensation judge may receive evidence and submit an issue or issues for decision at a conference hearing if the parties ~~so~~ agree.

(b) If documentary evidence is required to determine the issue or issues being submitted, the parties shall comply with the provisions of ~~R~~rule ~~10629~~ 10759 regarding the listing and filing of exhibits.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 5708 and 5709, Labor Code; and Section 10759, title 8, California Code of Regulations.

Commented [A664]: Renumbered.

Commented [A665]: Superfluous language deleted.

Commented [A666]: Capitalization removed to conform to style.

Commented [A667]: Cross-reference updated to reflect new rule number.

Commented [A668]: Referenced rule added

§ ~~10552~~. 10782. Expedited Hearings ~~Calendar~~.

(a) Where injury to any part or parts of the body is accepted as compensable by the employer, a party is entitled to an expedited hearing and decision upon the filing of an ~~a~~Application for ~~a~~Adjudication of ~~c~~Claim and a ~~d~~Declaration of ~~r~~Readiness to ~~p~~Proceed pursuant to ~~section~~ 10414 rule 10625 establishing a bona fide, good faith dispute pursuant to Labor Code section 5502(b). ~~as to:~~

~~(1) The employee's entitlement to medical treatment pursuant to Labor Code section 4600;~~

~~(2) Whether the employee is required to obtain treatment within a medical provider network;~~

~~(3) A medical treatment appointment or medical-legal examination;~~

~~(4) The employee's entitlement to, or the amount of, temporary disability indemnity payments;~~

~~(5) The employee's entitlement to compensation from one or more responsible employers when two or more employers dispute liability as among themselves; or~~

~~(6) Any other issue as prescribed in the rules and regulations of the Administrative Director.~~

(b) An expedited hearing may be set upon request where injury to any part or parts of the body is accepted as compensable by the employer and the issues include medical treatment or temporary disability for a disputed body part or parts.

(c) A workers' compensation judge assigned to a case ~~involving a disputed body part or parts~~ may re-designate the expedited hearing as a mandatory settlement conference, receive a ~~p~~Pre-~~t~~Trial ~~c~~Conference ~~s~~Statement pursuant to Labor Code section 5502, close discovery~~,~~ and schedule the case for trial on the issues presented, if the workers' compensation judge determines~~, in consultation with the presiding workers' compensation judge~~, that the case is not appropriate for expedited determination.

(d) Grounds for the re-designation of an expedited hearing include~~s~~, but ~~is~~ are not limited to, cases where the direct and cross-examination of the applicant will be prolonged, or where there are multiple witnesses who will offer extensive testimony.

(e) The parties are expected to submit for decision all matters properly in issue at a single trial and to produce 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.

Authority: Sections 133, 5307 and 5502, Labor Code.
Reference: Section 5502, Labor Code; and Section 10625, title 8, California Code of Regulations.

Commented [A669]: Capitalization added to reflect correct full name of the form.

Commented [A670]: Language added to reflect the correct full name of the form.

Commented [A671]: "Section" replaced with "rule" to conform to style; cross-reference updated to reflect new rule number.

Commented [A672]: Cross-referenced statute rather than repeating it; language deleted.

Commented [A673]: We propose eliminating this language because an expedited hearing may be re-designated as an MSC in other circumstances.

Commented [A674]: Capitalization and formatting added to reflect correct full name of the form.

Commented [A675]: Comma deleted to conform to style.

Commented [A676]: Amended to conform to practice.

Commented [A677]: Language revised to correct grammar.

§ ~~10555~~.10785. Priority Conferences. ~~Calendar~~

(a) A priority conference shall be set upon the filing of a ~~d~~Declaration of ~~r~~Readiness to Proceed requesting a priority conference that shows that:

(1) The applicant is represented by an attorney and the issues in dispute include employment and/or injury arising out of and in the course of employment; or

(2) The applicant ~~is or~~ claims ~~he or she~~ ~~was~~ to have been employed by an illegally uninsured employer and the issues in dispute include employment and/or injury arising out of and in the course of employment.

~~(b) Upon a showing of good cause, a workers' compensation judge may continue the matter to a status conference. At each priority or status conference, the parties shall be prepared to set the matter for trial or to provide a plan to complete discovery.~~

~~(c)~~(b) To the extent possible, all priority and status conferences in a case shall be conducted by the same workers' compensation judge. When discovery is complete, or when the workers' compensation judge determines that the parties have had sufficient time to complete reasonable discovery, the case shall be set for trial as expeditiously as possible.

Authority: Sections 133, 5307 and 5502, Labor Code.
Reference: Section 5502, Labor Code.

Commented [A678]: Language added to reflect the correct full name of the form.

Commented [A679]: Changed to reflect amendments to 5502.

Commented [A680]: Changed to conform to style per ACR 260.

Commented [A681]: We propose deleting this subdivision as Labor Code section 5502.5 already addresses continuances of conferences or hearings required by Labor Code section 5502.

§ ~~10451.1~~ 10786. Determination of Medical-Legal Expense Dispute

(a) Within 60 days of service of a medical-legal provider objection to a denial of a portion of the medical-legal provider's billing pursuant to Labor Code section 4622(c), the defendant shall file a Declaration of Readiness to Proceed to a status conference. Upon filing of a Declaration of Readiness to Proceed, the medical-legal provider shall be added to the official address record.

(b) A medical-legal provider may file a petition for reimbursement of medical-legal expenses where a defendant has failed to timely object to a medical-legal expense pursuant to Labor Code section 4622 or 60 days have elapsed from a provider objection pursuant to Labor Code section 4622(c) and the defendant has not filed a Declaration of Readiness to Proceed to a status conference. Upon filing of a petition for reimbursement of medical-legal expenses:

(1) The medical-legal provider shall be added to the official address record.

(2) The defendant shall either pay the expenses and file proof of payment or file a Declaration of Readiness to Proceed to a status conference.

(c) Notwithstanding the filing of a Declaration of Readiness to Proceed in accordance with the provisions of subdivisions (a) and (b) of this rule, the Workers' Compensation Appeals Board may defer hearing and determining this issue until the underlying claim of the employee or dependent has been resolved or has been abandoned.

(d) The employer and the medical-legal provider are required to appear at the status conference. If the matter is not resolved at the status conference, the matter may be set for a mandatory settlement conference on the medical-legal expense dispute.

(e) Bad Faith Actions or Tactics:

(1) If the Workers' Compensation Appeals Board determines that, as a result of bad faith actions or tactics, a defendant failed to comply with the requirements, timelines and procedures set forth in Labor Code sections 4622, 4603.3 and 4603.6 and the related Rules of the Administrative Director, the defendant shall be liable for the medical-legal provider's reasonable attorney's fees and costs, if any, and for sanctions under Labor Code section 5813 and rule 10421. The amount of the attorney's fees, costs and sanctions payable shall be determined by the Workers' Compensation Appeals Board; however, for bad faith actions or tactics occurring on or after the effective date of this rule, the monetary sanctions shall not be less than $500.00. These attorney's fees, costs and monetary sanctions shall be in addition to any penalties and interest that may be payable under Labor Code section 4622 or other applicable provisions of law, and in addition to any lien filing fee, lien activation fee or IBR fee that, by statute, the defendant might be obligated to reimburse to the medical-legal provider.

(2) If the Workers' Compensation Appeals Board determines that, as a result of bad faith actions or tactics, a medical-legal provider has improperly asserted that a defendant failed to comply with the requirements, timelines and procedures set forth in Labor Code sections 4622 and 4603.6 and

Commented [A682]: Rule 10451.1 provides a process for medical-legal providers to pursue payment when payment is denied for reasons not subject to Independent Bill Review. We propose re-organizing and amending 10451.1 to require the employer to file a DOR in the event of a dispute.

Labor Code section 4622(c) provides:

(c) If the employer denies all or a portion of the amount billed for any reason other than the amount to be paid pursuant to the fee schedules in effect on the date of service, the provider may object to the denial within 90 days of the service of the explanation of review. If the provider does not object to the denial within 90 days, neither the employer nor the employee shall be liable for the amount that was denied. If the provider objects to the denial within 90 days of the service of the explanation of review, the employer shall file a petition and a declaration of readiness to proceed with the appeals board within 60 days of service of the objection. If the employer prevails before the appeals board, the appeals board shall order the physician to reimburse the employer for the amount of the paid charges found to be unreasonable.

Commented [A683]: This language has been streamlined because the standards for the application of sanctions are already found within Labor Code section 5813 and rule 10421.

the related Rules of the Administrative Director, the medical-legal provider shall be liable for the defendant's reasonable attorney's fees and costs, if any, and for sanctions under Labor Code section 5813 and rule 10421. The amount of the attorney's fees, costs and sanctions payable shall be determined by the Workers' Compensation Appeals Board; however, for bad faith actions or tactics occurring on or after the effective date of this section, the monetary sanctions shall not be less than $500.00.

Authority: Sections 133, 4622 4627 and 5307, Labor Code.
Reference: Sections 4603.3, 4603.6, 4622 and 5813, Labor Code; and Section 10421, title 8, California Code of Regulations.

§ ~~10560, 10566, 10578~~. 10787. ~~Submission at Single~~ Trials.

(a) The parties ~~are expected to~~ shall submit for decision all matters properly in issue at a single trial and ~~to~~ produce at the trial 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. However, a workers' compensation judge may order that the issues in a case be bifurcated and tried separately upon a showing of good cause.

(b) Unless already filed in EAMS, the parties shall have all proposed exhibits available at trial for review by and filing with the trial workers' compensation judge.

(c) Minutes of hearing and summary of evidence shall be prepared at the conclusion of each ~~hearing~~ trial and filed in the record of proceedings. They shall include:

(1) The names of the commissioners, deputy commissioner or workers' compensation judge, reporter, the parties present, attorneys or other agents appearing therefor and witnesses sworn;

(2) The place and date of said trial ~~hearing~~;

(3) The ~~interlocutory orders~~, admissions and stipulations, the issues and matters in controversy, a descriptive listing of all exhibits received for identification or in evidence (with the identity of the party offering the same).

(4) ~~and~~ The disposition, and if ~~If~~ the disposition is an order taking off calendar or a continuance, the reasons for the order ~~therefor shall be given~~ which shall include the time and action, if any, required for submission;

(5) A summary of the evidence required by Labor Code ~~S~~section 5313 that shall include a fair and unbiased summary of the testimony given by each witness;

(6) If motion pictures are shown, a brief summary of their contents or a stipulation that parties waive a summary; and

(7) A fair statement of any offers of proof.

~~If the disposition is an order taking off calendar or a continuance, the reason therefor shall be given.~~

(d) Notwithstanding subdivision (c), the summary of evidence need not be filed upon waiver by the parties or upon issuance of a stipulated order, decision, or award.

Authority: Sections 133 and 5307, Labor Code.
Reference: Sections 5708 and 5313, Labor Code.

Commented [A684]: Former rule 10560.

Commented [A685]: Clarify mandatory to submit all issues

Commented [A686]: We propose adding this language to assist WCJs with the orderly management of trials.

Commented [A687]: Begin former rule 10566

Commented [A688]: Reference to hearing changed to trial for consistency within the rule.

Commented [A689]: Capitalization removed to conform to style.

Commented [A690]: Reference to hearing changed to trial for consistency within the rule.

Commented [A691]: Revised to conform to current practice.

Commented [A692]: Broke out disposition into own subsection and deleted archaic language

Commented [A693]: Capitalization removed to conform to style.

Commented [A694]: Would allow waiver by stipulation.

Commented [A695]: Word added to conform to style.

Commented [A696]: Moved to subdivision (b)(3) of this rule.

Commented [A697]: From current rule 10578

§ ~~10453~~. 10788. Petition for Automatic Reassignment of Trial or Expedited Hearing to Another Workers' Compensation Judge.

A party shall be entitled to automatic reassignment of a trial or expedited hearing to another workers' compensation judge in accordance with the provisions of this ~~section~~ rule. Consolidated cases are to be considered as one case within the meaning of this ~~section~~ rule.

(a) An injured worker shall be entitled to one reassignment of a judge for trial or expedited hearing. ~~If the injured worker has not exercised the right to automatic reassignment and one or more lien claimants have become parties and no testimony has been taken, the lien claimants shall be entitled to one reassignment of judge for a trial, which may be exercised by any of them.~~ The defendants shall be entitled to one reassignment of judge for a trial or expedited hearing, which may be exercised by any of them. The lien claimants shall be entitled to one reassignment of judge for a lien trial, which may be exercised by any of them. This ~~section~~ rule is not applicable to conference hearings. In no event shall any motion or petition for reassignment be entertained after the swearing of the first witness at a trial or expedited hearing.

(b) If the parties are first notified of the identity of the workers' compensation judge assigned for trial at a mandatory settlement conference, at a status conference, at a lien conference, at a priority conference, or upon reassignment at the time of trial, to exercise the right to automatic reassignment a party must make an oral motion immediately upon learning the name of the judge to whom the case has been assigned for trial. The motion shall be acted upon immediately by the presiding workers' compensation judge or a person designated by the presiding judge.

(c) If the parties are first notified of the identity of the workers' compensation judge assigned for trial or expedited hearing by a notice of trial served by mail, to exercise the right to automatic reassignment a party must file a petition requesting reassignment not more than five (5) days after ~~the service~~ receipt of the notice of trial or expedited hearing. The presiding judge or a person designated by the presiding judge shall rule on any petition for automatic reassignment.

(d) If a petition for automatic reassignment is granted and results in a new trial date, a new notice of trial or expedited hearing shall be served. Unless required for the convenience of the Workers' Compensation Appeals Board, no continuance shall be granted by reason of a petition or motion under this ~~section~~ rule. If a continuance is granted, another trial or expedited hearing shall be scheduled as early as possible.

(e) If a party files a petition or makes a motion for automatic reassignment and no other workers' compensation judge is available in the office, the assignment shall be made by a deputy commissioner of the Appeals Board.

Authority: Section 5307, Labor Code.
Reference: Section 5310, Labor Code.

Commented [A698]: Reordered and added subdivisions.

Commented [A699]: "Section" replaced with "rule" to conform to style.

Commented [A700]: "Section" replaced with "rule" to conform to style.

Commented [A701]: Language modified to make clear that lien claimants have a right to reassignment in a lien trial. Because a lien trial is a distinct proceeding, it seems appropriate for lien claimants to have a right to reassignment whether or not a defendant has exercised the right previously.

Commented [A702]: We propose amending this rule to provide 5 days from receipt. Given that a party has an additional 5 days to respond when service is made by mail, the language "not more than five days" is potentially ambiguous.

Commented [A703]: Petitions for automatic reassignment often result in maintaining the same trial date with the WCJ to be determined.

Commented [A704]: "Section" replaced with "rule" to conform to style.

§ ~~10417~~. 10789. Walk-Through Documents.

~~(a) A "walk-through" document is a document that is presented to a workers' compensation judge for immediate action. Notwithstanding the provisions of section 10414 (relating to the filing of declarations of readiness) and section 10544 (relating to notices of hearing), the following provisions shall govern walk-through documents.~~

~~(b) Each district office will have a designee of the presiding workers' compensation judge available to assign walk-through cases from 8:00 a.m. to 11:00 a.m. and 1:00 p.m. to 4:00 p.m. on court days.~~

(~~e~~a) The following documents may be submitted on a walk-through basis without a party filing a Declaration of Readiness to Proceed or the Workers' Compensation Appeals Board serving a notice of hearing:

(1) Compromise and ~~r~~Releases;

(2) Stipulations with ~~r~~Request for ~~a~~Award;

(3) Petitions for attorney's fees for representation of the applicant at a deposition; and

(4) Petitions to compel attendance at a medical examination or deposition;

(5) Petitions for Costs.

(~~d~~b) The following procedures shall be followed for filing walk-through documents:

(1) A walk-through settlement document (i.e., a ~~e~~Compromise and ~~r~~Release or a ~~s~~Stipulations with ~~r~~Request for ~~a~~Award), and all supporting medical reports and other supporting documents not previously filed, shall be filed directly with the workers' compensation judge at the date and time of the walk-through. ~~The party presenting the walk-through settlement shall use the appropriate form, document cover sheet, and document separator sheet.~~ Permanent and stationary medical or medical-legal reports shall be indicated as such. In addition, each walk-through settlement document (i.e., a ~~e~~Compromise and ~~r~~Release or a ~~s~~Stipulations with ~~r~~Request for ~~a~~Award) shall be accompanied by a proof of service showing that the settlement document was served on all other parties to the settlement, on any defendant not executing the settlement who may be liable for the payment of additional compensation, and on all lien claimants whose liens have not been resolved. A case opening settlement document being submitted for a walk-through shall be submitted no later than noon (12:00 p.m.) of the court day before any action on the walk-through, and shall be designated as a walk-through document. All documents in support of the settlement document shall be submitted at the walk-through with the assigned judge.

(2) A walk-through petition (i.e., a petition for deposition attorney's fees, or a petition to compel attendance at a medical examination or deposition) and all other documents relating to the walk-through petition, including any supporting documentation shall be filed directly with the workers'

Commented [A705]: Propose moving to definitions.

Commented [A706]: Moved to (c) below.

Commented [A707]: Added to clarify that no declaration of readiness is necessary

Commented [A708]: Capitalization added to reflect correct full name of the form.

Commented [A709]: Capitalization added to reflect correct full name of the form.

Commented [A710]: Changed to lower case to conform to style in (3) and (4).

Commented [A711]: We propose allowing petitions for costs on a walk through basis.

Commented [A712]: Capitalization added to reflect correct full name of the form.

Commented [A713]: Capitalization added to reflect correct full name of the form.

Commented [A714]: Duplicative language deleted.

Commented [A715]: Capitalization added to reflect correct full name of the form.

Commented [A716]: Capitalization added to reflect correct full name of the form.

compensation judge at the date and time of the walk-through. The party presenting the walk-through petition shall use the appropriate form, document cover sheet, and document separator sheet. In addition, at the date and time of the walk-through, the party filing the walk-through petition shall file a proof of service directly to the workers' compensation judge, as follows:

(A) For a petition for attorney's fees for representation of the applicant at a deposition, a proof of service showing service on the injured worker and the defendant alleged to be liable for paying the fees.

(B) For a petition to compel attendance at a medical examination or deposition, a proof of service showing service on the injured worker, the injured worker's attorney~~,~~ and all defendants.

Commented [A717]: Comma deleted to conform to style.

(c) Each district office shall have a designee of the presiding workers' compensation judge available to assign walk-through cases from 8:00 a.m. to 11:00 a.m. and 1:00 p.m. to 4:00 p.m. on court days.

Commented [A718]: Moved down from (b) with minor change in language.

(~~e~~d) When appearing for the walk-through proceeding, the party filing the walk-through document shall appear before the district office staff person designated by the presiding judge to assign the walk-through document to a workers' compensation judge. The filing party shall then appear before the assigned judge. If the assigned judge is unavailable for any reason, the filing party shall then proceed to the presiding judge for possible reassignment to another judge.

(~~f~~e) A workers' compensation judge who is presented with a walk-through settlement document shall approve it, disapprove it, suspend action on it, or accept it for later review and action. ~~If a workers' compensation judge is presented with so many walk-through settlement documents that review of them will interfere with the cases scheduled before him or her for hearing, the judge may refer the walk-through settlement to the presiding judge for possible reassignment to another judge.~~

Commented [A719]: Because the WCJ may accept the walk through for later review, this procedure is unnecessary.

