STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS

WORKERS' COMPENSATION APPEALS BOARD

INITIAL STATEMENT OF REASONS

Subject Matter of Proposed Regulations:

Rules of Practice and Procedure of the Workers' Compensation Appeals Board

BACKGROUND:

The Workers' Compensation Appeals Board (WCAB) proposes to amend its Rules of Practice and Procedure (Rules) effective January 1, 2020.[1] These proposed amendments are being initiated pursuant to the WCAB's rulemaking power under Labor Code sections 5307(a), 133, 5309 and 5708,[2] subject to the procedural requirements of section 5307.4. This Initial Statement of Reasons and accompanying Notice of Proposed Rulemaking have been prepared to comply with the procedural requirements of section 5307.4 and for the convenience of the regulated public to assist it in analyzing and commenting on this largely non-APA rulemaking process.[3]

The primary purpose of this rulemaking is to renumber and reorganize the rules for ease of use. As the number of rules has grown over the decades, the original numbering scheme has become more and more unwieldy, prompting the necessity of adding decimal rules and/or finding open numbers, whether or not they correspond to the most logical place for the rule to appear. The result is that the rules as a whole have become difficult to navigate even for experienced practitioners, not to mention injured workers, medical practitioners, insurance adjusters, interpreters, and other system users. Accordingly, the rules have been renumbered and reordered in a systematic, logical manner. As a result of this reorganization, some rules have been moved to different articles, and the order of articles has been changed. The intent is that the rules will appear in a logical, coherent order, both overall and within each individual article. In some cases, this has entailed combining and/or splitting up prior rules, in order to as much as possible have a single rule cover a single topic.

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[1] The WCAB rules are found in Cal. Code Regs., Title 8, Chapter 4.5, Subchapter 2, section 10300 et seq.

[2] All further statutory references are to the Labor Code unless otherwise specified.

[3] Under Government Code section 11351, the WCAB is not subject to Article 5 (Gov. Code, § 11346 et seq.), Article 6 (*id*. § 11349 et seq.), Article 7 (*id*. § 11349.7 et seq.), or Article 8 (*id*. § 11350 et seq.) of the rulemaking provisions of the Administrative Procedures Act (APA), with the sole exception that section 11346.4(a)(5) [publication in the California Regulatory Notice Register] does apply to the WCAB.

In a similar vein, we have taken the opportunity to implement a number of global changes to the rules as a whole. Most notably, 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 where appropriate, and in some situations have elected to repeat the noun rather than using a pronoun, where such usage provides greater clarity. We have also made other minor stylistic changes, including the removal of Oxford commas and the standardization of references (e.g. "Labor Code section __," "rule __," etc).

In addition to the above, we propose a number of other changes to specific rules. Each rule is specifically outlined below, but a handful of the most notable changes are noted here.

First, we propose redefining "party" to include lien claimants in rule 10305[4] (Definitions). Previously, lien claimants were defined as parties only after the resolution of an injured worker's case-in-chief, but in certain circumstances could be required to appear and/or participate in proceedings despite lacking party status, which created both conceptual and practical confusion. Redefining "party" to include lien claimants does not alter the fact that lien claims will not be heard until after the conclusion of the case-in-chief; the intent of the rule is to reflect the reality of practice. Similarly, the redefinition will not require service on lien claimants of all documents related to the case-in-chief, because rule 10625 requires service only on "affected" parties. As a result of this change, many references to "party or lien claimant" have been removed from the rules as redundant.

Second, we propose requiring exhibits in trials to be filed 20 days in advance of the trial date, unless the WCJ issues an order allowing later filing, pursuant to rule 10620 (Filing Proposed Exhibits). We recognize this may be burdensome in certain cases, and remind practitioners that the WCJ can always reduce this time period.

Third, our original proposal contemplated a number of changes to current rule 10451.1, which will become rule 10786, detailing the procedures for adjudicating medical-legal expense disputes. We received many comments from medical-legal providers expressing concern that our proposed changes would make it more difficult for them to obtain payment for services provided. As discussed in more detail below in the entry for rule 10786, this was far from the intent of the proposed changes. In order to address these concerns, we have significantly modified the proposed language, essentially restoring the current procedure under current rule 10451.1 while cleaning up the language to be easier to read and use.

Fourth, we propose adding a new rule that clarifies the procedure for an employer claiming a credit pursuant to Labor Code section 4909 for overpayment of benefits. When an employer owes an employee benefits but believes there has been an overpayment and unilaterally takes credit without first obtaining

[4] All rule numbers used in this background section refer to the proposed new rule numbers unless otherwise indicated.

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].) 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. We received some comments expressing concern that it would be burdensome on the parties to require preapproval before an employer may withhold benefits to offset a prior overpayment. However, the proposed rule is not intended to change existing law but merely to clarify that, as case law holds, an employer may not simply assert an overpayment and then begin deducting it from future benefits. As in any other case where there is controversy as to the proper amount of benefits to be paid, timely seeking WCAB intervention is ultimately in the interest of all parties.

Fifth, we propose allowing petition for costs to be processed as walk-through documents. We recognize that some petitions for costs may not be amenable to resolution on a walk-through basis, and that some District Offices may be more adversely impacted by this change than others. We note that the rule does not mandate processing petitions for costs as walk-throughs, and that WCJs always retain discretion to refuse to handle a given petition on a walk-through basis. The intent of the rule is to open the possibility of processing these petitions on a walk-through basis in those circumstances where it makes sense to do so, not to mandate any particular approach.

Other changes to specific rules are discussed below, in the section pertaining to each rule. Each rule is discussed in numerical order, with each Article presented as its own section. At the beginning of each Article is a table containing the old rule numbers, old rule titles, new rule titles, and new rule number, to allow the reader to quickly locate and cross-reference each rule. Where a single old rule is becoming a single proposed rule, the rule will be typically be amended and renumbered, unless the changes are so significant that it is preferable to repeal the old rule and replace it with the new rule. Where two or more prior rules are being combined into a single proposed rule, typically all of the prior rules will be repealed and replaced with the new rule. Where a rule is being repealed and not replaced, we include an explanation of why we believe the rule is no longer required.

In the interest of brevity, where language has been moved from one subdivision of a rule to another subdivision of the same rule, the movement has not been noted in the specific explanation of the changes to each rules. The same is true of changes to the numbering of various subdivisions, and of global changes discussed above, such as removing gender-specific language and references to lien claimants made redundant by the new "party" definition.

References within the rules to other rules have been updated as necessary, and rules have been revised to eliminate references to "parties or lien claimants" because the new definition of party includes lien claimants.

References in this document to "rule __" or "new rule __" refer to the new, proposed rule numbers; the former/current numbers are referred to as "current rule __."

In the proposed rules, changes are reflected by underlining (indicating new language) and strike-throughs (indicating deleted language).

Specific Technologies or Equipment

The proposed amendments do *not* mandate the use of specific technologies or equipment.

Consideration of Alternatives

The WCAB has identified no alternative that would be either more effective, or equally effective and less burdensome than the proposed amendments.

Effect on Small Businesses

The proposed amendments will not have a significant effect on small businesses.

Economic Impact on California Business Enterprises and Individuals

The proposed amendments will not have a significant economic impact on California business enterprises and individuals.

Article 1

General

TABLE 1

Former Number	Old Title	New Title/Repeal	New Number
10300	Adoption, Amendment or Rescission of Rules.	**Repealed and replaced by** Construction of Rules.	10300
10304	Article and Section Headings.		
10300	Adoption, Amendment or Rescission of Rules.	**Repealed and replaced by** Rulemaking Notices.	10302
10301	Definitions.	Definitions.	10305

Rules Repealed: 10300, 10304

New Rule Proposed: 10300 "Construction of Rules."

Statement of Specific Purpose and Reasons for Proposed Repeals and New Rule 10300.

We propose repealing rules 10300 and 10304, and replacing them with a new rule 10300 entitled "Construction of Rules." New rule 10300 will consist of subdivision (b) of former rule 10300 addressing severability of invalid rules and former rule 10304 addressing article and section headings. Subdivision (a) of current rule 10300 will become new rule 10302 discussed below.

Rule Repealed: 10300

New Rule Proposed: 10302 "Rulemaking Notices."

Statement of Specific Purpose and Reasons for Proposed Repeal and New Rule 10302.

We propose that former rule 10300(a) becomes rule 10302. Because the rule references Labor Code sections 5307 and 5307.4, it is not necessary to repeat the content of those Labor Code sections.

Rule Amended: 10305 "Definitions."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10305.

We propose renumbering the rule entitled "Definitions" from 10301 to 10305.

We propose eliminating the definitions of "Adjudication File" because it is defined by rule 10205(a); "Case Opening Document" because it is defined by rule 10450; "Declaration of Readiness" because it is defined by rule 10742; "Document" / "Document cover sheet" / "Document separator sheet" because they are defined by rule 10205(m), (n) and (o); "Electronic Filing" because it is defined by rule 10205(q); "To file" because it is defined by rule 10610; "Lien Conference" because it is defined by rule 10875; "Optical character recognition form" because it is defined by rule 10205(z); "Petition" because it is defined in Article 7; "To Serve" because it is defined in rule 10610; and "Trial" because it is unnecessary in light of rule 10787 which delineates the scope of trials;

We propose eliminating the definitions of "Application for Adjudication" because it is defined by Labor Code section 5500; "Carve out case" because it is defined by Labor Code sections 3201.5 through 3201.9; "Cost" because it is defined by Labor Code sections 4600, 4620, 4903, 5710, and 5811; "Lien activation fee" or "activation fee" because they are defined by Labor Code section 4903.06; "Lien filing fee" or "filing fee" because they are defined by Labor Code section 4903.05; "Priority conference" because it is defined by Labor Code section 5502; and "Venue" because it is defined by Labor Code section 5501.5 and 5501.6;

We propose eliminating the definitions of "Declaration of Readiness to Proceed to Expedited Hearing" because it is defined by rule 10782 and Labor Code section 5502(b); "Mandatory settlement conference" because it is defined by rule 10759 and Labor Code section 5502.

We propose eliminating the definition of "fax" because it is not a term of art and potentially confusing because the word fax is used both as a noun and a verb throughout these rules.

We propose eliminating subdivisions noting that "lien," "lien claim" and "lien issue(s)" includes claims of costs, because they are not actual definitions, and do not need to appear in a list of definitions.

We propose eliminating the definition of "Rating mandatory settlement conference" because we no longer have these proceedings.

We propose eliminating the definition of "Regular hearing" because it is not necessary.

We propose adding a definition for "Claim administrator" based loosely upon the definition for claims adjuster found in California Code of Regulations, title 10, section 2592.01(b).

We propose amending the definition of "District office" found in new subdivision (h) of this rule to include permanently staffed satellite offices, to clarify that a Declaration of Readiness to Proceedmay be filed at such offices.

We propose adding a definition of "En Banc decision" based upon Labor Code section 115.

We propose adding a definition of "Entity" to address issues related to non-attorney representation.

We propose adding the phrase "a remote location" to the definition of "Hearing" to reflect current practice. We also propose adding the phrase "lien trial" to the list of proceedings that constitute a hearing.

We propose adding a definition of "Non-attorney representative" as part of the rules implementing Labor Code section 4907.

We propose simplifying the definition of "party." This change is intended to broaden the definition in order to allow certain entities now considered non-parties to file petitions and obtain limited purpose hearings in the rules that directly address those petitions/hearings. To a similar end, 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 Declarations of Readiness to Proceed only after the case in chief is resolved. Redefining "party" to include lien claimants does not alter the fact that lien claims will not be heard until after the conclusion of the case-in-chief; the intent of the rule is to reflect the reality that lien claimants are parties. Similarly, this change will not require service on lien claimants of all documents related to the case-in-chief, because rule 10625 requires service only on "affected" parties.

We propose adding a definition of "Significant panel decision" codifying caselaw (*Larch v. Workers' Comp. Appeals Bd.* (1999) 64 Cal.Comp.Cases 1098, 1099-1100 (writ den.); *Elliott v. Workers' Comp. Appeals Bd.* (2010) 182 Cal.App.4th 355, 361, fn. 3 [75 Cal.Comp.Cases 81].)

We propose adding a definition of "Walk-through document" to address this procedure, unique to the Workers' Compensation Appeals Board.

We propose revising the definition of "Workers' Compensation Appeals Board" to distinguish it from "Appeals Board," which is defined separately.

We propose adding a definition of "Workers' Compensation Judge" based upon current rule 10302.

Finally, we propose adding Labor Code section 110(a) to the "Reference" section of this rule.

Article 2

Powers, Duties and Responsibilities

TABLE 2

Former Number	Old Title	New Title/Repeal	New Number
10340	Appeals Board Decisions and Orders.	Appeals Board Decisions and Orders.	10320
10341	En Banc Decisions.	En Banc and Significant Panel Decisions.	10325
10348	Authority of Workers' Compensation Judges.	Authority of Workers' Compensation Judges.	10330
10342	Appeals Board Member Orders.	Authority of Commissioners of the Appeals Board.	10338
10344	Appeals Board, Commissioner, Deputy Commissioner and Presiding Workers' Compensation Judges Orders.	Authority of Commissioners, Deputy Commissioners and Presiding Workers' Compensation Judges.	10344
10346	Assignment or Transfer of Cases.	Authority of Presiding Workers' Compensation Judge to Assign or Transfer Cases.	10346
10350	Trials: Appointment and Authority of Pro Tempore Workers' Compensation Judges.	**Repealed and replaced by:**	10355
10351	Conference Hearings: Appointment and Authority of Pro Tempore Workers' Compensation Judges.	Appointment and Authority of Pro Tempore Workers'	

10352	Reconsideration of Pro Tempore Workers' Compensation Judge's Orders, Decisions, or Awards.	Compensation Judges.	
10593	Testimony of Judicial or Quasi-Judicial Officers.	Testimony of Judicial or Quasi-Judicial Officers.	10360
New Rule		Extensions of Time During Public Emergencies.	10370

Rule Amended: 10320 "Appeals Board Decisions and Orders."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10320.

We propose renumbering and amending rule 10340 to become rule 10320 entitled "Appeals Board Decisions and Orders. We propose clarifying the rule to clarify that the orders issued pursuant to this rule may issue only from a panel of the Appeals Board or the Appeals Board acting en banc. We propose moving current subdivision (c) 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 10961 (formerly rule 10859). We proposed rewording subdivision (c) for clarity. We propose adding subdivision (d) to clarify that orders involving removal fall under this rule. We propose amending current subdivision (d), new subdivision (e) to reflect that the Appeals Board has disciplinary authority over non-attorney representatives pursuant to Labor Code section 4907, but not over attorneys. Finally, we propose adding Labor Code section 4907 to the "Reference" section of this rule.

