

Workers' Compensation Appeals Board – Rules of Practice and Procedure

ARTICLE 1

General

§10301. Definitions.

As used in this chapter:

(a) "Administrative Director" means the Administrative Director of the Division of Workers' Compensation.

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

~~(b)~~ (c) "Applicant" means any person asserting a right to relief under the provisions of Labor Code Section 5300.

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

~~(d)~~ "Conference Hearing" means a proceeding set for the purpose of ascertaining if there are genuine disputes requiring resolution by the Workers' Compensation Appeals Board, of providing assistance to the parties in resolving disputes, of narrowing the issues, and of expediting preparation and trial if a regular hearing is necessary.

(e) "Declaration of Readiness to Proceed" or "Declaration of Readiness" means a request for a proceeding before the Workers' Compensation Appeals Board.

(f) "Declaration of Readiness to Proceed to Expedited Hearing" means a request for a proceeding before the Workers' Compensation Appeals Board pursuant to Labor Code section 5502(b).

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

(h) To "file" a document means to deliver the document or cause it to be delivered to the Workers' Compensation Appeals Board district office with venue or to the Appeals Board for the purpose of having it included in the Workers' Compensation Appeals Board case file.

(i) "Hearing" means any trial, mandatory settlement conference, rating mandatory settlement conference, status conference, or priority conference.

~~(g)~~ (j) "Lien Claimant" means any person claiming payment under the provisions of Labor Code section 4903 or 4903.1.

(k) "Mandatory settlement conference" means a proceeding before the Workers' Compensation Appeals Board to assist the parties in resolving their dispute or, if the dispute cannot be resolved, to frame the issues and stipulations in preparation for a trial.

~~(h)~~ (l) "Party" means an Applicant or Defendant, or a lien claimant where the applicant's case has been settled by way of a compromise and release, or where the applicant chooses not to proceed with his or her case.

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

(j) "Proceeding" means any regular hearing, conference hearing, rating pre-trial, standby calendar, or any other act which may result in a finding, order, decision or award of the Workers' Compensation Appeals Board.

(n) "Priority conference" means a proceeding before the Workers' Compensation Appeals Board in which the applicant is represented by an attorney and the issues in dispute at the time of the proceeding include employment and/or injury arising out of and in the course of employment.

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

~~(l)~~ (p) "Record of Proceedings" means the pleadings, Declaration of Readiness to Proceed, minutes of hearings and summary of evidence, transcripts, if prepared and filed, proof of service, evidence received in the course of a proceeding, exhibits marked but not received into evidence, notices, petitions, briefs, findings, orders, decisions and awards, and arbitrator's file, if any.

~~(m)~~ (q) "Regular Hearing" means a proceeding set for the purpose of receiving evidence trial.

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

~~(n)~~ "Standby Calendar" means a rating pre-trial calendar where the case may immediately be referred to a workers' compensation judge for a regular hearing.

(s) "Status conference" means a proceeding set for the purpose of ascertaining if there are genuine disputes requiring resolution by the Workers' Compensation Appeals Board, of providing assistance to the parties in resolving disputes, of narrowing the issues, and of facilitating preparation and trial if a trial is necessary. A status conference includes a lien conference.

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

(u) "Trial" means a proceeding set for the purpose of receiving evidence.

(p) (v) "Workers' Compensation Appeals Board" means the Appeals Board, commissioners, deputy commissioners, presiding workers' compensation judges and workers' compensation judges.

Note: Authority cited: Sections ~~111, 5313, 5500, 5708 and 5709~~ 133 and 5307, Labor Code. Reference: ~~Section 5307, Labor Code.~~

§10306. Index of Cases. Case Names.

Each case shall be filed in the ~~index~~ database of the Division of Workers' Compensation Appeals Board under the name of the person claimed to have been injured, whether ~~such or not that~~ such or not that person is an applicant ~~or not~~. Reference to the case shall be by the name of the injured person and the Workers' Compensation Appeals Board case number.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 126, Labor Code.

§10308. Official Address Record.

The Workers' Compensation Appeals Board shall maintain in each case file an official address record, which shall contain the names and addresses of all parties and lien claimants, and their attorneys or agents of record.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 126, Labor Code.

§10322. Workers' Compensation Appeals Board Records Not Subject to Subpoena.

The records, files and proceedings of the Workers' Compensation Appeals Board shall not be taken from its offices either on informal request or in response to a subpoena duces tecum or any order issued out of any other court or tribunal. Except as precluded by Civil Code Section 1798.24, or Government Code Section 6254, certified copies of portions of the records desired by litigants shall be delivered upon payment of fees as provided in ~~Section 9990~~ of the Rules of the Administrative Director.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 127 and 5811, Labor Code.

§10324. Ex Parte Communications.

No document, including letters or other writings, shall be filed by a party or lien claimant with the Workers' Compensation Appeals Board unless service of a copy thereof is made on all parties together with the filing of proof of service as provided for in Rule 10514. No party or lien claimant shall discuss with the Appeals Board or a workers' compensation judge the merits of any case pending before the Appeals Board or that judge without the presence of all necessary parties to the proceeding, except as provided by these rules.

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

ARTICLE 2

Powers, Duties and Responsibilities

§10340. Appeals Board Decisions and Orders.

In accordance with Labor Code Section 115, the following orders, decisions and awards shall be issued only by the Appeals Board:

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

(b) All decisions ~~which that~~ which that terminate proceedings on reconsideration, including, but not limited to, findings, orders, awards, orders approving or disapproving compromise and release, orders allowing or disallowing liens, and orders for dismissal.

(c) All orders, including interim and interlocutory orders, made after reconsideration has been granted and while proceedings are pending on reconsideration, including but not limited to, orders taking off calendar, orders joining or dismissing parties, and orders allowing or disallowing liens. Unless otherwise instructed by the Appeals Board, the authority of the workers' compensation judge to whom a case has been referred for proceedings on reconsideration is as set out in Section 10862 of these Rules.

(d) Except for sanctions and contempt, Orders in disciplinary proceedings against attorneys or other agents.

(e) Decisions on remittitur.

(f) Orders disqualifying a workers' compensation judge under Labor Code Section 5311.

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

§10341. En Banc Decisions.

En banc decisions of the Appeals Board are binding on panels of the Appeals Board and workers' compensation judges as legal precedent under the principle of *stare decisis*.

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

§10346. Assignment or Transfer of Cases.

(a) The presiding workers' compensation judge has full responsibility for the assignment of cases ~~for trial~~ to the workers' compensation judges of each office. The presiding workers' compensation judge shall transfer to another workers' compensation judge the proceedings on any case in the event of the death, extended absence, unavailability, or disqualification of the workers' compensation judge to whom it has been assigned, and may otherwise reassign ~~such~~ those cases if no oral testimony has been received therein, or if the requirements of Labor Code Section 5700 have been waived. To the extent practicable and fair, supplemental proceedings shall be assigned to the workers' compensation judge who heard the original proceedings.

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

(b) If a compromise and release or stipulations with request for award have not been approved, disapproved, or noticed for trial on the issue of adequacy and other disputed issues within 45 days after filing, the file shall be transferred to the presiding judge for review.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections ~~6000, 6001, and 6002~~ 5309 and 5310, Labor Code.

§10347. Assignment of Judges.

Where practicable, different judges shall be assigned to conduct the mandatory settlement conference or conference(s) pursuant to Labor Code section 5502(c) and the trial.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5309 and 5310, Labor Code.

§10348. Authority of Workers' Compensation Judges.

In any case ~~which~~ that has been regularly assigned to a workers' compensation judge, ~~for trial under the provisions of Labor Code sections 5309 and 5310, a workers' compensation~~ the judge shall have full power, jurisdiction and authority to hear and determine all issues of fact and law presented and to issue ~~such~~ any interim, interlocutory and final orders, findings, decisions and awards as may be necessary to the full adjudication of the case, including the fixing of the amount of the bond required in Labor Code section 3715. Orders, findings, decisions and awards issued by a workers' compensation judge shall be the orders, findings, decisions and awards of the Workers' Compensation Appeals Board unless reconsideration is granted.

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

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 121, 134, 5309 and 5310, Labor Code.

§10349. Orders Equivalent to Notices of Intention.

An order with a clause rendering the order null and void if an objection showing good cause is filed within ten (10) days shall be deemed equivalent to a ten (10) day notice of intention.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 1, Labor Code.

§10350. Regular Hearings ~~Trials~~: Appointment and Authority of Pro Tempore Workers' Compensation Judges.

A presiding workers' compensation judge may appoint and assign a pro tempore workers' compensation judge to conduct a ~~regular hearing trial~~ on any issue in any proceeding before the Workers' Compensation Appeals Board and to make and file a finding, opinion, order, decision or award based thereon. Before assignment of a particular pro tempore workers' compensation judge, the parties or their representatives shall submit a request and written stipulation to the presiding workers' compensation judge. The request and written stipulation shall set out in full the name and the office address of the attorney agreed upon to conduct the ~~regular hearing trial~~ as a pro tempore workers' compensation judge.

If a case is off calendar or has not before been set on the ~~regular hearing trial~~ calendar, the request and written stipulation must be filed with a Declaration of Readiness to Proceed pursuant to Section 10414. The presiding workers' compensation judge, upon approval of the request for ~~regular hearing trial~~ by a pro tempore workers' compensation judge, will assign the case to the ~~regular hearing trial~~ calendar making appropriate arrangements to provide the pro tempore workers' compensation judge with facilities and staff at a time and place convenient to the Workers' Compensation Appeals Board and the pro tempore workers' compensation judge.

At the time of any conference hearing, the parties or their representatives may file the same request and written stipulation which will be submitted to the presiding workers' compensation judge who will assign the case to the ~~regular hearing trial~~ calendar in the same manner as set forth above.

Pro tempore workers' compensation judges will have all the authority and powers of workers' compensation judges as set forth in the Labor Code and Rules of Practice and Procedure of the Workers' Compensation Appeals Board including inquiry into adequacy of and approval of compromise and release agreements and stipulated findings including the authority to issue appropriate findings, awards and orders. Pro tempore workers' compensation judges shall be bound by the Rules of Practice and Procedure of the Workers' Compensation Appeals Board (including Articles 6, 7 and 8).

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections ~~121~~, 123.7, 5309 and 5310, Labor Code.

§10351. Conference Hearings: Appointment and Authority of Pro Tempore Workers' Compensation Judges.

A pro tempore workers' compensation judge shall in any case filed have the same power as a workers' compensation judge to conduct conference hearings, including ~~conference pre-trials mandatory settlement conferences~~, rating ~~pre-trials mandatory settlement conferences~~ and ~~standby calendars status conferences~~; to inquire into the adequacy of and to approve compromise and release agreements; to approve stipulated findings and to issue appropriate awards based on ~~such the~~ stipulations; to frame stipulations and issues and make interim and interlocutory orders at the conference hearing.

The presiding workers' compensation judge may assign a pro tempore workers' compensation judge to any conference hearing calendar including rating ~~pre-trials mandatory settlement conferences~~ or ~~standby calendars status conferences~~. The name of the pro tempore workers' compensation judge shall appear on the notice of ~~such calendar hearing~~. Failure to object to ~~such the~~ assignment within five days of service of notice of conference hearing shall constitute a waiver of any objection to proceeding before the pro tempore workers' compensation judge assigned to the mandatory settlement conference hearing, rating ~~pre-trial mandatory settlement conference~~ or ~~standby calendar status conference~~.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections ~~121~~, 123.7, 5309 and 5310, Labor Code.

§10353. Settlement Conference Authority.

(a) In accordance with Labor Code section 5502, subdivision ~~(d)~~(e)(2), the workers' compensation judge ~~or settlement conference referee~~ shall have authority to inquire into the adequacy and completeness, including provision for lien claims, of compromise and release agreements or stipulations with request for award or orders, and to issue orders approving compromise and release agreements or awards or orders based upon approved stipulations. The workers' compensation judge ~~or settlement conference referee~~ may make orders and rulings

regarding admission of evidence and discovery matters, including admission of offers of proof and stipulations of testimony where appropriate and necessary for resolution of the dispute(s) by the workers' compensation judge ~~or settlement conference referee~~, and may submit and decide the dispute(s) on the record pursuant to the agreement of the parties. The workers' compensation judge ~~or settlement conference referee~~ shall not hear sworn testimony at any conference.

(b) The workers' compensation judge ~~or settlement conference referee~~ may temporarily adjourn a conference to a time certain to facilitate a specific resolution of the dispute(s) subject to Labor Code section 5502, subdivision ~~(d)~~(e)(1).

Subject to the provisions of Labor Code Section 5502.5 and Rule 10416, upon a showing of good cause, the workers' compensation judge may continue a mandatory settlement conference to a date certain, may continue it to a status conference on a date certain, or may take the case off calendar. In such a case, the workers' compensation judge shall note the reasons for the continuance or order taking off calendar in the minutes. The minutes shall be served on all parties and lien claimants, and their representatives.

(c) Absent resolution of the dispute(s), the parties shall file at the mandatory settlement conference a joint pre-trial statement setting forth the ~~the~~ issues and stipulations for trial, witnesses, exhibits, and the proposed permanent disability rating as provided by Labor Code Section 4065. The parties may modify their proposed ratings only when evidence, relevant to the proposed ratings, and disclosed or obtained after the mandatory settlement conference, becomes admissible pursuant to Labor Code Section 5502, subdivision ~~(d)~~(e)(3).

A summary of conference proceedings including the joint pre-trial conference statement and the disposition shall be filed by the workers' compensation judge ~~or settlement conference referee~~ in the record of the proceedings on a form prescribed and approved by the Appeals Board and shall be served on the parties.

Note: Authority cited: Sections 133, 5307 and 5502~~(d)~~(2), Labor Code. Reference: Sections 5500~~(d)~~(2) and ~~(3)~~ 5502 and 5502.5, Labor Code.

ARTICLE 3 Parties and Joinder

§10360. Necessary Parties.

~~Except as otherwise specifically provided in Rule 10372, a~~Any applicant other than the injured employee shall join the injured employee as a party. In such instances the Application for Adjudication shall include the injured employee's address if known or, if not known, a statement of ~~such~~ that fact.

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

§10364. Parties Applicant.

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

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

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

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

§10380. Joinder of Parties.

After filing of an Application for Adjudication, the Appeals Board, a workers' compensation judge, ~~or a settlement conference referee~~ may order the joinder of additional parties necessary for the full adjudication of the case. A party not present or represented at the time of joinder shall be served with copies of the order of joinder, the application, minutes of hearing and summary of evidence, medical reports and other documents, as directed in the order of joinder. The Workers' Compensation Appeals Board may designate the party or parties who are to make service.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5307.5 and 5316, Labor Code.

ARTICLE 4
Filing of Documents

§10390. Place and Time of Filing Documents.

After the filing and processing of the application for adjudication, all papers and documents required to be filed by the Rules of Practice and Procedure of the Workers' Compensation Appeals Board or which request action by the Workers' Compensation Appeals Board shall be filed with the office of the Workers' Compensation Appeals Board district office where the case has been assigned for hearing except where the case is pending before the Appeals Board in San Francisco for action on a petition for reconsideration or removal.

After a petition for reconsideration or petition for removal has been properly filed pursuant to Rule 10840 or 10843 and after the 15 days for amendment or correction allowed by Rule 10859 or 10843 and until the Appeals Board issues its decision on a petition for reconsideration or removal, all requests for action relating to the reconsideration process, requests for withdrawal of the petitions for reconsideration or petitions to remove or notifications of change of address from the parties or lien claimants shall be filed with the Appeals Board in San Francisco. All other mail unnecessary to the reconsideration or removal process shall be filed with the district office where the case was heard and from which the decision issued.

Documents received in any other district office or the office of the Appeals Board in San Francisco, except as provided in this rule, shall not be accepted for filing or deemed filed and shall not be acknowledged or returned to the filing party and may be discarded. Such document, however, may be returned where the filing party includes a self addressed envelope with sufficient return postage. The Workers' Compensation Appeals Board, in any proceeding, may excuse a failure to comply with this rule resulting from mistake inadvertence, surprise, or excusable neglect.

Except where the document is filed at the mandatory settlement conference or hearing, the person who received the document for filing shall affix on it an appropriate endorsement as evidence of the fact and date of receipt, which endorsement may be made by handwriting, by hand stamp, by electrical mail received time and date stamp, or by any other appropriate means. Documents filed by mail are deemed filed on the date they are received by the Workers' Compensation Appeals Board, not on the date of posting.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 126, Labor Code.

§10391. Filing of Copies of Documents.

A document that has been sent directly to the Workers' Compensation Appeals Board by fax or e-mail will not be accepted for filing.

The Workers' Compensation Appeals Board will accept for filing a fax copy, photocopy, or other reproduction of a properly executed Application for Adjudication, Answer to an Application for Adjudication, Petition, Declaration of Readiness, Compromise and Release, or Stipulations with Request for Award.

Any reproduction of a document filed under this section is presumed to be an accurate representation of the original document. If a party alleges that a reproduction filed under this section is inaccurate or unreliable, the party filing the reproduction has the burden of proving by a preponderance of the evidence, that the reproduction is an accurate representation of the original document.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 126, Labor Code.

§10392. Form and Size Requirements for Filed Documents.

All pleadings, letters, petitions, briefs and notices filed with the Workers' Compensation Appeals Board by any party or lien claimant shall be on 8 1/2 x 11 inch paper with two holes punched at the top and centered to fit the Workers' Compensation Appeals Board file. All documents shall include in the heading the name of the injured employee and the Workers' Compensation Appeals Board case number. All pleadings, petitions and briefs shall be double spaced, except that quotations may be single spaced.