(~~g~~f) A walk-through document may be acted on only by a workers' compensation judge at the district office that has venue. If an injured worker has existing cases at two or more district offices that have venue, a walk-through document may be filed at any office having venue over an existing case that is a subject of the walk-through document. An existing case is a case that has been filed and assigned a case number prior to the filing of the walk-through document.

(~~h~~g) A walk-through document may be acted on by any workers' compensation judge except as follows:

(1) If a workers' compensation judge has taken testimony, any walk-through document in that case must be acted on by the judge who took testimony if that judge works at the district office to which the case is assigned, unless the presiding judge allows it to be acted on by another judge.

(2) If a workers' compensation judge has reviewed a document and declined to approve it, a walk-through document in that case must be acted on by the same judge, if that judge works at the district office to which the case is assigned, unless the presiding judge allows it to be acted on by another judge.

(~~i~~h) A workers' compensation judge who is presented with a walk-through petition for attorney's fees petition for costs, or petition to compel attendance shall issue an order in compliance with ~~section~~ rule ~~10349~~ 10832.

Authority: Sections 133 and 5307, Labor Code.
Reference: Sections 4053, 4054, 5001, 5002, 5702 and 5710, Labor Code; and Section 10832, title 8, California Code of Regulations.

Commented [A720]: Added to documents that may be walked through.

Commented [A721]: "Section" replaced with "rule" to conform to style; cross-reference updated to reflect new rule number.

§ ~~10564~~. 10790. Interpreters.

It shall be the responsibility of any party producing a witness requiring an interpreter to arrange for the presence of a qualified interpreter. Subject to the ~~R~~rules of the Administrative Director, the Workers' Compensation Appeals Board may in any case appoint an interpreter and fix the interpreter's compensation.

Commented [A722]: Capitalization removed to conform to style.

~~For injuries before January 1, 1994, interpreter's fees that are reasonably, actually and necessarily incurred and that are not allowed under Labor Code Section 4600 shall be allowed as costs under Labor Code Section 5811. Recovery shall be allowed in the amount charged by the interpreter unless:~~

Commented [A723]: We propose deleting this because interpreter fees are subject to the rules of the Administrative Director in effect on the date of service, rendering this language largely unnecessary.

~~(1) Proof of unreasonableness is entered by the party contesting the reasonableness of the charge, or~~

~~(2) The charge is manifestly unreasonable.~~

~~For injuries on or after January 1, 1994, interpreter's fees that are reasonably, actually and necessarily incurred shall be allowed as provided by Labor Code Sections 4600, 5710 and 5811 as amended July 16, 1993. Interpreter's fees as defined in Labor Code section 4620, that are reasonably, actually and necessarily incurred as provided in Labor Code section 4621, shall be allowed in accordance with the fee schedule set by the Administrative Director.~~

Authority: Sections 130, 133, 5307, and 5708, Labor Code.
Reference: Sections 4600, 4621, 5710 and 5811, Labor Code.

ARTICLE 14
Record of Proceedings

§ ~~10740~~ 10800. Transcripts.

~~Unless otherwise ordered by a commissioner, a deputy commissioner, or a presiding workers' compensation judge, t~~Testimony taken at hearings ~~in compensation proceedings~~ will not be transcribed except upon the written request of a party accompanied by the fee prescribed in the Rules of the Administrative Director, or unless ordered by a commissioner, a deputy commissioner, or presiding workers' compensation judge. Any written request shall be served on all parties.

~~No person shall make a photographic copy of a certified transcript from the Workers' Compensation Appeals Board file except upon payment prescribed by law for a copy of the certified transcript.~~

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 5300, 5301, 5309, 5700, 5701 and 5708, Labor Code; Section 703.5, Evidence Code; and Section 9990, title 8, California Code of Regulations.

Commented [A724]: Rule 10740 will become rule 10800 with the changes tracked below.

Commented [A725]: Unnecessary language deleted; reworded for clarity.

Commented [A726]: Added to clarify that request must be in writing.

Commented [A727]: This is a matter more properly subject to regulation by the Department of Workers' Compensation.

Commented [A728]: Referenced rule added.

§ ~~10750, 10751~~ 10803. Record of Proceedings Maintained in Adjudication File.

(a) The Workers' Compensation Appeals Board's adjudication file shall consist of:

(1) All documents filed ~~or lodged~~ by any party, ~~lien claimant,~~ attorney or other agent of record, and as provided in rule 10205.4; and

(2) The record of proceedings, which ~~(a) The Workers' Compensation Appeals Board's record of proceedings is maintained in the adjudication file and~~ consists of: the pleadings, minutes of hearing~~, and~~ summar~~y~~ies of evidence, certified transcripts, ~~if prepared and filed,~~ proofs of service, admitted evidence ~~received in the course of a hearing~~, exhibits ~~marked~~ identified but not ~~received in~~ admitted as evidence, notices, petitions, briefs, findings, orders, decisions and awards, opinions on decision, reports and recommendations on petitions for reconsideration and/or removal, and the arbitrator's file, if any. Each of these documents is part of the record of proceedings, whether maintained in paper or electronic form. Documents that are in the adjudication file but have not been received or offered ~~in~~ as evidence are not part of the record of proceedings.

(b) Upon approval of a ~~c~~Compromise and ~~r~~Release or ~~s~~Stipulations with ~~r~~Request for ~~a~~Award, all medical reports that have been filed as of the date of approval shall be deemed ~~to have been~~ admitted in evidence and part of the record of proceedings ~~shall be deemed to have been transferred to the record of proceedings~~.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 126 and 5708, Labor Code; and Section 10205.4, title 8, California Code of Regulations.

Commented [A729]: New (a) is the text of current rule 10751, with (a) and (b) switched so that former 10750(a) can be added to new (a)(2).

Commented [A730]: Deleted to conform to definition of party.

Commented [A731]: Moved to new (a).

Commented [A732]: Deleted conditional language. A record of proceedings necessarily only includes a certified transcript if it has been prepared and filed.

Commented [A733]: A document may be admitted into evidence after a hearing. Therefore, we have deleted "in the course of a hearing" and added "documents admitted into evidence" for greater precision of language.

Commented [A734]: Added for completeness.

Commented [A735]: Capitalization added to reflect correct full name of the form.

Commented [A736]: Capitalization added to reflect correct full name of the form.

Commented [A737]: Revised to improve clarity and delete unnecessary language.

Commented [A738]: Referenced rule added.

§ ~~10322, 10753~~ 10807. Inspection of ~~Files~~ Workers' Compensation Appeals Board Records.

(a) The records~~,~~ and files ~~and proceedings~~ of the Workers' Compensation Appeals Board shall not be taken from its offices ~~either~~ on informal request, ~~or~~ in response to a subpoena duces tecum, or in response to any order issued ~~out of~~ by any other court or tribunal.

(b) Except as precluded by Civil Code ~~S~~section 1798.24~~,~~ or Government Code ~~S~~section 6254, certified copies of portions of the records desired by litigants shall be delivered upon payment of fees as provided in the Rules of the Administrative Director.

(c) Except as provided by ~~sections~~ rules 10208.6 and ~~10754~~ 10813, or as ordered by ~~a workers' compensation judge~~ the presiding workers' compensation judge, the presiding workers' compensation judge's designee, or the Appeals Board, the adjudication case files of the Workers' Compensation Appeals Board may be inspected in accordance with the provisions of ~~sections~~ rules 10208.5 and 10208.6.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 126, 127, 5811 and 5955, Labor Code; Section 1798.24, Civil Code; Section 6254, Government Code; and Sections 10208.5, 10208.6 and 10813, title 8, California Code of Regulations.

Commented [A739]: We propose combining these two rules as both deal with how to review WCAB files and/or copies of same.

Commented [A740]: Language from rule 10322.

Commented [A741]: Language from rule 10322.

Commented [A742]: Lower case

Commented [A743]: Remove comma

Commented [A744]: Lower case

Commented [A745]: Language from rule 10753.

Commented [A746]: "Sections" replaced with "rules" to conform to style; cross-references updated to reflect new rule numbers.

Commented [A747]: Changed to PJ or designee because efficient administration of a district office requires a PJ to be aware of these requests.

Commented [A748]: Referenced statutes and rules added.

§ ~~10755~~ 10811. Destruction of Records.

Except as otherwise provided by these rules, or as ordered by a workers' compensation judge or the Appeals Board, the adjudication case files of the Workers' Compensation Appeals Board shall be retained, returned, and destroyed in accordance with the provisions of ~~section 10278.7~~ rule 10208.7.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Section 135, Labor Code; and Section 10208.7, title 8, California Code of Regulations.

Commented [A749]: Rule 10755 refers to rule 10278.7 as containing the procedures for "*retain[ing], return[ing], and destroy[ing]*" records and exhibits (emphasis added).

The reference to 10278.7 in rule 10755 was a typographical error and should have been a reference to 10208.7. We have changed the cross-reference accordingly.

Commented [A750]: Referenced statute added.

§ ~~10754~~ 10813. Sealed Documents.

(a) Upon a showing of good cause as set forth in subdivision (c) of this rule, t~~T~~he presiding workers' compensation judge, the presiding workers' compensation judge's designee, or the Appeals Board may order sealed medical reports, medical records or other documents filed in a case containing references to or discussions of mental or emotional health of any person, sexual habits or practice, use of or addiction to alcohol or other drugs, or other matters of similar character, and information whose release could threaten the safety or wellbeing of the injured worker or others. Sealed documents shall not ~~otherwise~~ be made available for public inspection except by order of ~~a~~ the presiding workers' compensation judge, the presiding workers' compensation judge's designee, or the Appeals Board upon a showing ~~that~~ of good cause ~~exists to permit the inspection~~.

~~(1) A party may seek to have documents sealed by filing a petition to seal documents with either the presiding judge of the district office having venue, or with the Appeals Board. Any petition to seal must be accompanied by a memorandum of points and authorities and a declaration containing facts sufficient to justify sealing consistent with subdivision (b) of this rule.~~

~~(2) In a case involving an unrepresented injured employee, the presiding judge or the Appeals Board may on his, her, or its own motion seal a document or documents after compliance with subdivision (d). Within twenty court days after the order sealing documents, the presiding judge or the Appeals Board shall allow the injured worker an opportunity to object to the order.~~

(b)~~(1)~~ A party requesting that ~~a document or~~ documents be sealed shall file a petition to seal documents or portions thereof ~~for an order sealing the requested records~~ with either~~.~~

~~(b)(2) The party requesting that a record or records be filed under seal must lodge it with~~ the district office ~~under (d) when the petition is filed~~ having venue, or with the Appeals Board, if the matter is pending there. ~~if the matter is pending on petition for reconsideration, removal or disqualification, unless good cause exists for not lodging it. Pending the determination of the petition, the lodged records will be conditionally under seal.~~

(1) ~~The~~ Any petition to seal documents ~~must~~ shall demonstrate good cause and shall be accompanied by a ~~memorandum of points and authorities and a~~ declaration containing facts sufficient to justify the sealing consistent with subdivision (c) of this rule.

(2) Documents that have not been filed prior to the petition to seal may be lodged with the Workers' Compensation Appeals Board concurrently with the filing of the petition to seal. A document shall be lodged in a sealed envelope with a coversheet that includes the ADJ number, a general description of the documents and a statement that "the documents are lodged pending the outcome of a petition to seal."

(3) If necessary to prevent disclosure, the petition, any opposition, and any supporting documents shall be filed in a public redacted version and lodged in a complete version conditionally under seal.

Commented [A751]: We propose reordering the subsections of this rule to reflect the chronological steps in the process of sealing a document. First, documents are identified as potentially "sealable." Next, a party files a petition requesting that the documents be sealed and lodges any documents that were not previously filed. Then, a WCJ must expressly find certain facts in order to seal the documents.

Commented [A752]: Added this phrase to clarify that a document will not automatically be sealed if it references certain content.

Commented [A753]: Changed to PJ or designee per conversation with current PJs, who recommend that this power be reserved for the PJ or designee, not all WCJs, due to the sensitivity of these documents. Also changed to conform to style per ACR 260.

Commented [A754]: We propose adding this phrase to allow a PJ or designee to seal documents related to injured workers in a witness protection program or other similar circumstances.

Commented [A755]: Changed to conform to style per ACR 260.

Commented [A756]: Simplified language with no substantive change.

Commented [A757]: Language moved to new subdivisions (c) and (d), with edits (see comments there).

Commented [A758]: New subdivision (b) is a revised/expanded version of former subdivision (b). The process for lodging documents conditionally under seal in proposed (b)(2) is from former subdivision (c); it has been simplified to reflect current practice.

Commented [A759]: Simplified language with no substantive change.

Commented [A760]: Language adapted/expanded from former subdivision (b)(1).

Commented [A761]: Simplified process from former subdivision (c).

(4) If the presiding worker's compensation judge, the presiding workers' compensation judge's designee, or the ~~Workers' Compensation~~ Appeals Board denies the petition to seal, the clerk shall return the lodged record to the submitting party and shall not place it in the adjudication file.

(5) ~~A document filed with the district office or the Appeals Board~~ Subsequently-filed documents shall not disclose material contained in a document previously ~~filed document that is~~ sealed, conditionally ~~under~~ sealed, or subject to a pending petition to seal.

~~(d)~~(c) The presiding workers' compensation judge, the presiding workers' compensation judge's designee, or the ~~Workers' Compensation~~ Appeals Board may order that a document be filed under seal or sealed only ~~if he, she, or it~~ after expressly ~~finds~~ finding facts that establish:

(1) There exists an overriding public interest that overcomes the right of public access to the record;

(2) The overriding public interest supports sealing the record;

(3) A substantial probability exists that the overriding public interest will be prejudiced if the record is not sealed;

(4) The proposed sealing is narrowly tailored; and

(5) No less restrictive means exists to achieve the overriding public interest.

(d) Documents may be ordered sealed on the motion of the presiding workers' compensation judge, the presiding workers' compensation judge's designee, or the Appeals Board if the injured employee is unrepresented or other good cause exists for sealing the documents. All parties shall be given notice and opportunity to be heard. After the issuance of a notice of intention to seal documents, the documents shall be lodged conditionally under seal pending the issuance of an order sealing the documents or an order finding no good cause to seal the documents.

~~(e)(1) The party requesting that a record be filed under seal shall put it in a manila envelope or other appropriate container, seal the envelope or container, and lodge it with the district office or with the Appeals Board if the matter is pending on petition for reconsideration, removal or disqualification.~~

~~(2) The envelope or container lodged with the court must be labeled "CONDITIONALLY UNDER SEAL."~~

~~(3) The party submitting the lodged record shall affix to the envelope or container a cover sheet that:~~

~~(A) Contains a case number and~~

~~(B) States that the enclosed record is subject to a petition to file the record under seal.~~

Commented [A762]: Language added to conform to style.

Commented [A763]: Changed to conform to style per ACR 260.

Commented [A764]: We propose changing this language to clarify that this subdivision applies to any documents filed in a case after a sealing order issues.

Commented [A765]: Language added to conform to style.

Commented [A766]: Changed to conform to style per ACR 260.

Commented [A767]: Moved from former subdivision (d) with only non-substantive changes to the language.

Commented [A768]: This language was moved and revised from former (a)(1) & (2), which stated:

"(1) A party may seek to have documents sealed by filing a petition to seal documents with either the presiding judge of the district office having venue, or with the Appeals Board. Any petition to seal must be accompanied by a memorandum of points and authorities and a declaration containing facts sufficient to justify sealing consistent with subdivision (b) of this rule.

(2) In a case involving an unrepresented injured employee, the presiding judge or the Appeals Board may on his, her, or its own motion seal a document or documents after compliance with subdivision (d). Within twenty court days after the order sealing documents, the presiding judge or the Appeals Board shall allow the injured worker an opportunity to object to the order."

Commented [A769]: Process for lodging documents conditionally under seal has been simplified and moved to new subdivision (b)(2).

~~(4) Upon receipt of a record lodged under this rule, the district office or the Appeals Board shall endorse the affixed cover sheet with the date of its receipt and must retain but not file the record unless ordered to do so.~~

~~(d) The presiding judge or the Appeals Board may order that a document be filed under seal or sealed only if he, she, or it expressly finds facts that establish:~~

~~(1) There exists an overriding public interest that overcomes the right of public access to the record;~~

~~(2) The overriding public interest supports sealing the record;~~

~~(3) A substantial probability exists that the overriding public interest will be prejudiced if the record is not sealed;~~

~~(4) The proposed sealing is narrowly tailored; and~~

~~(5) No less restrictive means exists to achieve the overriding public interest.~~

(e)(1) If an order is made that a document or documents be sealed, the order shall be filed in the record of the proceedings. The order shall set forth the facts that support the findings and direct the sealing of only those documents and pages, or, if practicable, portions of those documents and pages, that contain the material that needs to be placed under seal.

(2) If the order directs that an entire document shall be sealed, and if the sealed document is contained in a paper adjudication file, the sealed document shall be placed in a sealed envelope, which shall be removed from the file before the file is made available for public inspection. If the sealed document is in an electronic adjudication file, the document shall be marked as sealed. No entirely sealed document in a paper file or an electronic file shall be available for public inspection.

(3) If the order directs that a portion or portions of a document be sealed, and if the partially sealed document is contained in a paper adjudication file, the partially sealed document shall be placed in a sealed envelope, however, a version of the document with the sealed portion redacted shall be made available for public inspection. If the sealed document is in an electronic adjudication file, a version of the document with the sealed portion redacted also shall be electronically maintained and shall be made available for public inspection.

(f) Sealed documents shall be made available for inspection by any party to the case or by ~~his~~ their representative, subject to any reasonable conditions and limitations as the presiding workers' compensation judge, the presiding workers' compensation judge's designee, or the Appeals Board may impose.

~~(g) Sealed documents shall not otherwise be made available for public inspection except by order of a workers' compensation judge or the Appeals Board which shall be made only on a showing that good cause exists to permit the inspection.~~

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.

Commented [A770]: Changed to conform to style per ACR 260.

Commented [A771]: Language added to conform to style; changed to conform to style per ACR 260.

Commented [A772]: Moved to subdivision (a) with non-substantive changes.

Reference: Section 5708, Labor Code; Rule 2.551, California Rules of Court.

§ ~~10760~~ 10818. Recording of ~~Trial Level~~ Proceedings.

(a) For the purposes of this ~~section~~ rule, "recording" means any photographing, recording, or broadcasting of trial level proceedings using video, film, audio, any digital media or other equipment.

(b) Except as provided in this rule, ~~trial level~~ proceedings shall not be photographed, recorded, or broadcast. This rule does not prohibit the Division of Workers' Compensation (DWC) from photographing or videotaping sessions for judicial education or publications and is not intended to apply to closed-circuit television broadcasts solely within DWC or between DWC facilities if the broadcasts are controlled by the DWC and DWC personnel.

(c) Recording shall be permitted only on written order ~~of~~ by the assigned workers' compensation judge ~~assigned to the case as provided in this subdivision~~. The workers' compensation judge ~~in his or her discretion~~ may permit, refuse, or limit~~, or terminate~~ recording.