Rule Amended: 10325 "En Banc and Significant Panel Decisions."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10325.

We propose renumbering current rule 10341 to rule 10325 and adding subdivision (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.

Rule Amended: 10330 "Authority of Workers' Compensation Judges."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10330.

We propose renumbering current rule 10348 to rule 10330. The portion of the rule dealing with contempt will be moved to a new rule in Article 4, rule 10440. We propose deleting language 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 writs, summons, and warrants.

Rule Amended: 10338 "Authority of Commissioners of the Appeals Board."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10338.

We propose renumbering this rule with only non-substantive wording changes.

Rule Amended: 10344 "Authority of Commissioners, Deputy Commissioners and Presiding Workers' Compensation Judges."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10344.

We propose minor changes to the title and language for clarity.

Rule Amended: 10346 "Authority of Presiding Workers' Compensation Judge to Assign or Transfer Cases."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10346.

We propose changing the title of the rule for consistency with other titles in this article. In subdivision (b), we propose adding language at the suggestion of the State Bar workers' compensation section to address reasons a WCJ may be unavailable. Subdivision (c) will be split from subdivision (b) for emphasis. We propose adding Labor Code sections 5309, 5310 and 5700 to the "Reference" section of the rule.

Rules Repealed: 10350, 10351, 10352

New Rule Proposed: 10355 "Appointment and Authority of Pro Tempore Workers' Compensation Judges."

Statement of Specific Purpose and Reasons for Proposed Repeals and New Rule 10355.

We propose repealing current rules 10350, 10351 and 10352 and replacing them with a new rule governing pro tempore Workers' Compensation Judges. We propose deleting the portions of current rule 10350 pertaining to pro tempore judges hearing trial by stipulation because arbitration is available for parties that want to stipulate to have a matter decided by a particular attorney. We propose deleting the portions of current rule 10350 pertaining to the requirement that notice of the name of the pro tempore judge be provided prior to the conference to conform to current practice.

Rule Amended: 10360 "Testimony of Judicial or Quasi-Judicial Officers."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10360.

We propose renumbering this rule with no substantive changes. Some superfluous or redundant language has been deleted, and the references to street addresses of various agencies have been removed because the information is potentially subject to change. We have also corrected a typographical error.

Rule Adopted: 10370 "Extensions of Time During Public Emergencies."

Statement of Specific Purpose and Reasons for Proposed Adoption of rule 10370.

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 extension of non-jurisdictional deadlines in public emergencies, modeled on California Rule of Court 8.66, which will include giving the Chief Workers' Compensation Judge, or their designee, the authority to authorize a district office to accept filing via fax.

Rule Repealed: 10349 "Order Equivalent to Notices of Intention."

Statement of Specific Purpose and Reasons for Proposed Repeal of Rule 10349.

We propose repealing current rule 10349. The rule will be replaced with rule 10832, in Article 15. We have elected to repeal 10349, rather than simply amending it, due to the magnitude and significance of the proposed changes.

Article 3

Parties, Joinder, and Consolidation

Table 3

Former Number	Old Title	New Title/Repeal	New Number
10360	Necessary Parties.	Necessary Parties.	10380
10364	Parties Applicant.	**Repealed and replaced by:** Joinder of Parties.	10382
10380	Joinder of Parties.		
10550	Proper Identification of the Parties and Lien Claimants.	Proper Identification of Parties.	10390
10589	Consolidation of Cases.	Consolidation of Cases.	10396
10592	Assignment of Consolidated Cases.	Assignment of Consolidated Cases.	10398

Rule Amended: 10380 "Necessary Parties."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10380.

We propose renumbering rule 10360 with no substantive changes.

Rules Repealed: 10364, 10380

New Rule Proposed: 10382 "Joinder of Parties."

Statement of Specific Purpose and Reasons for Proposed Repeals and New Rule 10382.

We propose repealing current rules 10364 and 10380 and replacing them with a unified new rule governing joinder of parties. The reference to when a lien claimant may become a party is rendered unnecessary by the changes to the definition of party to include lien claimants. Substantively, 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.

Rule Amended: 10390 "Proper Identification of Parties."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10390.

We propose redrafting this rule for clarity and moving it into Article 3. Since the *Coldiron* case, third party administrators have become more prevalent and continue to be improperly identified as parties. (See *Coldiron v. Compuware Corporation* (2002) 67 Cal.Comp.Cases 289 (Appeals Board en banc).) By simplifying and clarifying this rule, we hope to eliminate such misidentification. 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 without misidentification.

We also propose requiring a notice of representation before appearing before the WCAB. 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.

Finally, 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.

Rule Amended: 10396 "Consolidation of Cases."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10396.

We propose renumbering current rule 10589 and moving it into Article 3 with minor non-substantive changes in language. To reflect current practice and the realities of the electronic environment and new technology, we have revised subdivision (e) to make clear that if cases are consolidated, evidence admitted into one case is admissible in all other consolidated cases even if no master file has been designated.

Rule Amended: 10398 "Assignment of Consolidated Cases."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10398.

We propose renumbering current rule 10592 and moving it into Article 3 with minor non-substantive changes in language. We also propose adding the referenced Labor Code sections and rules to the "Reference" section of the rule.

ARTICLE 4

Conduct of Parties, Attorneys, and Representatives

Table 4

Former Number	Old Title	New Title/Repeal	New Number
New Rule		Attorney Representatives.	10400
10773	Law Firm Employees.	**Repealed and replaced by:** Non-Attorney Representatives.	10401
10774.5, subdivs. (a) & (b)	Notices of Representation, Change of Representation, and Non-Representation for Lien Claimants.		
10774	Substitution or Dismissal of Attorneys	Substitution or Dismissal of Attorneys and Non-Attorney Representatives.	10402
New Rule		Complaints Regarding Violations of Labor Code Section 4907.	10403
New Rule		Suspension and Removal of a Non-Attorney Representative's Privilege to Appear before the Workers' Compensation Appeals Board under Labor Code Section 4907.	10404
10324	Ex Parte Communications.	Ex Parte Communications.	10410
10561	Sanctions.	Sanctions.	10421

10782	Vexatious Litigants.	Vexatious Litigants.	10430
New Rule		Contempt.	10440
10779	Disbarred and Suspended Attorneys.	Disbarred and Suspended Attorneys.	10445

Rule Adopted: 10400 "Attorney Representatives."

Statement of Specific Purpose and Reasons for Proposed Adoption of rule 10400.

We propose a new law regarding representation by attorney representatives, to accompany rule 10401, which addresses representation by non-attorney representatives. These rules together will make clear who is representing a given party, and the information to be included either in a notice of representation or in the opening document. As noted in the rule, a notice of representation is not required if all the information required to appear in the notice appears on an opening document, such as an Application for Adjudication. The rule also includes a cross-reference to rule 10868, which contains additional requirements relating to appearances by representatives of lien claimants.

Rules Repealed: 10773, 10774.5

New Rule Proposed: 10401 "Non-Attorney Representatives."

Statement of Specific Purpose and Reasons for Proposed Repeals and New Rule 10401.

We propose repealing current rules 10773 and 10774.5 and replacing them with a new rule regarding non-attorney representatives that combines the salient points of the three rules proposed for repeal.

Subdivision (a) of the new rule is taken from current 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[.]" As part of our proposal to streamline the rules regarding non-attorney appearances and actions in worker's compensation proceedings, we have deleted the superfluous language from current rule 10773(a)(2).

The requirement in subdivision (b) of the new rule that non-attorney representatives be held to the same professional standards of conducts as attorneys is derived from Labor Code section 4907(b).

Subdivision (c) of the new 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. As noted in the rule, a notice of representation is not required if all the information required to appear in the notice appears in an opening document. We propose two procedures. Subsection (c)(1) sets forth the requirements for giving notice of representation when the non-attorney representative is employed by a law firm. Subsection (c)(2) sets forth the requirements for giving notice of representation when the non-attorney representative is self-employed. The remainder of current rule 10774.5 will become new rule 10868.

Subdivisions (d) and (e) of the new rule attempt to ensure greater accountability for non-attorneys and attorneys supervising non-attorney representatives by creating a clear paper trail of who prepared each filing, and who was responsible for that person's supervision.

Subdivision (f) 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 new rule 10751.

Subdivision (g) includes a cross-reference to rule 10868, which contains additional requirements relating to appearances by representatives of lien claimants.

Rule Amended: 10402 "Substitution or Dismissal of Attorneys and Non-Attorney Representatives."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10402.

We propose renumbering this rule with some changes. The requirement that dismissal of an agent shall be made via a statement of dismissal has been deleted to reflect current practice. Subdivision (b) of this rule provides a procedure for withdrawal or termination of representation by a non-attorney representative.

Rule Adopted: 10403 "Complaints Regarding Violations of Labor Code Section 4907."

Statement of Specific Purpose and Reasons for Proposed Adoption of rule 10403.

We propose adding new rules 10403 and 10404 to create a process for effectuating Labor Code section 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.

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 Government Code sections 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.

Subdivision (g) is modeled on Labor Code sections 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."

Rule Adopted: 10404 "Suspension and Removal of a Non-Attorney Representative's Privilege to Appear before the Workers' Compensation Appeals Board under Labor Code Section 4907."

Statement of Specific Purpose and Reasons for Proposed Adoption of rule 10404.

We propose adding new rules 10403 and 10404 to create a process for effectuating Labor Code section 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.

Subdivision (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.

Subdivision (b) of this rule clarifies the standard for removal, denial, or suspension of a non-attorney's privilege to appear before the WCAB.

Subdivision (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, and provides for standards for disqualification of the hearing officer consistent with the remainder of these rules.

Subdivisions (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.

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.

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.

Subdivision (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.

Rule Amended: 10410 "Ex Parte Communications."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10410.

We propose moving this rule from Article 1 to Article 4 without substantive changes. The reference to new rule 10789 is to provide a precise cross-reference to the rule that permits ex parte communications in limited circumstances.

Rule Amended: 10421 "Sanctions."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10421.

Current 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. References to Labor Code sections and rules have been added to the "Reference" section of the rule.

Rule Amended: 10430 "Vexatious Litigants."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10430.

Current rule 10782 will become rule 10430 with minor non-substantive changes in language tracked below. References to Labor Code sections have been added to the "Reference" section of the rule.

Rule Adopted: 10440 "Contempt."

Statement of Specific Purpose and Reasons for Proposed Adoption of rule 10440.

We propose a 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.

Rule Amended: 10445 "Disbarred and Suspended Attorneys."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10445.

Current rule 10779 will become rule 10445 with minor non-substantive changes.

Article 5

Applications and Answers

Table 5

Former Number	Old Title	New Title/Repeal	New Number
10400	Filing and Service of Applications.	**Repealed and replaced by:** Invoking the Jurisdiction of the Workers' Compensation Appeals Board.	10450
		Repealed and replaced by: Applications.	10455
10401	Separate Application for Each Injury.		
10402	Minors and Incompetents as Applicants.		
10403	Application Required Before Jurisdiction Invoked and Before Compelled Discovery May Be Commenced.	**Repealed and Replaced by:** Invoking the Jurisdiction of the Workers' Compensation Appeals Board.	10450
10405	Request for Findings of Fact.	Request for Findings of Fact.	10460
10940	Application.	**Repealed and replaced by:** Subsequent Injuries Benefits Trust Fund Application.	10462
10946	Medical Reports in Subsequent Injuries Benefits Trust Fund Cases.		

10480	Answers.	**Repealed and replaced by:** Answers.	10465
10484	Procedural Requirement.		
10404	Labor Code Section 4906(g) Statement.	Labor Code Section 4906(h) Statement.	10470

Rules Repealed: 10400, 10403

New Rule Proposed: 10450 "Invoking the Jurisdiction of the Workers' Compensation Appeals Board."

Statement of Specific Purpose and Reasons for Proposed Repeals and New Rule 10450.

We propose repealing current rules 10403 and 10400 and replacing them with a new rule to address all potential case opening documents. Current rule 10403 is replicated entirely in new rule 10450, while current rule 10400 is replicated in 10450 and 10455. The inclusion of the clause in subdivision (b) clarifies that the bar on formal, compelled discovery prior to filing a case opening document includes subpoenas to obtain records or sworn testimony, consistent with the holding of *Yee-Sanchez v. Permanente Medical Group* (2002) 68 Cal.Comp.Cases 638 (Appeals Board Significant Panel Decision). Subdivision (b) of rule 10400, initially included in our proposed revisions as subdivision (c) of the new rule, containing the proviso regarding Labor Code section 4064(c), has been removed because changes to that statute render it unnecessary. Statutes and rules referenced have been added to the "Reference" section of the rule.

Rules Repealed: 10400, 10401, 10402

New Rule Proposed: 10455 "Applications."

Statement of Specific Purpose and Reasons for Proposed Repeals and New Rule 10455.

We propose repealing current rules 10400, 10401, and 10402 and replacing them with a new rule, entitled "Applications," to address the requirements to which all applications shall conform. Current rules 10401 and 10402 are replicated entirely in new rule 10455, while current rule 10400 is replicated in 10455 and 10450. We propose adding new language in subdivision (a) to clarify the procedure for filing Applications for Adjudication of Claim and provide additional guidance to practitioners. The sentence in subdivision (d) requiring the minor's nomination has been eliminated because 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 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.

Rule Amended: 10460 "Request for Findings of Fact."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10460.

Current rule 10405 will become rule 10445 with minor non-substantive changes. The reference to former rule 10590 has been removed because that rule was repealed in 2008.

Rules Repealed: 10940, 10946

New Rule Proposed: 10462 "Subsequent Injuries Benefits Trust Fund Application."

Statement of Specific Purpose and Reasons for Proposed Repeals and New Rule 10462.

We propose repealing current rules 10940 and 10946 and replacing them with new rule 10462 regarding Subsequent Injuries Benefits Trust Fund Applications (SIBTF) in this article and removing current Article 19 dedicated to SIBTF, which consists of only three rules. The substance of current rules 10940 and 10946 are replicated in new rule 10462. The changes are largely organizational rather than substantive. The removal of the prohibition on allegations of additional factors being raised without an amended application is because in practice allegations of an additional factor of disability may be made by raising the issue prior to trial, and we see no reason not to conform the rule to practice.

Rules Repealed: 10480, 10484

New Rule Proposed: 10465 "Answers."

Statement of Specific Purpose and Reasons for Proposed Repeals and New Rule 10465.

We propose repealing current rules 10480 and 10484 and replacing them with a new rule regarding answers. The substance of current rules 10480 and 10484 are replicated in new rule 10465 as follows: The initial sentence of the rule is current rule 10480, while subdivisions (a) through (c) are current 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 occurs first.

