

**STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS  
Division of Workers' Compensation**

**NOTICE OF PROPOSED RULEMAKING**

**Subject Matter of Regulations:  
Rules of the Court Administrator  
Electronic Adjudication Management System (EAMS)**

**TITLE 8, CALIFORNIA CODE OF REGULATIONS  
Sections 10210 et seq.**

**NOTICE IS HEREBY GIVEN** that the Court Administrator of the Division of Workers' Compensation, pursuant to the authority vested in him by Labor Code sections 133, 5307(c), 5500.3 and 5502, proposes to adopt regulations within Article 1, Subchapter 1.9 to Chapter 4.5 of Title 8, California Code of Regulations, commencing with section 10210, relating to the Electronic Adjudication Management System (EAMS) and workers' compensation adjudication files at the trial level.

**PROPOSED REGULATORY ACTION**

The Department of Industrial Relations, Division of Workers' Compensation, proposes to adopt regulations within Article 1, Subchapter 1.9 to Chapter 4.5 of Title 8, California Code of Regulations, commencing with section 10210, relating to the Electronic Adjudication Management System (EAMS) and workers' compensation adjudication files at the trial level.

Repealed §10250. Payment of Medical Provider and Medical-Legal Lien Claimant Initial Lien Filing Fees. Rules of the Court Administrator

**Article 1. Definitions and General Provisions**

Proposed §10210. Definitions.

Proposed §10211. Compliance with Rules of the Court Administrator.

Proposed §10212. District Office Records Not Subject to Subpoena.

Proposed §10213. Ex Parte and Prohibited Communications.

Proposed §10214. Compromise and Release forms and Stipulation with Request for Award forms.

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Proposed §10230. Time of Filing Documents.  
Proposed §10232. Form and Size Requirements for Filed Documents.  
Proposed §10232.1. Document cover sheet form.  
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Proposed §10233. Filing of Medical Reports, Medical-Legal Reports, and Various Records.  
Proposed §10235. Improper Filing of Documents.  
Proposed §10236. Filing of Copies of Documents.

**Article 4. Appearances, the Form of Minutes of Hearings and Minute Orders**

Proposed §10240. Appearances Required.  
Proposed §10241. Failure to Appear.  
Proposed §10243. Continuances.  
Proposed §10244. Appearances in Settled Cases.  
Proposed §10245. Minutes of Hearing form.  
Proposed §10246. Electronically Filed Decisions, Findings, Awards, and Orders.

**Article 5. Declarations of Readiness to Proceed and Objections and Hearing Calendars**

Proposed §10250. Declaration of Readiness to Proceed.  
Proposed §10251. Objection to Declaration of Readiness to Proceed.  
Amended §10252. Expedited Hearing Calendar.  
Amended §10252.1. Expedited Hearing form.  
Proposed §10253. Settlement Conference Calendar.  
Proposed §10253.1. Pre-trial Conference Statement form.  
Proposed §10254. Priority Conference Calendar.

**Article 6. Consolidation Procedures**

Proposed §10260. Assignment of Consolidated Cases.

**Article 7. Access to Records and Retention of Records**

Proposed §10270. Access to and Viewing Adjudication Files.  
Proposed §10272. Sealing Documents.  
Proposed §10273. Retention, Return and Destruction of Records and Exhibits.  
Proposed §10275 Recording of Trial Level Proceedings.

**Article 8. Procedures for Requesting Immediate Action by a Judge**

Proposed §10280. Walk-Through Documents.  
Proposed §10281. Emergency Petitions for Stay.

**Article 9. Review of Administrative Orders issued by the Administrative Director**

Proposed §10290. Petition Appealing Order Granting or Denying Petition for Order Requiring Employee to Select Employer-Designated Physician.  
Proposed §10291. Petition Appealing Notice of Compensation Due.  
Proposed §10293. Petition Appealing Order of the Rehabilitation Unit.  
Proposed §10294. Petition Appealing Determination of a Return to Work Reimbursement.  
Proposed §10294.5. Petition Appealing Determination Regarding Supplemental Job Displacement Benefits.