(1) Any person who wishes to record a ~~trial level~~ proceeding shall make a written request to the ~~presiding~~ assigned workers' compensation judge ~~for permission to record the proceeding~~ and shall serve the written request on all parties at least ~~five~~10 business days before the proceeding commences unless good cause to shorten time is shown. ~~The workers' compensation judge assigned to the proceeding shall rule upon the request. The district office shall promptly notify the parties that a request has been filed.~~

(2) The workers' compensation judge may hold a hearing on the request or rule on the request without a hearing.

(3) In ruling on the request, the workers' compensation judge shall consider the following factors:

(A) Importance of maintaining public trust and confidence in the workers' compensation system;

(B) Importance of promoting public access to the workers' compensation system;

(C) Parties' support of or opposition to the request;

(D) Nature of the case;

(E) Privacy rights of all participants in the proceeding, including witnesses;

(F) Effect on any minor who is a party, prospective witness, or other participant in the proceeding;

(G) Effect on any ongoing law enforcement activity in the case;

(H) Effect on any subsequent proceedings in the case;

(I) Effect of coverage on the willingness of witnesses to cooperate, including the risk that coverage will engender threats to the health or safety of any witness;

Commented [A773]: Issues surrounding recordation are not limited to trial level proceedings. Accordingly, we have expanded the rule's coverage to proceedings not at the trial level.

Commented [A774]: "Section" replaced with "rule" to conform to style.

Commented [A775]: Revised to apply to all proceedings.

Commented [A776]: Unnecessary language deleted.

Commented [A777]: Revised to apply to all proceedings.

Commented [A778]: In order to provide adequate notice to the district offices and parties, we propose lengthening the time. The time can always be shortened for good cause.

(J) Effect on excluded witnesses who would have access to the televised testimony of prior witnesses;

(K) Security and dignity of the trial level proceeding;

(L) Undue administrative or financial burden to DWC or participants;

(M) Interference with neighboring hearing rooms;

(N) Maintaining orderly conduct of the proceeding;

(O) Any other factor the workers' compensation judge deems relevant.

(4) The workers' compensation judge's ruling on the request to permit recording is not required to make findings or a statement of decision. The workers' compensation judge may condition the order permitting recording of the proceedings on the requestor's agreement to pay any increased costs incurred by DWC resulting from recording the proceeding (for example, for additional security). The requestor shall be responsible for ensuring that any person who records the trial level proceedings on their behalf know and follow the provisions of the order and this rule.

(5) The order permitting recordation may be modified or terminated on the workers' compensation judge's own motion or upon application to the workers' compensation judge without the necessity of a prior hearing or written findings. Notice of the application and any modification or termination ordered pursuant to the application shall be given to the parties and each person permitted by the previous order to record the proceeding.

(6) The workers' compensation judge shall not permit recording of the following:

(A) Proceedings held in chambers which are not transcribed by a hearing reporter;

(B) Proceedings closed to the public; and

(C) Conferences between an attorney and a client, witness, or aide, between attorneys, or between counsel and the workers' compensation judge at the bench, unless transcribed by a hearing reporter.

(7) The workers' compensation judge may require a demonstration that people and equipment comply with this rule. The workers' compensation judge may specify the placement of equipment to minimize disruption of the proceedings.

(8) The following rules shall apply to all recording:

(A) One video recording device and one still photographer shall be permitted.

(B) The equipment used shall not produce distracting sound or light. Signal lights or devices to show when equipment is operating shall not be visible.

(C) Microphones and wiring shall be unobtrusively located in places approved by the workers' compensation judge and shall be operated by one person.

(D) Operators shall not move equipment or enter or leave the courtroom while the proceeding is in session, or otherwise cause a distraction.

(E) Equipment or clothing shall not bear the insignia or marking of a media agency.

(9) If two or more people request recordation of a proceeding, they shall file a statement of agreed arrangements. If they are unable to agree, the workers' compensation judge may deny a request to record the proceeding.

(d) Any violation of this rule or an order made under this rule is an unlawful interference with the proceedings may be the basis for an order terminating recording, a citation for contempt, or an order imposing monetary or other sanctions as provided by law.

(e) Notwithstanding (a) through (d), a workers' compensation judge may permit inconspicuous personal recording devices to be used by parties in a courtroom to make sound recordings as personal notes of the proceedings. A person proposing to use a recording device shall obtain advance permission from the workers' compensation judge before recording the proceeding. The recording shall not be used for any purpose other than as personal notes, and shall not constitute evidence as to any matter recorded. The right of any individual to use a personal recording device shall be suspended if, in the workers' compensation judge's sole discretion, it appears that:

(1) The continued recording of the proceedings will inhibit any party or witness from participation in the proceeding; or

(2) The recording is done in a manner that threatens to disrupt the proceeding.

(f) Only the stenographic recording provided by an Official Hearing Reporter shall be deemed the official recording of a proceeding.

Commented [A779]: This subdivision clarifies that personal recordings are not a record of proceedings and cannot be used in lieu of an Official Hearing Reporter.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Rule 1.150, California Rules of Court.

§ 10820. When Certified Copies Will Issue.

(a) Certified copies of findings, ~~and~~ awards ~~or~~ and other final orders for the purpose of having judgment entered and execution issued by the clerk of a superior court shall be issued by the presiding workers' compensation judge, or the presiding workers' compensation judge's designee, only upon written request of ~~a~~ the person seeking to have judgment entered and execution issued, ~~entitled to benefits thereunder~~ or by their attorney or ~~authorized~~ non-attorney representative, and upon payment of the fees prescribed by the Rules of the Administrative Director.

(b) Certified copies of such orders and awards against authorized insurance carriers, authorized self-insured employers, the State of California and all political subdivisions thereof shall be issued only upon receipt of a written request showing good cause therefor.

(c) Every request for a certified copy of any final order must state whether proceedings are pending on reconsideration or judicial review, whether a petition for reconsideration or a writ of review has been filed, and whether the decision, a certified copy of which is requested has become final.

(d) Nothing in these rules~~, however,~~ shall limit the power of the Workers' Compensation Appeals Board to issue a certified copy at any time upon its own motion without charge.

Authority: Sections 133 and 5307, Labor Code.
Reference: Sections 5806, 5807 and 5808, Labor Code.

Commented [A780]: Not renumbered. Propose adding subdivision letters and rewording as discussed in comments.

Commented [A781]: The phrase "a person entitled to benefits thereunder" is unclear, and could be read to imply that, e.g., a party seeking to execute a sanctions order has an additional right to benefits. We propose this revision to clarify who may seek a certified copy of a final order for the purpose of getting the superior court to enter and execute a judgment on a final order from a WCJ.

Commented [A782]: Revised to conform to proposed definition of non-attorney representatives in new rule 10305(n).

Commented [A783]: Superfluous language deleted.

§ 10825. Withholding Certified Copies.

As an alternative to the issuance of an order staying execution, the Workers' Compensation Appeals Board may direct by order that no certified copy be issued. Such an order shall have the same effect as an order staying execution issued under similar circumstances.

(a) Before staying execution or issuing an order withholding issuance of a certified copy of an order, decision or award, the Workers' Compensation Appeals Board in its discretion may require the filing of a bond from an approved surety equivalent to twice the probable amount of liability in the case.

(b) The bond shall be filed in the record of the case.

Authority: Sections 133 and 5307, Labor Code.
Reference: Sections 130, 134, 5105, 5806, 5807, 5808, 5809, 6000, 6001 and 6002, Labor Code.

ARTICLE 15
Findings, Awards and Orders

§ ~~10349.~~ 10832. ~~Orders Equivalent to Notices of Intention.~~ Notices of Intention and Orders after Notices of Intention.

(a) The Workers' Compensation Appeals Board may issue a notice of intention for any proper purpose, including but not limited to:

(1) Allowing or disallowing a lien;

(2) Allowing or disallowing a petition for costs;

(3) Sanctioning a party;

(4) Submitting the matter on the record after a party fails to appear; or

(5) Dismissing an application.

(b) A Notice of Intention may be served by designated service in accordance with rule 10629, except a Notice of Intention in the form of an order with a clause rendering the order null and void if an objection is filed within a certain time period must be served by the Workers' Compensation Appeals Board.

(c) If an objection is filed within the time provided, the Workers' Compensation Appeals Board, in its discretion may:

(1) Sustain the objection;

(2) Issue an order consistent with the notice of intention together with an opinion on decision; or

(3) Set the matter for hearing.

(d) Any order issued after a notice of intention shall be served by the Workers' Compensation Appeals Board pursuant to rule 10628.

~~An order with a clause rendering the order null and void if an objection showing good cause is filed within ten (10) days shall be deemed equivalent to a ten (10) day notice of intention.~~

Authority: Sections 133 and 5307, Labor Code.
Reference: Section 5307, Labor Code; and Sections 10628 and 10629, title 8, California Code of Regulations.

Commented [A784]: We propose replacing the rule regarding Notices of Intention (NIT) with an expanded rule (a) specifying who can serve an NIT, (b) clarifying that only the WCAB can serve a "self-destruct" NIT that becomes a final order, and (c) including examples of typical NITs.

Commented [A785]: Referenced rules added.

§ ~~10570~~ 10833. Minute Orders.

Commented [A786]: Propose moving with minor change in language.

Interlocutory or interim orders, including but not limited to orders of dismissal of improper or unnecessary parties, may be entered upon the minutes of hearing and will become the order of the Workers' Compensation Appeal Board upon the filing thereof.

Authority: Sections 133, 5307, Labor Code.
Reference: Section 5307.5, Labor Code.

§ ~~10496, 10497.~~ 10835. Effect of Stipulations. ~~Awards and Orders~~ ~~Without Hearing~~.

(a) Findings, awards and orders may be based upon stipulations of parties in open court or upon written stipulation signed by the parties.

(b) No finding shall be made contrary to a stipulation of the parties ~~on an issue~~ without giving the parties notice and an opportunity to be heard.

Authority: Sections 133 and 5307, Labor Code.
Reference: Section 5702, Labor Code.

Commented [A787]: Combined 10496 and 10497.

Commented [A788]: Rule 10496 with addition of the word findings.

Commented [A789]: Rule 10497 with minor change in language.

Commented [A790]: Unnecessary language deleted.

§ ~~10776~~ 10840. Approval of Attorney's Fee by Workers' Compensation Appeals Board Required.

~~(a) No request for payment or demand for payment of a fee shall be made by any attorney for, or agent of, a worker or dependent of a worker until the fee has been approved or set by the Workers' Compensation Appeals Board.~~

~~(b)~~(a) No attorney or agent shall request, demand or accept any money from a worker or dependent of a worker for the purpose of representing the worker or dependent of a worker before the Workers' Compensation Appeals Board or in any appellate procedure related thereto until the fee has been approved or set by the Workers' Compensation Appeals Board or an appellate court.

~~(c)~~(b) Any agreement between any attorney or agent and a worker or dependent of a worker for payment of a fee shall be submitted to the Workers' Compensation Appeals Board for approval within ~~ten (~~10~~)~~ days after the agreement is made.

Authority: Sections 133 and 5307, Labor Code.
Reference: Sections 4903 and 4906, Labor Code.

Commented [A791]: We propose renumbering and amending the title of this rule to more clearly describe the nature of the rule.

Commented [A792]: Combined (a) and (b).

Commented [A793]: "Ten" deleted to conform to style.

§ ~~10778~~ 10842. Request for Increase of Attorney's Fee

All requests for an increase in attorney's fee shall be accompanied by proof of service on the applicant of written notice of the attorney's adverse interest and of the applicant's right to seek independent counsel. Failure to ~~so~~ notify the applicant may constitute grounds for dismissal of the request for increase in fee.

Authority: Sections 133 and 5307, Labor Code.
Reference: Sections 4903 and 4906, Labor Code.

Commented [A794]: Renumbered with only non-substantive change in language.

Commented [A795]: Unnecessary language deleted.

§ ~~10775~~. 10844. Reasonable Attorney's Fee.

In establishing a reasonable attorney's fee, the workers' compensation judge or arbitrator shall consider the:

(a) Responsibility assumed by the attorney~~,~~;

(b) Care exercised in representing the applicant~~,~~;

(c) Time involved~~,~~; and

(d) Results obtained.

~~Reference will be made to guidelines contained in the Policy and Procedural Manual and workers' compensation judges and arbitrators shall at all times comply with Labor Code section 5313 by setting forth the reasons or grounds for applying the guidelines in any fee determination. Through its power to grant reconsideration on its own motion, the Appeals Board shall exercise authority to ascertain the extent to which these guidelines are followed.~~

Authority: Sections 133 and 5307, Labor Code.
Reference: Sections 4903 and 4906, Labor Code.

Commented [A796]: Colon added.

Commented [A797]: Commas replaced with semicolons and "and" is added to (c) to conform to style.

Commented [A798]: Deleted because pursuant to AB 1244, this matter will be addressed via a form issued by the Administrative Director.

§ ~~10780~~. 10850.~~Dismissal~~ Order Dismissing Application.

~~Except as provided in Rule 10562 and 10582 and unless good cause to the contrary appears, orders of dismissal of claim forms for injuries on or after January 1, 1990 and before January 1, 1994, and o~~

(a) Orders of dismissal of applications for adjudication ~~for injuries before January 1, 1990 and on or after January 1, 1994,~~ shall issue forthwith ~~when~~ upon requests~~ed~~ by the employee unless there is good cause to not issue an order.

(b) All other orders of dismissal of applications for adjudication ~~of claim forms for injuries occurring on or after January 1, 1990 and before January 1, 1994, or orders of dismissal of applications for adjudication for injuries occurring before January 1, 1990 and on or after January 1, 1994,~~ shall issue only after service of a notice of intention allowing at least ~~fifteen (15)~~ 10 days for ~~the~~ any adverse party~~ies~~ to show good cause to the contrary, and not by an order with a clause rendering the order null and void if an objection showing good cause is filed.

Authority: Sections 133 and 5307, Labor Code.
Reference: Section 5307, Labor Code.

Commented [A799]: Renumbered and renamed.

Commented [A800]: No longer need rule regarding window period.

Commented [A801]: In some circumstances, such as where an application is filed by a lien claimant or a defendant, the WCJ may need discretion to refuse a request.

Commented [A802]: Language deleted due to ending of window period

Commented [A803]: Our rules regarding failure to appear and dismissal for lack of prosecution both provide for 10-day notice. Changed to 10 days for consistency.

ARTICLE 16
Liens

§~~10770~~ 10862. Filing ~~and Service~~ of Lien Claims.

(a) ~~Lien Claims that May Be Filed or Served:~~

~~(1)~~ A lien claim may be filed ~~or served~~ only if permitted by Labor Code section 4900 et seq. An otherwise permissible lien claim shall not be filed ~~or served~~ if doing so would violate the premature filing restrictions of Labor Code section 4903.6(a).

~~(2) Except as provided in subdivision (a)(3),~~ ~~a~~ Any lien claim that is not statutorily allowable, in whole or in part, or is filed before the lapse of the premature filing restrictions of Labor Code section 4903.6(a) shall be deemed invalid, whether or not accepted for filing, and shall be deemed dismissed by operation of law.

~~(3) Claims for medical-legal costs and other claims of costs are not allowable as a lien against compensation. Nevertheless, a claim for medical-legal costs or other claims of costs may be filed as a lien claim. If, however, a lien claim includes medical-legal costs or other claims of costs:~~
~~(A) the filing person or entity shall pay the lien filing or lien activation fees, if required by Labor Code sections 4903.05(c) and 4903.06; and~~

~~(B) If the person or entity fails to pay any requisite filing fee or lien activation fee within the time limits specified by Labor Code sections 4903.05(c) and 4903.06, the entire lien claim shall be deemed dismissed by operation of law.~~

(b) ~~Format of Lien Claims:~~

~~(1) Electronically-filed lien claims:~~

~~(A)~~ A section 4903(b) lien~~, a claim of costs lien, and any lien form that includes either or both of these liens~~ shall only be filed electronically in accordance with section 4903.05 on an e-form approved by the Appeals Board and shall not be filed by any other method. ~~Any lien submitted in paper form in violation of this subparagraph:~~

~~(i) Shall not be deemed filed for any purpose, whether or not it was accepted for filing;~~

~~(ii) Shall not toll or extend the time for filing a lien claim under Labor Code section 4903.5;~~

~~(iii) Shall not be acknowledged or returned to the filer; and~~

~~(iv) May be destroyed at any time without notice.~~

~~(B) All other lien claims may be filed electronically.~~

Commented [A804]: Propose breaking up rule 10770 into
*10862 Filing of Lien Claims
*10865 Service of Lien Claims
*10872 Notification of Resolution or Withdrawal of Lien Claims

Commented [A805]: Propose removing references to service because this rule is limited to filing.

Commented [A806]: Propose removing claims for medical legal costs because Labor Code section 4903(b) was amended effective January 1, 2015 to include medical legal expenses as Labor Code section 4903(b) liens.

Commented [A807]: Deleted subheadings from rule to conform to style.

Commented [A808]: Deleted references to claim of costs lien because of 1/1/15 amendment to Labor Code section 4903(b).

Commented [A809]: Propose removing this language at this location and having a single consolidated subsection (i) which explains the consequences for failure to correctly file a lien.

~~(C) Any electronically submitted lien claim shall be deemed filed only if it utilizes an e-form approved by the Appeals Board and it is submitted in accordance with the requirements of:~~

~~(i) The electronic filing or JET-filing procedures established by the Administrative Director under sections 10205.11 and 10206 et seq., including the Business Rules and Technical Specifications they incorporate by reference; or~~

~~(ii) Any other administrative procedures or standards for electronic filing established by statute, regulation, en banc decision of the Appeals Board, published appellate opinion, or policy of the Administrative Director, applying to documents to be filed with the Workers' Compensation Appeals Board.~~

~~(2) Non-electronically-filed lien claims:~~

(c) ~~(A)~~ All other lien claims ~~shall~~ may be filed utilizing an optical character recognition (OCR) lien claim form approved by the Appeals Board. ~~and completed in compliance with section 10205.10(e), unless the lien claimant is excepted by parts (A) through (C) of section 10205.10(e)(5).~~

~~(B) Lien claimants set forth in parts (A) through (C) of section 10205.10(c)(5) may file a lien claim utilizing an approved recognition OCR form or a non-OCR paper lien form completed in compliance with section 10205.10(e).~~

~~(3)~~ (d) The claims of two or more providers of goods or services shall not be merged into a single lien. However, an individual provider may claim more than one type of lien on a single lien form by marking the "Other Lien(s)" checkbox on the form and by specifying the nature and statutory basis for each lien in that checkbox's associated text box.

~~(e) Requirements for Filing Lien Claims with the Workers' Compensation Appeals Board:~~
~~(1) The requirements of this subdivision shall apply to all lien claims, whether or not filed electronically.~~

~~(2) Only original (i.e., initial or opening) lien claims shall be filed. Except as provided in subdivisions (g) or (h) of section 10393 or as ordered by the Workers' Compensation Appeals Board, no amended lien claims shall be filed. Any amended lien previously filed or lodged for filing may be destroyed without notice.~~

~~(3)~~ (e) The following documents shall be concurrently filed with each lien claim:

(1) A proof of service;

(2) The verification under penalty of perjury required by ~~section~~ rule ~~10770.5~~ 10890;

(3) A true and correct copy of any assignment of the lien, if required by Labor Code section 4903.8(a) and (b);

Commented [A810]: We propose deleting this subsection because the exact method of filing a lien claim is covered by DWC's rules. Electronic filing has been regularized and is no longer in a trial period.