Rule Amended: 10470 "Labor Code section 4906(h) statement."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10470.

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 accept a party's Application or Answer.

Article 6

Venue

Table 6

Former Number	Old Title	New Title/Repeal	New Number
10409	Venue.	Venue.	10480
		Venue When Applicant is Employee of Division of Workers' Compensation.	10482
10410	Objection to Venue Under Labor Code Section 5501.5(c).	Objection to Venue Based on an Attorney's Principal Place of Business.	10488
10411	Petition for Change of Venue Under Labor Code Section 5501.6.	Petition for Change of Venue for Good Cause.	10490
10412	Proceedings and Decision After Venue Change.	**Repeal.**	**Repeal.**

Rule Amended: 10480 "Venue."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10480.

Current rule 10409 will become rule 10480. We deleted material that is duplicative of Labor Code section 5501.5. A portion of current rule 10409 will become rule 10482.

Rule Amended: 10482 "Venue When Applicant is Employee of Division of Workers' Compensation."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10482.

Rule 10482 is a new rule containing the portion of current 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.

Rule Amended: 10488 "Objection to Venue Based on an Attorney's Principal Place of Business."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10488.

Current 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 also added a sentence to clarify that a timely objection automatically results in mandatory venue reassignment in accordance with Labor Code section 5501.5.

Rule Amended: 10490 "Petition for Change of Venue for Good Cause."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10490.

Current 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.

Rule Repealed: 10412 "Proceedings and Decision After Venue Change."

Statement of Specific Purpose and Reasons for Proposed Repeal of rule 10470.

This rule may be construed as contradicting current rule 107701.1(a)(2) (proposed rule 10820(a)(2)) which provides that "a lien conference may be set at any district office without necessity of an order changing venue." We believe it is sufficiently obvious that an order changing venue changes venue for most purposes that it need not be spelled out in a rule.

Article 7

Petitions, Pleadings, and Forms

Table 7

Former Number	Old Title	New Title/Repeal	New Number
10408	Application for Adjudication of Claim Form and Other Forms.	Form Pleadings.	10500
10450	Petitions and Answers.	Petitions and Answers to Petitions.	10510
10490	Demurrer, Judgement on the Pleadings, and Summary Judgment Not Permitted; Unintelligible Pleadings.	Demurrer, Judgement on the Pleadings and Summary Judgment Not Permitted.	10515
10492	When Pleadings Deemed Amended.	When Pleadings Deemed Amended.	10517
10498	Special Requirements for Pleadings Filed or Served by Attorneys or by Non-Attorney Employees of an Attorney or Law Firm.	Special Requirements for Pleadings Filed or Served by Representatives.	10520
10440	Pleadings–Serious and Willful Misconduct.	**Repealed and replaced by:** Petition for Increased or Decreased Compensation – Serious and Willful Misconduct.	10525
10445	Allegations.		
10447	Pleadings –Discrimination.	Petition for Increased Compensation–Discrimination under Labor Code section 132a.	10528
10430	Letters of Appointment for Medical Examiners.	**Repeal.**	**Repeal.**

10470	Emergency Petition for Stay.	Emergency Petition for Stay.	10530
10455	Petition to Reopen.	Petition to Reopen.	10534
10458	Petition for New and Further Disability	Petition for New and Further Disability.	10536
10462	Petition to Terminate Liability; Filing.	**Repealed and replaced by:** Petition to Terminate Liability for Continuing Temporary Disability.	10540
10464	Contents of Petition to Terminate Liability.		
10466	Objections to Petition, Hearing, Interim Order		
10451.2	Determination of Medical Treatment Disputes	**Repeal.**	**Repeal.**
10451.3	Petition for Costs.	Petition for Costs.	10545
10454	Automatic Reassignment after Reversal on Reconsideration	**Repeal.**	**Repeal.**
New Rule		Petition for Labor Code Section 5710 Attorney's Fees.	10547
10582	Inactive Cases.	Petition to Dismiss Inactive Case.	10550
New Rule		Petition for Credit.	10555
10583	Dismissal of Claim Form–Labor Code Section 5404.5.	**Repeal.**	**Repeal.**

Rule Amended: 10500 "Form Pleadings."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10500.

Current 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). The requirements for a petition to terminate liability for continuing temporary disability are set forth in new rule 10540.

Rule Amended: 10510 "Petition and Answers to Petitions."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10510.

Current rule 10450 will become rule 10510. Subdivisions have been reordered. We propose limiting new subdivision (c) to answers to petitions and clarifying that the 10 days (extended depending on method of service) runs from the date of service rather than filing.

By amending subdivision (a) to specify that it applies once jurisdiction has been invoked, subdivisions (h) and (i) are no longer necessary. 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?" Accordingly, we have added additional cross references to filing and service rules to clarify that filing of petition must conform with general filing requirements.

Rule Amended: 10515 "Demurrer, Judgment on the Pleadings and Summary Judgment not Permitted."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10515.

We propose deleting the portion of this rule that involves unintelligible pleadings, because it does not reflect current practice with respect to such pleadings. Typically, if a pleading is unintelligible and accompanied by a Declaration of Readiness to Proceed, a WCJ will set a status conference to try to resolve the issue; the WCJ's normal authority to manage their calendar is sufficient in these circumstances to support the granting of a continuance or whatever other action may be appropriate in the circumstances.

Rule Amended: 10517 "When Pleadings Deemed Amended."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10517.

Current rule 10492 will become rule 10517 with only a minor non-substantive change in language.

Rule Amended: 10520 "Special Requirements for Pleadings Filed or Served by Representatives."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10520.

We propose renumbering current rule 10498 with largely minor changes in language. 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 section 4907, we propose adding a requirement that non-

attorney representatives include pertinent information in pleadings to maintain consistency with other requirements of attorneys.

Rules Repealed: 10440, 10445

New Rule Proposed: 10525 "Petition for Increased or Decreased Compensation – Serious and Willful Misconduct."

Statement of Specific Purpose and Reasons for Proposed Repeals and New Rule 10525.

We propose repealing current rules 10440 and 10445 and replacing them with a single rule regarding petitions seeking increased or decreased compensation for serious and willful misconduct. 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 each theory must be set forth separately, the language is superfluous.

Rule Amended: 10528 "Petition for Increased Compensation – Discrimination under Labor Code Section 132a."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10528.

Former rule 10447 will become rule 10528. The title has been changed to conform with other titles in the article, and unnecessary language has been deleted.

Rule Amended: 10530 "Emergency Petition for Stay."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10530.

Former rule 10470 will become rule 10530 with minor, non-substantive changes in language. The language regarding permanently staffed satellite offices was added because such offices do not have a Presiding Judge.

Rule Amended: 10534 "Petition to Reopen."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10534.

Current rule 10455 will become rule 10534 without change in language.

Rule Amended: 10536 "Petition for New and Further Disability."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10536.

Current rule 10458 will become rule 10536 with minor, non-substantive changes in language.

Rules Repealed: 10462, 10464, 10466

New Rule Proposed: 10540 "Petition to Terminate Liability for Continuing Temporary Disability."

Statement of Specific Purpose and Reasons for Proposed Repeals and New Rule 10540.

We propose repealing current rules 10462, 10464 and 10466 and replacing them with a single rule governing petitions to terminate liability for continuing temporary disability. The substance of the repealed rules is recapitulated in new rule 10540, with some of the specific requirements regarding the contents of the petition eliminated. 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 an employer 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). The requirement to file a petition within 10 days of termination of payments has been changed to at least one week prior to termination because 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." We also propose expanding the provisions on filing and service of petitions to terminate liability for continuing temporary disability to conform to our proposed new rules on filing and service. Finally, in response to comments received during the informal comment period, we have standardized the language regarding filing and service of objections to petitions to terminate liability for continuing temporary disability indemnity benefits so that the deadlines do not conflict.

Rule Amended: 10545 "Petition for Costs."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10545.

Current rule 10451.3 will become rule 10545. We propose allowing these petitions to be dealt with on a walk through basis rather than requiring a DOR. We recognize that some petitions for costs may not be amenable to resolution on a walk-through basis, and that some District Offices may be more adversely impacted by this change than others. We note that the rule does not mandate processing petitions for costs as walk-throughs, and that WCJs always retain discretion to refuse to handle a given petition on a walk-through basis. The intent of the rule is to open the possibility of processing these petitions on a walk-through basis in those circumstances where it makes sense to do so, not to mandate any particular approach.

Rule Adopted: 10547 "Petition for Labor Code Section 5710 Attorney's Fees."

Statement of Specific Purpose and Reasons for Proposed Adoption of rule 10547.

We propose a new rule detailing procedures for seeking attorney's fees awardable under Labor Code section 5710 in the event that the parties dispute whether the fees are appropriate.

Rule Amended: 10550 "Petition to Dismiss Inactive Case."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10550.

Current rule 10582 will become rule 10550. The final paragraph of current rule 10582 has been broken into subdivisions to clarify the process for practitioners, with minimal substantive changes. Window period language has been removed due to the passage of time. A reference to rule 10625 has been added to the "Reference" section of the rule.

Rule Adopted: 10555 "Petition for Credit."

Statement of Specific Purpose and Reasons for Proposed Adoption of rule 10555.

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 section 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.

Rule Repealed: 10430 "Letters of Appointment for Medical Examiners."

Statement of Specific Purpose and Reasons for Proposed Repeal of rule 10430.

Rule 10430 (formerly rule 10418) was originally adopted in 1990 and renumbered in 2002. Prior to April 19, 2004, it was possible for a party to obtain a medical-legal evaluation without engaging with an opposing party. After the amendments made to Labor Code section 4060 et seq. by SB 899 and corresponding regulations adopted by the Division of Workers' Compensation (See Cal. Code Regs., tit. 8,

§ 1 et seq.), a party cannot obtain an evaluation of an injured worker without providing notice through the panel qualified medical evaluation process. Therefore, this regulation is no longer necessary.

Rule Repealed: 10451.2 "Determination of Medical Treatment Disputes."

Statement of Specific Purpose and Reasons for Proposed Repeal of rule 10451.2.

This rule does not provide additional information to the practitioner beyond what is in the relevant statutes and rules. In particular, Labor Code section 5502(b)(2) provides that an employee may request an expedited hearing regarding "[t]he employee's entitlement to medical treatment pursuant to section 4600, except for treatment issues determined pursuant to sections 4610 and 4610.5."

Rule Repealed: 10454 "Automatic Reassignment after Reversal on Reconsideration."

Statement of Specific Purpose and Reasons for Proposed Repeal of rule 10454.

We do not believe the automatic right to reassignment provided in this rule is advisable, or consistent with general norms of judicial practice. Specifically, we note that judges have an ethical obligation to decide the cases assigned to them, unless they are disqualified from doing so. (See Code of Judicial Ethics, Canon 3B(1).) Erroneous rulings are not a basis for seeking to disqualify a judge, especially when they are subject to review. (See, e.g., *McEwen v. Occidental Life Ins. Co.* (1916) 172 Cal. 6, 11; *Mackie v. Dyer* (1957) 154 Cal.App.2d 395, 400.) Vesting a party who prevails before the Appeals Board on certain issues with an automatic right of assignment undermines the general principle that judges should decide the cases assigned to them, and risks implying that some erroneous rulings may in fact be a valid basis for seeking judicial reassignment.

Rule Repealed: 10583 "Dismissal of Claim Form – Labor Code Section 5404.5."

Statement of Specific Purpose and Reasons for Proposed Repeal of rule 10583.

Window period cases are increasingly rare and Labor Code section 5404.5 is sufficiently specific to direct a party that wishes to dismiss a claim form.

Article 8

Petitions Related to Administrative Orders

Table 8

Former Number	Old Title	New Title/Repeal	New Number
10950	Petitions Appealing Orders Issued by the Administrative Directors.	**Repealed and Replaced by:** Petitions Related to Orders Issued by the Division of Workers' Compensation Administrative Director or the Director of Industrial Relations.	10560
New Rule		Petition Appealing Denial of Return-to-Work Supplement.	10565
10957	Petition Appealing Independent Bill Review determination of the Administrative Director.	Petition Appealing Independent Bill Review Determination.	10567
10451.4	Petition to Enforce Independent Bill Review Determination.	Petition to Enforce an Administrative Director Determination.	10570
10957.1	Petition Appealing Independent Medical Review Determination of the Administrative Director.	Petition Appealing Independent Medical Review Determination.	10575
10959	Petition Appealing Medical Provider Network Determination of the Administrative Director.	Petition Appealing Medical Provider Network Determination of the Administrative Director.	10580

10953	Petition Appealing Audit Penalty Assessment–Labor Code Section 129.5(g).	Petition Appealing Audit Penalty Assessment–Labor Code Section 129.5(g).	10590

Rule Repealed: 10950 "Petitions Appealing Orders Issued by the Administrative Directors."

New Rule Proposed: 10560 "Petitions Related to Orders Issued By the Division of Workers' Compensation Administrative Director or the Director of Industrial Relations"

Statement of Specific Purpose and Reasons for Proposed Repeal and New Rule 10560.

We propose repealing current rule 10950. The rule will be replaced with rule 10560. We have elected to repeal 10950, rather than simply amending it, due to the magnitude and significance of the proposed changes. We have attempted to encompass the requirements common to all petitions appealing orders issued by the Administrative Director or the Director of Industrial Relations in order to remove repetitive verbiage from each rule in this Article.

Rule Adopted: 10565 "Petition Appealing Denial of Return-to-Work Supplement."

Statement of Specific Purpose and Reasons for Proposed Adoption of rule 10565.

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 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.

Rule Amended: 10567 "Petition Appealing Independent Bill Review Determination."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10567.

Current rule 10957 will become rule 10567 with largely non-substantive changes. The requirements in current subdivision (d) regarding the caption of the petition have been removed because the ADJ number and Independent Bill Review (IBR) case number, now required under new subdivision (e), should be sufficient to identify the case. Current subdivision (l), new subdivision (i), has been amended to clarify and more specifically direct WCJs and parties regarding procedure after a determination is rescinded.

Current subdivision (m), new subdivision (j), has been amended 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. Referenced rules have been added to the "References" section and unreferenced rules removed.

Rule Amended: 10570 "Petition to Enforce an Administrative Director Determination."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10570.

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 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 IBR determination. The "References" section of the rule has been updated as well.

Rule Amended: 10575 "Petition Appealing Independent Medical Review Determination."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10575.