**Article 10. Arbitration**

Proposed §10295. Mandatory Arbitration.  
Proposed §10296. Voluntary Arbitration.  
Proposed §10297. Arbitration Submittal form.

## PUBLIC HEARING

A public hearing has been scheduled to permit all interested persons the opportunity to present statements or arguments, oral or in writing, with respect to the subjects noted above, on the following dates:

**Date:** Monday, July 14, 2008  
**Time:** 10:00 a.m. to 5:00 p.m. or conclusion of business  
**Place:** Ronald Reagan State Building, Auditorium  
300 South Spring Street  
Los Angeles, CA 90013

**Date:** Tuesday, July 15, 2008  
**Time:** 10:00 a.m. to 5:00 p.m. or conclusion of business  
**Place:** Elihu Harris State Building, Auditorium  
1515 Clay Street  
Oakland, CA 94612

**The State Office Building and its Auditorium are accessible to persons with mobility impairments. Alternate formats, assistive listening systems, sign language interpreters, or other type of reasonable accommodation to facilitate effective communication for persons with disabilities, are available upon request. Please contact the State Wide Disability Accommodation Coordinator, Kathleen Estrada, at 1-866-681-1459 (toll free), or through the California Relay Service by dialing 711 or 1-800-735-2929 (TTY/English) or 1-800-855-3000 (TTY/Spanish) as soon as possible to request assistance.**

Please note that public comment will begin promptly at 10:00 a.m. and will conclude when the last speaker has finished his or her presentation. If public comment concludes before the noon recess, no afternoon session will be held.

The Court Administrator requests, but does not require that, any persons who make oral comments at the hearings also provide a written copy of their comments. Equal weight will be accorded to oral comments and written materials.

## WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department of Industrial Relations, Division of Workers' Compensation. The written comment period closes at **5:00 p.m., on July 15, 2008**. The Department of Industrial Relations, Division of Workers' Compensation will consider only comments received at the Department of Industrial Relations, Division of Workers' Compensation by that time. Equal weight will be accorded to oral comments presented at the hearing and written materials.

Submit written comments concerning the proposed regulations prior to the close of the public comment period to:

Notice of Proposed Rulemaking – Rules of the Court Administrator –  
Electronic Adjudication Management System (EAMS)  
8 CCR §§ 10210 et seq.  
(May, 2008)

Maureen Gray  
Regulations Coordinator  
Department of Industrial Relations  
Division of Workers' Compensation  
Post Office Box 420603  
San Francisco, CA 94142

Written comments may be submitted by facsimile transmission (FAX), addressed to the above-named contact person at (510) 286-0687. Written comments may also be sent electronically (via e-mail) using the following e-mail address: [dwcrules@dir.ca.gov](mailto:dwcrules@dir.ca.gov) .

Unless submitted prior to or at the public hearing, Ms. Gray must receive all written comments no later than **5:00 p.m. on July 15, 2008.**

## **AUTHORITY AND REFERENCE**

The Court Administrator is undertaking this regulatory action pursuant to the authority vested in the Court Administrator by Labor Code sections 133, 5307(c), 5500.3 and 5502.

Reference is to Labor Code §§110, 126, 127, 129, 129.5, 133, 138.7, 139.5, 4053, 4054, 4600, 4603, 4604, 4645, 5001, 5270 – 5277, 5300, 5301, 5307, 5316, 5500, 5501.5, 5501.6, 5500.3, 5502, 5504, 5700, 5702, 5708, 5710, and 5813.

## **INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW**

In 2002, Assembly Bill 749 (AB 749, Stats. 2002, Ch. 6), created the position of court administrator. Labor Code section 5307 was amended to provide that the court administrator “shall adopt reasonable, proper, and uniform rules for district office procedure regarding trial level proceedings of the workers’ compensation appeals board.” The rules shall include regulations regarding “conferences, hearings, continuances, and other matters deemed reasonable and necessary to expeditiously resolve disputes.” The court administrator shall also promulgate forms to be used at all trial level proceedings.