Commented [A811]: We propose deleting subsection title to conform to style.

Commented [A812]: Non 4903(b) liens are not required to be filed using OCR, but may be filed using OCR.

Commented [A813]: Propose eliminating because EAMS filing is covered in rule 10206 et seq and is well understood.

Commented [A814]: By applying mandated electronic filing to just 4903(b) lien claimants, we no longer need to carve out exceptions from the electronic filing mandate.

Commented [A815]: Subheading deleted to conform to style; additional language deleted to conform to current practice and provide clarity to practitioners.

Commented [A816]: Moved from 10770(c)(4)

Commented [A817]: "Section" replaced with "rule" to conform to style; cross-reference updated to reflect new rule number.

(4) The declaration under penalty of perjury if required by Labor Code section 4903.8(d); and

(5) Any other declaration or form required by law to be concurrently filed with a lien claim.

~~(4) Unless the lien claimant is concurrently filing an initial (case opening) application in accordance with section 10770.5, a lien claim shall bear the adjudication case number(s) previously assigned by the Workers' Compensation Appeals Board for the injury or injuries.~~

~~(5) Any person or entity filing a section 4903(b) lien and/or a claim of costs lien shall not file any such lien unless it has paid the requisite lien filing fee.~~

~~If the lien claimant asserts it is exempt from payment of the filing fee because it is not filing a section 4903(b) or claim of costs lien or because it is an entity specified in Labor Code section 4903.05(c)(7), it shall indicate this in the designated field of the lien form.~~

~~Any lien claim filed in violation of this provision shall be deemed dismissed by operation of law.~~

~~(6)(A) For medical treatment provided on or after July 1, 2013, a section 4903(b) lien shall not be filed if the only remaining dispute(s) must be resolved by the independent medical review procedures established by Labor Code sections 4610.5, 4610.6, 4616.3, and 4616.4 and/or by the independent bill review procedures established by Labor Code sections 4603.2, 4603.3, and 4603.6.~~

(~~B~~ f) Nothing in this subdivision shall preclude a medical treatment lien claimant from filing a lien claim if there are other outstanding disputes, including but not limited to injury, employment, jurisdiction, or the statute of limitations.

~~(7) Any lien claim or supporting documentation submitted in violation of subdivisions (c)(1) through (c)(7) shall not be deemed filed for any purpose, shall not be acknowledged or returned to the filer, and may be destroyed at any time without notice.~~

(~~8~~ g) The service of a lien claim on a defendant, or the service of notice of any claim that would be allowable as a lien, shall not constitute the filing of a lien claim with the Workers' Compensation Appeals Board within the meaning of its rules of practice and procedure or within the meaning of Labor Code section 4903.1 et seq., including but not limited to section 4903.5.

(~~9~~ h) Where a lien has been served on a party, that party shall have no obligation to file that lien with the Workers' Compensation Appeals Board.

(i) Any lien claim filed in violation of the provisions of this rule shall not be deemed filed for any purpose, including tolling or extending the time for filing the lien claim, and shall not be acknowledged or returned to the filer, and may be destroyed at any time without notice.

Authority: Sections 133, 5307 and 5708, Labor Code.

Commented [A818]: This declaration is required for 4903(b) lien claims but not for other lien claims. Added here to enable removal of former 10770(l)

Commented [A819]: Moved to new filing fee rule, rule 10877.

Commented [A820]: Moved to end of rule.

Commented [A821]: This is part of the verification described in subsection (e)(4) of this rule and is therefore unnecessary.

Commented [A822]: Moved to subsection (i) of this rule.

Commented [A823]: This is combination of current 10770(b)(1)(A)(i)-(iv), 10770(c)(5), and 10770(c)(7).

Reference: Sections 4900 et seq., 4903, 4903.05, 4903.06, 4903.8, 4903.1, 4903.4, 4903.5, 4903.6, 4904, 4603.2, 4603.3, 4603.6, 4610.5, 4610.6, 4616.3, 4616.4, 4622 and 5813, Labor Code; and Section 10890, title 8, California Code of Regulations.

§ ~~10770.7.~~ 10863. Requirement for Liens Filed Before January 1, 2017

Any section 4903(b) lien that is subject to a filing fee pursuant to section 4903.05 and that is filed before January 1, 2017 shall be dismissed unless, on or before July 1, 2017, the lien claimant electronically files, in accordance with Article ~~4~~ 9 of the Workers' Compensation Appeals Board Rules of Practice and Procedure, a Supplemental Lien Form and 4903.05(c) Declaration on the form approved by the Appeals Board.

Commented [A824]: Filing and Service rules are now in Article 9.

Authority: Sections 133, 5307 and 5708, Labor Code.
Reference: Sections 4903 and 4903.5, and Labor Code.

§~~10770~~ 10865. Service of Lien Claims and Supporting Documents.

~~(d) Service of Lien Claims and Supporting Documentation on the Parties~~

~~(1)~~(a) All original and amended lien claims, and all related documents, including ~~supporting documentation~~ a full statement or itemized voucher for any section 4903(b) lien and any document listed in ~~subdivision (c)(4),~~ rule 10862(e) shall be served on:

(~~A~~ 1) The injured worker ~~(~~or, if deceased, the worker's dependent, unless:

(~~i~~ A) The worker or dependent is represented by an attorney or other agent of record, in which event service may be made solely upon the attorney or agent of record; or

(~~ii~~ B) The underlying case of the worker or dependent has been resolved; or ~~For purposes of this subdivision, the underlying case will be deemed to have been resolved if:~~

~~(I) In a stipulated findings and award or in a compromise and release agreement, a defendant has agreed to hold the worker or dependent harmless from the specific lien claim being filed and has agreed to pay, adjust, or litigate that lien claim;~~

~~(II) A defendant had written notice of the lien claim before the lien was filed and, in a stipulated findings and award or in a compromise and release agreement, that defendant has agreed to pay, adjust, or litigate all lien claims;~~

~~(III) The application for adjudication of claim filed by the worker or the dependent has been dismissed, and the lien claimant is filing or has filed a new application; or~~

(~~IV~~C) The worker or the dependent chooses not to proceed with ~~his, her, or their~~ the case.

(~~B~~2) Any employer(s) or insurance carrier(s) that are parties to the case and, if represented, their attorney(s) or other agent(s) of record.

(~~2~~3) The full statement or itemized voucher supporting the lien claim or amended lien claim shall include:

(A) Any amount(s) previously paid by any source for each itemized service;

(B) A statement that clearly and specifically sets forth the basis for the claim for additional payment;

(C) Proof of ownership of the debt if the lien claimant is not the original service provider or is not an entity described in Labor Code sections 4903.05(c)(7) or 4903.06(b); and

(D) A declaration under penalty of perjury under the laws of the State of California that all of the foregoing information provided is true and correct.

Commented [A825]: This rule was formerly part of 10770 (beginning at subdivision (d)).

Commented [A826]: Heading deleted to conform to style.

Commented [A827]: Cross-reference updated to reflect new rule number.

Commented [A828]: Single parenthesis deleted to conform to style.

Commented [A829]: The meaning of "resolution of the underlying case" is not generally a matter of dispute, rendering this language unnecessary.

Commented [A830]: Comma deleted to conform to style.

Commented [A831]: Language revised to correct grammar.

(~~3~~b) When serving an amended lien claim, the lien claimant shall indicate in the box set forth on the lien form that it is an "amended" lien claim~~.~~ and

~~(e)~~ ~~The lien claimant~~ shall provide the name, mailing address~~,~~ and telephone number of a person with authority to resolve the lien claim on behalf of the lien claimant.

~~(f) For purposes of this subdivision, an "amended" lien includes:~~

~~(1) A lien that is for or includes additional services or charges for the same injured employee for the same date or dates of injury;~~

~~(2) A lien that reflects a change in the amount of the lien based on payments made by the defendant; and/or~~

~~(3) A lien that has been corrected for clerical or mathematical error. A subsequent lien claim that adds an additional adjudication case number or numbers is an "amended" lien with respect to the adjudication case number(s) originally listed.~~

[note]

Authority: Sections 133, 5307 and 5708, Labor Code.
Reference: Sections 4903, 4903.05, 4903.06, 4903.8, 4903.1, 4903.4, 4903.5, 4903.6, 4904, 4603.2, 4603.3, 4603.6, 4610.5, 4610.6, 4616.3, 4616.4 and 4622, Labor Code; and Section 10862, title 8, California Code of Regulations.

Commented [A832]: Combined in single sentence for style and brevity.

Commented [A833]: Comma deleted to conform to style.

Commented [A834]: The meaning of "amended lien" is not generally a matter of dispute, rendering this language unnecessary.

Commented [A835]: 10770(g)-(k) will become rule 10872.

Commented [A836]: Added "and"

§ ~~10774.5~~ 10868. Notices of Representation, Change of Representation~~,~~ and Non-Representation for Lien Claimants.

(a) After filing a lien, w~~W~~henever any lien claimant obtains representation by an attorney or a non-attorney representative, changes such representation, or such representation ceases, the lien claimant shall, ~~provide written notice~~ within 5 working days, file and serve a notice of representation in accordance with rule 10390.~~to:~~

~~(1) The Workers' Compensation Appeals Board;~~

~~(2) The injured employee and the dependent(s) of a deceased employee or, if represented, to the attorney or non-attorney representative of the employee or dependent(s); and~~

~~(3) Each defendant and each defendant's attorney or non-attorney representative, if any. The written notice shall be accompanied by a proof of service made under penalty of perjury.~~

(b) In addition to the requirements of rule 10390, and, for non-attorney representatives, rule 10400, the ~~The~~ notice shall:

(1) Include the caption, the case title (i.e., the name of the injured employee and the name of the defendant or primary defendant(s)) and the adjudication case number(s) to which the notice relates;

(2) Set forth the full legal name, mailing address~~,~~ and telephone number of the lien claimant; and

(3) Set forth the full legal name, mailing address~~,~~ and telephone number of the initial or new attorney or non-attorney representative or, where a lien claimant becomes self-represented, the name of the former attorney or non-attorney representative.

~~(c) The notice shall be filed and served within five working days of when:~~

~~(1) A self-represented lien claimant obtains an attorney or a non-attorney representative;~~

~~(2) A represented lien claimant changes to a new attorney or non-attorney representative; or~~

~~(3) A represented lien claimant becomes self-represented.~~

~~(d)~~ (c)The notice shall be verified by a declaration under penalty of perjury stating: "I declare under penalty of perjury that the statements and information contained in this notice are true and correct."

~~(e)~~ (d) Notices of Representation and Notices of Change of Representation: Whenever a lien claimant obtains or changes representation to an attorney, the lien claimant's duties, as set forth in subdivisions (a) through (d), may be satisfied by notice of representation or change of representation filed and served by the attorney. If the attorney assuming representation files and serves such a notice, the provisions of subdivision (e)(1) through (e)(7) shall not apply.

Commented [A837]: Comma deleted to conform to style.

Commented [A838]: Based on former 10774.5(c)

Commented [A839]: Added to clarify that the initial lien filing may designate a representative.

Commented [A840]: Revised to conform to proposed definition of non-attorney representatives in new rule 10305(n).

Commented [A841]: These requirements are articulated in rule 10390 and therefore need not be repeated; language deleted.

Commented [A842]: Language modified to match above changes and to clarify that the rules for non-attorney representatives apply if the notice is being filed by a non-attorney representative.

Commented [A843]: Language modified to match above changes.

Commented [A844]: Comma deleted to conform to style.

Commented [A845]: Comma deleted to conform to style.

Commented [A846]: Moved to subsection (a) of this rule.

In all other instances, the lien claimant shall comply with the following procedures:

(1) Where a self-represented lien claimant obtains a representative, a "Notice of Representation" shall be filed. Where a represented lien claimant changes to a new representative, a "Notice of Change of Representation" shall be filed.

(2) If a lien claimant becomes represented by or changes representation less than five working days before a scheduled hearing or if, for any reason, a copy of the notice of representation or change of representation does not appear in the Workers' Compensation Appeals Board's record by the time of hearing, a copy of the fully executed notice shall be lodged with the workers' compensation judge presiding over the hearing and shall be concurrently personally served on each party ~~or lien claimant~~ appearing at the hearing or, if represented, their appearing attorney or non-attorney representative.

Commented [A847]: Deleted to conform to definition of party.

(3) The notice of representation or change of representation is required even if the initial or new representative has signed or is signing a pleading on behalf of the lien claimant.

(4) The lien claimant and the representative who is assuming representation must each sign and date the notice of representation or change of representation before the relationship shall become effective.

If the lien claimant or the representative is a partnership, corporation, or other organization, the notice of representation or change of representation may be signed by a corporate officer, partner~~,~~ or fiduciary under a statement certifying that the person signing has the authority to sign.

Commented [A848]: Comma deleted to conform to style.

(5) If no fully executed notice of representation or change of representation has been filed at or before the time of any hearing:

(A) The lien claimant shall be deemed not to be represented even if a representative who purportedly has assumed representation appears; and

(B) If the lien claimant does not otherwise appear at the hearing, it shall be subject to all of the consequences of a failure to appear.

(6) ~~A notice of representation or change of representation shall not be filed for the sole purpose of allowing a third party agent, such as a copy service, to sign and issue a subpoena or subpoena duces tecum under Labor Code section 130, Labor Code section 5710, or Rrule 10530 et seq.~~

Commented [A849]: Conflicts with Labor Code section 4903.8 and the Copy Service Fee Schedule; language deleted.

(7) The notice of representation or change of representation shall contain each of the following, verified under penalty of perjury:

(A) A declaration executed by both the lien claimant and by the representative assuming representation stating: "I declare that the named initial or new representative has consented to represent the interests of the named lien claimant and that the named lien claimant has consented to this representation.";

(B) A declaration executed by both the lien claimant and by the representative assuming representation stating one of the following, as appropriate:

(i) "This representation began on _____, __, 20___. I am not aware of any other attorney or non-attorney who was previously representing the lien claimant."; or

(ii) "This representation began on: _____, __, 20___. I am aware that _____ [specify person or entity] was previously representing the lien claimant. This Notice of Change of Representation supersedes a previous Notice of Representation dated _____, 20____. I hereby certify that I have notified the previous attorney or non-attorney representative in writing of the change of representation.";

(C) A declaration executed by the representative stating: "By signing below, I affirm that I am not disqualified from appearing under Labor Code section 4907, WCAB ~~R~~rule ~~10779~~ 10445 (Cal. Code Regs., tit. 8, § ~~10779~~ 10445) or by any other ~~R~~rule, order~~,~~ or decision of the Workers' Compensation Appeals Board, the State Bar of California, or court."

~~(f)~~ (e)Notice of Non-Representation:

(1) If a lien claimant's representation by an attorney or non-attorney representative terminates for any reason (including but not limited to the attorney or non-attorney's discharge or death, or the suspension or removal of the attorney's or non-attorney's right to appear) and the lien claimant does not concurrently execute a notice of change of representation, the lien claimant shall be deemed self-represented and shall file and serve a "Notice of Non-Representation."

(2) The notice of non-representation shall comply with the provisions of subsections (a) through ~~(d)~~ (c), above.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 130, 4907 and 5710; Sections 284, 285 and 286, Code of Civil Procedure; and Sections 10390 and 10445, title 8, California Code of Regulations.

Commented [A850]: Added close to quotation.

Commented [A851]: Capitalization removed to conform to style.

Commented [A852]: Cross-reference updated to reflect new rule number.

Commented [A853]: Cross-reference updated to reflect new rule number.

Commented [A854]: Capitalization removed to conform to style.

Commented [A855]: Comma deleted to conform to style.

§ ~~10770~~ 10872. Notification of Resolution or Withdrawal of Lien Claims.

(~~g~~ a) Within five business days after a lien has been resolved or withdrawn, the lien claimant shall file and serve a notification of resolution or a withdrawal of the lien claim. ~~provide written notification to:~~

~~(1) The Workers' Compensation Appeals Board;~~

~~(2) The party defendant(s) or, if represented, their attorney(s); and~~

~~(3) The worker or dependent(s) or, if represented, the attorney(s) for the worker or dependent(s), except that no such notification is required if the underlying case has been resolved. as provided in subdivision (d)(1)(A)(ii)(I) through (IV).~~

For purposes of this section, a lien is not "resolved" unless payment in accordance with an order or an informal agreement has in fact been made and received.

~~(4)~~(b) If the notification of lien resolution or withdrawal is being filed by a lien claimant's attorney or non-attorney representative, then a copy shall also be served on the lien claimant. If the notification is being filed by a lien claimant who is represented, then a copy shall also be served on the attorney or non-attorney representative. In either case, the written notification shall include a request to end-date both the lien claimant and its representative as case participants in EAMS.

(~~h~~ c) When a lien claimant notifies the Workers' Compensation Appeals Board in writing that its lien has been resolved or withdrawn, the lien claim shall be deemed dismissed with prejudice by operation of law.

(d) Once a lien claim has been so dismissed, the lien claimant shall appear at any hearing that was noticed prior to the withdrawal of the lien unless excused by the workers' compensation appeals board. The lien claimant shall be excused from appearing at any subsequently noticed hearing.

~~(i) The Workers' Compensation Appeals Board shall either serve or, under sections 10500(a) and 10544, cause to be served notice on all lien claimants of each hearing scheduled, whether or not the hearing directly involves that lien claimant's lien claim.~~

~~(j) Inclusion of the injured employee's Social Security number on a lien form is voluntary, not mandatory. A failure to provide a Social Security number will not have any adverse consequences. Nevertheless, although a lien claimant is not required by law to include the employee's Social Security number, lien claimants are encouraged to do so because this will facilitate the processing and filing of the lien claim. Social Security numbers are used solely for identification and verification purposes in order to administer the workers' compensation system. A Social Security number will not be disclosed, made available, or otherwise used for purposes other than those specified, except with the consent of the applicant, or as permitted or required by statute, regulation, or judicial order.~~

Commented [A856]: This rule was formerly part of 10770 (beginning at subdivision (g)).

Commented [A857]: We propose that, in light of our new filing and service rules, we use filing and service as terms of art and eliminate other language such as "provide written notification."

Commented [A858]: Amended to provide that lien claimant shall appear at any hearing noticed prior to the withdrawal unless excused.

Commented [A859]: Deleted because rule 10750 now requires service on all parties – including lien claimants - for all hearings.

Commented [A860]: Pursuant to new rule 10455(e) "An applicant is not required to disclose their social security number. If an applicant discloses their Social Security number on the application, the Social Security number will be used solely for identification and verification purposes in order to administer the workers' compensation system except with the consent of the applicant, or as permitted or required by statute, regulation, or judicial order."

(~~k~~c) Any violation of the provisions of this ~~section~~ rule may give rise to monetary sanctions, attorney's fees~~,~~ and costs under Labor Code section 5813 and ~~R~~rule ~~10561~~ 10421.

~~(l) The provisions of subdivisions (c)(4)(D), (c)(8), (c)(9), and (d)(2) shall not apply to any notice of claim or lien claim of:~~

~~(1) The Employment Development Department;~~

~~(2) The California Victims of Crime Program;~~

~~(3) Any lien claimant listed as being excepted under parts (A) through (C) of section 10205.10(c)(5);~~

~~(4) Any governmental entity pursuing a lien claim for child support or spousal support; and~~
~~(5) the Uninsured Employers Benefits Trust Fund.~~

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 4903, 4903.05, 4903.06, 4903.8, 4903.1, 4903.4, 4903.5, 4903.6, 4904, 4603.2, 4603.3, 4603.6, 4610.5, 4610.6, 4616.3, 4616.4, 4622 and 5813, Labor Code; and Section 10421, title 8, California Code of Regulations.