Current rule 10957.1 will become rule 10575. The first subdivision has been removed because an Independent Medical Review (IMR) determination will only issue in the cases involving the factual circumstances outlined, rendering this subdivision superfluous. The requirements in current subdivision (e) regarding the caption of the petition have been removed because the ADJ number and IMR case number, now required under new subdivision (e), should be sufficient to identify the case. Language in current subdivisions (g) and (k) have been removed because it repeats content found in rule 10560, the general rule regarding petitions involving the Administrative Director, and elsewhere. Additionally, language in subdivision (b) of new rule 10575 has been rearranged and revised to better reflect the nuances of the IMR process. More precise language has been included in new subdivision (i) to assist practitioners and to clarify procedures after an IMR determination is rescinded.

Rule Amended: 10580 "Petition Appealing Medical Provider Network Determination of the Administrative Director. "

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10580.

Current rule 10959 will become 10580 with stylistic, non-substantive changes. References to addresses have been removed because addresses are subject to change. The reference to current rule 10852 has been removed because we proposed repealing that rule. The "References" section has been updated.

Rule Amended: 10590 "Petition Appealing Audit Penalty Assessment–Labor Code Section 129.5(g)."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10590.

Current rule 10953 will become rule 10590 with stylistic, non-substantive changes. Subdivision (a) has been amended to clarify that the petition is not filed at the trial level. The "References" section has been updated.

Article 9

Filing and Service of Documents

Table 9

Former Number	Old Title	New Title/Repeal	New Number
10508	Extension of Time for Weekends and Holidays.	Time for Actions.	10600
10507	Time Within Which to Act When a Document is Served by Mail, Fax, or E-Mail.	Time Within Which to Act When a Document is Served by Mail, Fax or E-Mail.	10605
New Rule		Filing and Service of Documents.	10610
10390	Place of Filing Documents After Initial Application or Case Opening Document.	**Repealed and replaced by:** Filing of Documents.	10615
10391	Filing of Documentary Evidence.		
10392	Time of Filing Documents.		
10397	Restrictions on the Rejection for Filing of Documents Subject to a Statute of Limitations or a Jurisdictional Time Limitation.	Restrictions on the Rejection for Filing of Documents Subject to a Statute of Limitations or a Jurisdictional Time Limitation.	10617
10393	Filing of Medical Reports, Medical Legal Reports, and Various Records.	**Repealed and replaced by:** Filing Proposed Exhibits.	10620
10505	Service by Parties or Lien Claimants.	**Repealed and replaced by:** Service.	10625
10510	Service on Represented Employees or Dependents and on Attorneys or Agents.		

10608.5	Service by Parties and Lien Claimants of Reports and Records on Other Parties and Lien Claimants.		
10500	Service by the Workers' Compensation Appeals Board.	**Repealed and replaced by** Service by the Workers' Compensation Appeals Board.	10628
10506	Service: Mail Box.		
New Rule		Designated Service	10629
10501	Service in Death Cases.	**Repealed and replaced by** Service on the Division of Workers' Compensation and the Director of Industrial Relations.	10632
10942	Service.		
10601	Copies of Reports and Records.	**Repealed and replaced by** Duty to Serve Documents.	10635
10607	Computer Printouts of Benefits Paid.		
10608, subdivs. (a), (b), and (d)	Service of Medical Reports, Medical-Legal Reports, and Other Medical Information.		
10615	Continuing Duty to Serve		
10616	Employer-Maintained Medical Records.		
10608, subdiv. (c)		**Repealed and replaced by** Service of Medical Reports, Medical-Legal	10637

		Reports, and Other Medical Information on a Non-Physician Lien Claimant.	

Rule Amended: 10600 "Time for Actions."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10600.

Current rule 10508 will become rule 10600. Rule 10600 will include the content of current 10508 as well as language based on California Rule of Court 1.10. 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). In response to several comments we received during the informal comment period, we have revised our proposed language to avoid the term of art "legal holiday."

Rule Amended: 10605 "Time Within Which to Act When a Document is Served by Mail, Fax or E-Mail."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10605.

Current 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. With respect to service via U.S. Mail, however, we have added language to more closely track Code of Civil Procedure section 1013. Subdivision (c) of the current rule has been eliminated as unnecessary because of changes to the wording in subdivision (a).

Rule Adopted: 10610 "Filing and Service of Documents"

Statement of Specific Purpose and Reasons for Proposed Adoption of rule 10610.

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.

Rules Repealed: 10390, 10391, 10392

New Rule Proposed: 10615 "Filing of Documents"

Statement of Specific Purpose and Reasons for Proposed Repeals and New Rule 10615.

We propose repealing current rules 10390, 10391, and 10392 and replacing them with a single rule 10615 entitled "Filing of Documents." Current rule 10390 is replicated entirely in new rule 10615, while current rule 10391 is split between new rules 10615 and 10680. With the exception of subdivision (d), current rule 10392 is replicated in new rule 10615. We propose deleting this subdivision to reflect current practice and the technological realities of electronic filings. The proposed rule provides cross references to the rules of the Administrative Director related to scanning of hard-copy documents and e-filing of documents in the Electronic Adjudication Management System (EAMS). The proposed rule also adds new language in subdivision (c) to better reflect the realities of filing either in EAMS or via U.S. Mail. Specifically, 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 district office 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. By contrast, 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. Finally, subdivision (d) adds a cross-reference to Administrative Director Rule 10206.3, Time of Filing of Documents.

Rule Amended: 10617 "Restrictions on the Rejection for Filing of Documents Subject to a Statute of Limitations or a Jurisdictional Time Limitation."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10617.

Current rule 10397 will become rule 10617 with minor, non-substantive changes.

Rule Repealed: 10393

New Rule Proposed: 10620 "Filing Proposed Exhibits."

Statement of Specific Purpose and Reasons for Proposed Adoption of New Rule 10620.

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. In response to several comments received during the informal comment period, we have removed the proposed language regarding expedited hearings, as the schedule for expedited hearing would not allow for filing exhibits 20 days prior. We propose repealing rule 10393 and replacing it with proposed rule 10620, entitled Filing Proposed Exhibits. Rule

10620 will be a blanket rule providing 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 more than 20 days prior. We will retain some of the language in 10393(d)(1) in a simplified form as rule 10700(a).

In the informal comments to the proposed changes, we received feedback that some would prefer the rule to provide for filing by the day of trial unless the WCJ orders filing before the trial date. However, such a rule would risk surprising litigants, who may proceed to a mandatory settlement conference with the belief that they do not have to file exhibits until the day of trial, only to be ordered to file exhibits on a timeline they were not contemplating and may not be able to meet. Rules should generally be drafted so as to minimize the chances that they may become traps for the unwary. Therefore, it is more prudent for the rule to specify filing 20 days before trial with the option for the WCJ to order later filing.

Rules Repealed: 10505, 10510, 10608.5

New Rule Proposed: 10625 "Service."

Statement of Specific Purpose and Reasons for Proposed Repeals and New Rule 10625.

We propose repealing current rules 10505, 10510 and 10608.5 and replacing them with a new rule 10625 entitled "Service." The proposed rule addresses how service may be effectuated and what constitutes a "proof of service." The definitions in this combined new rule come from California Rule of Court 1.21. Subdivision (d) is taken from current rule 10505(h). In drafting the new rule, we have significantly streamlined the language from current rules 10505 and 10510 to provide for one standard for service that applies to all parties, improve ease of comprehension, provide additional clarity to practitioners, and better reflect both current practice and what is required for due process of law. Subdivision (a) of current rule 10510 has been moved, in condensed form, to new rule 10628. Additionally, because we propose including lien claimants in the definition of "party," we propose repealing current rule 10608.5 (pertaining to service by parties and lien claimants, on other parties and lien claimants, of reports and records) to allow for one standard for service that applies to all parties. We note that the rule provides for service on "affected" parties; as a result, the inclusion of lien claimants in the definition of "party" does not mandate service on lien claimants of every filing made in the case-in-chief.

Rules Repealed: 10500, 10506

New Rule Proposed: 10628 "Service by the Workers' Compensation Appeals Board."

Statement of Specific Purpose and Reasons for Proposed Repeals and New Rule 10628.

We propose repealing current rules 10500 and 10506 and replacing them with a new rule 10628 governing service by the WCAB. Current rules 10500 and 10506 are replicated entirely in new rules 10628 and 10629. Specifically, subdivision (a) of current rule 10500 has been moved to a new rule on designated

service, rule 10629; subdivision (b) of current rule 10500 has been combined with a condensed version of current rule 10510 into subdivision (a) of new rule 10628; subdivision (c) of current rule 10500 has become subdivision (b) of new rule 10628, with a new requirement of a printed name to address the problem of illegible handwriting; subdivision (d) of current rule 10500 has become subdivision (c) of new rule 10628; and subdivision (e) of current rule 10500 has become subdivision (d) of new rule 10628. Current rule 10506 has become subdivision (e) of new rule 10628.

Rule Adopted: 10629 "Designated Service."

Statement of Specific Purpose and Reasons for Proposed Adoption of rule 10629.

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. However, 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 proof of service to be filed. Experience has taught us that relying on the serving party to keep a record of the proof of service, to be produced in the event of a dispute, is both unwieldy and unreliable, leading to delay, confusion, and waste.

Rules Repealed: 10501, 10942

New Rule Proposed: 10632 "Service on the Division of Workers' Compensation and the Director of Industrial Relations."

Statement of Specific Purpose and Reasons for Proposed Repeals and New Rule 10632.

We propose repealing current rules 10501 and 10942 and replacing them with a single rule 10632 entitled "Service on the Division of Workers' Compensation and the Director of Industrial Relations." The substance of current rules 10501 and 10942 are replicated entirely in new rule 10632. We propose adding a provision for service on the Return-to-Work Supplement Program. The proposed rule, unlike the current rules, does not include addresses. Subdivisions (c), (d), (e) and (f) of the new rule provides for service on the Uninsured Employers Benefits Trust Fund, the Return-to-Work Supplement program, the Independent Bill Review Unit, and the Independent Medical Review Unit, using language that mirrors the language governing service on the Subsequent Injury Benefits Trust Fund.

Rules Repealed: 10601, 10607, 10608, 10615, 10616

New Rule Proposed: 10635 "Duty to Serve Documents."

Statement of Specific Purpose and Reasons for Proposed Repeals and New Rule 10635.

We propose repealing current rules 10601, 10607, 10608, 10615, and 10616 and replacing them with a new rule 10635 entitled "Duty to Serve Documents." Current rules 10601, 10615, and 10616 are replicated in

new rule 10635. Current rule 10601, stating 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," 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. Current rule 10607 is replicated in subdivision (b) of new rule 10635, with the exception of the last sentence, which has been moved to subdivision (b) of new rule 10759 ("Mandatory Settlement Conference"). Additionally, we have added language suggested by the California Applicants' Attorneys Association to clarify the frequency with which a party may request that a defendant provide a computer printout of benefits paid within 20 days. Subdivision (c) of current rule 10608 will be broken out into separate rule, rule 10637, with the remainder of current rule 10608 deleted to conform to the new definitions proposed in new rule 10305, the new standards and requirements for service that apply to all parties, and to remove superfluous or duplicative language.

Rule Repealed: 10608

New Rule Proposed: 10637 "Service of Medical Reports, Medical-Legal Reports, and Other Medical Information on a Non-Physician Lien Claimant."

Statement of Specific Purpose and Reasons for Proposed Repeal and New Rule 10637.

We propose repealing current rule 10608, discussed above, and replacing subdivision (c) of current rule 10608 with new rule 10637, "Service of Medical Reports, Medical-Legal Reports, and other Medical Information on a Non-Physician Lien Claimant". This subdivision addresses a procedure that is not applicable to every case and, therefore, it should not be included in the general rule.

Article 10

Subpoenas

We propose renumbering the rules related to subpoenas, with mostly minor non-substantive changes. Substantively, the most significant change is a proposal that subpoenas include the ADJ number they relate to, to allow for better tracking and administration. We propose repealing current rule 10626 (Examining and Copying Hospital and Physicians' Records) because it does not reflect current practice. We also propose repealing current rule 10631 (Specific Finding of Fact–Labor Code Section 139.2(d)(2)) because it simply restates the Labor Code section.

Table 10

Former Number	Old Title	New Title/Repeal	New Number
10530	Subpoenas.	Subpoenas.	10640
10532	Notice to Appear or Produce.	Notice to Appear or Produce.	10642
10534	Microfilm.	Subpoenas of Electronic Records.	10644
10536	Witness Fees and Subpoenas.	Witness Fees and Subpoenas.	10647
10537	Subpoena for Med Witness.	Subpoena for Medical Witness.	10650
10538	Subpoenas for Medical Information by Non-Physician Lien Claimants.	Subpoenas for Medical Information by Non-Physician Lien Claimants.	10655
10618	X-Rays.	X-Rays.	10660
10626	Examining and Copying Hospital and Physicians' Records.	**Repeal.**	**Repeal.**
10631	Specific Finding of Fact–Labor Code Section 139.2(d)(2).	**Repeal.**	**Repeal.**

10632	Labor Code Section 4065–Evidence.	**Repeal.**	**Repeal.**
10633	Proposed Rating–Labor Code Section 4065.	**Repeal.**	**Repeal.**

Rule Amended: 10640 "Subpoenas."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10640.

Current rule 10530 will become rule 10640. In addition to minor, non-substantive changes, we propose requiring that subpoenas include ADJ case numbers. Because only post-application subpoenas are permissible, this will not be burdensome and will assist in the administration of the workers' compensation system.

Rule Amended: 10642 "Notice to Appear or Produce."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10642.

Current rule 10532 will become rule 10642 with no substantive changes. A statute has been added to the "Reference" section of the rule.

Rule Amended: 10644 "Subpoenas of Electronic Records."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10644.

We propose expanding current rule 10534 to cover all electronic records. 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. 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.

Rule Amended: 10647 "Witness Fees and Subpoenas."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10647.

Current rule 10536 will become rule 10647 with no substantive changes.

Rule Amended: 10650 "Subpoena for Medical Witness."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10650.

Current rule 10537 will become rule 10650 with no substantive changes.

Rule Amended: 10655 "Subpoenas for Medical Information by Non-Physician Lien Claimants."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10655.

Current rule 10538 will become rule 10655 with no substantive changes.

Rule Amended: 10660 "X-Rays."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10660.

Current rule 10618 will become rule 10660. We propose deleting language governing the method of production of X-rays because parties need greater discretion with electronic records and other methods for providing copies of X-rays and other medical imaging studies. The change is not intended to eliminate the ability of a WCJ to order that X-rays be provided, in appropriate circumstances.

Rule Repealed: 10626 "Examining and Copying Hospital and Physicians' Records."

Statement of Specific Purpose and Reasons for Proposed Repeal of rule 10626.