Where, on the same day, a party files two or more medical reports in the same case, the party shall attach them to a transmittal letter ~~which~~ that shall list each report by name of physician and date of report. The transmittal letter shall include the name of the injured employee and the Workers' Compensation Appeals Board case number.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 126, Labor Code.

§10395. Improper Filing of Documents.

The following documents shall not be filed with or sent to the Workers' Compensation Appeals Board:

- (a) Letters to opposing parties or counsel;
- (b) Subpoenas;
- (c) Notices of taking deposition;
- (d) Medical appointment letters;
- (e) Proofs of service ordered pursuant to Rule 10500;
- (f) Medical reports, except as required by Rules 10608 and 10615;

(g) Any other document which is not required to be filed by the Rules of Practice and Procedure of the Workers' Compensation Appeals Board or which does not request action by the Workers' Compensation Appeals Board.

This rule shall not prevent admission into evidence of any document relevant to an issue pending before the Workers' Compensation Appeals Board.

Documents improperly filed pursuant to this rule and received in any district office or the office of the Appeals Board in San Francisco shall neither be accepted for filing nor deemed filed for any purpose and shall not be acknowledged or returned to the filing party, and may be discarded.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 126, Labor Code.

§10396. Duty to Furnish Correct Address.

(a) Every party and lien claimant having an interest in an active case pending before the Workers' Compensation Appeals Board shall advise the Workers' Compensation Appeals Board and all other known interested parties of any change of address by promptly furnishing the correct and current mailing address.

Every lien claimant having an interest in an active case pending before the Workers' Compensation Appeals Board shall advise all known interested parties of any change in the identity or telephone number of the person with authority to resolve the lien by promptly furnishing the correct name and daytime telephone number of that person to the interested parties, and shall advise the Workers' Compensation Appeals Board of any such change after a Declaration of Readiness is filed.

~~In the event that a claim form has been filed for an injury on or after January 1, 1990 and no application for adjudication has been filed, it shall be the duty of every interested party or lien claimant to keep all other known interested parties and lien claimants advised of that party's or lien claimant's correct and current mailing address.~~

(b) Every party and lien claimant having an interest in an inactive case shall advise all other known interested parties and known interested lien claimants of any change of address by promptly furnishing the correct and current mailing address.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 126, Labor Code.

ARTICLE 5 Pleadings

§10400. Applications.

~~Except for pre-application proceedings provided in Rule 10406, p~~Proceedings for adjudication of rights and liabilities before the Workers' Compensation Appeals Board shall be initiated by the filing of an Application for Adjudication, Compromise and Release Agreement or Stipulations with Request for Award. ~~Where a compromise and release agreement or stipulations with request for award is filed as an application, it shall be accompanied by a copy of the claim form for injuries occurring on or after January 1, 1990.~~

~~Applications for Adjudication for injuries occurring before January 1, 1990 and on or after January 1, 1994, shall be filed with the Workers' Compensation Appeals Board office with the proper venue. Upon filing, the application shall be assigned an identification case number and placed in the case file. The person filing the application shall be notified that the application has been filed and shall be given an identification case number which that he or she shall serve on all other parties and lien claimants.~~

~~Applications for Adjudication for injuries occurring on or after January 1, 1990 and before January 1, 1994, shall be submitted for filing with the Workers' Compensation Appeals Board office with the proper venue. Upon submission for filing, and if the claimed injury has not been previously assigned an identification number, the application shall be assigned an identification number and placed in a case file. If an identification number has already been assigned, the application will be placed in the case file. After submission for filing of an application, the case file shall then be reviewed by the presiding workers' compensation judge, or any workers' compensation judge or settlement conference referee designated by the presiding workers' compensation judge, who shall~~

determine from the facts stated in the application and supporting documents whether efforts to resolve disputed issues have been described, medical reports and necessary documents are attached and the application is properly completed. If these requirements are not met or the application is not properly completed, the application shall be rejected and the parties and lien claimants of record notified; otherwise the application shall be filed and the case scheduled for hearing and the parties and lien claimants of record notified of the identification number. A simple statement in the application setting forth efforts to resolve the dispute or noting the opposing party's failure to respond within fifteen (15) days to an effort to resolve the dispute shall constitute an adequate description for the purposes of this rule. Where the above requirements are in doubt, applications should be resolved in favor of filing. An application shall be deemed filed when approved for filing by the presiding workers' compensation judge. The presiding workers' compensation judge shall approve for filing or reject the application within ten (10) days of submission of the application for filing. If review of the application is not completed within ten (10) days, the application shall be deemed filed.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 126, 5316 and 5500, Labor Code.

§10402. Minors, Incompetents as Applicants.

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

~~For injuries occurring on or after January 1, 1990, a Petition for Appointment of Guardian ad Litem shall be attached to any request by a minor or incompetent for the Workers' Compensation Appeals Board to make a pre-application determination pursuant to rule 10406. If the request for pre-application determination is made by a person other than the minor or incompetent, the Workers' Compensation Appeals Board shall, on its own motion, make such appointment when it is deemed in the best interests of the minor or incompetent.~~

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5307.5 and 5500, Labor Code.

§10404. Labor Code Section 4906(g) Statement.

The employee, insurer, employer and the attorneys for each party shall comply with Labor Code Section 4906(g) by filing a statement under penalty of perjury wherein it is declared that the party on whose behalf the declaration is made has not violated Labor Code Section 139.3, has not offered, delivered, received, or accepted any unlawful rebate, refund, commission, preference, patronage dividend, discount or other consideration, whether in the form of money or otherwise, as compensation or inducement for any referred examination or evaluation by a physician. Except as otherwise provided herein, failure to comply with this rule shall result in refusal to file or process that party's application for adjudication or answer. If any of the above parties are not available, cannot be located or are unwilling to sign, a declaration under penalty of perjury setting forth in specific detail the reasons that ~~such the~~ party is not available, cannot be located or is unwilling to sign as well as good faith efforts to locate the party may be filed with the application or answer. If the presiding workers' compensation judge or designee determines from the facts set forth in the declaration that good cause has been established, he or she may accept the application or answer for filing. For the purpose of this rule, a compromise and release agreement or stipulations with request for award shall not be treated as an application for adjudication.

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

§10405. Request for Findings of Fact.

~~a~~ A request for findings of fact under Government Code Sections ~~21025.4, 21026 or 21363~~ 21164, 21166, 21537, 21538, 21540, or 21540.5 or under Labor Code Sections 4800.5(d), 4801, 4804.2, 4807 or 4851 is a proceeding separate from a claim for workers' compensation benefits even though it arises out of the same incident, injury or exposure. The request for findings of fact shall be filed separately and a separate file folder and record of the proceeding will be maintained, but the request for findings of fact may be consolidated for hearing with a claim for workers' compensation benefits under the provisions of Section 10590 of these Rules.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections ~~21025.4, 21026 and 21363~~ 21164, 21166, 21537, 21538, 21540, and 21540.5, Government Code; and Sections 4800.5(d), 4801, 4804.2, 4807 and 4851, Labor Code.

~~§10406. Pre Application and Miscellaneous Proceedings.~~

~~Any request for pre application determinations by the Workers' Compensation Appeals Board for injuries occurring on or after January 1, 1990 and before January 1, 1994, shall be on a form prescribed by the Appeals Board.~~

~~Pre application determinations shall include, but not be limited to, discovery motions and pre application attorney fee requests pursuant to rule 10987.~~

~~A petition unaccompanied by an Application for Adjudication may be filed for benefits under Labor Code sections 132a, 4553 and 4751.~~

~~Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 132a, 4553, 4751 and 5401, Labor Code.~~

~~§10407~~ 10583. Dismissal of Claim Form--Labor Code Section 5404.5.

Where an application for adjudication for an injury on or after January 1, 1990 and before January 1, 1994, has not been filed by any of the parties, an employer or insurer seeking dismissal of a claim form for lack of prosecution shall solely utilize the procedures set forth in Labor Code Section 5404.5 and shall not seek an order of dismissal from the Appeals Board by the filing of an application for adjudication, a request for pre-application determination or any other petition or request.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 5404.5, Labor Code.

§10408. Forms of Application.

(a) The Application for Adjudication for compensation benefits and death benefits shall be on forms prescribed and approved by the Appeals Board, and:

~~(1) in serious and willful misconduct cases, it shall also comply with the requirements of Section 10440 and Section 10445 of these rules;~~

~~(2) in subsequent injury cases, it shall also comply with the requirements of Section 10940 of these rules;~~

~~(3) in Section 132a cases, it shall also comply with the requirements of Section 10447 of these rules.~~

~~(4) Designation of venue selection pursuant to Labor Code Section 5501.5 should be made either on the Application for Adjudication form or on a separate attached document.~~

Venue shall be at the district office where the Application for Adjudication is filed pursuant to Labor Code Section 5501.5.

~~(b) Until a new Application for Adjudication form is prescribed and approved by the Appeals Board, Applications for Adjudication for injuries occurring on or after January 1, 1990 and before January 1, 1994 may:~~

~~(1) be on the forms provided for in former Rule 10965 and accompanied by a dated and completed copy of the Employee's Claim For Workers' Compensation Benefits; or~~

~~(2) be on the same forms as provided in former Rule 10408 and accompanied by a Declaration of Readiness to Proceed as described in Rule 10966, if a conference or hearing is requested, and a dated and completed copy of the Employee's Claim For Workers' Compensation Benefits.~~

~~(c) Until a new Application for Adjudication form is prescribed and approved by the Appeals Board, Applications for Adjudication for injuries before January 1, 1990 and on or after January 1, 1994 shall be on the forms provided for in former Rule 10408.~~

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5500 and 5501.5, Labor Code.

§10410. Objection to Venue.

Any employer or carrier listed on the initial Application for Adjudication may file an objection to venue selected under Labor Code section 5501.5(a)(3) within 30 days after notice of the case number is served on the party.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 5501.5, Labor Code.

§10411. Petition for Change of Venue.

A petition for change of venue shall be filed at the district office with venue. Any objection to a petition for a change of venue shall be filed within 10 days of the filing of the petition. The presiding judge or his or her

designee shall grant or deny a petition for change of venue, or serve notice of a status conference concerning the petition, within 30 days of the filing of the petition.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 5501.6, Labor Code.

§10412. Location of File After Venue Change.

When an order changing venue is issued, the Workers' Compensation Appeals Board file shall be sent forthwith to the district office to which venue was changed and that district office shall retain the file until 1) another order changing venue is issued, or 2) the case is inactive and the file is ready to be sent to the state records center or destroyed.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 126 and 5501.6, Labor Code.

§10414. Declaration of Readiness to Proceed.

~~This rule applies to injuries occurring before January 1, 1990 and on or after January 1, 1994:~~

~~Applications or petitions shall not be placed on calendar for pre-trial mandatory settlement conferences, regular hearing, status conferences, priority conferences, or any other hearing unless one of the parties has filed and served a Declaration of Readiness to Proceed in the form prescribed by the Workers' Compensation Appeals Board wherein the declarant states under penalty of perjury that he or she is presently ready to proceed to regular hearing on the issues stated therein and specifies efforts made to resolve those issues. The Declaration of Readiness shall be served on all other parties and lien claimants. The declarant shall state under penalty of perjury the specific efforts made to resolve the issues stated and, unless a status conference or priority conference is requested, that he or she is presently ready to proceed on those issues.~~

~~Declarations of Readiness to Proceed shall be reviewed by the presiding workers' compensation judge, or any workers' compensation judge or settlement conference referee designated by the presiding workers' compensation judge, who will determine on the basis of the facts stated in the declaration, the case file and any submitted documents whether the parties are ready to proceed and efforts have been made to resolve the issues. If so, a hearing shall be calendared; if not, the declaration shall be rejected and the parties notified. A simple statement in the declaration setting forth efforts to resolve the dispute or noting the opposing party's failure to respond within fifteen (15) days to an effort to resolve the dispute shall constitute an adequate description for the purposes of this rule.~~

~~A false declaration or certification by an attorney or representative may give rise to proceedings under Labor Code Section 134 for contempt or Labor Code Section 5813 for sanctions.~~

~~If an applicant a party is represented by an attorney or representative any Declaration of Readiness filed on behalf of the applicant party shall be executed by the attorney or representative.~~

~~This rule These rules shall not prohibit the Workers' Compensation Appeals Board from requiring proceedings on its own motion.~~

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 134, and 5502 and 5813, Labor Code.

§10415. Declaration of Readiness to Proceed to Expedited Hearing.

An expedited hearing shall not be placed on calendar unless a party has filed a Declaration of Readiness to Proceed to Expedited Hearing. However, the Workers' Compensation Appeals Board may schedule an expedited hearing on its own motion.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 5502(b), Labor Code.

§10416. Objection to Declaration of Readiness to Proceed.

~~This rule applies to injuries occurring before January 1, 1990 and on or after January 1, 1994:~~

~~Any objection to a Declaration of Readiness to Proceed shall be filed and served within ten (10) days if the application is filed before January 1, 1991, or six (6) days if filed on or after January 1, 1991, after service of such the Declaration. The objection shall set forth, under penalty of perjury, specific reason(s) why the case should not be set for hearing or why the requested proceedings are inappropriate.~~

~~A false declaration or certification filed under this section by an attorney or representative may give rise to proceedings under Labor Code section 134 for contempt or Labor Code section 5813 for sanctions.~~

If an applicant a party is represented, the attorney or representative shall execute the any objection to the Declaration of Readiness to Proceed on behalf of the party.

~~The presiding workers' compensation judge or any workers' compensation judge or settlement conference referee designated by the presiding workers' compensation judge shall rule on the objection and make an appropriate disposition.~~

If a party has received a copy of the Declaration of Readiness to Proceed and has not filed an objection under this section, that party ~~may~~ shall be deemed to have waived any and all objections to ~~regular hearing proceeding~~ on the issues specified in the declaration, absent extraordinary circumstances.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 134 and 5813, Labor Code.

§10417. Walk-Through Calendar Setting.

Each district office shall establish a procedure allowing a party or law firm representing a party or parties to file up to five (5) Declarations of Readiness per day in person and immediately be notified of the date that the cases are scheduled for conference. Each Declaration of Readiness shall be served at least 10 days prior to filing and, when filed, shall be accompanied by any objection to the Declaration of Readiness. Within five (5) days of filing, the person filing the Declaration of Readiness shall notify in writing all other parties and lien claimants of the date, time, and location of the conference and the identity of the assigned judge. At the conference, the judge shall consider the issues listed in the Declaration of Readiness and the issues raised by any objection to it.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5316 and 5502, Labor Code.

§10417 10420. Setting the Case.

The Workers' Compensation Appeals Board, ~~except as provided in Labor Code section 5502, subdivisions (b) and (d), upon the receipt of a Declaration of Readiness to Proceed, or the filing of an Application for Adjudication for injury on or after January 1, 1990 and before January 1, 1994, may, in its discretion, set the case for a type of proceeding other than the that requested. Except as provided in Labor Code section 5502, subdivisions (b) and (d),~~ The Workers' Compensation Appeals Board may on its own motion set any case for conference or hearing trial.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5310, 5311 and 5502(b) and (d), Labor Code.

§10418 10430. Letters of Appointment for Medical Examinations.

~~After the filing of an Application for Adjudication for an injury occurring prior to January 1, 1990, and on or after January 1, 1994, a each party will notify all other parties, or and their attorneys or representatives, of any medical appointment scheduled for the purposes of medical-legal evaluation. Such That notice shall be given at the same time the injured worker is advised of the appointment.~~

~~After the filing of a claim form for an injury occurring on or after January 1, 1990, and before January 1, 1994, pursuant to Labor Code section 5401, subdivision (c), the injured worker, employer, and their attorney or representatives, shall notify each other of any appointment scheduled for the purpose of medical-legal evaluation. Notice shall be given at the same time the injured worker is advised of the appointment.~~

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5401 and 5703, Labor Code.

§10440. Pleadings--Serious and Willful Misconduct.

All allegations that an injury was caused by either the serious and willful misconduct of the employee or of the employer must be separately pleaded and must set out in sufficient detail the specific basis upon which the charge is founded so that the adverse parties and the Workers' Compensation Appeals Board may be fully advised.

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

§10445. Allegations.

All allegations that an injury was caused by serious and willful misconduct shall:

(a) When the charge of serious and willful misconduct is based on more than one theory, set forth each theory separately.

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

~~Failure to state the basis of a claim of serious and willful misconduct with the particularity herein required, unless specifically waived by the adverse party, may upon motion of a party be grounds for a dismissal.~~

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

§10447. Pleadings--Discrimination.

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

~~Failure to state the basis of the charge with the particularity herein required, unless specifically waived by the adverse party, may, upon the motion of a party, be grounds for dismissal.~~

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

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

§10450. Petitions.

A request for action by the Workers' Compensation Appeals Board, other than an Application for Adjudication, an Answer or Declaration of Readiness, shall be made by petition filed at the district office of the Workers' Compensation Appeals Board with venue. The caption of each petition shall contain the title and number of the case and shall indicate the type of relief sought.

Any document previously filed with the Workers' Compensation Appeals Board should not be attached to a petition; any such document that is attached to a petition may be discarded.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections ~~126 133 and~~ 5307, Labor Code.

§10453. Petition for Automatic Reassignment of Regular Trial or Expedited Hearing to Another Workers' Compensation Judge.