Commented [A861]: Relettered.

Commented [A862]: "Section" replaced with "rule" to conform to style.

Commented [A863]: Comma deleted to conform to style.

Commented [A864]: Capitalization removed to conform to style; cross-reference updated to reflect new rule number.

Commented [A865]: (c)(4)(D) is a declaration of under penalty of perjury required by Labor Code section 4903.8(d). However, the declaration is not required for non 4903(b) liens.

§ ~~10770.1~~ 10875. Lien Conferences and Lien Trials.

(a) (1) A lien conference shall be set:

(A) When any party~~, including a lien claimant who is a "party" as defined by section 10301(dd)(6),~~ files a ~~d~~Declaration of ~~r~~Readiness to Proceed ~~(DOR)~~ in accordance with ~~section 10414~~ rule 10742 on any issue(s) directly relating to any lien claim(s); or (B) by the Workers' Compensation Appeals Board on its own motion at any time.

(2) Based upon resources available and such other considerations as the Workers' Compensation Appeals Board in its discretion may deem appropriate, a lien conference may be set at any district office without the necessity of an order changing venue.

(3) Unless otherwise expressly stated in the notice of hearing, all unresolved lien claims and lien issues shall be heard at the lien conference, whether or not listed in any ~~DOR~~ Declaration of Readiness to Proceed. An agreement to "pay, adjust or litigate" a lien claim or its equivalent, or an award leaving a lien claim to be adjusted, is not a resolution of the lien claim or lien issue.

(4) Once a ~~DOR~~ Declaration of Readiness to Proceed for a lien conference has been filed, it cannot be withdrawn. If the lien of a lien claimant that has filed a ~~DOR~~ Declaration of Readiness to Proceed has been resolved, that lien claimant shall request that its lien be withdrawn in accordance with ~~section 10770(g)~~ rule 10872.

(5) To the extent feasible, the date of the lien conference shall be no sooner than 60 days after the date the notice of hearing for it is served.

(b) When a party~~, including a lien claimant who is a "party" as defined by section 10301(dd)(6) rule 10305(i),~~ files a ~~d~~Declaration of ~~r~~Readiness to ~~p~~Proceed on an issue directly relating to a lien claim, including any preliminary or intermediate procedural or evidentiary issue, the party shall serve the Declaration of Readiness to Proceed on all parties and lien claimants listed on the official participant record in EAMS at the time of service and, if represented, on their attorney or non-attorney representative(s) of record and designate on the ~~d~~Declaration of ~~r~~Readiness to Proceed form that it is requesting a "lien conference" and shall not designate any other kind of conference. If a status conference or any other type of conference is requested or is set on the calendar, that status conference or other type of conference shall be deemed a "lien conference" and shall be governed by any and all rules applying to a "lien conference." ~~Notwithstanding any other provision of these Rules, the Workers' Compensation Appeals Board shall not convert, re-set, or continue a "lien conference" to any other type of conference.~~

(~~b~~c) Nothing in this ~~section~~ rule shall preclude the Workers' Compensation Appeals Board, in its discretion, from~~:~~

~~(1)~~ ~~S~~setting a type of hearing other than that requested in the Declaration of Readiness to Proceed. ~~DOR, in accordance with section 10420;~~

Commented [A866]: Propose retaining (a) with minor language changes.

Commented [A867]: Removed to conform to new definition of party.

Commented [A868]: Language added to reflect the correct full name of the form.

Commented [A869]: "Section" replaced with "rule" to conform to style; cross-reference updated to reflect new rule number.

Commented [A870]: Language added to reflect the correct full name of the form.

Commented [A871]: Language added to reflect the correct full name of the form.

Commented [A872]: Language added to reflect the correct full name of the form.

Commented [A873]: "Section" replaced with "rule" to conform to style; cross-reference updated to reflect new rule number.

Commented [A874]: Moved from 10770.1(d)

Commented [A875]: Deleted to conform to definition of party.

Commented [A876]: Language added to reflect the correct full name of the form.

Commented [A877]: From former rule 10414.

Commented [A878]: Language added to reflect the correct full name of the form.

Commented [A879]: We propose removing this language to give WCJs more flexibility to manage their calendars.

Commented [A880]: Relettered.

~~(2) Issuing a ten-day notice of intention to order payment of the lien claim, in full or in part, in accordance with section 10888; or~~

~~(3) Issuing a ten-day notice of intention to disallow the lien claim, in accordance with section 10888.~~

~~(c) No lien claimant that is required to pay a lien filing or lien activation fee shall file a dDeclaration of rReadiness or participate in any lien conference, including obtaining an order allowing its lien in whole or in part, without submitting written proof of prior timely payment of the fee.~~

~~(1) At the lien conference, there shall be a rebuttable presumption that a lien claimant is required to pay a lien filing fee or activation fee.~~

~~(A) If a lien claimant asserts it is an entity listed in Labor Code sections 4903.05(c)(7) or 4903.06(b), it shall be prepared to file proof or submit a stipulation to that effect at the lien conference upon request by the workers' compensation judge. The judge, however, may formally or informally take judicial notice that the lien claimant is such an entity. This may include, but is not necessarily limited to, taking judicial notice of prior decisions of the Workers' Compensation Appeals Board and taking judicial notice based on the "common knowledge" or the "not reasonably subject to dispute" provisions of Evidence Code section 452(g) and (h).~~

~~(B) If a lien claimant asserts under Labor Code section 4903.06(a) that it already paid a filing fee as required by former Labor Code section 4903.05 as added by Chapter 639 of the Statutes of 2003, it shall submit written proof of such payment at the lien conference.~~

~~(2) The following requirements must be met to satisfy the lien claimant's burden of demonstrating prior timely payment:~~

~~(A) Proof of prior timely payment shall be in the form provided by the Rules of the Administrative Director or by a printout from the Public Information Search Tool of EAMS. An offer of proof or a stipulation that payment was made shall not be adequate.~~

~~(B) Proof of prior timely payment of a filing fee must establish that the fee was paid contemporaneously with the filing of the lien.~~

~~(C) Proof of prior timely payment of an activation fee must establish that the fee was paid before the scheduled starting time of the lien conference set forth in the notice of hearing, except that, if the lien claimant filed the declaration of readiness, the proof shall establish that the activation fee was paid contemporaneously with the filing of the declaration of readiness.~~

~~If a lien claimant fails to submit proper written proof of prior timely payment, the Workers' Compensation Appeals Board may elect to conduct a search within the Electronic Adjudication Management System to confirm prior timely payment, but is not obligated to do so, and a failure to conduct such a search shall not be a proper basis for a petition for reconsideration, removal, or disqualification.~~

Commented [A881]: Propose repeal of 10888 and new dismissal rule.

Commented [A882]: Moved to separate rule on filing fees, rule 10877.

Commented [A883]: Moved to rule 10877 on filing fees.

~~(3) If a lien claimant that is required to pay a lien filing or activation fee fails to provide proper written proof of prior timely payment, then:~~

~~(A) If the proof of prior timely payment of the activation fee is not submitted, the lien claim shall be dismissed with prejudice. This provision shall apply even if, but for the lien conference, the activation fee would not have been due until December 31, 2013.~~

~~(B) If the proof of prior timely payment of the filing fee is not submitted, the lien claim shall be deemed dismissed by operation of law as off the time of its filing, except that if the lien claimant filed a declaration of readiness its lien shall be dismissed with prejudice; however, in neither case shall the dismissed lien toll, preserve, or extend any applicable statute of limitations.~~

~~A lien claimant shall not avoid dismissal by attempting to pay the fee at or after the hearing.~~
~~(4) If a lien claimant fails to appear at a lien conference, the Workers' Compensation Appeals Board may issue a notice of intention to dismiss consistent with rule xxxx the provisions above.~~

(~~e~~d) All defendants and lien claimants shall appear at all lien conferences and lien trials, either in person or by attorney or non-attorney representative. Each defendant, lien claimant, attorney, and ~~hearing~~ non-attorney representative appearing at any lien conference or lien trial:

(1) Shall have sufficient knowledge of the lien dispute(s) to inform the Workers' Compensation Appeals Board as to all relevant factual and/or legal issues in dispute;

(2) Shall have authority to enter into binding factual stipulations; and

(3) Shall either have full settlement authority or have full settlement authority immediately available by telephone.

(e) If a lien claimant fails to appear at a lien conference, the Workers' Compensation Appeals Board may issue a notice of intention to dismiss consistent with rules 10755 and 10888~~the provisions above~~.

(f) For any lien claim(s) or lien issue(s) not fully resolved at the lien conference by an order signed by a workers' compensation judge, the defendant(s) and lien claimant(s) shall prepare, sign, and file with the workers' compensation judge a ~~p~~Pre-~~t~~Trial ~~c~~Conference ~~s~~Statement, which shall include:

(1) All stipulations;

(2) The specific issues in dispute;

(3) All documentary evidence that might be offered at the lien trial; and

(4) All witnesses who might testify at the lien trial. The right to present any issue, documentary evidence, or witness not listed in the ~~p~~Pre-~~t~~Trial ~~c~~Conference ~~s~~Statement shall be deemed waived,

Commented [A884]: End filing fee rule

Commented [A885]: Moved to rule 10888.

Commented [A886]: Revised to conform to proposed definition of non-attorney representatives in new rule 10305(n).

Commented [A887]: Revised to conform to proposed definition of non-attorney representatives in new rule 10305(n).

Commented [A888]: Comma deleted to conform to style.

Commented [A889]: Revised to conform to proposed definition of non-attorney representatives in new rule 10305(n).

Commented [A890]: Clarifying ability of WCJ to issue a notice of intention to dismiss consistent with the enumerated rules.

Commented [A891]: From 10770.1(f)

Commented [A892]: Capitalization and formatting added to reflect correct full name of the form.

Commented [A893]: Capitalization and formatting added to reflect correct full name of the form.

absent a showing of good cause. This subdivision shall apply regardless of which action the Workers' Compensation Appeals Board takes under subdivision ~~(g)~~(e).

(g) If any lien claim(s) or lien issue(s) cannot be fully resolved at the lien conference, the Workers' Compensation Appeals Board shall take one of the following actions:

(1) Set a lien trial;

(2) Upon a showing of good cause, allow a one-time continuance of the lien conference to another lien conference, after which a lien trial shall be set; or

(3) Upon a showing of good cause, order the lien conference off calendar.

Good cause shall not include the delayed or late appointment of an attorney or ~~other~~ non-attorney representative by a defendant or lien claimant or the delayed receipt of the defendant's or lien claimant's file by that attorney or ~~other~~ non-attorney representative.

The action taken shall apply to all unresolved lien claim(s) or lien issue(s).

(h) Discovery shall close on the date of the lien conference. Evidence not disclosed or obtained thereafter shall not be admissible unless the proponent of the evidence can demonstrate that it was not available or could not have been discovered by the exercise of due diligence prior to the lien conference.

~~(i) If a lien claimant fails to appear at a lien conference or lien trial, the Workers' Compensation Appeals Board may issue a notice of intention to dismiss the lien claim with or without prejudice in accordance with section 10562(d)(1).~~

~~If a defendant is designated to serve the notice of intention to dismiss under section 10500(a), the defendant shall serve the notice of intention within 10 business days. If the defendant does not receive a timely objection (taking into consideration the time extension provisions of sections 10507 and 10508), the defendant shall file and serve a proposed order dismissing the lien and copies of the notice of intention and the notice's proof of service.~~

~~An order dismissing a lien claim for failure to appear shall be served only by the Workers' Compensation Appeals Board and not by designated service.~~

~~(j) The Workers' Compensation Appeals Board may order that any unresolved lien claim(s) or lien issue(s) be submitted for decision solely on the exhibits listed in the pretrial conference statement if:~~

~~(1) No witnesses are listed in the pretrial conference statement; or~~

~~(2) Witnesses are listed but no good cause is shown for any witness to testify at trial. Good cause may be established by offers of proof made at the lien conference.~~

Commented [A894]: Revised to conform to proposed definition of non-attorney representatives in new rule 10305(n).

Commented [A895]: Revised to conform to proposed definition of non-attorney representatives in new rule 10305(n).

Commented [A896]: Covered in rules 10832 and 10888; language deleted.

~~If the disputed lien claim(s) or lien issue(s) are submitted for decision at the lien conference, the workers' compensation judge shall prepare minutes of hearing and a summary of evidence listing:~~

~~(1) All exhibits offered in evidence;~~

~~(2) The identity of the party or lien claimant offering each exhibit; and~~

~~(3) Whether or not each exhibit is admitted in evidence. This descriptive listing shall be filed and served no later than the date of the decision on the submitted issues.~~

~~(k~~ (i) After a lien conference or lien trial has been ordered off calendar, no party or lien claimant shall file a new ~~d~~Declaration of ~~r~~Readiness to Proceed for at least 90 days. The ~~d~~Declaration of ~~r~~Readiness to Proceed shall designate that a "lien conference" is requested and shall state under penalty of perjury that there has been no hearing on the lien claim(s) or lien issue(s) within the preceding 90 calendar days. Nothing in this subdivision shall preclude the Workers' Compensation Appeals Board from:

(1) Restoring the lien claim(s) or lien issue(s) to the lien conference or lien trial calendar on its own motion or

(2) Restoring the lien claim(s) or lien issue(s) to the lien conference or lien trial calendar less than 90 calendar days after the most recent hearing.

(~~l~~ k) If a party is designated to serve notice of a lien conference or lien trial under ~~sections~~ rules ~~10500(a)~~ 10629 and ~~10544~~ 10750, that party shall bring a copy of its proof of service to the lien conference or lien trial and, if another party fails to appear, the proof of service shall be filed with the Workers' Compensation Appeals Board.

(~~m~~ j) Any violation of the provisions of this ~~section~~ rule may give rise to monetary sanctions, attorney's fees, and costs under Labor Code section 5813 and ~~R~~rule ~~10561~~ 10421.

~~(n) The provisions of subdivisions (f), (h), and (i)(2) shall not apply to the lien claim(s) of any of the following:~~

~~(1) The Employment Development Department;~~

~~(2) The California Victims of Crime Program;~~

~~(3) Any lien claimant listed as being excepted under section 10205.10(e)(5);~~

~~(4) Any governmental entity pursuing a lien claim for child support or spousal support; and~~

~~(5) Lien claims of the Uninsured Employers Benefits Trust Fund.~~

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.

Commented [A897]: Moved to rule 10880.

Commented [A898]: Relettered.

Commented [A899]: Language added to reflect the correct full name of the form.

Commented [A900]: Language added to reflect the correct full name of the form.

Commented [A901]: Colon added to conform to style.

Commented [A902]: "Sections" replaced with "rules" to conform to style; cross-references updated to reflect new rule numbers.

Commented [A903]: "Section" replaced with "rule" to conform to style.

Commented [A904]: Capitalization removed to conform to style; cross-reference updated to reflect new rule number.

Commented [A905]: These liens may be resolved prior to a lien conference, but if the liens are included in the lien proceedings, discovery should close at the lien conference.

Reference: Sections 4903, 4903.05, 4903.06, 4903.1, 4903.4, 4903.5, 4903.6, 4904, 5502 and 5502.5, Labor Code; Sections 351, 352, 451 and 452, Evidence Code; and Sections 10305, 10421, 10629, 10742, 10750, 10755, 10872 and 10888, title 8, California Code of Regulations.

~~§10770.1(c)~~ 10877. Fees Required at Lien Conference.

(a) No lien claimant that is required to pay a lien filing or lien activation fee shall file a ~~d~~Declaration of ~~r~~Readiness to Proceed or participate in any lien conference, including obtaining an order allowing its lien in whole or in part, without submitting written proof of prior timely payment of the fee.

(~~a~~ b) At the lien conference, there shall be a rebuttable presumption that a lien claimant is required to pay a lien filing fee or activation fee.

(1) If a lien claimant asserts it is an entity listed in Labor Code sections 4903.05(c)(7) or 4903.06(b), it shall be prepared to file proof or submit a stipulation to that effect at the lien conference upon request by the workers' compensation judge. The judge, however, may formally or informally take judicial notice that the lien claimant is such an entity. This may include, but is not necessarily limited to, taking judicial notice of prior decisions of the Workers' Compensation Appeals Board and taking judicial notice based on the "common knowledge" or the "not reasonably subject to dispute" provisions of Evidence Code section 452(g) and (h).

(2) If a lien claimant asserts under Labor Code section 4903.06(a) that it already paid a filing fee as required by former Labor Code section 4903.05 as added by Chapter 639 of the Statutes of 2003, it shall submit written proof of such payment at the lien conference.

(~~b~~ c) The following requirements must be met to satisfy the lien claimant's burden of demonstrating prior timely payment:

(1) Proof of prior timely payment shall be in the form provided by the Rules of the Administrative Director or by a printout from the Public Information Search Tool of EAMS. An offer of proof or a stipulation that payment was made shall not be adequate.

(2) Proof of prior timely payment of a filing fee must establish that the fee was paid contemporaneously with the filing of the lien.

(3) Proof of prior timely payment of an activation fee must establish that the fee was paid before the scheduled starting time of the lien conference set forth in the notice of hearing, except that, if the lien claimant filed the ~~d~~Declaration of ~~r~~Readiness to Proceed, the proof shall establish that the activation fee was paid contemporaneously with the filing of the ~~d~~Declaration of ~~r~~Readiness to Proceed.

(d) If a lien claimant fails to submit proper written proof of prior timely payment, the Workers' Compensation Appeals Board may elect to conduct a search within the Electronic Adjudication Management System to confirm prior timely payment, but is not obligated to do so, and a failure to conduct such a search shall not be a proper basis for a petition for reconsideration, removal, or disqualification.

Commented [A906]: Rule 10770.1(c)(1)-(3) relettered with no substantive changes.

Commented [A907]: Language added to reflect the correct full name of the form.

Commented [A908]: Language added to reflect the correct full name of the form.

Commented [A909]: Language added to reflect the correct full name of the form.

(~~e~~ c) If a lien claimant that is required to pay a lien filing or activation fee fails to provide proper written proof of prior timely payment, then:

(1) If the proof of prior timely payment of the activation fee is not submitted, the lien claim shall be dismissed with prejudice. This provision shall apply even if, but for the lien conference, the activation fee would not have been due until December 31, 2013.

(2) If the proof of prior timely payment of the filing fee is not submitted, the lien claim shall be deemed dismissed by operation of law as of the time of its filing, except that if the lien claimant filed a ~~d~~Declaration of ~~r~~Readiness to Proceed its lien shall be dismissed with prejudice; however, in neither case shall the dismissed lien toll, preserve, or extend any applicable statute of limitations.

Commented [A910]: Language added to reflect the correct full name of the form.

(f) A lien claimant shall not avoid dismissal by attempting to pay the fee at or after the hearing.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 4903, 4903.05, 4903.06, 4903.1, 4903.4, 4903.5, 4903.6, 4904, 5502 and 5502.5, Labor Code; and Sections 351, 352, 451 and 452, Evidence Code.

§ ~~10770.1~~ 10880. Submission at Lien Conferences.