A version of this rule has been in effect since at least the 1970s. However, it does not conform to modern practice. Moreover, this Rule is duplicative of statutory law. As an initial matter, beginning at section 123100, the Health & Safety Code establishes a patient's absolute right to receive and review copies of their medical records, and sets forth the specific conditions and requirements for this review. (Health & Saf. Code, §§ 123100 et seq.) Further, the Evidence Code provides that medical providers "shall make all of the patient's records … available for inspection and copying by the [patient's] attorney at law or his, or her, representative, promptly upon the presentation of the written authorization." (Evid. Code, § 1158.) A HIPAA-covered health care provider may share protected health information if it has a court order. To the extent that this rule could be construed to require a health care provider to share protected health information without a subpoena, it may be in conflict with federal law.

Rule Repealed: 10631 "Specific Finding of Fact–Labor Code Section 139.2(d)(2)."

Statement of Specific Purpose and Reasons for Proposed Repeal of rule 10631.

This rule simply restates the relevant portions of Labor Code section 139.2(d)(2) without significant additions or refinements. Accordingly, we propose repeal because the rule does not provide significant additional information beyond what is in the relevant statute.

Rule Repealed: 10632 "Labor Code Section 4065–Evidence."

Statement of Specific Purpose and Reasons for Proposed Repeal of rule 10632.

Labor Code section 4065 was repealed.

Rule Repealed: 10633 "Proposed Rating–Labor Code Section 4065."

Statement of Specific Purpose and Reasons for Proposed Repeal of rule 10633.

Labor Code section 4065 was repealed.

Article 11

Evidence

Table 11

Former Number	Old Title	New Title/Repeal	New Number
10600	Evidence and Reports.	**Repealed and replaced by** Documentary Evidence.	10670
10604	Certified Copies.		
10622	Failure to Comply.		
10634	Labor Code Section 4628(k) Requests.		
10580	Evidence Taken Without Notice.	Evidence Taken Without Notice.	10672
10602	Formal Permanent Disability Rating Determinations.	Formal Permanent Disability Rating Determinations.	10675
10603	Oversized Exhibits, Diagnostic Imaging, Physical Exhibits, and Exhibits on Media.	Oversized Exhibits, Diagnostic Imaging, Physical Exhibits and Exhibits on Media.	10677
10391, subdivs. (b) and (c)	Filing of Documentary Evidence	**Repealed and replaced by** Reproductions of Documents.	10680
10605	Reproductions of Documents.		
10606	Physicians' Reports as Evidence.	Physicians' Reports as Evidence.	10682
10606.5	Vocational Experts' Reports as Evidence.	Vocational Experts' Reports as Evidence.	10685

Rules Repealed: 10600, 10604, 10622, 10634

New Rule Proposed: 10670 "Documentary Evidence."

Statement of Specific Purpose and Reasons for Proposed Repeals and New Rule 10670.

We propose repealing current rules 10600, 10604, 10622, and 10634 and replacing them with a single rule entitled "Documentary Evidence." Current rules 10600, 10604, and 10622 are replicated entirely in new rule 10670, while a revised and streamlined version of current rule 10634 will become subdivision (b)(4) of new rule 10670. The proposed rule outlines documents that the WCAB may decline to receive into evidence, including any document not filed 20 days prior to trial. In response to several comments we received during the informal comment period, we have removed the reference to expedited hearings (as the schedule for expedited hearings would not allow for filing exhibits 20 days prior), and we have also clarified that a WCJ may decline to admit into evidence documents served both at or prior to a Mandatory Settlement Conference.

New subdivision (a) is current rule 10604 with non-substantive changes. The exclusions in new subdivision (b) aside from the provision regarding documents not filed 20 days prior to the hearing are derived from Labor Code sections 4826, 5307, 5502, and 5703. Subdivision (c) provides that where evidence is willfully suppressed, it shall be presumed that the evidence is adverse. 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").

Rule Amended: 10672 "Evidence Taken Without Notice."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10672.

Current rule 10580 will become rule 10672 with no change in language.

Rule Amended: 10675 "Formal Permanent Disability Rating Determinations."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10675.

Current rule 10602 will become rule 10675 with no change in language.

Rule Amended: 10677 "Oversized Exhibits, Diagnostic Imaging, Physical Exhibits and Exhibits on Media."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10677.

Current rule 10603 will become rule 10677 with no substantive changes.

Rules Repealed: 10391, 10605

New Rule Proposed: 10680 "Reproductions of Documents."

Statement of Specific Purpose and Reasons for Proposed Repeals and New Rule 10680.

We propose repealing current rules 10391 and 10605 and replacing them here with new rule 10680 with no substantive changes. Subdivision (a) of current rule 10391 has been moved to new rule 10615, while subdivisions (b) and (c) of current rule 10391 have been combined to become subdivision (a) of new rule 10680. The remainder of the rule is current rule 10605.

Rule Amended: 10682 "Physicians' Reports as Evidence."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10682.

Current rule 10606 will become rule 10682 with no substantive changes.

Rule Amended: 10685 "Vocational Experts' Reports as Evidence."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10685.

Current rule 10606.5 will become rule 10685 with no substantive changes.

Article 12

Settlements

Table 12

Former Number	Old Title	New Title/Repeal	New Number
10393	Filing of Medical Reports, Medical Legal Reports, and Various Records.	**Repealed and replaced by** Approval of Settlements.	10700
10870	Approval of Compromise and Release.		
10882	Action on Settlement Agreement.		
10886	Service on Lien Claimants.	Service of Settlements on Lien Claimants.	10702
10875	Procedures–Labor Code section 3761.	Procedures–Labor Code section 3761.	10705
10874	Form.	**Repeal.**	**Repeal.**
10878	Settlement Document as an Application.	**Repeal.**	**Repeal.**
10888	Resolution of Liens.	**Repeal.**	**Repeal.**

Rules Repealed: 10393, 10870, 10882

New Rule Proposed: 10700 "Approval of Settlements."

Statement of Specific Purpose and Reasons for Proposed Repeals and New Rule 10700.

We propose repealing current rules 10393, 10870 and 10882 and replacing them with a single rule entitled "Approval of Settlements." Portions of current rule 10393 are replicated in new rule 10620, while subdivision (d)(1) of current rule 10393 is replicated, with minor changes, in subdivision (a) of new rule 10700. We also propose removing the portion of 10870 that addresses vocational rehabilitation because vocational rehabilitation is no longer a benefit provided to injured workers. Subdivision (b) of new rule 10700 is current rule 10882, and subdivision (c) of new rule 10700 is current rule 10870 with the above-noted reference deleted.

Rule Amended: 10702 "Service of Settlements on Lien Claimants."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10702.

Current rule 10886 will become rule 10702 with minor changes. In response to comments we received during the informal comment period, we have clarified that the party that files a Compromise and Release or a Stipulations with Request for Award must serve the Compromise and Release or a Stipulations with Request for Award on a lien claimant who has a lien claim on file. Additionally, we removed the words "or order" to reflect current practice.

Rule Amended: 10705 "Procedures–Labor Code section 3761."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10705.

Current rule 10875 will become rule 10705 with largely non-substantive changes. The reference to injuries on or after January 1, 1994 is no longer necessary due to the passage of time.

Rule Repealed: 10874 "Form."

Statement of Specific Purpose and Reasons for Proposed Repeal of rule 10874.

We have multiple forms, including the compromise and release form. This rule was redundant with current rule 10480 (proposed rule 10408) and accordingly can be repealed with no effect.

Rule Repealed: 10878 "Settlement Document as an Application."

Statement of Specific Purpose and Reasons for Proposed Repeal of rule 10878.

Effective January 1, 2013, the filing of a Declaration of Readiness to Proceed rather than the filing of an Application triggers a defendant's obligation to pay attorney's fees pursuant to Labor Code section 4064(c). Accordingly, whether a settlement document is treated as an application no longer matters greatly. We propose repeal of this regulation as unnecessary given the change in law.

Rule Repealed: 10888 "Resolution of Liens."

Statement of Specific Purpose and Reasons for Proposed Repeal of rule 10888.

We propose repealing this regulation because it does not conform to current practice and because it burdens the District Offices unnecessarily. Although we certainly endorse defendants making good faith efforts to settle liens at the time of the resolution of the case-in-chief, experience has taught us that a requirement to make such good-faith efforts is in effect unenforceable, and produces token, pro-forma contacts unlikely to lead to actual settlement. These contacts often serve only to increase antagonism between defendants and lien claimants as accusations of bad faith are levelled and denied. We encourage defendants and lien claimants to engage proactively in settlement discussions, but the mandate in this

rule has not proved effective, and therefore we propose repealing it. We note that the party filing a notice of settlement is required to serve the settlement document on lien claimants who have already filed claims, meaning that the repeal of this rule will not result in lien claimants being unaware of proposed settlements. As a result, parties interested in settlement will be in a position to conduct settlement discussions even without the mandate of this rule.

With regard to the second portion of the rule, Labor Code section 4903.5 now provides an 18 month statute of limitations for filing a lien claim. Accordingly, a WCJ may need to exercise discretion to delay the setting of a lien conference.

Article 13

Hearings

Table 13

Former Number	Old Title	New Title/Repeal	New Number
10414	Declaration of Readiness to Proceed.	Declaration of Readiness to Proceed.	10742
10416	Objection to Declaration of Readiness to Proceed.	Objection to Declaration of Readiness to Proceed.	10744
10420	Setting the Case.	Setting the Case.	10745
10548	Continuances.	Continuances.	10748
10544	Notice of Hearing.	Notice of Hearing.	10750
New Rule		Appearances by Representatives Not Identified on Notice of Representation	10751
10563	Appearances Required of Parties to Case-in-Chief.	**Repealed and replaced by** Appearances Required.	10752
10563.1	Other Appearances Required.		
10562	Failure to Appear.	**Repealed and Replaced by** Failure to Appear at Mandatory Settlement Conference in Case in Chief.	10755
		Repealed and Replaced by Failure to Appear at	10756

		Trial in Case in Chief.	
10549	Appearances in Settled Cases.	Appearances in Settled Cases.	10757
New Rule		Status Conferences.	10758
10353	Settlement Conference Authority.	**Repealed and replaced by** Mandatory Settlement Conferences.	10759
10629	Filing and Listing of Exhibits.		
10541	Submission at Conference.	Submission at Conference.	10761
10552	Expedited Hearing Calendar.	Expedited Hearing.	10782
10555	Priority Conference Calendar.	Priority Conference.	10785
10451.1	Determination of Medical-Legal Expense Disputes.	**Repealed and replaced by** Determination of Medical-Legal Expense Dispute.	10786
10560	Submission at Single Trial.	**Repealed and replaced by** Trials.	10787
10566	Minutes of Hearing and Summary of Evidence.		
10578	Waiver of Summary of Evidence.		
10453	Petition for Automatic Reassignment of Trial or Expedited Hearing to Another Workers' Compensation Judge.	Petition for Automatic Reassignment of Trial or Expedited Hearing to Another Workers' Compensation Judge.	10788
10417	Walk-Through Documents.	Walk-Through Documents.	10789

10564	Interpreters.	Interpreters.	10790

Rule Amended: 10742 "Declaration of Readiness to Proceed."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10742.

Current rule 10414 will become rule 10742. We propose adding a reference to the general service rule, new rule 10610, to avoid having to restate service rules here. Because we propose changing the definition of party to include lien claimants even before the case in chief has been resolved, language has been added to new subdivision (b) to make clear that adjudication of the case in chief takes priority over adjudication of lien claims; as a result, lien claimants will remain unable to file a Declaration of Readiness to Proceed until the case in chief has either been resolved or abandoned. The language in the current rule relating to lien activation fees has been moved to Article 16, and other language rendered irrelevant by defining lien claimants as parties has been omitted. A party filing a Declaration of Readiness to Proceed must currently state under penalty of perjury that good-faith efforts have been made to resolve the dispute prior to filing; we propose requiring the party to specify what efforts have been made. This will allow the WCAB to verify that such efforts have actually been made.

Rule Amended: 10744 "Objection to Declaration of Readiness to Proceed."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10744.

Current rule 10416 will become rule 10744 with largely non-substantive changes in language. New subdivision (c) includes language, mirroring rule 10625, requiring that a represented party's objection to a Declaration of Readiness to Proceed be filed by their representative. The language in the prior rule regarding review by the presiding judge or the presiding judge's designee has been removed because it does not reflect actual practice. The "References" section of the rule has also been updated.

Rule Amended: 10745 "Setting the Case."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10745.

Current rule 10420 will become rule 10745 with no changes.

Rule Amended: 10748 "Continuances."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10748.

Current rule 10548 will become rule 10748 with no substantive changes.

Rule Amended: 10750 "Notice of Hearing."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10750.

Current rule 10544 will become rule 10750. The reference in current subdivision (c) to a special rule governing proceedings against the Subsequent Injuries Benefits Trust Fund has been removed because that rule, 10944, was repealed effective January 1, 2003. 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." Because prior rule 10944 was repealed, this reference is outdated and should be removed.

Rule Adopted: 10751 "Appearances by Representatives Not Identified on Notice of Representation."

Statement of Specific Purpose and Reasons for Proposed Adoption of rule 10751.

We propose a new rule to assist in regulating appearances by representatives. In the past, substantial confusion has resulted from attorneys and non-attorney representatives not listed on the Notice of Representation making appearances on behalf of clients, without sufficient identification or proof of representation. This rule will provide a paper trail for such appearances.

Rules Repealed: 10563, 10563.1

New Rule Proposed: 10752 "Appearances Required."

Statement of Specific Purpose and Reasons for Proposed Repeals and New Rule 10752.

We propose repealing current rules 10563 and 10563.1 and replacing them with a new rule 10752 governing appearances. Current rule 10563 is entirely replicated in new rule 10752. The last three subdivisions of current rule 10563.1 are replicated in new rule 10752; we propose leaving out the first two subdivisions in keeping with our proposed new definition of "party" and to reflect current practice. 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. We propose eliminating the requirement that a person with settlement authority be available "by telephone" given the variety of modern communication options. Language has been added to clarify that although a represented applicant is required to personally appear at a mandatory settlement conference, failure to appear is not grounds for dismissal of the application, and that neither a lien conference nor a lien trial is a hearing pertaining to the case-in-chief. New subdivision (d) eliminates the differential treatment of lien claimants based upon the value of their liens that required some lien claimants to appear at the case-in-chief; as long as lien claimants are available immediately with settlement authority, an appearance should not be required by rule in all cases based solely upon the value of the lien.

Rule Repealed: 10562

New Rules Proposed: 10755 "Failure to Appear at Mandatory Settlement Conference in Case in Chief"

Statement of Specific Purpose and Reasons for Proposed Repeal and New Rules 10755.