~~The injured worker (or the dependent or dependents of a deceased worker) and defendants~~ A party shall be entitled to automatic reassignment of a regular trial or expedited hearing to another workers' compensation judge in accordance with the provisions of this section. An injured worker shall be entitled to one reassignment of a judge for trial or expedited hearing. If the injured worker has not exercised the right to automatic reassignment and one or more lien claimants have become parties and no testimony has been taken, the lien claimants shall be entitled to one reassignment of judge for a trial, which may be exercised by any of them. The defendants shall be entitled to one reassignment of judge for a trial or expedited hearing, which may be exercised by any of them. Proceedings for such reassignment shall be instituted by the filing of a petition supported by an affidavit or declaration under penalty of perjury in substantially the following form:

State of California _____)
County of) ss.

_____)
_____)

[being duly sworn, deposes and says:] [declares under penalty of perjury:] That [s]he is [a party] [attorney for a party] to the above numbered case. That affiant believes that [s]he cannot have a [fair] [expeditious] [inexpensive] [unencumbered] [impartial] trial before the workers' compensation judge [before whom the case is pending] [to whom the case is assigned].

[Subscribed and sworn to me before this _____ day of _____, 19____]

~~(Notary public or other officer administering oath)~~

~~If the workers' compensation judge assigned to hear the matter is known, the petition and affidavit or declaration shall be filed. If the parties are first notified of the identity of the workers' compensation judge assigned for trial or expedited hearing by a notice of trial served by mail, to exercise the right to automatic reassignment a party must file a petition requesting reassignment not more than five (5) days after the service of the notice of regular trial or expedited hearing and be directed to the attention of the presiding workers' compensation judge. The presiding judge or a person designated by the presiding judge shall rule on any petition for automatic reassignment. If a petition for automatic reassignment is granted, a new notice of trial or expedited hearing shall be served.~~

~~If a case is assigned for Regular Hearing at a Conference Hearing, including Conference Pre-Trial, Rating Pre-Trial or Standby Calendar, a party may. If the parties are first notified of the identity of the workers' compensation judge assigned for trial at a mandatory settlement conference, at a status conference, at a lien conference, at a priority conference, or upon reassignment at the time of trial, to exercise the right to automatic reassignment by making a party must make an oral motion in lieu of the written motion required by this section. The oral motion shall be made on the record immediately upon learning the name of the judge to whom the case has been assigned for Regular Hearing, trial, and The motion shall be acted upon immediately by the presiding workers' compensation judge or a person designated by the presiding judge, of the office in which the case is to be heard. In the event the presiding workers' compensation judge is unavailable, any workers' compensation judge authorized by the presiding workers' compensation judge may rule upon the motion.~~

~~A motion for reassignment made orally under this section need not be accompanied or supported by the affidavit or declaration under penalty of perjury prescribed by this section.~~

~~In no event shall any motion or petition for reassignment be entertained after the swearing of the first witness at a Regular Hearing trial or expedited hearing.~~

~~Upon the filing of a petition for reassignment in accordance with the provisions of this section, without any further act or proof, the presiding workers' compensation judge shall assign the case or proceeding to another workers' compensation judge. If a party files a petition or makes a motion for automatic reassignment and no other workers' compensation judge is available in the office, such the assignment shall be made by a deputy commissioner of the Appeals Board. Upon reassignment a new notice of Regular Hearing shall be served. Under no circumstances shall more than one such reassignment be made in any one case or proceeding provided, however, that one additional reassignment may be made upon petition of a party on the other side. Such petition by the other party shall be filed in the manner and time hereinabove provided.~~

~~Unless required for the convenience of the Workers' Compensation Appeals Board, no continuance shall be granted by reason of a petition filed or motion under this section. If a continuance is granted, another Regular Hearing trial or expedited hearing shall be scheduled as early as possible.~~

~~Consolidated cases are to be considered as one case within the meaning of this section. This section is not applicable to conference hearings.~~

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5310 and 5311, Labor Code.

§10454. Automatic Reassignment After Reversal.

Notwithstanding Rule 10453, where the Appeals Board reverses a decision of a workers' compensation judge on an issue of the statute of limitations, jurisdiction, employment, or injury arising out of and in the course of employment, and remands the case for further proceedings, the party who filed the petition for reconsideration that resulted in the reversal shall be entitled to automatic reassignment of the case to another workers' compensation judge upon a motion or petition requesting reassignment filed at the district office within 30 days after the decision of the Appeals Board becomes final.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 5310, Labor Code.

§10454- 10455. Petition to Reopen.

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

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

§10462. Petition to Terminate Liability; Filing.

A petition to terminate liability for continuing temporary disability indemnity under a findings and award, decision or order of the Appeals Board or a workers' compensation judge shall be filed within 10 days of the termination of ~~such~~ the payments or other compensation. Failure to file such a petition within 10 days may affect the right to credit for an overpayment of temporary disability indemnity.

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

§10464. Contents of Petition to Terminate Liability.

A petition to terminate liability for temporary total disability indemnity shall conform substantially to the form provided by the Appeals Board and shall ~~specify~~ include:

(a) the correct title and date of filing of the prior order or decision, liability under which is sought to be terminated;

~~(b) the amount of disability indemnity which has been paid;~~

~~(c) the date to which such payments have been made;~~

~~(d) (b) the date upon which it is claimed that liability terminated;~~

~~(e) (c) the grounds upon which it is claimed liability should be terminated;~~

~~(f) (d) whether permanent disability is being advanced and, if so, the approximate date to which such indemnity will be paid;~~

~~(g) (e) whether the employee is presently working, according to information available to the petitioner;~~

(f) a computer printout showing the dates and the amounts of disability indemnity that have been paid, and the periods covered shall be attached; and

~~(h) (g) proof of service upon the opposing parties.~~

All medical reports in the possession of the petitioner ~~and which that~~ have not previously been served and filed shall accompany the petition. The petition also shall contain a statement, in underlined capital letters, that an order terminating liability for temporary total disability indemnity ~~will~~ may issue unless objection thereto is made on behalf of the employee within 14 days after service of the petition.

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

§10466. Objections to Petition, Hearing, Interim Order.

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

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

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

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

~~Following ruling upon the petition to terminate, the case shall be set by the presiding workers' compensation judge in the customary manner upon the filing of an appropriate declaration of readiness.~~

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections ~~4630~~ 4650 and 4651.1, Labor Code.

§10470. Medical Reports.

~~This rule applies to injuries occurring before and on or after January 1, 1990:~~

~~All petitions and answers thereto shall be accompanied by the filing and service on the adverse parties of all medical reports then in the possession or under the control of the party and not previously filed.~~

~~This rule shall not apply to pre-application petitions filed for injuries occurring on or after January 1, 1990, pursuant to rule 10406, or for requests for arbitration pursuant to Labor Code sections 5270 through 5277.~~

~~This rule shall not preclude the filing of documents necessary for determination of any issues raised in a pre-allocation petition.~~

~~Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5270, 5277, 5401 and 5703, Labor Code.~~

§10480. Answers.

~~An Answer to each Application for Adjudication for injuries occurring before January 1, 1990 and on or after January 1, 1994 shall be filed and served six (6) ten (10) days after service of the Declaration of Readiness to Proceed required by rule 10414 or 10415.~~

~~An Answer to each Application for Adjudication for injuries occurring on or after January 1, 1990 and before January 1, 1994 shall be filed and served within six (6) days after service of the Application for Adjudication.~~

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

§10484. Procedural Requirement.

The Answer used by the parties shall conform to a form prescribed and approved by the Appeals Board. Additional matters may be pleaded as deemed necessary by the answering party.

A general denial is not an answer within this rule. The Answer shall be accompanied by a statement proof of service upon the opposing parties.

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

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

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

~~A demurrer will not be allowed, but a Demurrers, petitions for judgment on the pleadings, and petitions for summary judgment are not permitted. A continuance may be granted upon timely request and upon such terms as may be reasonable under the circumstances or may be ordered by the Workers' Compensation Appeals Board on its own motion if:~~

~~(a) ~~the~~ a pleading is so uncertain, unintelligible or ambiguous as to render it impossible for the Workers' Compensation Appeals Board to understand or act upon it; or~~

~~(b) any party is prejudiced by omission or ambiguity of necessary allegations sufficient to prevent that party from adequately presenting a cause of action or defense.~~

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

ARTICLE 6 Service

§10500. Service.

~~Upon filing an Application for Adjudication for an injury occurring before January 1, 1990 and on or after January 1, 1994, or upon submission for filing of an Application for Adjudication for injuries occurring on or after January 1, 1990 and before January 1, 1994, the filing party shall serve a copy of the application on all adverse other parties. If the applicant is the injured worker or dependent and is unrepresented, the injured worker's' or dependent's application and accompanying documents shall be served by the Workers' Compensation Appeals Board on the parties listed on the application or on the address record in the case file. If an identification case~~

number has been previously assigned by the Workers' Compensation Appeals Board, that number must be affixed to the Application, and service thereof is deemed service of a conformed copy for the purposes of Labor Code Section 5501. If an identification case number has not been assigned either before or at the time of filing of the application, affixing notification of the identification case number assigned to the application by the Workers' Compensation Appeals Board shall constitute service of a conformed copy for the purpose of Labor Code section 5501.

Except as provided below, the Workers' Compensation Appeals Board may, in its discretion, designate the a party, parties or any lien claimant, or their representative, to make service of notices of the time and place of hearing, orders approving compromise and release, the awards based upon stipulations with request for award and any interim or procedural orders. The party, lien claimant, or representative designated to make service shall retain the proof of service and shall not file it unless ordered to do so by the Workers' Compensation Appeals Board.

The Workers' Compensation Appeals Board shall serve all parties and lien claimants of record notice of the first mandatory settlement conference and any final order, decision, or award issued by a workers' compensation judge or settlement conference referee on a disputed issue after submission. No lien claim shall be disallowed or reduced unless the lien claimant has been given notice and an opportunity to be heard.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5316 and 5504, Labor Code.

§10501. Service in Non-Dependent Death Cases.

When an Application for Adjudication, stipulations with request for award or compromise and release is filed in a death case in which there is a bona fide issue as to partial or total dependency, the filing party shall serve copies of such the documents shall be served on the Department of Industrial Relations, Non-Dependency Death Without Dependents Unit, except where the deceased employee left a surviving minor child.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 4706.5, Labor Code.

§10505. Service by the Parties.

Service of any document may be made either by mail or personal service. Service of any document may be made by facsimile transmission by agreement of the parties or lien claimants, or where authorized or requested by the receiving party or lien claimant.

Service of all documents other than those specified in Sections 10500 and 10501 shall be made by the parties and lien claimants.

Note: Authority cited: Sections 133, 5307 and 5316, Labor Code. Reference: Section 5316, Labor Code.

§10506. Service: Mailbox.

Where a district office of the Workers' Compensation Appeals Board maintains mailboxes for outgoing documents and allows consenting parties, lien claimants, and attorneys to obtain their documents from their mailboxes, documents so obtained shall be deemed to have been served on the party, lien claimant, or attorney by mail on the date of service specified on the document.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 5316, Labor Code.

§10507. Mail and Fax Service.

The time requirements of Code of Civil Procedure Section 1013(a) shall govern all service by mail and fax.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 5316, Labor Code.

§10514. Proof of Service by Parties and Lien Claimants.

Proof of service by parties or lien claimants may be made by:

- (a) affidavit or declaration of service;
- (b) written statement endorsed upon the document served and signed by the party making the statement;
- (c) letter of transmittal.

The Proof of Service shall set forth the names and addresses of persons served, whether such service was made personally or by mail, the date of service, the place of personal service or the address to which mailing was made.

The proof of service shall be filed with the documents to which the proof of service pertains. A proof of service filed at any other time may be discarded by the Workers' Compensation Appeals Board.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 5316, Labor Code.

§10520. Proof of Service by Workers' Compensation Appeals Board.

Proof of service by the Workers' Compensation Appeals Board may be made by endorsement on the document served, setting forth the fact of service on the persons listed on the official address record on the date of service. The endorsement shall state whether such service was made personally or by mail, the date of service and the signature of the person making the service.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 5316, Labor Code.

ARTICLE 7 Subpoenas

§10534. Microfilm.

Where records or other documentary evidence have been recorded or reproduced using the methods described in Section 1551 of the Evidence Code and the original records destroyed, ~~such the~~ film, legible print thereof or electronic recording shall be produced in response to a subpoena duces tecum. A party offering ~~such a~~ film or electronic recording in evidence may be required to provide legible prints thereof or reproductions from ~~such the~~ electronic recording.

The expense of:

- (a) inspecting ~~such~~ reproductions shall be paid by the party making the inspection; and
- (b) obtaining microfilm prints shall be borne by the party requiring the same.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections ~~132~~ 130, Labor Code.

§10536. Witness Fees and Subpoenas.

~~This rule applies to injuries occurring before and on or after January 1, 1990:~~

Medical examiners appointed by the Workers' Compensation Appeals Board or agreed to by the parties when subpoenaed for cross-examination at the Workers' Compensation Appeals Board or deposition shall be paid by the party requiring the attendance of the witness ~~the reasonable and customary hourly or daily fee for the actual time consumed in the examination of that witness by any party to the proceeding in accordance with the Rules of the Administrative Director.~~

Failure to serve the subpoena and tender ~~such a the~~ fee in advance based on the estimated time of the ~~proceeding trial~~ or deposition may be treated by the Workers' Compensation Appeals Board as a waiver of the right to examine ~~such the~~ witness. Service and payment of the fee may be made by mail if the witness so agrees.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 130, 131, ~~132, 134~~ and 4621 and 5710, Labor Code.

ARTICLE 8 Hearings

§10541. Hearings. Submission at Conference.

~~A hearing may be either a Conference Hearing or a Regular Hearing. Nothing in this rule precludes a A~~ workers' compensation judge ~~from receiving~~ may receive evidence and submitting an issue or issues for decision at a ~~C~~onference ~~H~~earing if the parties so agree.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections ~~5705~~ 5708 and 5709, Labor Code.

§10544. Notice of Hearing.

The Workers' Compensation Appeals Board shall serve or cause to be served notice of the time and place of hearings on all parties and lien claimants, and their attorneys or other agents of record, as provided in Rule 10500.

Notice of Hearing shall be given at least ten (10) days before the date of hearing, except where:

(a) notice is waived;

(b) a different time is expressly agreed to by all parties and concurred in by the Workers' Compensation Appeals Board; or

(c) the proceedings are governed by Article 19 pertaining to claims against the Subsequent Injuries Fund.

~~Every notice for Regular Hearing shall state the name of the workers' compensation judge to whom the case or proceeding has been assigned for hearing.~~

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section ~~5505~~ 5504, Labor Code.

§10548. Continuances; Appearances in Settled Cases.

~~(a) Continuances are not favored. The parties are expected to submit for decision all matters in controversy at a single hearing and to produce at such hearing all necessary evidence, including witnesses, documents, medical reports, payroll statements and all other matters considered essential in the proof of a party's claim or defense. Requests for continuances are inconsistent with the requirement that workers' compensation proceedings be expeditious. Continuances will be granted only upon a clear showing of good cause. Where possible, reassignment pursuant to Rule 10346 shall be used to avoid continuances.~~

~~(b) When the parties represent to the Workers' Compensation Appeals Board that a case has been settled, the case shall be taken off calendar and no appearances shall be required.~~

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Article XIV, Section 4, California Constitution; and Section 5502.5, Labor Code.

§10555. Priority Conference Calendar.

A priority conference will be set upon the filing of a Declaration of Readiness requesting a priority conference that shows that the applicant is represented by an attorney and that the issues in dispute include employment and/or injury arising out of and in the course of employment. Upon a showing of good cause, the workers' compensation judge may continue the matter to a status conference. At each priority or status conference, the parties shall be prepared to set the matter for trial or to provide a plan to complete discovery. To the extent possible, all priority and status conferences in a case shall be conducted by the same workers' compensation judge. When discovery is complete, or when the workers' compensation judge determines that the parties have had sufficient time to complete reasonable discovery, the case shall be set for trial as expeditiously as possible.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 5502(c), Labor Code.

§10560. ~~Further Hearings.~~ Submission at Single Trial.

~~Further hearings will not be granted except by order of the Workers' Compensation Appeals Board on a showing of good cause and in the exercise of sound discretion.~~

The parties are expected to submit for decision all matters properly in issue at a single trial and to produce at the trial all necessary evidence, including witnesses, documents, medical reports, payroll statements and all other matters considered essential in the proof of a party's claim or defense. However, a workers' compensation judge may order that the issues in a case be bifurcated and tried separately upon a showing of good cause.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Article XIV, Section 4, California Constitution; and Section 5708, Labor Code.

§10561. Sanctions.

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

A bad faith action or tactic is one ~~which that~~ results from a willful failure to comply with a statutory or regulatory obligation or from a willful intent to disrupt or delay the proceedings of the Workers' Compensation Appeals Board.

A frivolous bad faith action or tactic is one that is done for an improper motive or is indisputably without merit.

Violations subject to the provisions of Labor Code Section 5813 shall include but are not limited to the following:

Failure to appear or appearing late at a conference or ~~hearing trial~~ shall be deemed a bad faith action or tactic solely intended to cause unnecessary delay where a reasonable excuse is not offered or the offending party has demonstrated a pattern of such conduct.

Filing a pleading, petition or legal document shall be deemed a bad faith action or tactic ~~which that~~ is frivolous or solely intended to cause unnecessary delay unless there is some reasonable justification for filing ~~such a the~~ document.

Failure to timely serve evidentiary documents, including but not limited to medical reports pursuant to rule 10608, shall be deemed a bad faith action or tactic that is frivolous or solely intended to cause unnecessary delay unless that failure resulted from mistake, inadvertence, or excusable neglect.