(a) The Workers' Compensation Appeals Board may order that any unresolved lien claim(s) or lien issue(s) be submitted for decision solely on the exhibits listed in the ~~p~~Pre-~~t~~Trial ~~c~~Conference ~~s~~Statement if:

(1) No witnesses are listed in the ~~p~~Pre-~~t~~Trial ~~c~~Conference ~~s~~Statement; or

(2) Witnesses are listed but no good cause is shown for any witness to testify at trial. Good cause may be established by offers of proof made at the lien conference.

(b) If the disputed lien claim(s) or lien issue(s) are submitted for decision at the lien conference, the workers' compensation judge shall prepare minutes of hearing and a summary of evidence listing:

(1) All exhibits offered in evidence;

(2) The identity of the party or lien claimant offering each exhibit; and

(3) Whether or not each exhibit is admitted in evidence. This descriptive listing shall be filed and served no later than the date of the decision on the submitted issues.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 4903, 4903.05, 4903.06, 4903.1, 4903.4, 4903.5, 4903.6, 4904, 5502 and 5502.5, Labor Code; and Sections 351, 352, 451 and 452, Evidence Code.

Commented [A911]: Formerly 10770.1(j). Relettered with no substantive changes.

Commented [A912]: Capitalization and formatting added to reflect correct full name of the form.

Commented [A913]: Capitalization and formatting added to reflect correct full name of the form.

§ ~~10562, 10582.5, 10770.1,~~ 10888. Dismissal of Lien Claims.

(a) The Workers' Compensation Appeals Board may order a lien dismissed for lack of prosecution, non-appearance by the lien claimant~~;~~ or failure to comply with the provisions of the Labor Code or these rules.

(b) A lien claim may be dismissed for lack of prosecution on a petition filed by a party or on the Workers' Compensation Appeals Board's own motion if the lien claimant fails to file a ~~d~~Declaration of ~~r~~Readiness to Proceed to proceed ~~by the earlier of:~~ within:

(1) 180 days after ~~the lien claimant becomes a party within the meaning of section 10301(dd)(6)~~ the underlying case of the injured employee or the dependent(s) of a deceased employee has been resolved or the injured employee or the dependent(s) of a deceased employee choose(s) not to proceed with the case; or

(2) 180 days after a lien conference or lien trial at which the lien claim was at issue is ordered off calendar.

~~The 180-day period of subdivision (a)(1) is computed from the date that the original owner of the lien claim became a party or would have become a party if it still owned the lien claim.~~

(c) A dismissal for failure to appear at a hearing shall only issue if the lien claimant was provided with notice of the lien conference or lien trial.

(d) A dismissal for failure to comply with the Labor Code or these rules shall only be issued if the lien claimant has failed to comply with a statute or rule that provides that a lien may be dismissed for non-compliance.

(e) Before issuing an Order dismissing a lien, the Workers' Compensation Appeals Board shall issue a Notice of Intention to Dismiss the lien claim consistent with rule 10832 that provides at least 10 days for the lien claimant to file and serve a response showing good cause why an Order dismissing the lien should not issue.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 4903, 4903.05, 4903.06, 4903.1, 4903.4, 4903.5, 4903.6, 4904, 5502, 5502.5 and 5404.5, Labor Code; and Sections 10305 and 10832, title 8, California Code of Regulations.

Commented [A914]: Period added.

Commented [A915]: Summarizing the reasons for dismissal of a lien by the WCAB from the three rules that have been combined into new rule 10888.

Commented [A916]: Former rule 10582.5.

Commented [A917]: Former rule 10562.

Commented [A918]: Comma deleted to conform to style.

Commented [A919]: Former rules 10770 and rules 10770.1.

Commented [A920]: Former rule 10582.5(a).

Commented [A921]: Language added to reflect the correct full name of the form.

Commented [A922]: Reworded to conform to style and for clarity.

Commented [A923]: Former rule 10582.5(a)(1).

Commented [A924]: Language revised to conform to new definition of party.

Commented [A925]: Former rule 10582.5(a)(2).

Commented [A926]: Formerly in rule 10582.5; deleted to conform to definition of party.

Commented [A927]: A lien claim cannot be dismissed or reduced unless the lien claimant has been given notice and an opportunity to be heard. (*Beverly Hills Multispecialty Group v. Workers' Comp. Appeals Bd.* (1994) 26 Cal.App.4th 789 [59 Cal.Comp.Cases 461].)

§ ~~10770.5.~~ 10890. Verification of Compliance with Labor Code Section 4903.6 on ~~to~~ Filing of Lien Claim or Application by Lien Claimant.

(a) Any section 4903(b) lien, any lien for medical-legal costs, and any application related to any such lien shall have attached to it a verification under penalty of perjury which shall contain a statement specifying in detail the facts establishing that both of the following have occurred:

(1) Sixty days have elapsed since after the date of acceptance or rejection of liability for the claim, or the time provided for investigation of liability pursuant to Labor Code section 5402(b) has elapsed, whichever is earlier; and

(2) Either of the following:

(A) The time provided for payment of medical treatment bills pursuant to Labor Code section 4603.2 has expired and, if the employer objected to the amount of the bill, the reasonable fee has been determined pursuant to Labor Code section 4603.6, and, if authorization for the medical treatment has been disputed pursuant to Labor Code section 4610, the medical necessity of the medical treatment has been determined pursuant to Labor Code sections 4610.5 and 4610.6; or

(B) The time provided for payment of medical-legal expenses pursuant to Labor Code section 4622 has expired and, if the employer objected to the amount of the bill, the reasonable fee has been determined pursuant to Labor Code section 4603.6.

(b) The verification under penalty of perjury shall also contain a statement declaring that the lien is not being filed solely because of a dispute subject to the independent medical review and/or the independent bill review process.

(c) In addition, if an ~~a~~Application for ~~a~~Adjudication of Claim is also being filed, the verification under penalty of perjury shall contain:

(1) A statement specifying in detail the facts establishing that venue in the district office being designated is proper pursuant to Labor Code section 5501.5(a)(1) or Labor Code section 5501.5(a)(2); and

(2) A statement specifying in detail the facts establishing that the filing lien claimant has made a diligent search and has determined that no adjudication case number exists for the same injured worker and same date of injury at any district office. A diligent search shall include contacting the injured worker, contacting the employer or carrier, or inquiring at the district office with appropriate venue pursuant to Labor Code section 5501.5(a)(1) or Labor Code section 5501.5(a)(2).

(d) The verification shall be in the following form:

I declare under penalty of perjury under the laws of the State of California:

Commented [A928]: Propose new title to clarify that labor code requires the elements of this verification, but not the verification itself.

Commented [A929]: Propose renumbering without substantive change in language.

Commented [A930]: Period added.

Commented [A931]: Comma deleted to conform to style.

Commented [A932]: Comma deleted to conform to style.

Commented [A933]: Capitalization added to conform to style and reflect full title of form.

(1) That the time periods set forth in Rrule ~~10770.5~~ 10890(a) have elapsed;

(2) That the section 4903(b) lien, the lien for medical-legal costs, or the application is not being filed solely because of a dispute subject to the independent medical review and/or independent bill review process; and

(3) That, if an ~~a~~Application for ~~a~~Adjudication of Claim is being filed, that venue is proper as set forth in Rrule ~~10770.5~~ 10890(b) and that I have made a diligent search and have determined that no adjudication case number exists for the same injured worker and the same date of injury. In determining that no adjudication case number exists for the same injured worker and the same date of injury, I have made a diligent search consisting of the following efforts (specify):

_____

_____

_____ s/s

_____ on

_____

Failure to attach the verification or an incorrect verification may be a basis for sanctions.

(e) If the Appeals Board approves an e-form or optical character recognition (OCR) form for this declaration, lien claimants shall file the declaration using the adopted form.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 4603.2, 4603.6, 4610.5, 4610.6, 4622, 4903, 4903.6, 5402 and 5501.5 Labor Code; and Section 10890, title 8, California Code of Regulations.

Commented [A934]: Capitalization removed to conform to style; cross-references updated to reflect new rule numbers.

Commented [A935]: Comma removed to conform to style.

Commented [A936]: Comma removed to conform to style.

Commented [A937]: Capitalization and language added to reflect correct full name of the form.

Commented [A938]: Capitalization removed to conform to style; cross-references updated to reflect new rule numbers.

Commented [A939]: Language added in anticipation of the possibility of a future form approval. Standardized language in verifications avoids ambiguity and the need for litigation over whether a lien should be dismissed because of word choice.

§ ~~10770.6.~~10892. Verification to Filing of Declaration of Readiness to Proceed by or on Behalf of Lien Claimant~~.~~

No Declaration of Readiness to Proceed shall be filed for a section 4903(b) lien, or for a lien claim for medical-legal costs, without an attached verification executed under penalty of perjury:

(a) Stating either that:

(1) The ~~d~~Declaration of ~~r~~Readiness to Proceed is not being filed because of a dispute solely subject to the independent medical review and/or independent bill review process; or

(2) A timely petition appealing the Administrative Director's determination regarding independent medical review and/or independent bill review has been filed; and

(b) Stating either that:

(1) The underlying case has been resolved; or

(2) At least six months have elapsed from the date of injury and the injured worker has chosen not to proceed with ~~his or her~~ their case.

The declarant shall make a diligent search to determine that the injured worker has chosen not to proceed with ~~his or her~~ their case and the verification shall specify the efforts made in conducting the diligent search. A diligent search shall include contacting the injured worker, contacting the employer or carrier, or inquiring at the district office with appropriate venue pursuant to Labor Code section 5501.5(a)(1) or Labor Code section 5501.5(a)(2).

The verification shall be in the following form:

I declare under penalty of perjury under the laws of the State of California that:

[ ] The ~~d~~Declaration of ~~r~~Readiness to Proceed is not being filed because of a dispute subject to the independent medical review and/or independent bill review process; or

[ ] A timely petition appealing the Administrative Director's determination regarding independent medical review and/or independent bill review has been filed (Check one box); and

[ ] The underlying case has been resolved; or

[ ] At least six months have elapsed from the date of injury and the injured worker has chosen not to proceed with ~~his or her~~ their case (Check one box). In determining that the injured worker has chosen not to proceed with ~~his or her~~ their case, I have made a diligent search consisting of the following efforts (specify):

Commented [A940]: Propose renumbering without substantive change in language.

Commented [A941]: Comma added; language added to reflect the correct full name of the form.

Commented [A942]: Language added to reflect the correct full name of the form.

Commented [A943]: Changed to conform to style per ACR 260.

Commented [A944]: Changed to conform to style per ACR 260.

Commented [A945]: Language added to reflect the correct full name of the form.

Commented [A946]: Changed to conform to style per ACR 260.

Commented [A947]: Changed to conform to style per ACR 260.

_____
_____ s/s _____ on
_____

Failure to attach the verification or an incorrect verification may be a basis for sanctions.

(c) If the Appeals Board approves an e-form or optical character recognition (OCR) form for this declaration, lien claimants shall file the declaration using the adopted form.

Commented [A948]: Language added in anticipation of the possibility of a future form approval. Standardized language in verifications avoids ambiguity and the need for litigation over whether a lien should be dismissed because of word choice.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 4903, 4903.6 and 5501.5, Labor Code.

§ ~~10772.~~10899. Unemployment Compensation Disability Liens.

When an unemployment compensation disability lien is filed by the Employment Development Department, there shall be a rebuttable presumption that the amounts stated therein have been paid to the injured worker by the Employment Development Department.

In any case involving a lien claim for unemployment compensation disability benefits or unemployment compensation benefits and extended duration benefits where it appears that further benefits may have been paid subsequent to the filing of the claim of lien, the workers' compensation judge shall notify the lien claimant when the case is ready for decision or for ~~o~~Order ~~a~~Approving ~~c~~Compromise and ~~r~~Release, and the lien claimant shall have five (5) days thereafter in which to file and serve an amended lien reflecting all payments made to and including the date of filing of the amended lien.

In cases where a ~~c~~Compromise and ~~r~~Release is filed and continuing unemployment compensation disability benefits or unemployment compensation benefits and extended duration benefits are being paid, the workers' compensation judge will ascertain the full amount of the lien claim as of the time of the approval of the ~~c~~Compromise and ~~r~~Release so that the allocation made under the authority of Labor Code ~~S~~section 4904 may be changed to reflect unemployment compensation disability or unemployment compensation and extended duration payments to the date of decision.

Authority: Sections 133 and 5307, Labor Code.
Reference: Sections 4903 and 4904, Labor Code.

Commented [A949]: Propose renumbering without substantive change in language.

Commented [A950]: Capitalization added to conform to style; comma added to correct punctuation.

Commented [A951]: Capitalization added to conform to style.

Commented [A952]: Capitalization removed to conform to style.

ARTICLE 17
Arbitration

§ ~~10995~~. 10900. Mandatory Arbitration.

Commented [A953]: Propose redrafting this rule to eliminate material regarding selection of the arbitrator which will be in a separate rule. Pursuant to Labor Code section 5270, arbitration does not apply where an applicant is unrepresented.

~~(a) This rule applies to injuries occurring on or after January 1, 1990.~~
~~(b) Any application for adjudication that lists one or more disputes involving an issue set forth in Labor Code section 5275(a), shall be accompanied by an arbitration submittal form. The arbitration submittal form shall indicate that either:(1) an arbitrator has been selected pursuant to Labor Code section 5271(a), or~~
~~(2) an unsuccessful attempt has been made to select an arbitrator and the presiding workers' compensation judge is requested pursuant to Labor Code section 5271(b), to assign a panel of five arbitrators.~~

~~(c) If the parties have agreed to an arbitrator pursuant to Labor Code section 5271(c), the presiding judge shall, within six (6) days of receipt of the arbitration submittal form, order the issue or issues in dispute submitted for arbitration pursuant to Labor Code sections 5272, 5273, 5276 and 5277.~~
~~(d) If the arbitration submittal form requests a panel pursuant to Labor Code section 5271(b), the presiding judge shall, within six (6) days of receipt of the arbitration submittal form, serve on each of the parties an identical list of five arbitrators selected at random pursuant to Labor Code 5271(b). For each party in excess of one party in the capacity of employer and one party in the capacity of injured employee or lien claimant, the presiding judge shall randomly select two additional arbitrators to add to the panel in accordance with the selection process set forth in Labor Code section 5721(c). Each of the parties shall strike two arbitrators from the list and return it to the presiding judge within six (6) days after service. Failure to timely return the list shall constitute a waiver of a party's right to participate in the selection process. If one arbitrator remains, the presiding judge shall, within six (6) days of return of the lists from the parties, order the issue or issues submitted for arbitration before the selected arbitrator pursuant to Labor Code sections 5272, 5273, 5276 and 5277. If more than one arbitrator remains on the panel, the presiding judge shall randomly select an arbitrator from the remaining panelists.~~
~~(e) If the parties to the dispute have stricken all the arbitrators from the panel, the presiding judge shall, within six (6) days of receipt of the last of the returned lists, serve on each of the parties to the dispute a new list of five arbitrators and any additional arbitrators required by Labor Code section 5271(c), selected at random but excluding the names of the arbitrators on the prior list. Each of the parties to the dispute shall again strike two arbitrators from the list and return it to the presiding judge within six (6) days after service. This procedure shall continue until one or more arbitrators remain on the lists returned to the presiding judge.~~
~~(f) The parties shall provide all necessary materials to the arbitrator. Any paper file shall remain in the custody of the district office.~~
~~(g) A copy of any final decision, order or award from the arbitrator, together with a copy of the record developed as set forth in Labor Code sections 5276 and 5277, shall be filed with the presiding judge of the district office having venue. The district office shall scan the copies of the arbitrator's the decision, order or award and record into the EAMS adjudication file and, after scanning, shall destroy the copies.~~

Unless the applicant is not represented by an attorney, any party may file an arbitration submittal form after a defendant denies liability for benefits because it disputes insurance coverage.

Any party may file an arbitration submittal form after a petition for contribution pursuant to Labor Code section 5500.5 has been filed.

Any party may file a petition objecting to arbitration submittal if the party asserts the issues in dispute are not subject to mandatory arbitration pursuant to Labor Code section 5275(a).
Upon receipt of an arbitration submittal form or an objection to an arbitration submittal form, the presiding judge may set the matter for a status conference to determine if the issues in dispute are subject to mandatory arbitration.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 5270, 5272, 5275, 5276, 5277 and 5500.5, Labor Code

§ ~~10996.~~ 10905. Voluntary Arbitration.

~~(a) At any time, the parties may agree to submit any issue for arbitration pursuant to Labor Code section 5275(b), by submitting an arbitration submittal form that indicates that the parties have selected an arbitrator pursuant to Labor Code section 5271(a), and by filing an application for adjudication if one has not been previously filed.~~
~~(b) Within six (6) days of receipt of the arbitration submittal form, the presiding workers' compensation judge shall order the issues in dispute submitted for arbitration pursuant to Labor Code sections 5272, 5273, 5276 and 5277.~~
~~(c) If the parties are unable to agree to an arbitrator under Labor Code section 5271(a), the parties may agree to follow the procedures for selecting an arbitrator under Labor Code section 5271(b) and (c), as set forth in section 10995.~~
~~(d) The parties shall provide all necessary materials to the arbitrator.~~
~~(e) A copy of any final decision, order or award from the arbitrator, together with a copy of the record developed as set forth in Labor Code sections 5276 and 5277, shall be filed with the presiding judge of the district office having venue. The district office shall scan the copies of the arbitrator's decision, order or award and the record into the EAMS adjudication file and, after scanning, shall destroy the copies.~~

The parties agreeing to submit an issue or issues to voluntary arbitration shall jointly submit an arbitration submittal form outlining the issues they propose to submit to arbitration.

Unless there is an existing ADJ number, an Application for Adjudication of Claim shall be concurrently filed with arbitration submittal form.

Upon receipt of an arbitration submittal form, the presiding judge may set the matter for a status conference to clarify the issues submitted to the arbitrator or to ensure compliance with Labor Code section 5270.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 5270, 5271, 5272, 5273, 5275, 5276 and 5277, Labor Code.

Commented [A954]: Rule 10996 includes duplicative material on the mechanics of arbitration submittal. We propose a rule that addresses the issues unique to voluntary arbitration. In particular, the parties may wish to limit the issues submitted.

§ ~~10995, 10996~~ 10910. Selection of Arbitrator.

(a) If the parties agree on an arbitrator, the parties shall file a proposed order appointing arbitrator concurrently with the arbitration submittal form. The presiding judge, or a judge designated by the presiding judge, shall within 10 days of receipt of the arbitration submittal form and proposed order, issue an Order Appointing Arbitrator or set the matter for a status conference.

(b) If the arbitration submittal form requests a panel pursuant to Labor Code section 5271, the presiding judge or a judge designated by the presiding judge shall, within 10 days of receipt of the arbitration submittal form, serve on each of the parties an identical list of arbitrators selected at random pursuant to Labor Code 5271(b).

(1) Within 10 days of service of the list of arbitrators, any party may file a petition to disqualify an arbitrator for reasons set forth in section 170.1 of the Code of Civil Procedure. A timely petition for disqualification suspends the arbitrator selection process until the presiding judge acts on the petition. Together with any order issued regarding the petition for disqualification, the presiding judge shall set forth time limits for striking names.