We propose repealing current rule 10562 and replacing it with new rules 10755 and 10756, relating respectively to failures to appear at mandatory settlement conferences and trials in the case in chief. Lien conferences and trials are covered by rules 10875 and 10876. New rules 10755 and 10756 make clear that only failures to appear by required parties trigger the consequences laid out in the rules. The language mandating that cases be forwarded to the presiding judge to set for trial has been eliminated because this is inconsistent with current practice.

Rule Repealed: 10562

New Rules Proposed: 10756 "Failure to Appear at Trial in Case in Chief"

Statement of Specific Purpose and Reasons for Proposed Repeal and New Rules 10756.

We propose repealing current rule 10562 and replacing it with new rules 10755 and 10756, relating respectively to failures to appear at mandatory settlement conferences and trials in the case in chief. Lien conferences and trials are covered by rules 10875 and 10876. New rules 10755 and 10756 make clear that only failures to appear by required parties trigger the consequences laid out in the rules.

Rule Amended: 10757 "Appearances in Settled Cases."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10757.

Current rule 10549 will become rule 10757. We propose changing the word "shall" to "may" to give the WCJ greater discretion in deciding whether to take a case off calendar based upon a representation that the case has been settled.

Rule Adopted: 10758 "Status Conferences."

Statement of Specific Purpose and Reasons for Proposed Adoption of rule 10758.

We propose a new rule to clarify that a WCJ may redesignate a hearing as a status conference, as this is already the current practice. Labor Code section 5502(d)(1) requires that trial be held within 75 days if a dispute is not resolved at a mandatory settlement onference. Labor Code section 5502(c) contemplates regular status conferences when a Declaration of Readiness to Proceed to a priority conference is filed and discovery is not complete.

Rules Repealed: 10353, 10629

New Rule Proposed: 10759 "Mandatory Settlement Conferences."

Statement of Specific Purpose and Reasons for Proposed Repeals and New Rule 10759.

We propose repealing current rules 10353 and 10629 and replacing them with a single rule 10759 regarding Mandatory Settlement Conferences. Current rule 10353 is replicated entirely in new rule 10759, with subdivision (a) split between subdivisions (a) and (c) of new rule 10759, subdivision (b) appended to subdivision (a) of new rule 10759, and subdivision (c) becoming subdivisions (b) and (d) of new rule 10759. Subdivision (d) of current rule 10629 is subdivision (b)(1) of new rule 10759; we propose eliminating the remainder of current rule 10629 to conform to the new proposed rules on service and documentary evidence. As discussed above, the last sentence of current rule 10607 has been moved to subdivision (b) of new rule 10759. The precise reference to Labor Code section 5502(e)(2) has been eliminated because amendments have been made to the lettering of that statute. Other references to the section have been updated in light of those amendments. References to Labor Code section 4065 have been eliminated because that statute was repealed. The prohibition on the WCJ hearing sworn testimony at the Mandatory Settlement Conference has been removed to allow for the parties to stipulate to converting the hearing to a trial to allow for such testimony in rare circumstances. Language has been added to clarify that the WCJ must record any orders as well as the ultimate disposition.

Rule Amended: 10761 "Submission at Conference."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10761.

Current rule 10541 will become rule 10761 with no substantive changes. The "Reference" section of the rule has been updated.

Rule Amended: 10782 "Expedited Hearing."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10782.

Current rule 10552 will become rule 10782. We propose eliminating the language limiting the ability of a WCJ to re-designate an expedited hearing as a mandatory settlement conference to cases "involving a disputed body part or parts" because there are other circumstances in which a WCJ may re-designate such a hearing.

Rule Amended: 10785 "Priority Conferences."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10785.

Current rule 10555 will become rule 10785. We propose deleting current subdivision (b), involving good cause for continuances, because Labor Code section 5502.5 already addresses continuances required by Labor Code section 5502; as such, this language is redundant.

Rule Repealed: 10451.1

New Rule Proposed: 10786 "Determination of Medical-Legal Expense Dispute.

Statement of Specific Purpose and Reasons for Proposed Repeal and New Rule 10786.

Current 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 have elected to repeal 10451.1 and replace it with new rule 10786, rather than simply amending it, due to the magnitude of the changes in language designed to simplify the rule and make it easier to understand.

We received many comments from the community regarding our initial proposed amendments to this rule, which contemplated requiring the defendant to file a Declaration of Readiness to Proceed in all circumstances. These comments expressed concern that such a change would allow defendants to simply fail to comply with the rule, thereby leaving medical-legal providers with no way to have their disputes adjudicated.

The proposed changes were not intended to allow such flagrant disregard for statutory and regulatory duties, which would be subject to sanctions under rule 10421 and Labor Code section 5813. The intent of the change was to place the burden of filing a Declaration of Readiness to Proceed on the defendant in all circumstances, as contemplated by Labor Code section 4622. Relatedly, because the current rule allows, but does not require a medical-legal provider to file a DOR along with the petition, many medical-legal disputes were left simply "hanging" in the system, without a mechanism to push them to resolution. By requiring defendants to file the DOR, we hoped to provide a mechanism to clear out these disputes from the system.

However, upon reflection, we appreciate the problems inherent in requiring the defendant to be the one to file the DOR in all circumstances – particularly when the defendant has already failed to comply with statutory and regulatory requirements once. Therefore, we have modified our proposed changes to permit a medical-legal provider to file both a petition and a DOR if the defendant has failed to comply with its duty to file a DOR pursuant to Labor Code section 4622 and subdivision (a) of the new rule. By requiring both a petition and a DOR from medical-legal providers, the problem of "hanging" disputes will be addressed.

Some comments expressed concern that it would unduly delay cases to refer each dispute to a status conference before proceeding to a mandatory settlement conference. Therefore, we have amended this language to provide the WCJ with discretion to decide the best way to calendar a dispute in order to achieve speedy, efficient resolution.

Many comments expressed concern that the language originally proposed in subdivision (c) of the new rule – now subdivision (d) - would allow WCJs to routinely defer all medical-legal disputes, whether or not their resolution depended on the resolution of a threshold issue in the case-in-chief. The intent of the

proposed changes was not to allow such routine deferral, but instead to simplify and streamline the language for ease of reading and to encompass all possible situations where deferral might be necessary in order to resolve the dispute. As such, we have modified the proposed language to make clear that deferral of a medical-legal dispute to after the conclusion of the case-in-chief is only appropriate where resolving the dispute depends on an issue relating to the case-in-chief that must be determined first. Because such situations are relatively rare, we do not anticipate this subdivision being invoked regularly.

The proposed language initially omitted the waiver provisions of current rule 10451.1(f) on the rationale that the statute itself implies such waiver. However, upon reflection, we agree that it is useful to include the waiver provisions in the rule as a guide to practitioners. We have therefore added these provisions back into the rule, demarcated into individual subdivisions for ease of reading. We emphasize that the waiver provisions regarding defendants' failure to take certain actions required by statute do not waive objections based upon a lien claimant's failure to comply with Labor Code sections 4620 and 4621.

In subdivision (i) of new rule 10786, the language has been streamlined. We have removed the examples of bad-faith actions and tactics previously listed in the rule because the standards for the application of sanctions are already found within Labor Code section 5813 and rule 10421. Although we recognize that some practitioners found the examples listed in the previous rule useful, we believe it is important that all sanctions be adjudicated based upon the same standards, and the articulation of particular examples in this rule only risks creating the erroneous impression that special standards govern the issuance of sanctions in this area. Our intent is not to limit the application of sanctions for bad-faith actions by either defendants or medical-legal providers in any way.

Rules Repealed: 10560, 10566, 10578

New Rule Proposed: 10787 "Trials."

Statement of Specific Purpose and Reasons for Proposed Repeals and New Rule 10787.

We propose repealing current rules 10560, 10566, and 10578 and replacing them with a single new rule 10787 entitled "Trials." Current rule 10560 will become subdivision (a) of new rule 10787 with minor changes in language; current rule 10566 will become subdivision (c) of new rule 10787; and current rule 10578 will become subdivision (d) of new rule 10787. Language in subdivision (a) has been altered to clarify that submission of all issues is mandatory unless otherwise ordered, not merely "expected." The new language of subdivision (b) has been added to make clear that any exhibits the parties seek to admit at trial that are not already filed electronically must be available for review and filing. Some instances of the word "hearing" have been changed to "trial" for clarity. The requirement that the disposition be recorded in the minutes of hearing has been broken into its own requirement to emphasize the importance of recording both the disposition and the reasons for the disposition if a matter is being taken off calendar or continued. Language has been added to allow the parties to stipulate to waive a summary of video evidence.

Rule Amended: 10788 "Petition for Automatic Reassignment of Trial or Expedited Hearing to Another Workers' Compensation Judge."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10788.

Current rule 10453 will become rule 10788. Language in subdivision (a) has been 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 is appropriate for lien claimants to have a right to reassignment whether or not a defendant has exercised the right previously. We propose amending the timeline for exercising the right of automatic assignment when a party is notified of the identity of the judge via a notice of trial, from 5 days after "service" to five days after "receipt." A deadline based upon receipt makes more sense given the short time period allowed and clears up any possible confusion related to whether the method of service extends the timeline to exercise the right. Subdivision (d) has been modified to clarify that a new notice of trial or expedited hearing is only necessary when the reassignment results in a new trial date.

Rule Amended: 10789 "Walk-Through Documents."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10789.

Current rule 10417 will become rule 10789. The definition of "walk-through document" has been moved to rule 10305. We propose allowing Petitions for Costs to be submitted on a walk-through basis, with a cross-reference making explicit that petitions for a determination of medical-legal expenses under rule 10789 are not petitions for costs. We recognize that not all Petitions for Costs will be amenable to resolution on a walk-through basis; in such circumstances, the WCJ may decline to act on the petition on a walk-through basis or accept it for later view and action, as with any other walk-through document. Language in subdivision (e) allowing a WCJ to refer walk-throughs to the presiding judge when the docket is crowded has been eliminated because it is unnecessary in light of the ability of the WCJ to accept the walk-through for later review.

Rule Amended: 10790 "Interpreters."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10790.

Current rule 10564 will become rule 10790. We propose eliminating the language regarding injuries before and after January 1, 1994 because interpreter fees are now determined by the rules of the Administrative Director; these rules determine payment based upon the date of the service.

Article 14

Record of Proceedings

Table 14

Former Number	Old Title	New Title/Repeal	New Number
10740	Transcripts.	Transcripts.	10800
10750	Record of Proceedings.	**Repealed and replaced by** Record of Proceedings Maintained in Adjudication File.	10803
10751	Adjudication File.		
10322	Workers' Compensation Appeals Board Records Not Subject to Subpoena.	**Repealed and replaced by** Inspection of Workers' Compensation Appeals Board Records.	10807
10753	Inspection of Files.		
10755	Destruction of Records.	Destruction of Records.	10811
10754	Sealing Documents.	Sealed Documents.	10813
10760	Recording of Trial Level Proceedings.	Recording of Proceedings.	10818
10820	When Certified Copies Will Issue.	When Certified Copies Will Issue.	10820
10825	Withholding Certified Copies.	Withholding Certified Copies.	10825
10785	Electronically filed decisions	**Repeal**	**Repeal**
10828	Necessity for Bond.	**Repeal.**	**Repeal.**

Rule Amended: 10800 "Transcripts."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10800.

Current rule 10740 will become rule 10800. Unnecessary and unclear language has been removed from the first paragraph, and language has been added to clarify that a request for a transcript must be in writing. The second paragraph has been removed because it is better regulated by the Administrative Director. The "References" section of the rule has been updated.

Rules Repealed: 10750, 10751

New Rule Proposed: 10803 "Record of Proceedings Maintained in Adjudication File."

Statement of Specific Purpose and Reasons for Proposed Repeals and New Rule 10803.

We propose repealing current rules 10750 and 10751 and replacing them with a single new rule 10803 entitled "Record of Proceedings Maintained in Adjudication File. Current rule 10750 is replicated entirely as subdivisions (a)(2) and (b) of new rule 10803, while current rule 10751 is replicated entirely as subdivision (a)(1). In subdivision (a)(2), language has been revised for greater precision. Specifically, the reference to certified transcripts "if prepared and filed" has been removed because all transcripts in a record of proceedings will have been prepared and filed. Additionally, language referring to evidence admitted "in the course of a hearing" has been clarified because it is possible that documents may be admitted into evidence after a hearing. Opinions on decision and reports and recommendations on petitions for reconsideration and/or removal have been added to the list of documents included in the record of proceedings; this is not a substantive change, as such documents have always been part of the record of proceedings. The "Reference" section of the rule has been updated.

Rules Repealed: 10322, 10753

New Rule Proposed: 10807 "Inspection of Workers' Compensation Appeals Board Records."

Statement of Specific Purpose and Reasons for Proposed Repeals and New Rule 10807.

We propose repealing current rules 10322 and 10753, both of which deal with the same subject, and replacing them with a single new rule 10807. Current rule 10322 is split into subdivisions (a) and (b) of new rule 10807, while current rule 10753 is replicated in subdivision (c) of new rule 10807 with changes to require an order from the presiding workers' compensation judge or their designee, because efficient administration of a district office requires that the presiding workers' compensation judge be aware of these requests for inspection. Additionally, the "Reference" section of the rule has been updated.

Rule Amended: 10811 "Destruction of Records."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10811.

Current rule 10755 will become rule 10811. We have corrected a typographical error – the reference to rule 10278.7 should have been to rule 10208.7. The "Reference" section of the rule has been updated.

Rule Amended: 10813 "Sealed Documents."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10813.

Current rule 10754 will become rule 10813. 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.

Language has been added to subdivision (a) to clarify that a document will only be sealed upon a showing of good cause, and empowering the presiding workers' compensation judge or their designee, rather than all WCJs, to make the determination on whether to seal documents. We have also added language allowing documents to be sealed based upon a danger that their release could threaten the safety or wellbeing of the injured worker or others, to account for situations such as witness protection programs. Language has been moved to new subdivisions (c) and (d) where appropriate.

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.

Rule Amended: 10818 "Recording of Proceedings."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10818.

Current rule 10760 will become rule 10818. The title and text have been changed because the recording of proceedings is not necessarily limited to trial level proceedings. We also propose requiring parties to serve requests to record proceedings 10 business days before the proceeding, rather than five, to provide adequate notice. This timeline may be shortened for good cause. Subdivision (f) has been added to clarify that personal recordings are not a record of proceedings and cannot be used in lieu of an Official Hearing Reporter.

Rule Amended: 10820 "When Certified Copies Will Issue."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10820.