Labor Code section 110(f) defines the court administrator as “the administrator of the workers’ compensation adjudicatory process at the trial level.”

Labor Code section 127 allows the court administrator to charge and collect fees for copies and papers, certified copies of official documents and orders or of the evidence taken or proceedings had, for transcripts of testimony, and for inspection of case files not stored in the place where the inspection is requested.

Labor Code section 127.5 provides that the court administrator “shall further the interests of uniformity and expedition of proceeding before workers’ compensation administrative law judges, assure that all workers’ compensation administrative law judges are qualified and adhere to deadlines mandated by the law or regulations, and manage district office procedural matters at the trial level.”

Labor Code section 5500.3(a) also requires the court administrator to establish uniform district office procedures, uniform forms, and uniform time of court settings for all district offices of the appeals board.

Labor Code section 5502 provides that the court administrator prescribe a form for the declaration of readiness to proceed. It also requires the court administrator to establish a priority calendar for issues requiring an expedited hearing and decision and a priority conference calendar for employees represented by an attorney when the issues in dispute are employment or injury arising out of employment or in the course of employment.

In fiscal year 2004 to 2005, the Senate Bill 1113 (SB 1113, Stats. 2004, Ch. 208)<sup>1</sup> authorized funds for the Electronic Adjudication Management System (EAMS). EAMS is a computer based system that will simplify and improve the DWC case management process to more efficiently resolve claims, improve the ability to schedule and manage court calendars, allow files to be shared between multiple users and transform paper files into secure electronic files, reducing the need for physical storage space at local district offices and the State Records Center. EAMS will replace the current workers' compensation court technology and supporting infrastructure.

Prior to the creation of the court administrator position, most of the rules pertaining to the district office procedures and forms were promulgated by the Workers' Compensation Appeals Board. The rules that were previously within the jurisdiction of the Workers' Compensation Appeals Board will be repealed by the Workers' Compensation Appeals Board in their rulemaking, which will be filed with the Office of Administrative Law. This rulemaking establishes uniform procedures and forms for the district offices of the appeals board. It also sets forth the procedures for filing required in EAMS. This rulemaking implements the first stage of EAMS (the internal go-live stage), which is to store the information electronically to allow for internal users to maintain and search for documents. At the Division of Workers' Compensation (DWC) internal go-live, external participants will continue to file on paper using new forms that employ optical character recognition (OCR). The OCR forms will be available online on the EAMS Web page. Forms and documents will be scanned into EAMS by DWC employees at district offices.

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<sup>1</sup> **Senate Bill No. 1113**

“CHAPTER 208

An act making appropriations for the support of the government of the State of California and for several public purposes in accordance with the provisions of Section 12 of Article IV of the Constitution of the State of California, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 31, 2004. Filed with Secretary of State July 31, 2004.]

7350-001-0223—For support of Department of Industrial Relations, for payment to Item 7350-001-0001, payable from the Workers' Compensation Administration Revolving Fund.....  
127,345,000”

\* \* \*

“4. Funds appropriated in this item for the development of a workers' compensation case management system shall not be available for expenditure until a Feasibility Study Report is approved by the Department of Finance.”

The Feasibility Study Report was approved in 2004.

These proposed regulations implement, interpret, and make specific the sections of the Labor Code pertaining to the jurisdiction of the court administrator and EAMS as follows:

**Repealed Section 10250      Payment of Medical Provider and Medical Legal Lien Claimant Initial Lien Filing Fees**

This section is repealed. This regulation implemented Labor Code section 4903.05, which required a filing fee for liens. Labor Code section 4903.05 was repealed on July 1, 2006.