(2) Within 15 days of service of the list of arbitrators, each party may strike two names from the list and serve notice of the names struck on all parties to the arbitration. Failure to serve notice waives a party's right to participate in the arbitrator selection process.

(3) The presiding judge, or a judge designated by the presiding judge, shall within 30 days of receipt of the arbitration submittal form, issue an Order Appointing Arbitrator or set the matter for a status conference.

(c) Only the arbitrator named in the Order Appointing Arbitrator shall conduct the arbitration.

(d) An arbitrator shall not communicate with any party regarding the merits of the issues to be arbitrated until appointed as the named arbitrator in the Order Appointing Arbitrator.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 5271, 5272, 5273, 5275, 5276 and 5277, Labor Code; and Section 170.1, Code of Civil Procedure.

Commented [A955]: The selection of an arbitrator proceeds in the same fashion whether the parties are subject to mandatory or voluntary arbitration. Therefore, we propose a single rule. We have changed the time within which the PJ must act from 6 days to 10 days to improve administration of the system.

Commented [A956]: Labor Code 5271(b) covers the process for selection.

§ ~~10998.~~ 10912. Disqualification of Arbitrator.

~~This rule applies to injuries occurring on or after January 1, 1990, except that this rule applies regardless of the date of injury for voluntary arbitration pursuant to Labor Code section 5275, subdivision (b).~~

After service of a list of panel members pursuant to rule ~~10995~~ 10910, any party may, within ~~six (6)~~ 10 days, petition the presiding workers' compensation judge to remove any member from the panel pursuant to section 170.1 of the Code of Civil Procedure. In event the presiding workers' compensation judge finds cause under section 170.1 of the Code of Civil Procedure, the presiding workers' compensation judge shall remove the member or members of the panel challenged and add to the original list the appropriate number of arbitrators at random to make a full panel and, within ~~six (6)~~ 10 days, serve the list on the parties.

In event the presiding workers' compensation judge selects an arbitrator pursuant to rule ~~10995~~ 10910, the parties will have ~~six (6)~~ 10 days after service of the name of the arbitrator to petition to disqualify that arbitrator pursuant to section 170.1 of the Code of Civil Procedure. If the presiding workers' compensation judge finds cause, the presiding workers' compensation judge shall assign another arbitrator pursuant to Labor Code section 5271~~, subdivision~~ (d) and order the issue or issues in dispute submitted to that arbitrator.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 5271, 5272, 5273, 5275, 5276 and 5277, Labor Code; Section 170.1, Code of Civil Procedure; and Section 10910, title 8, California Code of Regulations.

Commented [A957]: Window period.

Commented [A958]: Extended the time period from 6 to 10 days for administrative convenience.

Commented [A959]: Revised to conform to practice

Commented [A960]: Cross-reference updated to reflect new rule number.

Commented [A961]: We propose extending the period for the parties to seek to disqualify an arbitrator from six days to 10 days.

Commented [A962]: "Subdivision" deleted to conform to style.

§ 10914. Record of Arbitration Proceeding.

Commented [A963]: New rule to clarify what the record consists of in an arbitration proceeding.

(a) The arbitrator shall make and maintain the record of the arbitration proceeding and shall file the record with the Appeals Board when required by this rule or rule 10940.

(b) The parties shall provide the arbitrator with a copy of the Arbitration Submittal Form and the Order Appointing Arbitrator.

(c) The record of arbitration proceedings shall include the following:

(1) Order Appointing Arbitrator;

(2) Notices of appearance of the parties involved in the arbitration;

(3) Minutes of the arbitration proceedings, identifying those present, the date of the proceeding, the disposition and those served with the minutes or the identification of the party designated to serve the minutes;

(4) Pleadings, petitions, objections, briefs and responses filed by the parties with the arbitrator;

(5) Exhibits filed by the parties;

(6) Stipulations and issues entered into by the parties;

(7) Arbitrator's Summary of Evidence containing evidentiary rulings, a description of exhibits admitted into evidence, the identification of witnesses who testified and summary of witness testimony;

(8) Verbatim transcripts of witness testimony if witness testimony was taken under oath.

(9) Findings, orders, awards, decisions and opinions on decision made by the arbitrator; and

(10) Arbitrator's report on petition for reconsideration, removal or disqualification.

(d) The arbitrator shall file any finding, order or award together with the opinion on decision with the Appeals Board when it is served on the parties.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 5271, 5272, 5273, 5275, 5276 and 5277, Labor Code; and Section 10940, title 8, California Code of Regulations.

§ ~~10999.~~ 10920. Arbitrator Fee and Cost Disputes.

Any dispute involving an arbitrator's fee or cost shall be resolved by the presiding workers' compensation judge of the appropriate local office or, in ~~his or her~~ their absence, the acting presiding workers' compensation judge.

Any request to resolve a dispute about arbitrator fees or costs must be accompanied by any written agreement pertaining to arbitrator fees or costs and a statement that shall include the nature of the dispute and an itemization of the hours spent in actual arbitration hearing, in preparation for arbitration, and in preparation of the decision. The statement shall also include an itemization of the verifiable costs including use of facility, reporters and transcript preparation.

An arbitrator's fee shall not exceed a reasonable amount. In establishing a reasonable fee, the ~~P~~presiding ~~W~~workers' ~~C~~compensation ~~J~~judge shall consider:

(a) Responsibility assumed by the arbitrator;

(b) Experience of the arbitrator;

(c) Number and complexity of the issues being arbitrated;

(d) Time involved; and

(e) Expeditiousness and completeness of issue resolution.

The presiding workers' compensation judge of each local office shall maintain statistics on all arbitration fees awarded pursuant to Labor Code section 5273(c) including the amount ~~thereof~~ and rationale ~~or basis~~ for the award pursuant to (a) through (e) ~~herein~~ above.

Arbitration costs will be allowed in a reasonable amount pursuant to Labor Code section 5273~~, subdivision~~ (a).

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 5271, 5271, 5273, 5275, 5276 and 5277, Labor Code.

Commented [A964]: Propose renumbering with only non-substantive changes.

Commented [A965]: Changed to conform to style per ACR 260.

Commented [A966]: Capitalization removed to conform to style.

Commented [A967]: Unnecessary and superfluous language deleted.

Commented [A968]: "Subdivision" deleted to conform to style

ARTICLE 18
Reconsideration, Removal and Disqualification

§ ~~10840, 10844 10845 10850~~. 10940. Filing and Service of Petitions for Reconsideration, Removal, ~~and~~ Disqualification and Answers.

(a) ~~Except as provided in sections 10865 and 10953,~~ Petitions for reconsideration, removal, or disqualification and answers ~~thereto may~~ shall be filed in EAMS or with the district office having venue in accordance with Labor Code section 5501.5 unless otherwise provided. Petitions for reconsideration of decisions after reconsideration of the Appeals Board shall be filed with the office of the Appeals Board.~~, with any district office of the Workers' Compensation Appeals Board or with the office of the Appeals Board in San Francisco.~~ Petitions filed in EAMS pursuant to this rule must comply with rules 10205.10-10205.14.

(b) No duplicate copies ~~of petitions filed with a district office~~ shall ~~not also~~ be filed with any ~~other~~ district office or with the Appeals Board ~~in San Francisco~~. No documents sent directly to the Appeals Board by fax or e-mail will be accepted for filing, unless otherwise ordered by the Appeals Board.

(c) Every petition and answer shall be verified upon oath in the manner required for verified pleadings in courts of record. A verification and a proof of service shall be attached to each petition and answer. Failure to file a proof of service shall constitute valid ground for dismissing the petition.

(d) A petition shall not exceed 25 pages and an answer shall not exceed 10 pages unless allowed by the Appeals Board. Any verification, proof of service, exhibit,, document cover sheet or document separator sheet filed with the petition or answer shall not be counted in determining the page limitation. Upon its own motion~~, or upon a clear and convincing~~ or upon a -showing of good cause, the Appeals Board may allow the filing of a petition or answer that ~~petition, answer, or supplemental petition or answer that does not comply with the provisions~~ exceeds the page limitations ~~including but not limited to the page limitations.~~ A request to exceed the page limitations shall be made by a separate petition, made under penalty of perjury, that specifically sets forth ~~the facts or other~~ reasons why the request should be granted.

(e) If the petition seeks removal or reconsideration of an arbitrator's decision or disqualification of an arbitrator, the petition and any answer shall be served on the arbitrator and all affected parties in accordance with rule 10610.~~(b) Except as provided in sections 10865 and 10953, the following persons and entities may file petitions for reconsideration, removal, or disqualification (and answers thereto) electronically within EAMS:~~

~~(a) A party, lien claimant, attorney, or other representative who has been assigned an individual EAMS login and password by the Division of Workers' Compensation as part of an electronic filing trial group; and~~

Commented [A969]: From 10840

Commented [A970]: "Thereto" deleted to conform to style. Changed "may" to "shall" because filing must be in EAMS or at district office consistent with filing of any document with the appeals board. This is a substantive change to allow for consistent filing rules.

Commented [A971]: Added new language to emphasize that all electronically filed petitions for reconsideration, removal, and disqualifications, and answers thereto, must also comply with the EAMS rules for electronically filed documents.

Commented [A972]: Superfluous language deleted.

Commented [A973]: Reworded to improve clarity.

Commented [A974]: From current rule 10845.

Commented [A975]: From current rule 10844 regarding petitions for disqualification. Labor code section 5902 requires that all petitions for reconsideration be verified. We are adding this section to clarify that petitions for removal and answers to petitions for reconsideration, removal and disqualification should also be verified.

Commented [A976]: Propose adding proof of service to definitions based on Code of Civil Procedure.

Commented [A977]: Designed to replace current 10850.

Commented [A978]: From current rule 10845(a).

Commented [A979]: Redundant language deleted.

Commented [A980]: Redundant language deleted.

Commented [A981]: Added to clarify that additional service required when petition involves arbitration.

~~(b) A law firm, an insurance company, a self-insured employer, a third party administrator, or lien claimant who has been assigned an organizational EAMS login and password by the Division of Workers' Compensation as part of an electronic filing trial group.~~

Commented [A982]: No longer required because EAMS filing is now standard, and this language is therefore superfluous.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 5501.5, 5900, 5902 and 5905, Labor Code; and Sections 10205.10-10205.14 and 10610, title 8, California Code of Regulations.

§ ~~10842, 10844.~~ 10945. Required Contents of Petitions for Reconsideration, Removal, ~~and~~ Disqualification and Answers.

(a) Every petition for reconsideration, removal or disqualification shall fairly state all of the material evidence relative to the point or points at issue. Each contention ~~contained in a petition for reconsideration, removal, or disqualification~~ shall be separately stated and clearly set forth. A failure to fairly state all of the material evidence may be a basis for denying the petition.

(b) ~~Each~~ Every petition ~~for reconsideration, removal, or disqualification,~~ and ~~each~~ answer ~~thereto~~ shall support its evidentiary statements by specific references to the record.

(1) References to any stipulations, issues, or testimony contained in any Minutes of Hearing, Summary of Evidence or hearing transcript shall specify:

(A) The date and time of the hearing; and

(B) If available, the page(s) and line number(s) of the Minutes, Summary, or transcript to which the evidentiary statement relates (e.g., "Summary of Evidence, 5/1/08 trial, 1:30 pm session, at 6:11-6:15").

(2) References to any documentary evidence shall specify:

(A) The exhibit number or letter of the document;

~~(B) The date and time of the hearing at which the document was admitted or offered into evidence;~~

(~~C)~~B) Where applicable, the author(s) of the document;

(~~D)~~C) Where applicable, the date(s) of the document; and

(~~E)~~D) The relevant page number(s) ~~and, if available, at least one other relevant identifier (e.g., line number(s), paragraph number(s), section heading(s)) that helps pinpoint the reference within the document~~ (e.g., "~~the 6/16/08 report~~ Exhibit M, Report of John A. Jones, M.D., 6/16/08 at p. 7. ~~Apportionment Discussion, 3rd full W [Defendant's Exh. B, admitted at 8/1/08 trial, 1:30pm session]~~").

(3) References to any deposition transcript shall specify:

(A) The exhibit number or letter of the document;

~~(B) The date and time of the hearing at which the deposition transcript was admitted or offered into evidence;~~

(~~C~~B) The name of the person deposed;

Commented [A983]: "Each" replaced with "every" to conform to style

Commented [A984]: Superfluous language deleted.

Commented [A985]: "Thereto" deleted to conform to style.

Commented [A986]: This is not current practice. We propose removing it.

Commented [A987]: This is not current practice. We suggest removing these identifiers.

Commented [A988]: This is not current practice. We suggest removing it.

Commented [A989]: Renumbered.

(~~D~~C) The date ~~and time~~ of the deposition; and

(~~E~~D) The relevant page number(s) and line(s) (e.g., "~~the~~ Exh. 3, 6/20/08 depo of William A. Smith, M.D., at 21:20-22:5 ~~[Applicant's Exh. 3, admitted at 12/1/08 trial, 8:30am session]~~").

(c)(1) Copies of documents that have already been received in evidence or that have already been made part of the adjudication file shall not be attached or filed as exhibits to petitions for reconsideration, removal, or disqualification or answers ~~thereto. Except as provided by section 10856,~~ ~~d~~ Documents attached in violation of this rule may be detached from the petition or answer and discarded.

(2) A document that is not part of the adjudication file shall not be attached to or filed with a petition for reconsideration or answer unless a ground for the petition for reconsideration is newly discovered evidence.

(3) A document shall not be attached to or filed with a petition for removal or disqualification or answer unless the document is not part of the adjudication file and is relevant to a petition for removal or disqualification.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 126, 5310, 5311, 5900, 5902 and 5904, Labor Code.

Commented [A990]: Renumbered.

Commented [A991]: This is not current practice. We suggest removing it.

Commented [A992]: Renumbered.

Commented [A993]: This is not current practice. We suggest removing it.

Commented [A994]: Amended to clarify that in rare circumstances it may be appropriate to attach documents.

Commented [A995]: "Thereto" deleted to conform to style.

Commented [A996]: Rule 10856 deals with reconsideration based on newly discovered evidence. However, a petitioner seeking relief based on newly discovered evidence would potentially need to attach documents that have already been received into evidence. We propose dividing (c) into (c)(1) addressing documents that are already part of the adjudication file and (c)(2) addressing documents that are not yet part of the adjudication file.

Commented [A997]: Currently, our rule does not address attaching documents that are not in evidence. In limited circumstances, such as when the petitioner seeks reconsideration based on newly discovered evidence, attaching or filing documents may be appropriate.

Commented [A998]: Petitions for removal or disqualification may be filed early in the proceedings. Accordingly, the petitioner may need to attach exhibits that are not part of the record.

§ ~~10843.~~ 10955. Petitions for Removal and Answers.

(a) At any time within ~~twenty (20)~~ days after the service of the order or decision, or of the occurrence of the action in issue, any party may petition for removal based upon one or more of the following grounds:

(1) The order, decision or action will result in significant prejudice.

(2) The order, decision or action will result in irreparable harm.

The petitioner must also demonstrate that reconsideration will not be an adequate remedy after the issuance of a final order, decision or award. Failure to file the petition to remove timely shall constitute valid ground for dismissing the petition for removal.

(b) The petition for removal and any answer ~~thereto~~ shall be verified upon oath in the manner required for verified pleadings in courts of record.

(c) A copy of the petition for removal shall be served forthwith upon all parties by the petitioner. Any adverse party may file an answer within ~~ten (10)~~ days after service. No supplemental petitions, pleadings or responses shall be considered unless requested or approved by the Appeals Board.

(d) ~~The~~ A workers' compensation judge may, within ~~fifteen (15)~~ days of the filing of the petition for removal, rescind the order or decision in issue, or take action to resolve the issue raised in the petition. If the judge so acts, or if the petitioner withdraws the petition at any time, the petition for removal will be deemed automatically dismissed, requiring no further action by the Appeals Board. The issuance of a new order or decision, or the occurrence of a new action, will recommence the time period for filing a petition for removal as described above.

(e) The filing of a petition for removal does not terminate the judge's authority to proceed in a case or require the judge to continue or cancel a previously scheduled hearing absent direction from the Appeals Board. After a petition for removal has been filed, the workers' compensation judge shall consult with the presiding workers' compensation judge prior to proceeding in the case or continuing or canceling a scheduled hearing.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Section 5310, Labor Code.

Commented [A999]: We propose renumbering this rule with only stylistic changes.

Commented [A1000]: "Twenty" deleted to conform to style.

Commented [A1001]: "Thereto" deleted to conform to style.

Commented [A1002]: "Ten" deleted to conform to style.

Commented [A1003]: "Fifteen" deleted to conform to style.

§ ~~10452.~~ 10960. Petition for Disqualification of Judge.

Proceedings to disqualify a workers' compensation judge under Labor Code ~~S~~section 5311 shall be initiated by the filing of a petition for disqualification supported by an affidavit or declaration under penalty of perjury stating in detail facts establishing one or more of the grounds for disqualification specified in ~~S~~section 641 of the Code of Civil Procedure. ~~of the workers' compensation judge to whom a case or proceeding has been assigned.~~ The petition to disqualify a workers' compensation judge and any answer shall be verified upon oath in the manner required for verified pleadings in courts of record.

If the workers' compensation judge assigned to hear the matter and the grounds for disqualification are known, the petition for disqualification shall be filed not more than 10 days after service of notice of hearing or after grounds for disqualification are known. ~~In no event shall any such petition be allowed after the swearing of the first witness.~~

A petition for disqualification shall be referred to and determined by a panel of three commissioners of the Appeals Board in the same manner as a petition for reconsideration.

Authority: Section 5307, Labor Code.
Reference: Section 641, Code of Civil Procedure; and Sections 5310 and 5311, Labor Code.

Commented [A1004]: Rule 10452 will become rule 10960 with the changes indicated below.

Commented [A1005]: Capitalization removed to conform to style.

Commented [A1006]: See rule 9721.12.

Commented [A1007]: Capitalization removed to conform to style.

Commented [A1008]: We propose removing redundant language and adding a reference to CCP 641 which provides the grounds for disqualification.

Commented [A1009]: Added a verification requirement contained in rules re: petitions for reconsideration and removal for consistency.

Commented [A1010]: We propose deleting this sentence because it is not consistent with Cal. Code of Civ. Pro. 641 referenced in Labor Code 5311.

§ 641. Grounds for objection to appointment
A party may object to the appointment of any person as referee, on one or more of the following grounds:
(a) A want of any of the qualifications prescribed by statute to render a person competent as a juror, except a requirement of residence within a particular county in the state.
(b) Consanguinity or affinity, within the third degree, to either party, or to an officer of a corporation which is a party, or to any judge of the court in which the appointment shall be made.
(c) Standing in the relation of guardian and ward, conservator and conservatee, master and servant, employer and clerk, or principal and agent, to either party; or being a member of the family of either party; or a partner in business with either party; or security on any bond or obligation for either party.
(d) Having served as a juror or been a witness on any trial between the same parties.
(e) Interest on the part of the person in the event of the action, or in the main question involved in the action.
(f) Having formed or expressed an unqualified opinion or belief as to the merits of the action.
(g) The existence of a state of mind in the potential referee evincing enmity against or bias toward either party.

§ ~~10859.~~ 10961. ~~Orders~~ Actions by Workers' Compensation Judge After ~~Filing of~~ Petition for Reconsideration is Filed.