Current rule 10820 will retain its numbering. The phrase in the current rule "a person entitled to benefits thereunder" is unclear, and could be read to imply that a party seeking to execute a sanctions order has an additional right to benefits. We propose revising this language 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.

Rule Amended: 10825 "Withholding Certified Copies."

Only a minor, non-substantive change has been made to current rule 10825, which will retain its current number.

Rule Repealed: 10785 "Electronically-filed Documents."

Statement of Specific Purpose and Reasons for Proposed Repeal of rule 10785.

This rule was adopted when paper files were common and EAMS was not yet the default file storage system. Now that all files are stored electronically, this rule is unnecessary.

Rule Repealed: 10828 "Necessity for Bond."

Statement of Specific Purpose and Reasons for Proposed Repeal of rule 10828.

The subject matter of this rule is adequately addressed by rule 10825.

Article 15

Findings, Awards and Orders

Table 15

Former Number	Old Title	New Title/Repeal	New Number
10349	Orders Equivalent to Notices of Intention	**Repealed and replaced by** Notices of Intention and Orders after Notices of Intention.	10832
10570	Minute Orders.	Minute Orders.	10833
10496	Awards and Orders Without Hearing.	**Repealed and replaced by** Effect of Stipulations.	10835
10497	Rejection of Stipulations.		
10776	Approval of Attorney's Fee.	Approval of Attorney's Fee by Workers' Compensation Appeals Board Required.	10840
10778	Request for Increase of Attorney's Fee.	Request for increase of Attorney's Fee.	10842
10775	Reasonable Attorney's Fee.	Reasonable Attorney's Fee.	10844
10780	Dismissal Orders.	Order Dismissing Application.	10850

Rule Repealed: 10349

New Rule Proposed: 10832 "Notices of Intention and Orders after Notices of Intention."

Statement of Specific Purpose and Reasons for Proposed Repeal and New Rule 10832.

We propose repealing rule 10349 and replacing it with a substantially expanded new rule 10832 entitled "Notices of Intention and Orders after Notices of Intention." The proposed rule will specify who can serve a notice of intention. In particular, the proposed rule will clarify that only the WCAB may serve a notice of intention that is 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 (so-called "self-destruct" notices of intention). The proposed rule will also include examples of typical notices of intention.

Rule Amended: 10833 "Minute Orders."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10833.

Current rule 10570 will become rule 10833 with minor changes in language.

Rules Repealed: 10496, 10497

New Rule Proposed: 10835 "Effect of Stipulations."

Statement of Specific Purpose and Reasons for Proposed Repeals and New Rule 10835.

We propose repealing current rules 10496 and 10497 and replacing them with a single new rule 10835 entitled "Effect of Stipulations." Current rule 10496 will become subdivision (a) of new rule 10835, and current rule 10497 will become subdivision (b) of new rule 10835, with only minor, non-substantive changes in wording.

Rule Amended: 10840 "Approval of Attorney's Fee by Workers' Compensation Appeals Board Required."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10840.

Current rule 10776 will become rule 10840 with no substantive changes. The title has been changed to more clearly describe the nature of the rule.

Rule Amended: 10842 "Request for increase of Attorney's Fee."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10842.

Current rule 10778 will become rule 10842 with no substantive changes.

Rule Amended: 10844 "Reasonable Attorney's Fee."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10844.

Current rule 10775 will become rule 10844. The last paragraph of the rule has been deleted because the Policy and Procedural Manual is not an appropriate source of rulemaking authority.

Rule Amended: 10850 "Order Dismissing Application."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10850.

Current rule 10780 will become rule 10850. Language related to the "window period" between January 1, 1990 and January 1, 1994 has been removed as unnecessary. Language has been added to subdivision (a) to allow a WCJ discretion on whether to dismiss an application upon request by the employee, to cover rare situations such as applications filed by lien claimants or defendants. The minimum period for responding to a Notice of Intention to dismiss an application has been reduced from 15 to 10 days, to match the minimum period allowed to respond to a Notice of Intention to dismiss for lack of prosecution, or for failure to appear.

Article 16

Liens

Table 16

Former Number	Old Title	New Title/Repeal	New Number
10770	Filing and Service of Lien Claims.	**Repealed and replaced by** Filing and Service of Lien Claims and Supporting Documents.	10862
10770.5	Verification to Filing of Lien Claim or Application by Lien Claimant.	Verification of Compliance with Labor Code section 4906.3 on Filing of Lien Claim or Application of Adjudication of Claim by Lien Claimant.	10863
10774.5, subdivs. (c) - (f)	Notices of Representation, Change of Representation, and Non-Representation for Lien Claimants.	**Repealed and replaced by** Notices of Representation, Change of Representation and Non-Representation for Lien Claimants.	10868
10770	Filing and Service of Lien Claims.	**Repealed and replaced by** Notification of Resolution or Withdrawal of Lien Claims.	10872
10770.1	Lien Conferences and Lien Trials.	**Repealed and replaced**	10873

		by Lien Claimant Declarations of Readiness to Proceed	
10770.6	Verification to Filing Declaration of Readiness By or on Behalf of Lien Claimant.	Verification to Filing Declaration of Readiness to Proceed by or on Behalf of Lien Claimant.	10874
10770.1	Lien Conferences and Lien Trials.	**Repealed and replaced by** Lien Conferences	10875
		Repealed and replaced by Fees Required at Lien Conference.	10876
		Repealed and replaced by Submission at Lien Conferences.	10878
		Repealed and replaced by Lien Trials	10880
		Repealed and replaced by Dismissal of Lien Claims.	10888
10772	Unemployment Compensation Disability Liens.	Unemployment Compensation Disability Liens.	10899

10582.5	**Repeal**	**Repeal.**	
10770.7	**Repeal.**	**Repeal.**	

Rule Repealed: 10770

New Rule Proposed: 10862 "Filing and Service of Lien Claims and Supporting Documents."

Statement of Specific Purpose and Reasons for Proposed Repeal and Adoption of New Rule 10862.

We propose repealing current rule 10770 and breaking it up into new rules 10862 and 10872. The rule has been significantly restructured for ease of reading and use.

Current subdivision (a)(3) has been removed because Labor Code section 4903(b) was amended effective January 1, 2015 to include medical-legal expenses as Labor Code section 4903(b) liens "to the extent the employee is entitled to reimbursement under Section 4621." Because all medical-legal expenses are technically reimbursement, this includes all claims under Section 4621. Accordingly, this subdivision is no longer required to allow these claims to be filed as liens if desired. The reference to a "claim of costs lien" in current subdivision (b)(1)(A) has been deleted for the same reason. Language has been removed from the same subdivision in order to incorporate into a single consolidated subdivision (j) which explains the consequences for failure to correctly file a lien; "shall" has been changed to "may" to reflect actual practice.

Language from current subdivision (b)(1)(C) has been removed because the exact method of filing a lien claim is covered by the Department of Workers' Compensation's rules. Electronic filing has been regularized and is no longer in a trial period. Language in subdivision (c) (formerly (b)(2)(A)) has been modified to clarify that liens not covered vy Labor Code section 4903(b) are not required to be filed using optical character recognition (OCR), but may be filed using OCR. We propose eliminating language in this same subdivision referencing the Administrative Director's e-filing rules because EAMS filing is well understood. By applying mandated electronic filing to only section 4903(b) lien claimants, we no longer need to carve out exceptions from the electronic filing mandate, and prior subdivision (b)(2)(B) can be deleted.

Current subdivision (c) has been removed to conform to style; the language in that provision has been deleted to conform to current practice and provide clarity to practitioners.

The subdivision specifying what documents are required to be filed with a lien has been streamlined because Labor Code section 4903(b) liens require different documentation than liens pursuant to other subdivisions of that statute.

We have deleted language defining resolution of the case-in-chief and the meaning of amended lien because those terms are not generally disputed. Similarly, language detailing what must appear in a full statement or itemized voucher has been removed because Labor Code section 4903.05 does not require proof of ownership of the debt or a declaration under penalty of perjury.

Language related to lien filing fees has been moved to rule 10876.

Rule Amended: 10863 "Verification of Compliance with Labor Code section 4906.3 on Filing o Lien Claim or Application of Adjudication of Claim by Lien Claimant."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10863.

Current rule 10770.5 will become rule 10863 with largely non-substantive changes. The title will change to reflect that the Labor Code explicitly mandates compliance with the elements of this verification, but not the verification itself. Subdivision (e) has been added in anticipation of the possibility of a future form approval for this verification. Standardized language in verifications avoids ambiguity and the need for litigation over whether a lien should be dismissed because of word choice.

Rule Repealed: 10774.5

New Rule Proposed: 10868 "Notices of Representation, Change of Representation and Non-Representation for Lien Claimants."

Statement of Specific Purpose and Reasons for Proposed Repeal and Adoption of New rule 10868.

As discussed above, subdivisions (a) and (b) of current rule 10774.5 will become new rule 10401. Subdivisions (c) through (f) will become new rule 10868. This section has been significantly revised for ease of reading and use. New subdivision (a) clarifies that a Notice of Representation according to this rule is only required when representation changes after the initial filing of a lien. Previous language requiring a party to bring a copy of the Notice of Representation to the hearing if a change of representation occurs within 5 days of a hearing date, or if the change of representation does not yet appear in the record, has been streamlined to simply require the notice to be brought to the hearing if it is not yet reflected in the record as of the date of hearing. The last sentence of new subdivision (a) clarifies that a new representative may not simply add their name and signature to another filing and claim this satisfies the provisions of this rule.

New subdivision (b) explains what is required in a Notice of Representation for a lien claimant, in addition to the requirements of rules 10390, 10400 and 10401, as relevant. Some language has been deleted because it is redundant with those rules.

New subdivision (c) details what the verification for a Notice of Representation for a lien claimant must contain.

References to a "Notice of Change of Representation" have been removed because this document is unnecessary; a Notice of Representation is sufficient.

New subdivision (d) has been added to make explicit that failure to comply with these rules is grounds for sanctions.

Rule Repealed: 10770

New Rule Proposed: 10872 "Notification of Resolution or Withdrawal of Lien Claims."

Statement of Specific Purpose and Reasons for Proposed Repeal and Adoption of New Rule 10872.

We propose repealing current rule 10770 and replacing it with new rules 10862 and 10872. New rule 10872 will cover notifying the WCAB when a lien has been resolved. Terms such as "provide written notification" have been replaced with references to filing and service in light of our new filing and service rules. The rule has been significantly revised for ease of reading and use. The five business day timeline has been revised to seven days to avoid confusion over the definition of the term "business day."

We propose deleting current subdivision (g)(4), requiring a representative to serve the notice of resolution on the lien claimant if the representative files the notice, and the lien claimant to serve the notice on their representative if the lien claimant files the notice, because such language is unnecessary; parties and their representatives need not serve documents on one another in any other circumstance.

We propose deleting the first portion of current subdivision (h), which deems a lien claim dismissed with prejudice upon notice of resolution or withdrawal. Because there is no actual mechanism for automatic dismissal of a lien upon the lien claimant providing notice of resolution, the result is that settlements reached immediately prior to a scheduled hearing date tend to cause substantial confusion as the notice of resolution may not have reached the WCJ by that time. Therefore we think it prudent that the rule acknowledges the constraints of practice.

Similarly, we propose adding new subdivision (b), requiring lien claimants to appear at any hearing that was noticed prior to the resolution or withdrawal of the lien, unless excused by the WCJ. As noted above, when lien claimants resolve their liens immediately prior to the hearing date and then fail to appear, substantial time and energy is wasted attempting to sort out which claims have been resolved, as opposed to lien claimants simply failing to show up. Notices of Intention to dismiss for failure to appear may be issued, resulting in substantial procedural headaches, especially when the lien claimant fails to respond to the Notice of Intention. We anticipate that WCJs will liberally excuse lien claimants from appearing when requested; the purpose of the amendment is to make sure WCJs are made aware of settlements occurring on the eve of a hearing, not to burden the parties with unnecessary appearances when they have already resolved their claims.

Language in former subdivision (i) has been removed because rule 10750 now requires service on all affected parties – including lien claimants – for all hearings.

Prior subdivision (j) has been deleted because 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."

Prior subdivision (l) has been deleted as unnecessary due to the changes made in new rule 10862 to apply these requirements only to Labor Code section 4903(b) liens.

Rule Repealed: 10770.1

New Rule Proposed: 10873 "Lien Claimants Declarations of Readiness to Proceed."

Statement of Specific Purpose and Reasons for Proposed Repeal and New Rule 10873.

We propose repealing current rule 10770.1 and replacing it with six new rules: 10873, 10875, 10876, 10878, 10880, and 10888. New rule 10873 will detail the procedures to be followed when a lien claimant files a Declaration of Readiness to Proceed. The language has been significantly revised for ease of reading and use.

Rule Amended: 10874 "Verification to Filing Declaration of Readiness to Proceed by or on Behalf of Lien Claimant."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10874.

Current rule 10770.6 will become rule 10874 with largely non-substantive changes. Subdivision (e) has been added in anticipation of the possibility of a future form approval for this verification. Standardized language in verifications avoids ambiguity and the need for litigation over whether a lien should be dismissed because of word choice.

Rule Repealed: 10770.1

New Rule Proposed: 10875 "Lien Conferences."

Statement of Specific Purpose and Reasons for Proposed Repeal and New Rule 10875.

We propose repealing current rule 10770.1 and replacing it with six new rules: 10873, 10875, 10876, 10878, 10880, and 10888. New rule 10875 will detail lien conferences. The language has been significantly revised for ease of reading and use. We propose eliminating the language which mandates only a single continuance of a lien conference, because in practice more than one continuance may be required. In

practice, WCJs often grant more than one continuance, or take the matter off calendar and then return it to the calendar to avoid the one-continuance requirement.

Language has been added to new subdivision (d) to clarify that a Pre-Trial Conference Statement (PTCS) need only be prepared if a lien is actually set for trial; the prior language implied that a PTCS should be prepared even if the matter was continued or taken off calendar.

Rule Repealed: 10770.1

New Rule Proposed: 10876 "Fees Required at Lien Conference."

Statement of Specific Purpose and Reasons for Proposed Repeal and New Rule 10876.

As discussed above, we propose repealing current rule 10770.1, with subdivision (c) becoming new rule 10876, pertaining to lien filing fees. There are no substantive changes.

Rule Repealed: 10770.1

New Rule Proposed: 10878 "Submission at Lien Conferences."

Statement of Specific Purpose and Reasons for Proposed Repeal and New Rule 10878.