Failing to comply with the Workers' Compensation Appeals Board's Rules of Practice and Procedure or an order of the Workers' Compensation Appeals Board, including an order of discovery, shall be deemed a bad faith action or tactic ~~which that~~ is frivolous or solely intended to cause unnecessary delay unless ~~such that~~ failure results from mistake, inadvertence, surprise, or excusable neglect.

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

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 5813, Labor Code.

§10562. Failure to Appear.

~~For the purposes of this rule, "application" means any application for adjudication filed for injuries occurring before January 1, 1990 and on or after January 1, 1994, and "claim form" means any claim form filed for injuries on or after January 1, 1990 and before January 1, 1994.~~

~~(a) Where a party served with notice of hearing trial fails to appear at such hearing either in person or by attorney or representative, the Workers' Compensation Appeals Board workers' compensation judge may~~

~~(1) dismiss the application or claim form after issuing a ten (10) day notice of intention to dismiss, or the workers' compensation judge may~~

~~(2) hear the evidence and, after service of the minutes of hearing and summary of evidence which that shall include a ten (10) day notice of intention to submit, make such decision as is just and proper.~~

~~(b) Where a party served with notice of a mandatory settlement conference fails to appear at such the conference, the workers' compensation judge may~~

~~(1) dismiss the application or claim form after issuing a ten (10) day notice of intention to dismiss, or the workers' compensation judge may~~

~~(2) close discovery and forward the case to the presiding workers' compensation judge to set for hearing trial.~~

~~(c) Where a party, after notice, fails to appear at either a hearing trial or a mandatory settlement conference and upon a showing of good cause is shown for failure to appear, the workers' compensation judge may take the case off the calendar if the application has been filed, or dismiss the application where a claim form has been filed, or may continue the case to a date certain.~~

~~(d) Where a lien claimant served with notice of a conference fails to appear at the conference either in person or by attorney or representative, and fails to have a person with settlement authority available by telephone, the workers' compensation judge may~~

~~(1) dismiss the lien claim after issuing a ten (10) day notice of intention to dismiss with or without prejudice, or~~

~~(2) close discovery and forward the case to the presiding workers' compensation judge to set for trial.~~

~~(e) Where a lien claimant served with notice of a trial fails to appear, the workers' compensation judge may~~

~~(1) dismiss the lien claim after issuing a ten (10) day notice of intention to dismiss with or without prejudice, or~~

(2) hear the evidence and, after service of the minutes of hearing and summary of evidence that shall include a ten (10) day notice of intention to submit, make such decision as is just and proper, or

(3) defer the issue of the lien and submit the case on the remaining issues.

(f) If the workers' compensation judge defers a lien issue, upon the issuance of his or her decision on the remaining issues, the workers' compensation judge shall

(1) issue a ten (10) day notice of intention to order payment of the lien in full or in part, or

(2) issue a ten (10) day notice of intention to disallow the lien, or

(3) continue the lien issue to a lien conference.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Article XIV, Section 4, California Constitution; and Sections ~~5404.5 and 5502(d)~~ and 5708, Labor Code.

§10563. Appearances Required.

Unless the notice otherwise provides, the applicant shall be present at a ~~conference hearing including a~~ mandatory settlement conference as provided in Labor Code section 5502, subdivision ~~(d)~~ (e) and the defendant ~~and lien claimants whose liens have not been resolved or withdrawn~~ shall have a person available with settlement authority. The person designated by the defendant to be available with settlement authority need not be present if ~~the an~~ attorney or representative who is present can obtain immediate authority by telephone. The representative of the lien claimant with settlement authority must be present or available by telephone. Government entities shall have a person available with settlement authority to the fullest extent allowed by law.

At the time of ~~Regular Hearing trial~~, all parties shall be present and the defendants shall have a person available with settlement authority in the same manner as set forth above. If a lien claimant whose lien has not been resolved or withdrawn is not present at the time of trial, the lien claimant shall have a person available with settlement authority in the same manner as set forth above.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections ~~111, 130,~~ 5502(d) and 5708, Labor Code.

§10564. Interpreters.

Subject to the ~~provisions of Government Code Section 11513 or 68566~~ Rules of the Administrative Director, the Workers' Compensation Appeals Board may in any case appoint an interpreter and fix the interpreter's compensation. It shall be the responsibility of any party producing a witness requiring an interpreter to arrange for the presence of a qualified interpreter.

For injuries before January 1, 1994, interpreter's fees ~~which that~~ are reasonably, actually and necessarily incurred and ~~which that~~ are not allowed under Labor Code Sections 4600 or ~~4601.5~~ shall be allowed as costs under Labor Code Section 5811. Recovery shall be allowed in the amount charged by the interpreter unless:

(1) proof of unreasonableness is entered by the party contesting the reasonableness of the charge, or

(2) the charge is manifestly unreasonable.

For injuries on or after January 1, 1994, interpreter's fees ~~which that~~ are reasonably, actually and necessarily incurred shall be allowed as provided by Labor Code Sections 4600, 5710 and 5811 as amended July 16, 1993. Interpreter's fees as defined in Labor Code section 4620, ~~which that~~ are reasonably, actually and necessarily incurred as provided in Labor Code section 4621, shall be allowed in accordance with the fee schedule set by the ~~a~~Administrative ~~d~~Director.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: ~~Sections 11513 and 68566, Government Code;~~ Sections 4600, ~~4601.5, 4620~~ 4621, 5710 and 5811, Labor Code.

§10566. Minutes of Hearing and Summary of Evidence.

Minutes of hearing and summary of evidence shall be prepared at the conclusion of each hearing and filed in the record of proceedings. They shall include:

(a) The names of the commissioners, deputy commissioner or workers' compensation judge, reporter, the parties present, attorneys or other agents appearing therefor and witnesses sworn;

(b) The place and date of said hearing;

(c) All interlocutory orders, admissions and stipulations, the issues and matters in controversy, a descriptive listing of all exhibits received for identification or in evidence (with the identity of the party offering the same) and the disposition, which shall include the time and action, if any, required for submission;

(d) A summary of the evidence required by Labor Code Section 5313 ~~which that~~ shall include a fair and unbiased summary of the testimony given by each witness;

(e) If motion pictures are shown, a brief summary of their contents;

(f) A fair statement of any offers of proof.

If the disposition is an order taking off calendar or a continuance, the reason therefor shall be given.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 5313, Labor Code.

§10578. Waiver of Summary of Evidence.

The summary of evidence need not be filed upon waiver by the parties, ~~upon filing of an ex parte order,~~ ~~nor~~ or upon issuance of a stipulated order, decision or award.

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

§10580. Evidence Taken Without Notice.

Transcripts or summaries of testimony taken without notice and copies of all reports and other matters added to the record, otherwise than during the course of an open hearing, shall be served upon the parties to the proceeding. Unless it is otherwise expressly provided, the parties shall be allowed 10 days after service of ~~such~~ the testimony and reports within which to produce evidence in explanation or rebuttal or to request further proceedings before the case shall be deemed submitted for decision.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 5704, Labor Code.

§10582. Inactive Cases, Procedure, Subsequent Action.

This rule applies to injuries occurring before January 1, 1990 and on or after January 1, 1994.

An Application for Adjudication filed without an accompanying Declaration of Readiness to Proceed will be placed in inactive status.

Cases set for hearing may be removed from the active calendar by an order taking off calendar.

Cases in off calendar status ~~will~~ may be restored to the active calendar upon the filing and serving of a properly executed Declaration of Readiness to Proceed.

Unless a case is activated for hearing within one year after the filing of the Application for Adjudication or the entry of an order taking off calendar, the case may be dismissed after notice and opportunity to be heard. Such dismissals may be entered at the request of an interested party or upon the Workers' Compensation Appeals Board's own motion for lack of prosecution. A case may be dismissed after issuance of a ten (10) day notice of intention to dismiss and an opportunity to be heard, but not by an order with a clause rendering the order null and void if an objection showing good cause is filed.

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

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections ~~111~~ 5405 and 5406, Labor Code.

~~§10590~~ 10589. Consolidated Cases.

Consolidation of two or more related cases may be ordered for the purpose of receiving evidence. Whether consolidation is ordered or a master file is designated to accommodate exhibits rests in the sound discretion of the ~~commissioner(s), deputy commissioner or workers' compensation judge or settlement conference referee to whom the case is assigned~~ Workers' Compensation Appeals Board. In exercising his or her ~~that~~ that discretion, the ~~commissioner(s), deputy commissioner, workers' compensation judge or settlement conference referee to whom the case is assigned~~ Workers' Compensation Appeals Board shall take into consideration the complexity of the issues involved and the potential prejudice of any party. Under ~~such~~ consolidation, all documentary evidence previously received in an individual case shall be reintroduced in the consolidated proceedings under a master file, if so designated. When so adduced, ~~such~~ the evidence shall be deemed part of the record of each of the several consolidated cases. Evidence received subsequent to the order of consolidation shall be similarly received with like force and effect.

Any request or petition to consolidate cases assigned to different workers' compensation judges in the same office of the Workers' Compensation Appeals Board shall be referred to the presiding workers' compensation judge of that office.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5303,~~5316~~ and ~~5502~~ 5708, Labor Code.

§10590. Consolidated Cases--Same Injured Worker.

For cases involving the same injured worker, any request or petition to consolidate cases assigned to different offices for hearing in one office shall be first referred to the presiding workers' compensation judges of the offices to which the cases are assigned; if the presiding workers' compensation judges cannot agree, the conflict shall be resolved by the court administrator upon referral by a presiding judge.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 5303, Labor Code.

§10591. Consolidating Cases--~~Different Offices~~ Multiple Injured Workers.

For cases involving two or more injured workers, Any request or petition to consolidate cases assigned to different offices for hearing in one office of the Workers' Compensation Appeals Board shall be first referred to the Assistant Chief of the Division of Workers' Compensation or his or her designee court administrator. Any request or petition to consolidate cases for hearing assigned to different workers' compensation judges in the same office shall be referred to the presiding workers' compensation judge of that office. The Assistant Chief or presiding workers' judge court administrator shall set the request for conference to obtain agreement of all the parties to the place of hearing. If the parties do not agree to the place of hearing, the ~~Assistance Chief or presiding workers' compensation judge~~ court administrator shall make a determination of the request for consolidation, giving due consideration to whether there are common issues of fact and law as well as whether judicial economy and expediency warrant and justify the request. Any party aggrieved by the determination of the ~~Assistant Chief or presiding workers' compensation judge~~ court administrator may request proceedings pursuant to Labor Code section 5310.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5303, 5310,~~5316~~ and ~~5502~~ 5708, Labor Code.

§10592. Pleadings in Consolidated Cases.

Separate pleadings shall be filed in each case consolidated for hearing. Where cases are consolidated, joint minutes of hearing, summaries of evidence and opinions may be utilized with sufficient copies for filing and service in each of the cases used.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5303and ~~5316~~ 5313, Labor Code.

ARTICLE 9 Evidence and Reports

§10600. Evidence and Reports.

The filing of a document does not signify its receipt in evidence, and, except for the documents listed in section 10750 of these Rules, only those documents ~~which~~ that have been received in evidence shall be included in the record of proceedings on the case.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections ~~1111, 5703, 5708 and 5709~~, Labor Code.

§10601. Copies of ~~Non-Medical~~ Reports and Records.

Where written evidence is documents, including videotapes, are to be offered in place of oral evidence, such as wage reports, sufficient correct copies shall be prepared by the offering party and into evidence, copies

shall be served on all adverse parties ~~not less than 20 days before the hearing~~ no later than the mandatory settlement conference, unless a satisfactory showing is made that ~~such reports or records~~ the documents were not available for service ~~within~~ by that time.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections ~~1111, 5703, 5708 and 5709~~ 5502(e), Labor Code.

§10602. Formal Permanent Disability Rating Determinations.

The Workers' Compensation Appeals Board may request the Disability Evaluation ~~Bureau~~ Unit to prepare a ~~recommended~~ formal rating determination on a form prescribed for that purpose by the Administrative Director, ~~Division of Industrial Accidents~~. ~~Such~~ The request may refer to an accompanying medical report or chart for the sole purpose of describing measurable physical elements of the condition ~~which~~ that are clearly and exactly identifiable. In every instance the request shall describe the factors of disability in full.

The report of the Disability Evaluation ~~Bureau~~ Unit in response to ~~such~~ the request shall constitute evidence only as to the percentage of the permanent disability based on the factors described, and ~~such~~ the report shall not constitute evidence as to the evidence existence of the permanent disability described.

The report of the Disability Evaluation ~~Bureau~~ Unit shall be filed and served on the parties and shall include or be accompanied by a notice that the case shall be submitted for decision seven (7) days after service unless written objection is made within that time.

Note: Authority cited: Sections ~~111, 4660, 5703, 5708 and 5709~~ 133 and 5307, Labor Code. Reference: Sections ~~5307~~ 4660 and 5708, Labor Code.

§10604. Certified Copies.

Certified copies of the reports or records of any governmental agency, division or bureau shall be admissible in evidence in lieu of the original ~~of such~~ reports or records.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5703, and 5708 ~~and 5709~~, Labor Code.

§10605. Reproductions of Documents.

A nonerasable optical image reproduction provided that additions, deletions, or changes to the original document are not permitted by the technology, a photostatic, microfilm, microcard, miniature photographic, or other photographic copy or reproduction, or an enlargement thereof, of a writing is admissible as the writing itself if the copy or reproduction was made and preserved as a part of the records of a business (as defined by Evidence Code Section 1270) in the regular course of that business. The introduction of the copy, reproduction, or enlargement does not preclude admission of the original writing if it is still in existence. The Workers' Compensation Appeals Board may require the introduction of a hard copy printout of the document.

A printed representation of images stored on a video or digital medium is presumed to be an accurate representation of the images it purports to represent. This presumption is a presumption affecting the burden of producing evidence. If a party to an action introduces evidence that a printed representation of images stored on a video or digital medium is inaccurate or unreliable, the party introducing the printed representation into evidence has the burden of proving by a preponderance of the evidence, that the printed representation is an accurate representation of the existence and content of the images that it purports to represent.

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

§10606. Physicians' Reports as Evidence.

The Workers' Compensation Appeals Board favors the production of medical evidence in the form of written reports. Direct examination of a medical witness will not be received at a hearing trial except upon a showing of good cause ~~and written notice to the parties filed and served at least 10 days before the hearing~~. A continuance may be granted for rebuttal testimony subject to Labor Code Section 5502.5.

These reports should include where applicable:

- (a) the date of the examination;
- (b) the history of the injury;
- (c) the patient's complaints;

- (d) a listing of all information received from the parties reviewed in preparation of the report or relied upon for the formulation of the physician's opinion;
- (e) the patient's medical history, including injuries and conditions, and residuals thereof, if any;
- (f) findings on examination;
- (g) a diagnosis;
- (h) opinion as to the nature, extent, and duration of disability and work limitations, if any;
- (i) cause of the disability;
- (j) treatment indicated;
- (k) opinion as to whether or not permanent disability has resulted from the injury and whether or not it is stationary. If stationary, a description of the disability with a complete evaluation;
- (l) apportionment of disability, if any;
- (m) a determination of the percent of the total causation resulting from actual events of employment, if the injury is alleged to be a psychiatric injury;
- (n) the reasons for the opinion; and,
- (o) the signature of the physician.

Failure to comply with (a) through (o) will be considered in weighing ~~such~~ the evidence.

In death cases, the reports of non-examining physicians may be admitted into evidence in lieu of oral testimony.

All medical-legal reports shall comply with the provisions of Labor Code Section 4628. Except as otherwise provided by the Labor Code, including Labor Code Sections 4628 and 5703, and the rules of practice and procedure of the Appeals Board, failure to comply with the requirements of this section will not make the report inadmissible but will be considered in weighing ~~such~~ the evidence.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections ~~4600~~, 4603.2, 4628, 5703, 5708 and 5709, Labor Code.

§10607. Computer Printouts of Benefits Paid.

If a party requests that a defendant provide a computer printout of benefits paid, within twenty (20) days the defendant shall provide the requesting party with a current computer printout of benefits paid. The printout shall include the date and amount of each payment of temporary disability indemnity, permanent disability indemnity, and vocational rehabilitation maintenance allowance, and the period covered by each payment, and the date, payee, and amount of each payment for medical treatment. This request may not be made more frequently than once in a one-hundred-twenty (120) day period unless there is a change in indemnity payments.

A defendant that has paid benefits shall have a current computer printout of benefits paid available for inspection at every mandatory settlement conference.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5502(e) and 5708, Labor Code.

§10608. Filing and Service of Physicians' Reports.

(a) After the filing of an Application for Adjudication, if a party is requested by another party or lien claimant to serve copies of physicians' reports relating to the claim, the party receiving the request shall serve copies of the reports on the requesting party or lien claimant within six (6) days of the request; the party receiving the request shall serve a copy of any subsequently-received physician's report within six (6) days of receipt of the report.

(b) A Declaration of Readiness to Proceed, ~~or a Declaration of Readiness to Proceed to Expedited Hearing, or an objection to either an Application for Adjudication for an injury on or after January 1, 1990 and before January 1, 1994, filed by any party or lien claimant~~ shall be accompanied by the physicians' reports which relate to the proceedings and which ~~that~~ are in the possession or under control of the declarant ~~or applicant~~. At the time of filing, it shall be the duty of the declarant ~~or applicant~~ to serve copies of physicians' reports which ~~that~~ have not been previously served and which ~~that~~ are in the possession or under the control of the declarant ~~or applicant~~ on all ~~opposing other~~ parties and all lien claimants requesting service.