Within 15 days of the ~~After a petition for reconsideration has been~~ timely ~~filed~~ filing of a~~, a workers' compensation judge may, within the period of fifteen (15) days following the date of filing of that~~ petition for reconsideration, a workers' compensation judge shall perform one of the following actions: ~~amend or modify the order, decision or award or rescind the order, decision or award and conduct further proceedings. Further proceedings shall be initiated within 30 days from the order of recession.~~

(a) Prepare a Report and Recommendation on Petition for Reconsideration in accordance with rule 10962;

(b) Rescind the entire order, decision or award and initiate further proceedings within 30 days; or

(c) Rescind the order, decision or award and issue an amended order, decision or award. The time for filing a petition for reconsideration pursuant to Labor Code section 5903 will run from the filing date of the amended order, decision or award.

~~The time for filing a petition for reconsideration pursuant to Labor Code section 5903 will run from the filing date of the new, amended or modified order, decision or award.~~ After ~~this period of fifteen (~~15~~)~~ days ha~~s~~ve elapsed from the filing of a petition for reconsideration, a workers' compensation judge shall not ~~make~~ issue any order in the case ~~nor correct any error~~ until the Appeals Board has denied or dismissed the petition for reconsideration or issued a decision after reconsideration.

Authority: Section 5307, Labor Code.
Reference: Sections 5903, 5906, 5907 and 5908.5, Labor Code; and Section 10962, title 8, California Code of Regulations.

Commented [A1011]: Reworded; "fifteen" deleted to conform to style.

Commented [A1012]: Superfluous language deleted.

Commented [A1013]: Now encompassed by subdivision (c) of this rule.

Commented [A1014]: Now encompassed by subdivision (b) of this rule.

Commented [A1015]: Moved to subdivision (c) of this rule.

Commented [A1016]: "Fifteen" deleted to conform to style.

Commented [A1017]: Language revised to correct grammar.

Commented [A1018]: We propose eliminating this language as it causes confusion and detracts from the essential point that the WCJ should not issue orders while the matter is pending.

§ ~~10860~~. 10962. Report of Workers' Compensation Judge.

Petitions for reconsideration, petitions for removal and petitions for disqualification shall be referred to the workers' compensation judge from whose decisions or actions relief is sought. If ~~T~~the workers' compensation judge ~~shall~~ prepares a report it ~~that~~ shall contain:

(a) A statement of the contentions raised by the petition;

(b) A discussion of the support in the record for the findings of fact and the conclusions of law that serve as a basis for the decision or order as to each contention raised by the petition, or, in the case of a petition for disqualification, a specific response to the allegations and, if appropriate, a discussion of any failure by the petitioner to comply with the procedures set forth in ~~R~~rule ~~10452,~~ 10960; and

(c) The action recommended on the petition.

The workers' compensation judge shall submit the report to the Appeals Board within 15 days after the petition is filed unless the Appeals Board grants an extension of time. The workers' compensation judge shall serve a copy of the report on the parties and any lien claimant, the validity of whose lien is specifically questioned by the petition, at the time the report is submitted to the Appeals Board.

If the workers' compensation judge assigned to the case is unavailable, the presiding judge or the presiding judge's designee shall prepare and serve the report.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 5900 and 5906, Labor Code; and Section 10960, title 8, California Code of Regulations.

Commented [A1019]: Language changed to clarify that a report is not required if the order, decision or award is rescinded pursuant to rule 10961.

Commented [A1020]: Capitalization removed to conform to style; cross-reference updated to reflect new rule number.

Commented [A1021]: Proposed language is intended to clarify the procedure for producing a report in the event that the assigned WCJ is unavailable.

§ ~~10848~~. 10964. Supplemental Petitions.

(a) When a petition for reconsideration, removal or disqualification has been timely filed, supplemental petitions or pleadings or responses other than the answer shall be considered only when specifically requested or approved by the Appeals Board.

(b) A party seeking to file a supplemental pleading shall file a petition setting forth good cause for the Appeals Board to approve the filing of a supplemental pleading and shall attach the proposed pleading.

(c) Supplemental petitions or pleadings or responses other than the answer~~, except as provided by this rule,~~ shall neither be accepted nor deemed filed for any purpose ~~and shall not be acknowledged or returned to the filing party~~ except as provided by this rule.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 5310, 5311 and 5900, Labor Code.

Commented [A1022]: Propose renumbering and amending to clarify that party who wants to file supplemental pleading should attach pleading to request/petition to file supplemental pleading.

§ ~~10858~~.10966. Correction of Errors.

Commented [A1023]: Propose renumbering with minor changes to language.

Before the time to file a petition for reconsideration ~~is filed~~ has elapsed, a workers' compensation judge may correct the decision for clerical, mathematical or procedural error or amend the decision for good cause under the authority and subject to the limitations set out in Sections 5803 and 5804 of the Labor Code.

Authority: Sections 133 and 5307, Labor Code.
Reference: Sections 5309, 5803 and 5804, Labor Code.

§ ~~10846~~. 10972. Skeletal Petitions.

Commented [A1024]: Propose renumbering with minor change in language.

A petition for reconsideration, ~~or~~ removal or disqualification may be denied or dismissed if it is unsupported by specific references to the record and to the principles of law involved.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 126, 5310, 5311, 5900, 5902 and 5904, Labor Code.

§ ~~10856.~~ 10974. Allegations of Newly Discovered Evidence and Fraud.

Commented [A1025]: Renumbered without change.

Where reconsideration is sought on the ground of newly discovered evidence that could not with reasonable diligence have been produced before submission of the case or on the ground that the decision had been procured by fraud, the petition must contain an offer of proof, specific and detailed, providing:

(a) The names of witnesses to be produced;

(b) A summary of the testimony to be elicited from the witnesses;

(c) A description of any documentary evidence to be offered;

(d) The effect that the evidence will have on the record and on the prior decision; and

(e) As to newly discovered evidence, a full and accurate statement of the reasons why the testimony or exhibits could not reasonably have been discovered or produced before submission of the case.

A petition for reconsideration sought upon these grounds may be denied if it fails to meet the requirements of this rule, or if it is based upon cumulative evidence.

Authority: Sections 133 and 5307, Labor Code.
Reference: Sections 5902 and 5903, Labor Code.

§ ~~10862.~~ 10984. Hearing After Reconsideration Granted.

Commented [A1026]: Renumbered with minor non-substantive changes.

Where reconsideration has been granted and the case referred to a workers' compensation judge for proceedings on reconsideration, the workers' compensation judge shall, upon the conclusion thereof, prepare and serve upon the parties a summary of evidence received in the proceedings after reconsideration granted.

Unless otherwise instructed by the panel before which a case is pending, the workers' compensation judge to whom the case has been assigned for further proceedings may rule on requests for postponement, continuance of further hearing, join additional parties, dismiss unnecessary parties where such dismissal is not opposed by any other party to the case, make all interlocutory or procedural orders that are agreed to by all parties, issue subpoenas, rule on motions for discovery, rule on all evidentiary motions and objections, and make all other rulings necessary to expedite and facilitate the trial and disposition of the case. The workers' compensation judge shall not order a medical examination, obtain a recommended disability evaluation, make an order taking the case off calendar, nor make an order approving or disapproving ~~c~~Compromise and ~~r~~Release.

Commented [A1027]: Capitalization added to reflect correct full name of the form.

Authority: Sections 133 and 5307, Labor Code.
Reference: Sections 5309 and 5313, Labor Code.

§ ~~10864~~. 10986. Authority of Workers' Compensation Judge After Decision After Reconsideration.

Commented [A1028]: We propose rewording this rule to simplify the language without substantive changes.

After a decision after reconsideration has become final, subsequent orders and decisions in a case ~~may~~ shall be made by any trial level workers' compensation judge ~~to whom the case is assigned pursuant to Section 10348, including orders approving or disapproving compromise and release, orders allowing or disallowing liens, orders for enforcement of the decision of the Appeals Board, orders granting or denying petitions to reopen, orders rescinding, altering or amending the decision of the Appeals Board for good cause under Labor Code Section 5803, orders for increased compensation under Labor Code Section 5814, orders terminating liability, orders for commutation and orders resolving issues that, the Board in its decision has left for determination by a workers' compensation judge~~.

~~A workers' compensation judge may not make an order correcting a decision after reconsideration for clerical, mathematical, or procedural error. Requests for such correction shall be acted on by the panel that made the decision or if the composition of the Board has changed, by the successor panel~~. An order correcting a decision after reconsideration for clerical, mathematical or procedural error shall be made by the panel that made the decision or if the composition of the Board has changed, by the successor panel.

Authority: Sections 133 and 5307, Labor Code.
Reference: Sections 5900, 5910 and 5911, Labor Code.

§ ~~10865.~~ 10990. Reconsideration of Arbitration Decisions Made Pursuant to Labor Code Sections 3201.5 and 3201.7.

(a) A petition for reconsideration from an arbitration decision made pursuant to Labor Code ~~S~~section 3201.5(a)(1) or ~~S~~section 3201.7(a)(1) (known as "carve-out" cases) shall be filed directly with the office of the Appeals Board ~~in San Francisco~~ within ~~twenty (20)~~ days of the service of the final order, decision, or award made and filed by the arbitrator or board of arbitrators. A copy of the petition for reconsideration shall be served on the arbitrator or arbitration board.

(b) Notwithstanding any other provision of these rules, a petition for reconsideration in a carve-out case shall be filed directly with the office of the Appeals Board ~~in San Francisco~~, and not with any district office, including the San Francisco district office. ~~The street address and the post office box address of the Appeals Board may be found at the website of the Department of Industrial Relations, Workers' Compensation Appeals Board (currently, at http://www.dir.ca.gov/wcab/WCAB.PetitionforReconsideration.htm) or by telephoning the Appeals Board in San Francisco (currently, (415) 703-4550).~~ Any petition for reconsideration in a carve-out case that is received by any district office shall neither be accepted for filing nor deemed filed for any purpose. If a carve-out petition for reconsideration is submitted to a district office in violation of this rule, the petition shall be returned to the petitioner with a letter referencing this rule, noting that the petition was improperly submitted to a district office and has been rejected, and indicating that the petition should be filed directly with the Appeals Board ~~in San Francisco~~ consistent with this rule.

(c) The petition for reconsideration in a carve-out case, which shall be submitted with a document cover sheet, shall also comply with each of the following requirements:

(1) It shall be captioned so as to identify it as a "Petition for Reconsideration from Arbitrator's Decision Under Labor Code section 3201.5 or 3201.7" and it shall caption:

(A) The injured employee's first and last names;

(B) The name(s) of the defendant(s);

(C) The alternative dispute resolution (ADR) case number (i.e., the carve-out arbitration case number); and

(D) The Workers' Compensation Appeals Board adjudication case number, if previously assigned;

(2) It shall set forth the date on which the arbitrator or board of arbitrators served the arbitration decision. Proof of service of the arbitration decision on the parties shall be either by a verified statement of the arbitrator or the board of arbitrators indicating the date of service and listing the names and addresses of the persons served or by written acknowledgment of receipt by the parties at the time of the arbitration proceedings;

Commented [A1029]: We propose renumbering without substantive changes, except as noted below regarding transmission of the record of proceedings to the Appeals Board.

Commented [A1030]: Capitalization removed to conform to style.

Commented [A1031]: Superfluous language deleted.

Commented [A1032]: "Twenty" deleted to conform to style.

Commented [A1033]: Superfluous language deleted.

Commented [A1034]: Because addresses are subject to change, deleted address.

Commented [A1035]: Superfluous language deleted.

(3) It shall append, under a document separator sheet a copy of that portion of the collective bargaining agreement relating to the workers' compensation arbitration and reconsideration processes;

(4) It shall append, under a document separator sheet, a completed ~~a~~Application for ~~a~~Adjudication of ~~c~~Claim (but without any venue designation), which is required solely for the purpose of obtaining the information set forth therein (e.g., the injured employee's date(s) of injury and date of birth; the names and mailing addresses of the parties); therefore, it shall not be deemed an application for purposes of Labor Code section 4064(c); and

(5) It shall contain a proof of service of the petition, including service on the arbitrator or board of arbitrators.

(d) After the filing of the carve-out petition for reconsideration, an adjudication file will be created and an adjudication case number will be assigned, if there is no existing adjudication case number. Any new adjudication case number will be served by the Appeals Board on the parties and attorneys, and on the arbitrator or board of arbitrators, at the addresses listed in the proof of service to the petition.

(e) Following the Appeals Board's service of the adjudication case number (or, if there is an existing case, following the filing of the carve-out petition for reconsideration), and until the Appeals Board issues a decision disposing of all issues raised in the petition, all further documents shall be filed directly with the office of the Appeals Board ~~in San Francisco~~, and not with any district office.

(f) Within 15 days after receiving the petition for reconsideration, the arbitrator or board of arbitrators shall perform one of the following actions:

(1) Rescind the entire order, decision or award and initiate further proceedings within 30 days; or

(2) Rescind the order, decision or award and issue an amended order, decision or award. The time for filing a petition for reconsideration pursuant to Labor Code section 5903 will run from the filing date of the amended order, decision or award; or

(3) ~~s~~Submit to the Appeals Board ~~in San Francisco~~ an electronic copy ~~photocopy~~ of the complete record of proceedings, including:

~~(1)~~(A) The transcript of proceedings, if any;

~~(2)~~(B) A summary of testimony if the proceedings were not transcribed;

~~(3)~~(C) The documentary evidence submitted by each of the parties;

~~(4)~~(D) An opinion that sets forth the rationale for the decision; and

Commented [A1036]: Capitalization added to reflect correct full name of the form.

Commented [A1037]: Superfluous language deleted.

Commented [A1038]: Proposed language clarifies that the arbitrator may choose to rescind and initiate further proceedings or to rescind and substitute a new order in the same manner as WCJs, instead of preparing a report.

Commented [A1039]: Superfluous language deleted.

Commented [A1040]: We propose changing this rule to require an electronic copy of the record of proceedings, rather than a photocopy. It is unnecessarily burdensome and wasteful of resources to require the arbitrator to provide the Appeals Board with a physical copy of the record of proceedings, only for that copy to be destroyed upon receipt after scanning.

~~(5)~~(E) A report on the petition for reconsideration, consistent with the provisions of ~~section 10860~~ rule 10962. The original arbitration record shall not be filed.

(g) Upon receipt of the electronic copy of the complete record of proceedings, ~~T~~the Appeals Board may enter ~~scan~~ the petition for reconsideration, any answer, and the ~~photocopied~~ record of the arbitration proceedings into the adjudication file within EAMS. ~~Upon scanning, the paper documents shall be destroyed.~~

(h) The petition for reconsideration, any answer, and the arbitration record shall be deemed part of the Workers' Compensation Appeals Board's record of proceedings under ~~section 10750~~ rule 10803.

(i) After an arbitration decision has been made, the arbitrator or board of arbitrators shall maintain possession of the original record of the arbitration proceedings until the time for filing a petition for reconsideration has passed. Thereafter one of the parties may be designated custodian of the arbitration record as provided for in the collective bargaining agreement.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 3201.5, 3201.7 and 4064 Labor Code; and Sections 10803 and 10962, title 8, California Code of Regulations.

Commented [A1041]: Language modified to conform to the proposed requirement to provide an electronic copy of the proceedings.

Commented [A1042]: "Section" replaced with "rule" to conform to style; cross-reference updated to reflect new rule number.

§ ~~10866.~~ 10995. Reconsideration of Arbitrator's Decisions or Awards Made Pursuant to the Mandatory or Voluntary Arbitration Provisions of Labor Code Sections 5270 through 5275.

(a) Any final order, decision or award filed by an arbitrator under the mandatory or voluntary arbitration provisions of Labor Code ~~S~~sections 5270 through 5275 shall be subject to the reconsideration process. ~~as set forth in Labor Code Sections 5900 through 5911 and Rules 10842 through 10850. The parties, respectively, shall serve the arbitrator with the petition for reconsideration and the answer.~~

(b) A petition for reconsideration from any final order, decision or award filed by an arbitrator under the mandatory or voluntary arbitration provisions of Labor Code sections 5270 through 5275, and any answer ~~to such a petition~~, shall be filed in EAMS or with the district office having venue in accordance with Labor Code section 5501.5. ~~may be filed with any district office or with the office of the Appeals Board in San Francisco.~~ No duplicate copies of petitions ~~filed with a district office~~ shall ~~not also~~ be filed with any other district office or with the Appeals Board ~~in San Francisco~~.

(c) ~~When a petition for reconsideration is filed from any final order, decision or award made by an arbitrator under Labor Code Sections 5270 through 5275,~~Within 15 days after receiving the petition for reconsideration, the arbitrator shall perform one of the following actions:

(1) Rescind the entire order, decision or award and initiate further proceedings within 30 days; or

(2) Rescind the order, decision or award and issue an amended order, decision or award. The time for filing a petition for reconsideration pursuant to Labor Code section 5903 will run from the filing date of the amended order, decision or award; or

(3) ~~P~~prepare and serve a report on reconsideration as provided in ~~R~~rule ~~10860~~ 10962. Upon completion of the report on reconsideration, the arbitrator shall concurrently forward an electronic copy of the arbitrator's ~~original~~ report and an electronic copy ~~photocopy~~ of the complete arbitration file directly to the presiding workers' compensation judge of the district office having venue over the matter. Upon receipt of the arbitrator's ~~original~~ report and the ~~photocopy of the complete arbitration file,~~ record of arbitration proceedings the district office shall enter ~~scan~~ the report and the ~~photocopied~~ file into the EAMS adjudication file. ~~and, after scanning, shall destroy these documents. Thereafter, the adjudication file shall be electronically transferred to the Appeals Board for action on the petition for reconsideration or, to the extent that the adjudication file is in paper form, the file shall be delivered to the Appeals Board.~~

(d) The petition for reconsideration, any answer, and the arbitration record shall be deemed part of the Workers' Compensation Appeals Board's record of proceedings under ~~section 10750~~ rule 10803.

~~(e) The costs of photocopying the arbitrator's file shall be reimbursed to the arbitrator in accordance with the provisions of Labor Code section 5273, within 30 days after the liable party or parties receives the arbitrator's billing for those costs.~~

Commented [A1043]: Capitalization removed to conform to style.

Commented [A1044]: Added that arbitrator should be served to the filing and service rules.

Commented [A1045]: Unnecessary language deleted.

Commented [A1046]: As with normal petitions for reconsideration, may no longer file with any district office.

Commented [A1047]: Superfluous language deleted.

Commented [A1048]: Proposed language clarifies that the arbitrator may choose to rescind and initiate further proceedings or to rescind and substitute a new order in the same manner as WCJs, instead of preparing a report.

Commented [A1049]: We propose changing this rule to require an electronic copy of the record of proceedings, rather than a photocopy. It is unnecessarily burdensome and wasteful of resources to require the arbitrator to provide the District Office with a physical copy of the record of proceedings, only for that copy to be destroyed upon receipt after scanning.

Commented [A1050]: Capitalization removed to conform to style; cross-reference updated to reflect new rule number.

Commented [A1051]: "Section" replaced with "rule" to conform to style; cross-reference updated to reflect new rule number.

Commented [A1052]: Rendered unnecessary by the proposed change to require the arbitrator to provide the District Office with an electronic copy rather than a photocopy.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 5270-5275, 5501.5 and 5900-5911, Labor Code; and Sections 10962 and 10979, title 8, California Code of Regulations.