As discussed above, we propose repealing current rule 10770.1, with subdivision (j) becoming new rule 10878 on submission at lien conferences. We propose eliminating the provision allowing a WCJ to submit a matter for decision solely on the exhibits if witnesses "are listed but no good cause is shown for any witness to testify at trial." If a party seeks to present testimony, it is not appropriate for a WCJ to order a lien be decided on the exhibits in the record in the absence of notice and the opportunity to be heard. The language regarding what must appear in the minutes of hearing and summary of evidence has been replaced with a cross-reference to rule 10787, which details what those documents must contain.

Rule Repealed: 10770.1

New Rule Proposed: 10880 "Lien Trials."

Statement of Specific Purpose and Reasons for Proposed Repeal and New Rule 10880.

We propose repealing current rule 10770.1 and replacing it with six new rules: 10873, 10875, 10876, 10878, 10880, and 10888. New rule 10880 will detail lien trials, and in particular the consequences for a failure to appear at a lien trial.

Rules Repealed: 10582.5, 10770.1

New Rule Proposed: 10888 "Dismissal of Lien Claims."

Statement of Specific Purpose and Reasons for Proposed Repeals and New Rule 10888.

We propose repealing current rules 10582.5 and, as discussed above, 10770.1, and adopting a new rule 10888, entitled "Dismissal of Lien Claims," that is derived from current rule 10582.5 and portions of current rule 10770.1. The substance of current rule 10582.5 will become subdivisions (a), (b), (b)(1), and (b)(2) of new rule 10888 with language from current rule 10582.5 deleted to conform to the new definition of "party," while portions of current rules 10770 and 10770.1 will be reflected in subdivision (b) of new rule 10888. The process for dismissing liens for lack of prosecution has been condensed and simplified to improve clarity and provide better guidance to practitioners. The remaining subdivisions of current rule 10770.1 have been moved to new rules 10873, 10875, and 10880. Subdivision (a) summarizes reasons for dismissal of a lien. New subdivisions (c), (d) and (e) are designed to protect lien claimants' due process rights. 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].)

Rule Amended: 10899 "Unemployment Compensation Disability Liens."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10899.

Current rule 10772 will become rule 10899 without substantive changes.

Rule Repealed: 10582.5 "Dismissal of Inactive Lien Claims for Lack of Prosecution."

Statement of Specific Purpose and Reasons for Proposed Repeal of rule 10582.5.

We propose repealing current rule 10582.5 as part of our proposal to condense and simplify the process for dismissing liens for lack of prosecution in new rule 10888. The substance of current rule 10582.5 is replicated in subdivisions (a) and (b) of new rule 10888. We propose deleting language regarding timeframes to conform to our new proposed definition of "party."

Rule Repealed: 10770.7 "Requirement for Liens Filed Before January 1, 2017."

Statement of Specific Purpose and Reasons for Proposed Repeal of rule 10770.7.

We propose repealing current rule 10770.7 because the window period described in this rule has been over for more than two years.

Article 17

Arbitration

Table 17

Former Number	Old Title	New Title/Repeal	New Number
10995	Mandatory Arbitration	**Repealed and replaced by** Mandatory Arbitration.	10900
10996	Mandatory Arbitration	**Repealed and replaced by** Voluntary Arbitration.	10905
10995	Mandatory Arbitration.	**Repealed and replaced by** Selection of Arbitrator.	10910
10996	Voluntary Arbitration.		
10998	Disqualification of Arbitrator.	Disqualification of Arbitrator.	10912
New Rule		Record of Arbitration Proceedings	10914
10999	Arbitrator Fee and Cost Disputes.	Arbitrator Fee and Cost Disputes.	10920
10997	Request for Arbitration.	**Repeal.**	**Repeal.**

Rule Repealed: 10995

New Rule Proposed: 10900 "Mandatory Arbitration."

Statement of Specific Purpose and Reasons for Proposed Repeal and New Rule 10900.

We propose repealing current rule 10995 and replacing it with a new rule 10900 entitled "Mandatory Arbitration," in addition to rule 10910, as explained below. The proposed rule will eliminate language

regarding the selection of the arbitrator (which will be contained in a separate rule), because under Labor Code section 5270, arbitration is not available where an applicant is unrepresented. Additionally, new rule 10900 will address the circumstances in which a case must be submitted to mandatory arbitration and provide a procedure to address disputes over whether mandatory arbitration is proper.

Rule Repealed: 10996

New Rule Proposed: 10905 "Voluntary Arbitration."

Statement of Specific Purpose and Reasons for Proposed Repeal and New Rule 10905.

We propose repealing current rule 10996 and replacing it with new rule 10905 entitled "Voluntary Arbitration," in addition to rule 10910, as explained below. Rule 10996 includes duplicative language on the submittal to arbitration. We propose a new rule that addresses the issues unique to voluntary arbitration. In particular, the parties may wish to limit the issues submitted.

Rules Repealed: 10995, 10996

New Rule Proposed: 10910 "Selection of Arbitrator."

Statement of Specific Purpose and Reasons for Proposed Repeals and New Rule 10910.

We propose repealing current rules 10995 and 10996 and replacing them with a single new rule 10910 governing the selection of arbitrators. 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 presiding workers' compensation judge must act from 6 days to 10 days to improve administration of the system.

Rule Amended: 10912 "Disqualification of Arbitrator."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10912.

Current rule 10998 will become rule 10912. References to the "window period" have been deleted as unnecessary. We have extended the time for filing a petition to remove a member from the panel to from 6 to 10 days for administrative convenience, and revised the rule to require that a petition to disqualify an arbitrator be addressed to the presiding workers' compensation judge to reflect current practice. We similarly propose extending the period to seek disqualification from 6 to 10 days.

Rule Adopted: 10914 "Record of Arbitration Proceeding."

Statement of Specific Purpose and Reasons for Proposed Adoptions of rule 10914

We propose a new rule clarifying what the record consists of in an arbitration proceeding.

Rule Amended: 10920 "Arbitrator Fee and Cost Disputes."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10920.

Current rule 10999 will become rule 10920 with non-substantive changes.

Rule Repealed: 10997 "Request for Arbitration"

Statement of Specific Purpose and Reasons for Proposed Repeal of rule 10997.

We propose repealing this rule because we wish to encourage agreements between the parties. Furthermore, in cases where testimony has been taken and a judge becomes unavailable, the parties may wish to proceed before a neutral arbitrator in order to achieve case resolution more quickly. Similarly, although testimony may have been taken on a threshold issue in a case, arbitration may be appropriate for the resolution of further issues in the case; the current rule implies that no arbitration may occur on any issue if there has been any testimony taken on any prior issue. While it remains likely that most arbitration agreements will occur before the taking of testimony, we see no compelling reason for an inflexible rule preventing arbitration after testimony has been taken no matter the circumstances.

Article 18

Reconsideration, Removal and Disqualification

Table 18

Former Number	Old Title	New Title/Repeal	New Number
10840	Filing Petitions for Reconsideration, Removal, and Disqualification and Answers.	**Repealed and replaced by** Filing and Service of Petitions for Reconsideration, Removal, Disqualification and Answers.	10940
10844	Petitions for Disqualification and Answers.		
10845	General Requirements for Petitions for Reconsideration, Removal, and Disqualification, and for Answers and Other Documents.		
10850	Proof of Service.		
10842	Contents of Petitions for Reconsideration, Removal, and Disqualification and Answers.	Required Content of Petitions for Reconsideration, Removal, and Disqualification and Answers.	10945
10843	Petitions for Removal and Answers.	Petitions for Removal and Answers.	10955
10844	Petitions for Disqualification and Answers.	Petition for Disqualification of Judge.	10960
10859	Orders After Filing of Petition for Reconsideration.	Actions by Workers' Compensation Judge After Petition for Reconsideration is Filed.	10961

10860	Report of Workers' Compensation Judge.	Report of Workers' Compensation Judge.	10962
10848	Supplemental Petitions.	Supplemental Petitions.	10964
10858	Correction of Errors.	Correction of Errors.	10966
10846	Skeletal Petitions.	Skeletal Petitions.	10972
10856	Allegations of Newly Discovered Evidence and Fraud.	Allegations of Newly Discovered Evidence and Fraud.	10974
10862	Hearing After Reconsideration is Granted.	Hearing After Reconsideration is Granted.	10984
10864	Authority of Workers' Compensation Judge After Decision After Reconsideration.	Authority of Workers' Compensation Judge After Decision After Reconsideration.	10986
10865	Reconsideration of Arbitration Decisions Made Pursuant To–Labor Code Sections 3201.5 and 3201.7.	Reconsideration of Arbitration Decisions Made Pursuant To–Labor Code Sections 3201.5 and 3201.7.	10990
10866	Reconsideration of Arbitrator's Decisions or Awards Made Pursuant to the Mandatory or Voluntary Arbitration Provisions of Labor Code Sections 5270 through 5275.	Reconsideration of Arbitrator's Decisions or Awards Made Pursuant to the Mandatory or Voluntary Arbitration Provisions of Labor Code Sections 5270 through 5275.	10995
10852	Insufficiency of Evidence.	**Repeal.**	**Repeal.**

Rules Repealed: 10840, 10844, 10845, 10850

New Rule Proposed: 10940 "Filing and Service of Petitions for Reconsideration, Removal, Disqualification and Answers."

Statement of Specific Purpose and Reasons for Proposed Repeals and New Rule 10940.

We propose repealing current rules 10840, 10844, 10845, and 10850 and replacing them with a single new rule 10940 entitled "Filing and Service of Petitions for Reconsideration, Removal, Disqualification and Answers." Current rule 10840 will become subdivision (a) of new rule 10940, with changes explained below; current rule 10844 will become subdivision (c) of new rule 10940; current rule 10845 will become subdivisions (b) and (d) of new rule 10940; and the second sentence of current rule 10850 will be appended to subdivision (c) of new rule 10940, while the first sentence is subsumed in the new rules on filing and service.

We added new language in subdivision (a) 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.

Labor code section 5902 requires that all petitions for reconsideration be verified. New language in subdivision (c) has been added to clarify that petitions for removal and answers to petitions for reconsideration, removal and disqualification must also be verified.

Subdivision (e) has been added to clarify that additional service is required when the petition involves an arbitration proceeding.

Prior subdivision (b) of 10840 has been deleted because EAMS filing is now standard.

Rule Amended: 10945 "Required Content of Petitions for Reconsideration, Removal, and Disqualification and Answers."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10945.

We propose renumbering current rule 10842 as new rule 10945 entitled "Required Content of Petitions for Reconsideration, Removal, Disqualification and Answers." The sections requiring reference to documentary evidence and depositions have been cleaned up to remove some requirements (e.g., giving the date and time of the hearing where the document was admitted or offered) that do not reflect current practice.

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. We propose amending the rule to allow documents to be attached in limited circumstances. Rule 10974 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. 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.

Rule Amended: 10955 "Petitions for Removal and Answers."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10955.

Current rule 10843 will become rule 10955 with non-substantive changes.

Rule Amended: 10960 "Petition for Disqualification of Judge."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10960.

We propose renumbering rule 10452 "Petition for Disqualification of Judge" as rule 10960. A verification element has been added, similar to those required for petitions for reconsideration and removal.

We propose deleting the sentence reading: "In no event shall any such petition be allowed after the swearing of the first witness" because it is not consistent with Code of Civil Procedure section 641, which is referenced in Labor Code section 5311. In certain limited circumstances, where the grounds for disqualification do not become known until after testimony has been given, such a petition may be appropriate.

Rule Amended: 10961 "Actions by Workers' Compensation Judge After Petition for Reconsideration is Filed."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10961.

Current rule 10859 will become rule 10961. This rule has undergone substantial organizational, non-substantive changes. We propose eliminating the language regarding correcting errors after the 15-day period because it causes confusion; by definition any correction of an error would entail issuing a new order, and therefore already be prohibited.

Rule Amended: 10962 "Report of Workers' Compensation Judge."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10962.

Current rule 10860 will become rule 10962. Language has been changed to clarify that a report is not required if the order, decision or award is rescinded pursuant to rule 10961, and to clarify the procedure for producing a report in the event that the assigned workers' compensation judge is unavailable. Depending upon the circumstances, the presiding workers' compensation judge may not be able to do

more than file a report stating that the WCJ is unavailable and cannot produce a report, but even such a report is useful to the Appeals Board because it serves to notify that a normal report will not be forthcoming.

Rule Amended: 10964 "Supplemental Petitions."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10964.

Current rule 10848 will become rule 10964. Subdivision (b) has been added to clarify that the party who wants to file the supplemental pleading should attach the proposed pleading to the request/petition to file the supplemental pleading.

Rule Amended: 10966 "Correction of Errors."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10966.

Current rule 10858 will become rule 10966 with minor changes in language.

Rule Amended: 10972 "Skeletal Petitions."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10972.

Current rule 10846 will become rule 10972. A petition for disqualification has been added to the list of petitions subject to dismissal on this basis.

Rule Amended: 10974 "Allegations of Newly Discovered Evidence and Fraud."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10974.

Current rule 10856 will become rule 10974 without change.

Rule Amended: 10984 "Hearing After Reconsideration Granted."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10984.

Current rule 10862 will become rule 10984 with no substantive changes.

Rule Amended: 10986 "Authority of Workers' Compensation Judge After Decision After Reconsideration."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10986.

Current rule 10864 will become rule 10986. Changes have been made to simplify the language without substantive effect.

Rule Amended: 10990 "Reconsideration of Arbitration Decisions Made Pursuant To–Labor Code Sections 3201.5 and 3201.7."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10990.

Current rule 10865 will become rule 10990 with largely non-substantive changes. References to addresses have been removed because they are subject to change. Language in subdivision (f) has been changed to clarify 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.

We propose changing subdivision (f) 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. Language in subdivision (g) has been revised in line with this proposed requirement.

Rule Amended: 10995 "Reconsideration of Arbitrator's Decisions or Awards Made Pursuant to the Mandatory or Voluntary Arbitration Provisions of Labor Code Sections 5270 through 5275."

Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10995.

Current rule 10866 will become rule 10995. The requirement to serve the arbitrator has been moved to new rule 10940, which sets forth the filing and service requirements for petitions for reconsideration, removal, and disqualification, and any answers thereto. Language has been added to subdivision (c) to clarify that 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.

We propose changing subdivision (c) 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. Language in subdivision (e) has been revised in line with this proposed requirement.

Rule Repealed: 10852 "Insufficiency of Evidence"

Statement of Specific Purpose and Reasons for Proposed Repeal of rule 10852.

Current rule 10842, which we propose renumbering as 10945, requires that every petition for reconsideration "shall fairly state all of the material evidence relative to the point or points at issue" and that each contention "shall be separately stated and clearly set forth." We therefore believe this regulation is redundant, as current rule 10842/new rule 10945 requires the party seeking reconsideration to state all material evidence relevant to the claim and to clearly explain the basis for each contention.