(c) Within six (6) days after service of the Declaration of Readiness to Proceed ~~or Application for Adjudication for an injury on or after January 1, 1990 and before January 1, 1994~~ Declaration of Readiness to Proceed to Expedited Hearing, all other parties and lien claimants shall ~~file and~~ serve upon the opposing parties copies of ~~medical all~~ reports of physicians that are in their possession or under their control, and which ~~that~~ have not been previously filed in the proceeding served. All reports that have not been previously filed, and whose filing is not required by subsection (b), shall be filed at the next hearing.

At any time before the filing of an Application for Adjudication for an injury on or after January 1, 1990 and before January 1, 1994, and upon written request of an opposing party or lien claimant, it shall be the duty of

the parties to serve, within six (6) days, copies of all physicians' reports in their possession and under their control upon opposing parties and all lien claimants requesting service.

(d) All physicians' reports that have not been previously filed shall be filed upon the filing of a compromise and release or stipulations with request for award.

(e) Any report filed in violation of this section may be discarded by the Workers' Compensation Appeals Board.

(f) X-rays shall not be transmitted to the Workers' Compensation Appeals Board except under a specific order directing their production.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections ~~4600, 4621,~~ 5001, 5502, 5703, and ~~5708 and 5709,~~ Labor Code.

~~§10609. Service on Lien Claimants.~~

~~Copies of all physicians' reports shall be served on lien claimants whose liens for medical or unemployed compensation disability benefits are proposed to be reduced or disallowed. Such service shall be made not later than the time such reduction or disallowance is proposed.~~

~~Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 4903.1, 5708 and 5709, Labor Code.~~

~~§10610. Cross Examination of Physicians.~~

~~The right of cross examination of a physician on the physician's report may be deemed waived where the report of the physician has been filed and served on the parties twenty (20) days or more before the hearing, unless the physician is produced at the hearing, or unless good cause has been shown for not producing the physician.~~

~~Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Article XIV, Section 4, California Constitution; and Sections 4621 and 5709, Labor Code.~~

~~§10615. Continuing Duty to File Serve.~~

~~All physicians' reports coming into the possession of any party subsequent to the filing of a Declaration of Readiness to Proceed or an Application for Adjudication for an injury on or after January 1, 1990 and before January 1, 1994, shall be filed at the next noticed conference or hearing. Each party shall serve all opposing parties copies of such physicians' reports within six (6) days following receipt.~~

~~Upon written request of an opposing party or lien claimant and following a final decision, order or award by the Appeals Board or a workers' compensation judge after a written request and during the continuing jurisdiction of the Workers' Compensation Appeals Board, all physicians' reports coming into the possession of any party shall be served on the opposing party or lien claimant within six (6) days. In the absence of a pending proceeding, physicians' reports shall not be filed with the Workers' Compensation Appeals Board.~~

~~During the continuing jurisdiction of the Workers' Compensation Appeals Board, the parties have a continuing duty to serve on each other and any lien claimant requesting service any physicians' reports received.~~

~~Note: Authority cited: Sections 133 and 5307, Labor Code.~~

~~§10616. Employer-Maintained Records.~~

~~A written communication from a physician containing any information listed in Section 10606 which that is contained in any record maintained by the employer in the employer's capacity as employer will be deemed to be a physician's report and shall be filed and served as required in Sections 10608, ~~10609~~ and 10615. Records from an employee assistance program are not required to be filed or served unless ordered by the Workers' Compensation Appeals Board.~~

~~Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 4600, 5703, and ~~5708 and 5709,~~ Labor Code.~~

~~§10618. Transmittal of X-Rays.~~

On order of the Appeals Board or workers' compensation judge, a Party shall forthwith transmit all X-rays to the person designated in the order.

X-rays shall be subpoenaed only when they are relevant to pending issues and there is a present and bona fide intent to offer them in evidence. X-rays produced in violation of this rule will be ordered returned to their original custodian at the expense of the party causing them to be produced.

Upon reasonable request of a party, X-rays in the possession of, or subject to the control of, an adverse party or lien claimant shall be made available for examination by the requesting party or persons designated by that party at a time or place convenient to the persons to make the examination.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 4600, and 5708 ~~and 5709~~, Labor Code.

~~§10619. Subpoena of X-Rays.~~

~~X-rays shall be subpoenaed only when they are relevant to pending issues and there is a present and bona fide intent to offer them in evidence. X-rays produced in violation of this rule will be ordered returned to their original custodian at the expense of the party causing them to be produced.~~

~~Note: Authority cited: Sections 133, 5307, 5708 and 5709, Labor Code. Reference: Sections 4600, 5708 and 5709, Labor Code.~~

~~§10620. Examination of X-Rays.~~

~~Upon reasonable request of a party, X-rays in the possession of, or subject to the control of, an adverse party or lien claimant shall be made available for examination by the requesting party or persons designated by that party at a time or place convenient to the persons to make the examination.~~

~~Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 4600, 5708 and 5709, Labor Code.~~

§10622. Failure to Comply.

Disclosure, service and filing of all medical reports in the possession and control of every party to a proceeding, except as otherwise expressly provided, ~~and compliance with the rule on inspection~~ is essential to and required in the expeditious determination of controversies.

The Workers' Compensation Appeals Board may decline to receive in evidence, either at or subsequent to hearing, any report offered under the provisions of Labor Code Section 5703 by a party who has failed to comply with the provisions of Rules 10600, 10608, 10615, 10616 ~~and or 10618, or any of them, or refuses or prevents examination of X-rays as required by Rule 10620.~~ A medical report shall not be refused admission into evidence at a hearing, solely upon the ground of a late filing, where examination was diligently sought and said report came into possession or control of the party offering it within the preceding seven (7) days.

Where a willful suppression of a medical report is shown to exist in violation of these rules, it shall be presumed that the findings, conclusions and opinions therein contained would be adverse, if produced.

The remedies in this section are cumulative to all others authorized by law.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections ~~111~~, 5708 ~~and 5709~~, Labor Code.

§10626. Hospital and Physicians' Records.

Subject to Labor Code section 3762, All parties, their attorneys, agents and physicians shall have full opportunity be entitled to examine and make copies of all or any part of physician, hospital, or dispensary records ~~which that~~ are relevant to the claims made and the issues pending in a proceeding before the Workers' Compensation Appeals Board.

A party offering such records shall designate the particular portion or portions thereof believed to be relevant, specifically stating where in ~~such the~~ records it may be found. The Workers' Compensation Appeals Board prefers ~~such that the~~ designation to be in writing and before the hearing.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 4600, Labor Code.

§10630. Return of Exhibits.

No exhibits filed or received in evidence will be released into the custody of a party, his attorney or other agent, except upon stipulation of the parties or by order of the Appeals Board or a workers' compensation judge.

Sixty (60) days after decision is final in any proceeding, or after a case has been ordered off calendar, the Workers' Compensation Appeals Board may, on its own motion, with or without notice, return:

(a) to the owners or persons producing the same, all exhibits of a physical, mechanical or demonstrative evidentiary character, unless some other disposition is expressly provided for; and

(b) to the respective owners or custodians, all permanent office records, X-rays, laboratory, clinical and hospital records and charts.

Upon expiration of five (5) years after filing the application, there being no proceedings pending, the Workers' Compensation Appeals Board may, with or without notice, make such order disposing of exhibits as deemed proper. Where proper written requests covering disposition of ~~such~~ the exhibits are on file, they will be returned or disposed of in accordance therewith.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 126, Labor Code.

§10631. Specific Finding of Fact--Labor Code Section 139.2(d)(2).

Where a qualified medical evaluator's report has been considered and rejected pursuant to Labor Code section 139.2, subdivision (d)(2), the workers' compensation judge or Appeals Board shall make and serve a specific finding on the qualified medical evaluator and the Industrial Medical Council at the time of decision on the regular workers' compensation issues. ~~Such~~ The specific finding may be included in the decision.

If the Appeals Board, on reconsideration, affirms or sets aside the specific finding of fact filed by a workers' compensation judge, it shall advise the qualified medical evaluator and the Industrial Medical Council at the time of service of its decision on the petition for reconsideration. If the workers' compensation judge does not make a specific finding and the Appeals Board, on reconsideration, makes a specific finding of rejection pursuant to Labor Code Section 139.2, subdivision (d)(2), it shall serve its specific finding on the qualified medical evaluator and the Industrial Medical Council at the time it serves its decision after reconsideration.

Rejection of a qualified medical evaluator's report pursuant to Labor Code section 139.2, subdivision (d)(2) shall occur where the qualified medical evaluator's report does not meet the minimum standards prescribed by the provisions of Rule 10606 and the regulations of the Industrial Medical Council.

This rule shall apply to injuries on or after January 1, 1994.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 139.2(d)(2), Labor Code.

§10632. Labor Code Section 4065--Evidence.

Where the provisions of Labor Code Section 4065 apply, the workers' compensation judge shall receive into evidence ~~both qualified medical evaluators' evaluations and the evaluation(s) of the treating physician(s), together with~~ the "proposed ratings" submitted by the parties.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 4065, Labor Code.

§10633. Proposed Rating--Labor Code Section 4065.

A "proposed rating" pursuant to Labor Code Section 4065 shall include the appropriate disability numbers for each part of the body resulting in permanent disability and a standard rating ~~on~~ of the factors of disability.

Where the provisions of Labor Code Section 4065 have been used to determine permanent disability, the workers' compensation judge shall comply with Labor Code Section 5313 and state the evidence relied upon and the reasons or grounds on which selection of the proposed rating is based.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 4065, Labor Code.

**ARTICLE 10
Medical Examiners**

~~§10700. Impartial Medical Examiners.~~

~~This rule applies to injuries occurring before January 1, 1991:~~

~~The Workers' Compensation Appeals Board may request referral of disputed medical questions to an independent medical examiner assigned by the Medical Director in the manner prescribed by Labor Code section 139.1.~~

~~The Workers' Compensation Appeals Board may, upon agreement of a party to pay the cost, and with the consent of the injured worker and his or her attorney or representative, if any, order an injured worker to be examined by an independent medical examiner selected by the Medical Director.~~

~~The Workers' Compensation Appeals Board may, upon agreement of a party to pay the cost, refer a disputed medical question to an agreed medical examiner selected by the parties or by the Workers' Compensation Appeals Board with the consent of the parties. The necessary arrangements will be made by the parties unless otherwise directed by the Appeals Board or workers' compensation judge.~~

~~Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 139.1 and 5703.5, Labor Code.~~

~~§10715. Orders Directing Applicants to Report for Medical Examination.~~

~~Copies of orders directing an injured worker to report to independent medical examiners or the Medical Bureau shall be served upon the worker, upon the worker's attorney or agent and upon the other parties as provided in Section 10510.~~

~~Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 139, Labor Code.~~

~~§10718. Prohibited Communication.~~

~~All correspondence concerning the examination and reports of the independent medical examiner or amendments thereto a physician appointed pursuant to Labor Code Section 5701 or 5703.5 shall be made through the Workers' Compensation Appeals Board, and no party, attorney or representative shall communicate with the independent medical examiner that physician with respect to the merits of the case unless ordered to do so by the Workers' Compensation Appeals Board.~~

~~Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections ~~139~~ 5701 and 5703.5, Labor Code.~~

~~§10722. Filing and Service of Medical Reports.~~

~~The original reports of independent medical examiners, agreed medical examiners, or Medical Bureau examiners shall be filed in the record of proceeding at the same time that copies thereof are served as provided in Rule 10510 and shall be deemed in evidence without further order.~~

~~Copies shall be served on any lien claimant who claims to have furnished medical treatment and who has requested service.~~

~~Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 139, 5703.5 and 5708, Labor Code.~~

~~§10727. Cross-Examination by Deposition.~~

~~The Workers' Compensation Appeals Board favors cross-examination of medical witnesses by way of deposition. Reasonable costs in connection with such deposition shall be allowed under Labor Code Section ~~4600~~ 4621.~~

~~Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Article XIV, Section 4, California Constitution: Section ~~4600~~ 5708, Labor Code.~~

ARTICLE 11 Transcript of Testimony

§10740. Transcripts.

Unless otherwise ordered by a commissioner, a deputy commissioner, or ~~by~~ a presiding workers' compensation judge, testimony taken at hearings in compensation proceedings will not be transcribed except upon the request of a party accompanied by the fee prescribed in the Rules of the Administrative Director.

Requests for transcription of testimony shall be in writing, served on all other parties, directed to the transcript clerk and accompanied by a deposit fee based on the transcript clerk's estimate of the number of pages to be transcribed. If the actual fee exceeds the deposit, the purchaser shall pay the balance of the fee before the transcript is released. Any excess deposit will be returned to the purchaser.

No person shall make a photographic copy of a transcript from the Board file except upon payment prescribed by law for a copy of the transcript.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 127 and 5708, Labor Code.

ARTICLE 12 Record of Proceedings

§10750. Record of Proceedings.

The ~~R~~ecord of ~~P~~roceedings consists of: the pleadings, declarations of readiness to proceed, minutes of hearing and summary of evidence, transcripts, if prepared and filed, proofs of service, evidence received in the course of a ~~proceeding~~ hearing, exhibits marked but not received in evidence, notices, petitions, briefs, findings, orders, decisions and awards. Documents that are in the Workers' Compensation Appeals Board file but have not been received in evidence are not part of the evidentiary record.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 126 and 5708, Labor Code.

§10751. Legal File.

The Workers' Compensation Appeals Board's legal file includes the record of proceedings. Upon approval of compromise and release or stipulations with request for award, all medical reports that have been filed shall be transferred to the legal file.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 126, Labor Code.

§10753. Inspection of Files.

Except as ~~otherwise~~ provided ~~herein and~~ in Section 10754 of these Rules or otherwise, any person legally may inspect the contents of any Workers' Compensation Appeals Board file at the ~~Workers' Compensation Appeals Board~~ district office where the file is located at a time convenient to the Workers' Compensation Appeals Board and during regular office hours. The file and the records and documents contained therein may not be removed from the ~~Workers' Compensation Appeals Board~~ district office for copying or for any other purpose. Copying operators must operate their equipment in the room assigned to them and any person copying a file must put papers back in the file in their original order and any person viewing or copying a file must return the file in the same order and condition in which it was received.

A file will not be sent from one office to another for inspection except for good cause by order of a workers' compensation judge and upon the payment of a fee required by the Administrative Director. At the request of a party to the case, or his or her attorney, A a file which that has been transferred to a record storage center for storage will be made available for inspection through the office from which the file was transferred, at the request of a party to the case or his attorney, but Files that have been transferred to a record storage center will ~~not~~ be made available for inspection by any other person ~~except by order of a workers' compensation judge on a showing of good cause upon payment of the fee required by the Administrative Director.~~

Although the following documents may be retained in a Workers' Compensation Appeals Board file folder for the sake of convenience, they are not a part of the file and may be removed from the file before it is made available for inspection by any person:

(a) Decisions, reports, opinions, orders, recommendations and other documents which that are in the process of preparation, or, although fully prepared, have not yet been signed and filed.

(b) ~~Medical Bureau~~, Agreed Medical Examiner or ~~Independent~~ Qualified Medical Examiner reports and ratings which that have been received but have not yet been served.

(c) The working papers, personal notes, deliberation records, and other private notations made by a workers' compensation judge, commissioner, deputy commissioner or Appeals Board attorney in the course of hearing or deliberation relating to the case.

(d) Any legal memorandum or analysis prepared by a workers' compensation judge, commissioner, deputy commissioner, Appeals Board attorney or legal assistant to assist a workers' compensation judge, deputy commissioner or commissioner in his deliberations concerning a case.

Except as provided in Rule 10754, a party, or his or her attorney or representative, may inspect the legal file and any medical reports that have been filed; any other person may inspect only the legal file.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections ~~111~~ and 126, Labor Code.

§10754. Sealed Documents.

Where a medical report, medical record or other document filed in a case contains references to or discusses the mental or emotional health of any person, sexual habits or practice, use of or addiction to alcohol or other drugs, or other matter of similar character such that the workers' compensation judge to whom the case is assigned determines that public inspection of the document should not be permitted, the workers' compensation judge may order the document to be sealed. If an order is made that a document or documents be sealed, the order shall be filed in the record of the proceedings and the sealed document or documents shall be placed in a sealed envelope, which shall be removed from the file before the file is made available for public inspection.

Sealed documents in a case shall be made available for inspection by any party to the case or by his representative on order of a workers' compensation judge and subject to ~~such~~ any reasonable conditions and limitations as the workers' compensation judge may impose. Sealed documents shall not otherwise be made available for public inspection except by order of a workers' compensation judge, which shall be made only on a showing that good cause exists to permit the inspection.

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

§10758. Destruction of Case Files.

Following a period of ~~fifteen (15)~~ five (5) years after ~~the filing of the Applications,~~ or other ~~proceedings~~ opening document, the Workers' Compensation Appeals Board may destroy, without microphotographic or other reproduction, the file in each case.

A case file may be destroyed by the Workers' Compensation Appeals Board after its contents, as stripped in accordance with Section 10755, have been reproduced in a manner permitted by law. ~~Such~~ The reproduction may be destroyed after a period of ~~fifteen (15)~~ five (5) years from the date of filing of the ~~proceeding~~ Application or other opening document.

The approval of the Department of Finance, as required by the provisions of Labor Code Section 135, will be obtained before action under this rule.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 135, Labor Code.

§10762. Reporters' Notes.

~~Phonographic~~ Stenographic reporters' notes shall be retained for a period of six (6) years after the taking of them and thereafter may be destroyed or otherwise disposed of.

The approval of the Department of Finance, as required by the provisions of Government Code Section 14755, will be obtained before action under this rule.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 14755, Government Code; and Section 5708, Labor Code.

ARTICLE 13 Liens

§10770. Lien Procedure.

(a) Any lien claimant under Labor Code sections 4903 or 4903.1 shall file its lien in writing upon a form approved by the Appeals Board or electronically as approved by the Administrative Director. ~~The~~ Lien claims filed in writing shall be accompanied by a full statement or itemized voucher supporting the lien and justifying the right to reimbursement and proof of service. All liens, along with a full statement or itemized voucher supporting the lien, shall be served upon the applicant, the injured worker (or, if deceased, upon worker's dependents), the employer, the insurance carrier and the respective attorneys or other representatives of record. ~~This paragraph~~

~~(a) applies to injuries regardless of the date of injury. Service of a lien on a party shall constitute notice to it of the existence of the lien.~~

~~(b) The Workers' Compensation Appeals Board shall not accept for filing a lien for an injury occurring before January 1, 1990, and on or after January 1, 1994, that does not bear an identification case number previously assigned by the Workers' Compensation Appeals Board for the injury.~~

~~(c) The Workers' Compensation Appeals Board shall not accept for filing a lien claim for an injury occurring on or after January 1, 1990, and before January 1, 1994, unless either:~~

~~(1) the lien bears an identification number previously assigned by the Workers' Compensation Appeals Board for the injury;~~

~~(2) the lien is accompanied by a copy of a completed original claim form as provided by Labor Code section 5401 for the injury; or~~

~~(3) the lien is accompanied by a declaration under penalty of perjury specifying the efforts made by the lien claimant to secure a copy of the completed original claim form.~~

~~(c) The lien claimant shall provide the name, mailing address, and daytime telephone number of a person who will be available at the time of all conferences and trials, and will have authority to resolve the lien on behalf of the lien claimant.~~

~~(d) Upon the filing of a lien for an injury occurring on or after January 1, 1990 and before January 1, 1994, the Workers' Compensation Appeals Board shall assign an identification number to the injury, if none has previously been assigned, and notify the lien claimant, the injured worker (or, if deceased, the workers' dependents), the employer, the insurance carrier and the respective attorneys or other representatives of record of the identification number.~~

~~(d) After a lien has been filed, the lien claimant shall continue to serve amendments to the lien on the parties. After a lien has been filed, amendments to the lien shall be filed only upon the filing of a Declaration of Readiness, compromise and release, or stipulations with request for award or order, or upon receipt of a notice of hearing. An amendment to a lien filed at any other time, and any attachments thereto, will not be filed and may be discarded by the Workers' Compensation Appeals Board. If a lien has been filed electronically, upon the filing of a Declaration of Readiness, compromise and release, or stipulations with request for award or order, or upon receipt of a notice of hearing, the lien claimant shall file a full statement or itemized voucher supporting the lien unless the lien claimant advises in writing, or electronically, that the lien has been resolved or withdrawn.~~

~~(e) Once a lien has been filed, the Workers' Compensation Appeals Board shall not accept for filing an amendment to the lien that increases or decreases the amount claimed unless a hearing has been scheduled or a compromise and release or stipulations with request for award or order has been filed with the Workers' Compensation Appeals Board for the injury. The lien claimant shall continue to serve amendments to the lien including amendments increasing or decreasing the amount claimed, on the parties. Service of a lien on a party shall constitute notice to it of the existence of the lien. The lien claimant shall be notified by the Workers' Compensation Appeals Board when a hearing is scheduled, or when a compromise and release or stipulations with request for award or order is received by the Workers' Compensation Appeals Board. Nothing in this subdivision precludes a lien claimant from filing with the Workers' Compensation Appeals Board notification of a change of name or address. This paragraph (e) applies to injuries regardless of the date of injury.~~

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 4903 and 4903.1, Labor Code.

§10771. Medical-Legal Expense.

Lien claims for the expenses set forth in Labor Code section 4622 shall not be filed with the Workers' Compensation Appeals Board until the 60-day period for voluntary payment has elapsed, or unless the lien claimant certifies the fee request has been rejected in writing.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 4620, 4621, 4622, 4624, 4625, 4903 and 4903.1, Labor Code.

§10772. Unemployment Compensation Disability Liens.

When an unemployment compensation disability lien is filed by the Employment Development Department, there shall be a rebuttable presumption that the amounts stated therein have been paid to the injured worker by the Employment Development Department.

In any case involving a lien claim for unemployment compensation disability benefits or unemployment compensation benefits and extended duration benefits where it appears that further benefits may have been paid subsequent to the filing of the claim of lien, the workers' compensation judge shall notify the lien claimant when the case is ready for decision or for order approving compromise and release and the lien claimant shall have five (5) days thereafter in which to file and serve an amended lien reflecting all payments made to and including the date of filing of the amended lien.

In cases where a compromise and release is filed and continuing unemployment compensation disability benefits or unemployment compensation benefits and extended duration benefits are being paid, the workers' compensation judge will ascertain the full amount of the lien claim as of the time of the approval of the compromise and release so that the allocation made under the authority of Labor Code Section 4904 may be changed to reflect unemployment compensation disability or unemployment compensation and extended duration payments to the date of decision.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 4903 and 4904, Labor Code.

ARTICLE 14
Attorneys and Representatives

§10773. Law Firm Employees.

(a) Law firm employees not holding current active membership in the State Bar may appear on behalf of the law firm if:

(1) 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;

(2) in all proceedings where the law firm employee appears and in all documents the person has prepared, the person appearing or preparing the documents is identified and it is fully disclosed that the person is not licensed to practice law in the State of California; and

(3) the attorney directly responsible for supervising the law firm employee appearing in any proceedings is identified.

(b) A workers' compensation judge shall not approve any compromise and release agreement or stipulations with request for award signed by a law firm employee who is not currently an active member of the State Bar of California without the specific written authorization of the attorney directly responsible for supervising the law firm employee.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 4907, Labor Code.

§10775. Reasonable Attorney's Fee.

In establishing a reasonable attorney's fee, the workers' compensation judge, ~~settlement conference referee~~ or arbitrator shall consider the

- (a) responsibility assumed by the attorney,
- (b) care exercised in representing the applicant,
- (c) time involved,
- (d) results obtained.

Reference will be made to guidelines contained in the Policy and Procedural Manual and workers' compensation judges, ~~settlement conference referees~~ and arbitrators shall at all times comply with Labor Code section 5313 by setting forth the reasons or grounds for applying the guidelines in any fee determination.

Through its power to grant reconsideration on its own motion, the Appeals Board shall exercise authority to ascertain the extent to which these guidelines are followed.

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

§10776. Approval of Attorney's Fee.

(a) No request for payment or demand for payment of a fee shall be made by any attorney for, or agent of, a worker or dependent of a worker until ~~such~~ the fee has been approved or set by the Workers' Compensation Appeals Board.

(b) No attorney or agent shall accept any money from a worker or dependent of a worker for the purpose of representing the worker or dependent of a worker before the Workers' Compensation Appeals Board or in any appellate procedure related thereto until ~~such~~ the fee has been approved or set by the Workers' Compensation Appeals Board or an appellate court.

(c) Any agreement between any attorney or agent and a worker or dependent of a worker for payment of a fee shall be submitted to the Workers' Compensation Appeals Board for approval within ten (10) days after the agreement is made.

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

§10779. Disbarred and Suspended Attorneys.

An attorney who has been disbarred or suspended by the Supreme Court for reasons other than nonpayment of State Bar fees, or who has been placed on involuntary inactive enrollment status by the State Bar, or who has resigned while disciplinary action is pending shall be deemed unfit to appear as a representative of any party before the Workers' Compensation Appeals Board during ~~such the time as that~~ the attorney is precluded from practicing law in this state. Any attorney claiming to be qualified to appear as a representative before the Workers' Compensation Appeals Board despite disbarment, suspension or resignation may file a petition for permission to appear. The petition shall set forth in detail:

(1) the facts leading to the disbarment, suspension or resignation; and

(2) the facts and circumstances alleged by the attorney to establish competency, qualification and moral character to appear as a representative before the Workers' Compensation Appeals Board. The petition shall be verified, shall be filed in the San Francisco office of the Appeals Board and a copy thereof served on the State Bar of California.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 4907, Labor Code.

**ARTICLE 15
Findings, Awards and Orders**

§10780. Dismissal Orders.

Except as provided in Rule 10562 and 10582 and unless good cause to the contrary appears, orders of dismissal of claim forms for injuries on or after January 1, 1990 and before January 1, 1994, and orders of dismissal of applications for adjudication for injuries before January 1, 1990 and on or after January 1, 1994, shall issue forthwith when requested by the employee. All other orders of dismissal of claim forms for injuries occurring on or after January 1, 1990 and before January 1, 1994, or orders of dismissal of applications for adjudication for injuries occurring before January 1, 1990 and on or after January 1, 1994, shall issue only after service of a notice of intention allowing at least fifteen (15) days for the adverse parties to show good cause to the contrary, and not by an order with a clause rendering the order null and void if an objection showing good cause is filed.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: ~~Section 5507, Labor Code.~~

**ARTICLE 16
Executions and Certified Copies**

§10820. When Certified Copies Will Issue.

Certified copies of findings and awards or other final orders for the purpose of having judgment entered and execution issued by the clerk of a superior court shall be issued only upon written request of a person entitled to benefits thereunder or by the attorney or authorized representative, and upon payment of ~~such the fees as are~~ prescribed by the Rules and Regulations of the Administrative Director of the Division of Industrial Accidents.

Certified copies of such orders and awards against authorized insurance carriers, authorized self-insured employers, the State of California and all political subdivisions thereof shall be issued only upon receipt of a written request showing good cause therefor.

Every request for a certified copy of any final order must state ~~whether payments have or have not been made thereunder and the amount thereof,~~ whether proceedings are pending on reconsideration or judicial review, whether a petition for reconsideration or a writ of review has been filed, and whether the decision, a certified copy of which is requested, has become final.

~~Unless good cause be shown, the request will be denied.~~

Nothing in these rules, however, shall limit the power of the Workers' Compensation Appeals Board to issue ~~such a~~ certified copy at any time upon its own motion without charge.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections ~~130, 134, 5105,~~ 5806, 5807, and 5808, ~~5809, 6000, 6001 and 6002,~~ Labor Code.

§10828. Necessity for Bond.

Where a party intending to file for writ of review requests a stay of execution or withholding issuance of a certified copy of the order, decision or award ~~which~~ that is the subject of the party's complaint, the request will

ordinarily be granted, conditioned upon the filing of a bond from an approved surety equivalent to twice the probable amount of liability in the case.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections ~~130, 134, 5105, 5806, 5807, 5808, 5956, 5809,~~ 6000, 6001 and 6002, Labor Code.

ARTICLE 17 Reconsideration

§10842. Contents of Petition for Reconsideration and Answer.

All petitions for reconsideration shall conform to the requirements of Section 10392 of these Rules.

Every petition for reconsideration shall fairly state all the material evidence relative to the point or points at issue. Each contention contained in a petition for reconsideration shall be separately stated and clearly set forth.

Copies of documents ~~which~~ that have already been received in evidence or ~~which~~ that have already been made part of the Board's legal file shall not be attached as exhibits to petitions for reconsideration or answers to petitions for reconsideration. Documents attached in violation of this rule may be detached from the petition for reconsideration or answer and discarded.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 126, 5900 and 5902, Labor Code.

§10843. Petitions to Remove.

(a) Petitions to remove and responses or answers thereto shall be filed with the district office of the Workers' Compensation Appeals Board from which relief is sought or from which an order subject to the removal process issued. Petitions to remove received in any district office except as provided by this rule shall neither be accepted for filing nor deemed filed for any purpose and may be discarded.

(b) At any time within twenty (20) days after the service of the order or decision, or of the occurrence of the action in issue, any party may petition for removal based upon one or more of the following grounds:

~~(a)~~ (1) The order, decision or action will result in significant prejudice.

~~(b)~~ (2) The order, decision or action will result in irreparable harm.

The petitioner must also demonstrate that reconsideration will not be an adequate remedy after the issuance of a final order, decision or award. Failure to file the petition to remove timely shall constitute valid ground for dismissing the petition to remove.

(c) A copy of the petition to remove shall be served forthwith upon all parties by the petitioner. Any adverse party may file an answer within ten (10) days after service. No supplemental petitions, pleadings or responses shall be considered unless requested or approved by the Appeals Board.

(d) The workers' compensation ~~administrative law judge (WCJ)~~ may, within fifteen (15) days of the filing of the petition to remove, rescind the order or decision in issue, or take action to resolve the issue raised in the petition to remove. If the ~~WCJ~~ judge so acts, or if the petitioner withdraws the petition at any time, the petition to remove will be deemed automatically ~~withdrawn~~ and dismissed, requiring no further action by the Appeals Board. The issuance of a new order or decision, or the occurrence of a new action, will recommence the time period for filing a petition to remove as described above.

(e) The filing of a petition to remove does not terminate the ~~WCJ's~~ judge's authority to proceed in a case or require the ~~WCJ~~ judge to continue or cancel a previously scheduled ~~proceeding~~ hearing absent direction from the Appeals Board. After a petition to remove has been filed, the workers' compensation judge shall consult with the presiding workers' compensation judge prior to proceeding in the case or continuing or canceling a scheduled hearing.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 5310, Labor Code.

§10850. Proof of Service.

Service of copies of ~~the~~ a petition for reconsideration, removal, or disqualification shall be made on all parties to the case and on any lien claimant, the validity of whose lien is specifically questioned by the petition ~~for reconsideration~~, and to any case that has been consolidated therewith pursuant to Section 10590. Failure to file proof of ~~such~~ service shall constitute valid ground for dismissing the petition ~~for reconsideration~~.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5310, 5311, 5902 and 5903, Labor Code.

§10852. Insufficiency of Evidence.

Where reconsideration is sought on the ground that findings are not ~~supported~~ justified by the evidence, the petition shall set out specifically and in detail how the evidence fails to ~~support~~ justify the findings.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5902 and 5903, Labor Code.

§10856. Allegations of Newly Discovered Evidence and Fraud.

Where reconsideration is sought on the ground of newly discovered evidence ~~which that~~ could not with reasonable diligence have been produced before submission of the case or on the ground that the decision had been procured by fraud, the petition must contain an offer of proof, specific and detailed, providing:

- (a) the names of witnesses to be produced;
- (b) a summary of the testimony to be elicited from ~~such the~~ witnesses;
- (c) a description of any documentary evidence to be offered;
- (d) the effect ~~such that the~~ evidence will have on the record and on the prior decision; and
- (e) as to newly discovered evidence, a full and accurate statement of the reasons why ~~such the~~ testimony or exhibits could not reasonably have been discovered or produced before submission of the case.

A petition for reconsideration sought upon ~~such these~~ grounds may be denied if it fails to meet the requirements of this rule, or if it is based upon cumulative evidence.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5902 and 5903, Labor Code.

§10859. Orders After Filing of Petition for Reconsideration.

After a petition for reconsideration has been timely filed, a workers' compensation judge ~~or settlement conference referee~~ may, within the period of fifteen (15) days following the date of filing of that petition for reconsideration, amend or modify the order, decision or award or rescind the order, decision or award and conduct further proceedings. Further proceedings shall be initiated within 30 days from the order of recession. The time for filing a petition for reconsideration pursuant to Labor Code section 5903 will run from the filing date of the new, amended or modified decision. After this period of fifteen (15) days has elapsed, a workers' compensation judge ~~or settlement conference referee~~ shall not make any order in the case nor correct any error until the Appeals Board has denied or dismissed the petition for reconsideration or issued a decision after reconsideration.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5906, 5907 and 5908.5, Labor Code.

§10860. Report of Workers' Compensation Judge.

Petitions for reconsideration, petitions for removal and petitions for disqualification shall be referred to the workers' compensation judge from whose decisions or actions relief is sought. The workers' compensation judge shall prepare a report ~~which that~~ shall contain:

- (a) a statement of the contentions raised by the petition;
- (b) a discussion of the support in the record for the findings of fact and the conclusions of law ~~which that~~ serve as a basis for the decision or order ~~explained of as to each contention raised by the petition~~, or, in the case of a petition for disqualification, a specific response to the allegations and, if appropriate, a discussion of any failure by the petitioner to comply with the procedures set forth in Rule 10452, and
- (c) the action recommended on the petition.

The workers' compensation judge shall send the report and the Workers' Compensation Appeals Board's file to the Appeals Board within 15 days after the petition is filed unless the Appeals Board grants an extension of time. The workers' compensation judge shall serve a copy of the report on the parties and any lien claimant, the validity of whose lien is specifically questioned by the petition ~~for reconsideration or affected by the petition to remove or petition for disqualification~~, at the time it is sent to the Appeals Board.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5900 and 5906, Labor Code.

§10862. Hearing After Reconsideration Granted.

Where reconsideration has been granted and the case referred to a workers' compensation judge for proceedings on reconsideration, the workers' compensation judge shall, upon the conclusion thereof, prepare and serve upon the parties a summary of evidence received in the proceedings after reconsideration granted.

Unless otherwise instructed by the panel before which a case is pending, the workers' compensation judge to whom the case has been assigned for further proceedings may rule on requests for postponement, continuance of further hearing, join additional parties, dismiss unnecessary parties where such dismissal is not opposed by any other party to the case, make all interlocutory or procedural orders ~~which~~ that are agreed to by all parties, issue subpoenas, rule on motions for discovery, rule on all evidentiary motions and objections, and make all other rulings necessary to expedite and facilitate the trial and disposition of the case. The workers' compensation judge shall not order a medical examination, obtain a recommended disability evaluation, make an order taking the case off calendar, nor make an order approving or disapproving compromise and release.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5309 and 5313, Labor Code.

§10864. Authority of Workers' Compensation Judge After Decision After Reconsideration.

After a decision after reconsideration has become final, subsequent orders and decisions in a case may be made by any workers' compensation judge to whom the case is assigned pursuant to Section 10348, including orders approving or disapproving compromise and release, orders allowing or disallowing liens, orders for enforcement of the decision of the Appeals Board, orders granting or denying petitions to reopen, orders rescinding, altering or amending the decision of the Appeals Board for good cause under Labor Code Section 5803, orders for increased compensation under Labor Code Section 5814, orders terminating liability, orders for commutation and orders resolving issues ~~which~~ that the Board in its decision has left for determination by a workers' compensation judge.

A workers' compensation judge may not make an order correcting a decision after reconsideration for clerical, mathematical, or procedural error. Requests for such correction shall be acted on by the panel ~~which~~ that made the decision or if the composition of the Board has changed, by the successor panel.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5900, 5910 and 5911, Labor Code.

§10865. Reconsideration--Labor Code Sections 3201.5 and 3201.7.

A petition for reconsideration from an arbitration decision made pursuant to Labor Code Section 3201.5; ~~subdivision (a)(1); or Section 3201.7(a)(1)~~ shall be filed directly with the office of the Appeals Board in San Francisco within twenty (20) days of the service of the final order, decision, or award made and filed by the arbitrator or board of arbitrators. A copy of the petition for reconsideration shall be served on the arbitrator or arbitration board.

The petition for reconsideration shall be captioned so as to identify it as a Petition for Reconsideration from Arbitrator's Decision Under Labor Code section 3201.5 or 3201.7, and shall set forth the injured worker's name, date of birth, social security number, and the date on which the arbitrator or board of arbitrators served the arbitration decision. Proof of service of the arbitration decision on the parties shall be either by a verified statement of the arbitrator indicating the date of service and listing the names and addresses of the persons served or by written acknowledgment of receipt by the parties at the time of the arbitration proceedings. In addition, a copy of that portion of the collective bargaining agreement relating to the arbitration and reconsideration processes shall be submitted by the petitioner.

Upon receiving the petition for reconsideration, the arbitrator or board of arbitrators shall forward to the Appeals Board in San Francisco the record of proceedings, including the transcript of proceedings, if any, a summary of testimony if the proceedings were not transcribed, the documentary evidence submitted by each of the parties, and an opinion ~~which~~ that sets forth the rationale for the decision as to each contention raised by the petition.

After the arbitration decision has been made, the arbitrator or board of arbitrators shall maintain possession of the record of proceedings until the time for filing a petition for reconsideration has passed. Thereafter one of the parties may be designated custodian of the arbitration record as provided for in the collective bargaining agreement.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 3201.5 and 3201.7, Labor Code.

§10866. Reconsideration of Arbitrator’s Decisions or Awards.

Any final order, decision or award filed by an arbitrator under Labor Code Sections 5270 through 5275 shall be subject to the reconsideration process as set forth in Labor Code Sections 5900 through 5911 and Rules 10840 and 10842.

The parties, respectively, shall serve the arbitrator with the petition for reconsideration and the answer.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5275(d), 5277(c), and 5900 through 5911, Labor Code.

§10867. Report of Arbitrator.

When a petition for reconsideration is filed from any final order, decision or award made by an arbitrator under Labor Code Sections 5270 through 5275, the arbitrator shall prepare and serve a report on reconsideration as provided in Rule 10860 and shall concurrently forward the arbitrator’s file and the original report to the presiding workers’ compensation judge, who shall promptly forward such the Workers’ Compensation Appeals Board’s file and the arbitrator’s file and report to the Appeals Board.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5275(d), 5277(c), and 5900 through 5911, Labor Code.

~~**§10868. Reconsideration of Settlement Conference Referees’ Decisions or Awards.**~~

~~Any final order, decision or award filed by a settlement conference referee pursuant to Labor Code Section 5502, subdivision (d), shall be subject to the reconsideration process as set forth in Labor Code Sections 5900 through 5911.~~

~~Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 111, 5502 and 5900, Labor Code.~~

~~**§10869. Report of Settlement Conference Referee.**~~

~~When a petition for reconsideration is filed from any final order, decision or award made by a settlement conference referee under Labor Code Section 5502, the settlement conference referee shall prepare a report on reconsideration as provided in Rule 10860 and shall concurrently forward the file and the original report to the presiding workers’ compensation judge, who shall promptly forward such file and report to the Appeals Board.~~

~~Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 111, 5502 and 5900, Labor Code.~~

ARTICLE 18
Compromise and Release Settlements

§10870. Approval of Compromise and Release.

Agreements ~~which~~ that provide for the payment of less than the full amount of compensation due or to become due and ~~which~~ undertake to release the employer from all future liability will be approved only where it appears that a reasonable doubt exists as to the rights of the parties or that approval is in the best interest of the parties. No agreement shall relieve an employer of liability for vocational rehabilitation benefits unless the Workers’ Compensation Appeals Board makes a finding that there is a good faith issue which, if resolved against the injured employee, would defeat the employee’s right to all workers’ compensation benefits.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 4646, 5001, 5002, and 5100.6, Labor Code.

~~**§10875. Procedures--Labor Code Section 3761.**~~

Where the insurer has attached a declaration to the compromise and release agreement or stipulations with request for award that it has complied with the provisions of Labor Code Sections 3761, subdivision (a), and 3761, subdivision (b), the Workers' Compensation Appeals Board may approve the compromise and release or stipulations with request for award without hearing or further proceedings.

Where a workers' compensation judge or the Appeals Board has approved a compromise and release or stipulations with request for award and the insurer has failed to show proof of service pursuant to Labor Code Section 3761, subdivision (b), the workers' compensation judge or the Appeals Board, after giving notice and an opportunity to be heard to the insurer, shall award expenses as provided in Labor Code Section 5813 upon request by the employer.

Any request for relief under Labor Code Section 3761, subdivision (b), or Labor Code Section 3761, subdivision (d), shall be made by the filing of a petition pursuant to Rule 10450, together with a ~~Declaration of~~ Readiness to pProceed.

This rule shall apply to injuries on or after January 1, 1994.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 3761, Labor Code.

§10878. Compromise and Release Settlement Document as an Application.

The filing of a compromise and release agreement or stipulations with request for award shall constitute the filing of an application which may, in the Workers' Compensation Appeals Board's discretion, be set for hearing, reserving to the parties the right to put in issue facts ~~which that~~ might otherwise have been admitted in the compromise and release agreement or stipulations with request for award. If a hearing is held with this document used as an application, the defendants shall have available to them all defenses that were available as of the date of filing of this document. The Workers' Compensation Appeals Board may thereafter either approve the ~~compromise and release settlement~~ agreement or disapprove it and issue findings and award after hearing has been held and the matter submitted for decision.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections ~~5000, 5001, 5002, 5003, 5004, 5005 and 5500~~ and 5702, Labor Code.

§10882. Action on Compromise and Release Settlement Agreement.

The Workers' Compensation Appeals Board shall inquire into the adequacy of all compromise and release agreements and stipulations with request for award, and may set the matter for hearing to take evidence when necessary to determine whether the agreement should be approved or disapproved, or issue findings and awards.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections ~~5000, 5001, 5002, 5003, 5004 and 5005~~ 5702, Labor Code.

§10886. Service on Lien Claimants.

Where ~~there a lien claim~~ a lien claim is on file with the Workers' Compensation Appeals Board ~~a claim of lien~~ or where a party has been served with a lien, and a compromise and release agreement or stipulations with request for award or order is filed ~~which proposes the disallowance of the lien in whole or in part, to which disallowance the lien claimant has not consented,~~ a copy of the compromise and release agreement or stipulations, ~~together with all documentary evidence and summaries of evidence,~~ shall be served on the lien claimant.

~~The lien claimant shall have fifteen (15) days after service upon it of a copy of the compromise and release agreement or the stipulations with request for award or order within which to file and serve upon the parties a protest against the proposal supported by copies of medical reports, documentary evidence or offers of proof.~~

No lien claim shall be disallowed or reduced unless the lien claimant has been given notice and an opportunity to be heard.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 4903, 4903.1, 4903.4, 4904, 4904.1, 4905 and 4906, Labor Code.

§10888. Resolution of Liens.

Before issuance of an order approving compromise and release that resolves a case or an award that resolves a case based upon the stipulations of the parties, if there remain any liens that have not been resolved or

withdrawn, the parties shall make a good-faith attempt to contact the lien claimants and resolve their liens. A good-faith attempt requires at least one contact of each lien claimant by telephone or letter.

After issuing an order approving compromise and release that resolves a case or an award that resolves a case based upon the stipulations of the parties, if there remain any liens that have not been resolved or withdrawn, the workers' compensation judge shall

(1) set the case for a lien conference, or

(2) issue a ten (10) day notice of intention to order payment of any such lien in full or in part, or

(3) issue a ten (10) day notice of intention to disallow any such lien.

Upon a showing of good cause, the workers' compensation judge may once continue a lien conference to another lien conference. If a lien cannot be resolved at a lien conference, the workers' compensation judge shall set the case for trial.

An agreement to "pay, adjust or litigate" a lien, or its equivalent, or an award leaving a lien to be adjusted, is not a resolution of the lien.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 4903, 4903.1, 4904, 5001, 5002 and 5702, Labor Code.

§10890. Walk-Through Documents.

(a) A "walk-through" document is a document that is presented to a workers' compensation judge for immediate action.

(b) A party may present the following walk-through documents to a workers' compensation judge during conference calendars and mandatory settlement conference calendars:

(1) Compromise and releases;

(2) Stipulations with request for award;

(3) Petitions for attorney's fees for representation of the applicant in vocational rehabilitation;

(4) Petitions for attorney's fees for representation of the applicant at a deposition; and

(5) Petitions to compel attendance at a medical examination or deposition.

(c) At any time, a party may present to the presiding judge a petition to stay an action by an opposing party pending a hearing. The presiding judge may act on the petition or assign it to another judge for action. A party who walks through a petition to stay an action shall provide notice to the opposing party or parties in accordance with subsections (b) and (c) of Rule 379 of the California Rules of Court.

(d) Each walk-through settlement document (a compromise and release or stipulations with request for award) shall be accompanied by a proof of service showing that the document was served on all lien claimants whose liens have not been resolved and any other defendant who may be liable for payment of additional compensation.

Each petition for attorney's fees for representation of the applicant in vocational rehabilitation shall be accompanied by a proof of service showing that the petition was served on the injured worker and the defendant alleged to be liable for paying the fees.

Each petition for attorney's fees for representation of the applicant at a deposition shall be accompanied by a proof service showing that the petition was served upon the defendant alleged to be liable for paying the fees.

Each petition to compel attendance at a medical examination or deposition shall be accompanied by a proof of service showing that the petition was served upon the injured worker, the injured worker's attorney, and any other defendant who may be liable for payment of additional compensation.

(e) A workers' compensation judge who is presented with a walk-through settlement document shall approve it, disapprove it, suspend action on it, or accept it for later review and action. If a workers' compensation judge is presented with so many walk-through documents that review of them will interfere with cases scheduled for conference, the judge may refer to the presiding judge as many walk-through cases as are necessary to allow timely consideration of the cases scheduled for conference.

(f) A walk-through document may be presented only to a workers' compensation judge at the district office that has venue. If an injured worker has existing cases at two or more district offices that have venue, a walk-through settlement may be presented to a judge at any office having venue over an existing case that is settled by the walk-through document. An existing case is a case that has been filed and assigned a case number prior to the filing of the walk-through document.

(g) A walk-through document may be presented to any workers' compensation judge during a conference calendar or mandatory settlement conference calendar except as follows:

(1) If a judge has taken testimony, any walk-through document in that case must be presented to the judge who took testimony if that judge works at the district office to which the case is assigned, unless the presiding judge allows it to be presented to another judge.

(2) If a judge has reviewed a settlement document and declined to approve it, a walk-through settlement document in that case must be presented to the same judge, if that judge works at the district office to which the case is assigned, unless the presiding judge allows it to be presented to another judge.

(h) If an injured worker is not represented by an attorney, the worker must be present when a walk-through settlement document is presented to the judge unless the settlement has previously been reviewed with the injured worker by an Information and Assistance officer.

(i) Each district office will have clerical staff available to obtain files and create new files for walk-through cases from 8:00 a.m. to 11:00 a.m. and 1:00 p.m. to 4:00 p.m. when conferences are scheduled except that, with the approval of the Administrative Director, in order to meet operational needs, a district office may require up to one day's notice of a party's intention to walk through a document and may require that documents requiring the creation of a new case file be filed up to one day prior to walking them through.

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

ARTICLE 19 Subsequent Injuries Fund

§10940. Application.

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

All applications against the Subsequent Injuries Fund shall be filed with the Appeals Board and a copy shall be served by mail on the Division of ~~Industrial Accidents~~ Workers' Compensation, Subsequent Injuries Fund, in accordance with Sections 10505 and 10507. Where joinder of the Subsequent Injuries Fund has been ordered by the workers' compensation judge or the Appeals Board, the applicant shall forthwith file and serve an application as provided herein.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 4750, 4751, 4753, 4753.5 and 4754.5, Labor Code.

§10942. Service.

Service of all documents directed to the Subsequent Injuries Fund shall be made on the Division of ~~Industrial Accidents~~ Workers' Compensation, Subsequent ~~Injury~~ Injuries Fund.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 4750, 4751, 4753, 4753.5 and 4754.5, Labor Code.

~~§10944. Notice of Hearing.~~

~~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.~~

~~Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 5502, Labor Code.~~

§10946. Medical Reports.

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

~~Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 5307, Labor Code.~~

ARTICLE 20 Review of Administrative Orders

§10950. Appeal from Order Granting or Denying Petition for Order Requiring Employee to Select Employer-Designated Physician.

~~Any party aggrieved by an order issued pursuant to Section 9786(d)(4) of the rules of the Administrative Director, Division of Industrial Accidents may petition the Appeals Board for relief therefrom within thirty (30) days from the date of the issuance of the order in the same manner specified for petitions for reconsideration. In the discretion of the Appeals Board, the matter may be referred to a workers' compensation judge for the taking of further evidence.~~

~~(a) Where either party petitions the Workers' Compensation Appeals Board within thirty (30) twenty (20) days pursuant to Section 9787 as the result of a grant or denial pursuant to Section ~~9787(d)(2)~~ 9786(e)(2) or Section 9786(~~de~~)(3) of the rules of the Administrative Director, the Appeals Board shall refer the matter shall be referred to a workers' compensation judge for hearing and determination of the issues raised. A party aggrieved by the determination of the workers' compensation judge may seek relief therefrom within the same time and in the same manner specified for petitions for reconsideration. The petition for reconsideration shall be filed in the district office having venue.~~

~~(b) Any party aggrieved by an order issued pursuant to Section 9786(e)(4) of the rules of the Administrative Director may petition the Appeals Board for relief therefrom within twenty (20) days from the date of the issuance of the order in the same manner specified for petitions for reconsideration, including the filing of the petition for reconsideration and answers thereto at the district office of the Workers' Compensation Appeals Board from which the decision issued.~~

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections ~~4600, 4601.5, 4603.2, 4603.5,~~ 4604 and 5302, Labor Code.

§10952. Appeal of Notice of Compensation Due.

A notice of compensation due, issued pursuant to Labor Code Section 129, may be appealed by the filing of an Appeal of Notice of Compensation Due with the Workers' Compensation Appeals Board and service of the Appeal of Notice of Compensation Due on the injured worker or dependent and the audit unit within fifteen (15) days of receipt of the notice of compensation due. The Appeal of Notice of Compensation Due shall be filed at or referred to the district office where venue has already been determined by previous filing or application or, if venue has not been determined, a district office in accordance with Labor Code Section 5501.5.

The filing of an objection to a notice of intention to issue notice of compensation due shall be a prerequisite for the filing of an Appeal of Notice of Compensation Due. Failure to timely file an objection to notice of intention to issue notice of compensation due may result in dismissal of the Appeal of Notice of Compensation Due.

The Appeal of Notice of Compensation Due shall set out the factual and legal basis for contesting the notice of compensation due and shall include the audit unit's file number. The Appeal of Notice of Compensation Due shall be accompanied by a copy of the notice of compensation due, a Declaration of Readiness, an Application for Adjudication if one has not been previously filed, and any other documents deemed relevant. The copy of the appeal of Notice of Compensation Due sent to the injured worker shall inform the injured worker of the right to consult an attorney.

~~If the injury, which is the subject of the notice of compensation due, has been assigned an identification number by the Workers' Compensation Appeals Board, that number~~ The case number assigned to the Application for Adjudication shall be assigned to the Appeal of Notice of Compensation Due; ~~otherwise, such Appeal of Notice of Compensation Due shall be assigned an identification number in the same manner as any request for pre-application proceedings.~~

An Appeal of Notice of Compensation Due shall be set for a ~~special~~ hearing before a workers' compensation judge within forty-five (45) days of filing with the Workers' Compensation Appeals Board unless the employee's claim is before the Workers' Compensation Appeals Board on other substantive issues in which case the appeal may be considered with these other issues. The audit unit, insurer, self-insured employer or third party administrator and the injured worker shall receive notice of the date and time of hearing as well as copies of any other notices or orders issued by the Workers' Compensation Appeals Board. Following the hearing, the workers' compensation judge shall issue findings of fact and an order affirming, modifying or rescinding the notice of compensation due, which complies with Labor Code section 5313.

If the injured worker is represented by an attorney, the workers' compensation judge may determine the amount of attorney fees reasonably incurred in resisting the Appeal of Notice of Compensation Due and may assess ~~such~~ reasonable attorney fees as a cost upon the employer filing the Appeal of Notice of Compensation Due in accordance with Labor Code section 129(c).

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 129, 5300 and 5301, Labor Code.

§10953. Petition Appealing Audit Penalty Assessment--Labor Code Section 129.5(g).

An insurer, self-insured employer, or third-party administrator may file a petition appealing from a civil penalty assessment issued pursuant to subdivision (e) of Labor Code section 129.5, together with a Declaration of Readiness requesting a mandatory settlement conference, at the district office of the Workers' Compensation Appeals Board closest to petitioner within seven days after receipt of the notice. If petitioner is domiciled out of state, the petition shall be filed at the San Francisco district office. Petitioner shall attach a copy of the notice of penalty assessment and any other evidence it wishes to submit. Petitioner shall serve upon the Administrative Director copies of all documents filed. Upon stipulation of petitioner and the Administrative Director, the matter may be submitted for decision at the mandatory settlement conference. Otherwise, it shall be set for trial.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 129.5(g), Labor Code.

§10955. Rehabilitation Appeals.

(a) Appeals from decisions of the Division of Workers' Compensation ~~Rehabilitation Unit~~, for injuries occurring before January 1, 1990 and on or after January 1, 1994, or an arbitrator appointed pursuant to Labor Code Sections 4645, subdivisions (b) and (c), shall be commenced as follows:

(1) if an Application for Adjudication is already on file, by filing an Declaration of Readiness and a appropriate petition setting forth the reason for the appeal;

(2) if no Application for Adjudication is on file, by filing an application, a Declaration of Readiness, and a petition setting forth the reason for the appeal.

~~A hearing on a rehabilitation appeal for injuries occurring before January 1, 1990 and on or after January 1, 1994, shall not be set for expedited hearing or mandatory settlement conference unless a declaration of readiness to proceed is filed.~~

(b) Appeals from decisions of the Division of Workers' Compensation, rehabilitation unit, for injuries on or after January 1, 1990 and before January 1, 1994, shall be commenced as follows:

(1) If an Application for Adjudication is already on file but the issues have not been determined, by the filing of a petition setting forth in detail the reasons for appeal.

(2) If no Application for Adjudication is on file, by filing an Application and a petition setting forth, in detail, the reasons for the appeal.

(3) If an Application for Adjudication has been filed and any of the issues have been determined, by the filing of a declaration of readiness to proceed for further and supplemental proceedings and a petition setting forth, in detail, the reasons for the appeal.

(b) The party appealing from a decision of the Rehabilitation Unit shall file and serve copies of the decision and other documents that the appealing party deems relevant. The opposing party may file and serve copies of whatever additional documents the opposing party deems relevant.

A copy of all pleadings, notices and orders shall be served on the Division of Workers' Compensation, ~~Rehabilitation Unit~~.

~~Appeals from decisions of the Division of Workers' Compensation, rehabilitation unit, regardless of of the date of injury shall be referred to arbitration pursuant to Labor Code Section 5275, subdivision (a)(6), if hearing cannot be set on the appeal within 120 calendar days from the filing of the appeal.~~

~~Referrals for arbitration by workers' compensation judges pursuant to Labor Code Sections 4645, subdivision (b), and 4645, subdivision (c), shall be made to the Division of Workers' Compensation, rehabilitation unit, which shall submit the dispute to arbitration in accordance with Labor Code Section 5275, subdivision (a)(5).~~

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 139.5, 4645 and 5500, Labor Code.

~~§10956. Rehabilitation Records.~~

~~When filing a petition under Section 10955, the party appealing from a decision of the Rehabilitation Bureau shall file and serve copies of the decision and other documents which the appealing party deems relevant. Within five (5) days of receipt of these documents, the opposing party may file and serve copies of whatever additional documents the opposing party deems relevant.~~

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 139.5, 5708 and 5709, Labor Code.

§10957. Deposition of Rehabilitation Consultants.

Depositions of Rehabilitation Bureau Unit Consultants will not be taken except on terms and conditions as ordered by a workers' compensation judge.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5708 and 5709, Labor Code.

§10958. Hearing and Burden of Proof.

Proceedings instituted under Section 10955 shall be assigned, heard and determined in the same manner as proceedings instituted for the collection of other compensation except that the burden of proof shall be on the person disputing the finding or determination of the Rehabilitation Bureau Unit.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 5708 and 5709, Labor Code.

ARTICLE 21 General

~~§10960. Operative Effect of Rules 10300 through 10958.~~

~~Unless otherwise specified, Articles 1 through 20, Rules 10300 through 10958, shall apply regardless of the date of injury.~~

~~Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Statutes of 1989, Chapters 892 and 893; and Statutes of 1993, Chapter 121.~~

~~§10961. Operative Effect of Rules 10960 through 10999.~~

~~Unless otherwise specified in Article 21 through Article 25, Rules 10960 through 10999, shall apply to proceedings concerning injuries occurring on or after January 1, 1990 and before January 1, 1994.~~

~~Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Statutes of 1989, Chapters 892 and 893; and Statutes of 1993, Chapter 121.~~

~~§10963. Administrative Director of the Division of Workers' Compensation.~~

~~The title "Administrative Director of the Division of Industrial Accidents" shall be changed to "Administrative Director of the Division of Workers' Compensation" wherever it appears in Articles 1 through 20, commencing with Rule 10300.~~

~~Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 110 and 111, Labor Code.~~

~~§10964. Office of Benefit Determination.~~

~~The words "Disability Evaluation Bureau" shall be changed to "The Office of Benefit Determination" wherever they appear in Articles 1 through 20, commencing with Rule 10300.~~

~~Note: Authority cited: Sections 133 and 5309, Labor Code. Reference: Section 124, Labor Code.~~

ARTICLE 22 Pleadings

~~§10966. Declaration of Readiness to Proceed.~~

~~This rule applies to injuries occurring on or after January 1, 1990, and before January 1, 1994.~~

~~When further or supplemental proceedings are requested after the filing of an Application for Adjudication, one of the parties or lien claimants must file and serve a Declaration of Readiness to Proceed on a form prescribed and approved by the Appeals Board. The declarant shall state under penalty of perjury that the declarant is presently ready to proceed to hearing on all issues stated therein and specifies the efforts to resolve those issues.~~

~~Declarations of Readiness to Proceed shall be reviewed by the presiding workers' compensation judge, or any workers' compensation judge or settlement conference referee designated by the presiding workers' compensation judge, who shall determine on the basis of the facts stated in the declaration of readiness, the case file and any submitted documents whether the parties are ready to proceed and efforts have been made to resolve the issues. If so, supplemental proceedings shall be calendared; if not, the declaration shall be rejected and the parties notified. A simple statement in the declaration setting forth efforts to resolve the dispute or noting the opposing party's failure to respond within fifteen (15) days to an effort to resolve the dispute shall constitute an adequate description for the purposes of this rule.~~

~~A false declaration or certification by an attorney or representative may give rise to proceedings under Labor Code section 134 for contempt.~~

~~If an injured worker is represented, any Declaration of Readiness filed on behalf of the injured worker shall be executed by the attorney or representative.~~

~~This rule shall not prohibit the Workers' Compensation Appeals Board from requiring proceedings on its own motion.~~

~~Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 134, 5500 and 5502, Labor Code.~~

~~§10967. Objection to Declaration of Readiness to Proceed.~~

~~This rule applies to injuries occurring on or after January 1, 1990, and before January 1, 1994.~~

~~Any objection to a Declaration of Readiness to Proceed shall be filed and served within six (6) days after service of such declaration. The objection shall set forth, under penalty of perjury, the specific reason(s) why the case should not be set for hearing or why the requested proceedings are inappropriate.~~

~~A false declaration or certification filed under this section by an attorney or representative may give rise to proceedings under Labor Code section 134 for contempt.~~

~~If an applicant is represented, the attorney or representative shall execute the objection to the Declaration of Readiness.~~

~~The presiding workers' compensation judge or any workers' compensation judge or settlement conference referee designated by the presiding workers' compensation judge shall rule on the objection and make an appropriate disposition.~~

~~If a party has received a copy of the Declaration of Readiness and has not filed an objection under this rule, that party may be deemed to have waived any and all objections to regular hearing on the issues specified in the Declaration of Readiness.~~

~~Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 5500, Labor Code.~~

ARTICLE 23 Medical Examiners

~~§10984. Impartial Medical Examiners.~~

~~The words "Medical Director" shall be substituted for the words "Medical Bureau" wherever they appear in Articles 1 through 20, commencing with Rule 10300.~~

~~Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 122 and 139, Labor Code.~~

ARTICLE 24 Attorneys and Representatives

~~§10987. Pre Application Attorney Fees.~~

~~When a case is resolved without the filing of an Application for Adjudication and an attorney or agent is requesting a fee for representing an injured worker or dependent, the attorney or agent shall seek approval of a reasonable attorney fee pursuant to Labor Code Section 4906 from the presiding workers' compensation judge on a form prescribed and approved by the Appeals Board which shall contain a description of the following:~~

- ~~(a) activity of activities for which the fee is sought;~~
- ~~(b) nature of dispute;~~
- ~~(c) responsibility assumed by the attorney;~~
- ~~(d) care shown in representing the injured worker or dependent;~~
- ~~(e) estimate of time involved; and~~

~~(f) results obtained.~~

~~The form shall include an order of approval to be signed by the presiding workers' compensation judge designated by him or her.~~

~~The presiding workers' compensation judge or the presiding workers' compensation judge's designee may consider other relevant information submitted with the form.~~

~~This rule applies to all injuries occurring on or after January 1, 1990, and before January 1, 1994.~~

~~Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 4903 and 4906, Labor Code.~~

~~§10987.1. Information Request Form.~~

~~{Form}~~

~~Note: Authority cited: Sections 133, 5307, 5401.5, Labor Code. Reference: Section 5401.5, Labor Code.~~

~~§10987.2. Information Response Form.~~

~~{Form}~~

~~Note: Authority cited: Sections 133, 5307, 5401.6, Labor Code. Reference: Section 5401.6, Labor Code.~~

~~§10987.3. Operative Effect of Rules 10987.1 and 10987.2.~~

~~The Information Request Form in Rule 10987.1 and the Information Response Form in Rule 10987.2 apply only where a claim form has been filed for injuries on or after January 1, 1990 and before January 1, 1994.~~

~~Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 4903 and 4906, Labor Code.~~

ARTICLE 25 **Arbitration**

§10995. Mandatory Arbitration.

~~This rule applies to injuries occurring on or after January 1, 1990, except that this rule applies regardless of the date of injury for issues set forth in Labor Code section 5275 subdivisions (a)(3) and (4):.~~

Any Application for Adjudication ~~which~~ that lists one or more disputes involving an issue set forth in Labor Code section 5275, subdivision (a), shall be accompanied by an arbitration submittal form prescribed and approved by the Appeals Board. The arbitration submittal form shall indicate that either:

- (1) an arbitrator has been selected pursuant to Labor Code section 5271, subdivision (a), or
- (2) an unsuccessful attempt has been made to select an arbitrator and the presiding workers' compensation judge is requested pursuant to Labor Code section 5271, subdivision (b), to assign a panel of five arbitrators.

If the parties have agreed to an arbitrator pursuant to Labor Code section 5271, subdivision (c), the presiding workers' compensation judge shall, within six (6) days of receipt of the arbitration submittal form, order the issue or issues in dispute submitted for arbitration pursuant to Labor Code sections 5272, 5273, 5276 and 5277.

If the arbitration submittal form requests a panel pursuant to Labor Code section 5271, subdivision (b), the presiding workers' compensation judge shall, within six (6) days of receipt of the arbitration submittal form, serve on each of the parties an identical list of five arbitrators selected at random pursuant to Labor Code 5271(b). For each party in excess of one party in the capacity of employer and one party in the capacity of injured employee or lien claimant, the presiding workers' compensation judge shall randomly select two additional arbitrators to add to the panel in accordance with the selection process set forth in Labor Code section 5271, subdivision (c). Each of the parties shall strike two arbitrators from the list and return it to the presiding workers' compensation judge within six (6) days after service. Failure to timely return the list shall constitute a waiver of a party's right to participate in the selection process. If one arbitrator remains, the presiding workers' compensation judge shall, within six (6) days of return of the lists from the parties, order the issue or issues submitted for arbitration before the selected arbitrator pursuant to Labor Code sections 5272, 5273, 5276 and 5277. If more than one arbitrator remains on the panel, the presiding workers' compensation judge shall randomly select an arbitrator from the remaining panelists.

If the parties to the dispute have stricken all the arbitrators from the panel, the presiding workers' compensation judge shall, within six (6) days of receipt of the last of the returned lists, serve on each of the parties to the dispute a new list of five arbitrators and ~~such any~~ additional arbitrators required by Labor Code section 5271 subdivision (c) selected at random but excluding the names of the arbitrators on the prior list. Each of the parties to the dispute shall again strike two arbitrators from the list and return it to the presiding workers' compensation judge within six (6) days after service. This procedure shall continue until one or more arbitrators remain on the lists returned to the presiding workers' compensation judge.

The parties shall provide all necessary materials to the arbitrator. The Workers' Compensation Appeals Board file shall remain in the custody of the district office.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5270 through 5277, Labor Code.

§10996. Voluntary Arbitration.

~~This rule applies to injuries occurring before and on or after January 1, 1990.~~

At any time, the parties may agree to submit any issue for arbitration pursuant to Labor Code section 5275, subdivision ~~(d)~~ (b), by submitting an arbitration submittal form prescribed and approved by the Appeals Board ~~which that~~ indicates that the parties have selected an arbitrator from the list prepared by the presiding workers' compensation judge pursuant to Labor Code section 5271, subdivision (a) and by filing an Application for Adjudication if one has not been previously filed.

Within six (6) days of receipt of the arbitration submittal form, the presiding workers' compensation judge shall order the issues in dispute submitted for arbitration pursuant to Labor Code sections 5272, 5273, 5276 and 5277.

~~In the event an application has not been filed, a~~Any final decision, order or award from the arbitrator, together with the notice of claim form and the record developed as set forth in Labor Code sections 5276 and 5277, shall be filed with the presiding workers' compensation judge ~~who shall assign a case number in the same manner as an Application for Adjudication.~~

If the parties are unable to agree to an arbitrator under Labor Code section 5271, subdivision (a), the parties may agree to follow the procedures for selecting an arbitrator under Labor Code section 5271, subdivision (b) and (c), as set forth in rule 10995.

The parties shall provide all necessary materials to the arbitrator. The Workers' Compensation Appeals Board file shall remain in the custody of the district office.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5270 through 5277, Labor Code.

§10997. Request for Arbitration.

~~This rule applies to injuries occurring before and on or after January 1, 1990.~~

~~Arbitration may not be requested when a case is set for hearing before a workers' compensation judge unless the parties, within six (6) days after service of the notice of hearing, file an arbitration submittal form indicating the name of the arbitrator selected under Labor Code section 5271, subdivision (a). In no event will arbitration be permitted after the taking of testimony in any proceeding.~~

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5270 through 5277, Labor Code.

§10998. Disqualification of Arbitrator.

This rule applies to injuries occurring on or after January 1, 1990, except that this rule applies regardless of the date of injury ~~for issues set forth in Labor Code section 5275, subdivisions (a)(3) and (4), and for voluntary arbitration pursuant to Labor Code section 5275, subdivision (d) (b).~~

After service of a list of panel members pursuant to rule 10995, any party may, within six (6) days, petition the workers' compensation judge to remove any member from the panel pursuant to section 170.1 of the Code of Civil Procedure. In event the presiding workers' compensation judge finds cause under section 170.1 of the Code of Civil Procedure, the presiding workers' compensation judge shall remove the member or members of the panel challenged and add to the original list the appropriate number of arbitrators at random to make a full panel and, within six (6) days, serve the list on the parties.

In event the presiding workers' compensation judge selects an arbitrator pursuant to rule 10995, the parties will have six (6) days after service of the name of the arbitrator to petition to disqualify that arbitrator

pursuant to section 170.1 of the Code of Civil Procedure. If the presiding workers' compensation judge finds cause, the presiding workers' compensation judge shall assign another arbitrator pursuant to Labor Code section 5271, subdivision (d) and order the issue or issues in dispute submitted to that arbitrator.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5271(d), ~~5275(a), 5275(b), 5275(c), 5275(d)~~, Labor Code.

§10999. Arbitrator Fee and Cost Disputes.

~~This rule applies to injuries occurring before and on or after January 1, 1990.~~

Any dispute involving an arbitrator's fee or cost shall be resolved by the presiding workers' compensation judge of the appropriate local office or, in his or her absence, the acting presiding workers' compensation judge.

Any request to resolve a dispute about arbitrator fees or costs must be accompanied by any written agreement pertaining to arbitrator fees or costs and a statement ~~which~~ that shall include the nature of the dispute and an itemization of the hours spent in actual arbitration hearing, in preparation for arbitration, and in preparation of the decision. The statement shall also include an itemization of the verifiable costs including use of facility, reporters and transcript preparation.

An arbitrator fee shall not exceed a reasonable amount. In establishing a reasonable fee, the Presiding Workers' Compensation Judge shall consider:

- (a) responsibility assumed by the arbitrator;
- (b) experience of the arbitrator;
- (c) number and complexity of the issues being arbitrated;
- (d) time involved; and
- (e) expeditiousness and completeness of issue resolution.

The presiding workers' compensation judge of each local office shall maintain statistics on all arbitration fees awarded pursuant to Labor Code section 5273(c) including the amount thereof and rationale or basis for the award pursuant to (a) through (e) herein above.

Arbitration costs will be allowed in a reasonable amount pursuant to Labor Code section 5273, subdivision (a).

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5273(c), ~~5275(c) and (d)~~, Labor Code.