**Proposed Section 10210      Definitions**

This proposed section defines key terms to ensure that their meaning within the regulations will be clear to the workers' compensation community. The terms are defined as follows:

- (a) "Adjudication file" or "ADJ file" means a case file in which the jurisdiction of the Workers' Compensation Appeals Board has been invoked and which is maintained by the Division of Workers' Compensation in paper format, or electronic format, or both, including a temporary paper case file.
- (b) "Administrative director" means the administrative director of the Division of Workers' Compensation or his or her designee.
- (c) "Appeals board" means the commissioners and deputy commissioners of the Workers' Compensation Appeals Board acting en banc, in panels, or individually.
- (d) "Applicant" means any person asserting a right to relief under the provisions of Labor Code section 5300.
- (e) "Application for adjudication" or "application" means the initial pleading that asserts a right to relief under the provisions of Labor Code section 5300.
- (f) "Court administrator" means the administrator of the workers' compensation adjudicatory process at the trial level, or his or her designee.
- (g) "Declaration of readiness to proceed" or "declaration of readiness" means a request for a proceeding before the district office.
- (h) "Declaration of readiness to proceed to expedited hearing" means a request for a proceeding before the district office pursuant to Labor Code section 5502(b).
- (i) "Defendant" means any person against whom a right to relief is claimed.
- (j) "District office" means a trial level workers' compensation court.
- (k) "Document" is a pleading, petition, medical report, record, declaration, exhibit, or another filing submitted by a party or lien claimant, including an electronically scanned version of a document that was filed in paper form. Each medical report or other record having a different author and/or a different date of service is a separate "document."
- (l) "Document cover sheet" means Form 10232.1, which is placed on top of a document or set of documents filed at one time in a specific case.

- (m) “Document separator sheet” means Form 10232.2, which is placed on top of each individual document, when one or more documents are being filed at the same time in the same case and placed on top of each individual attachment to each document being filed, when a document has one or more attachments.
- (n) “Electronic Adjudication Management System” or “EAMS” means the computerized case management system used by the Division of Workers’ Compensation to store and maintain adjudication files and to perform other case management functions.
- (o) “Electronic signature” means a signature electronically affixed by a workers’ compensation administrative law judge or by the appeals board to any decision, findings, award, order or other document.
- (p) “Fax” means a document that has been electronically served by a fax machine.
- (q) To “file” a document means to deliver a document or cause it to be delivered to the district office with venue or to the appeals board for the purpose of having it included in the adjudication file.
- (r) “Hearing” means any trial, mandatory settlement conference, rating mandatory settlement conference, status conference, lien conference, or priority conference.
- (s) “Lien claimant” means any person claiming payment under the provisions of Labor Code section 4903 or 4903.1.
- (t) “Lien conference” means a proceeding for the purpose of assisting the parties in resolving disputed lien claims pursuant to Labor Code section 4903 or 4903.1 or, if the dispute cannot be resolved, to frame the issues and stipulations in preparation for a lien trial.
- (u) “Mandatory settlement conference” means a proceeding to assist the parties in resolving their dispute or, if the dispute cannot be resolved, to frame the issues and stipulations in preparation for a trial.
- (v) “Optical character recognition form” or “OCR form” means a paper form designed to be scanned so that its information is automatically extracted and stored in EAMS.
- (w) “Party” means: (1) a person claiming to be an injured employee or the dependent of an injured employee; (2) a defendant; or (3) a lien claimant where either (A) the underlying case of the injured employee or the dependent of an injured employee has been resolved or (B) the injured employee or the dependent of an injured employee chooses not to proceed with his, her, or their case.
- (x) “Petition” means any document filed containing a request for action other than an application for adjudication, an answer or a declaration of readiness to proceed.
- (y) “Priority conference” means a proceeding in which the applicant is represented by an attorney and the issues in dispute at the time of the proceeding include employment and/or injury arising out of and in the course of employment.
- (z) “Rating mandatory settlement conference” means a mandatory settlement conference conducted to facilitate the determination of the existence and extent of permanent disability through the use of informal ratings issued by the Disability Evaluation Unit, where the only unresolved issues are permanent disability and the need for future medical treatment.

(aa) “Regular hearing” means a trial.

(bb) To “serve” a document means to personally deliver a copy of the document, or to send it in a manner permitted by these rules and the rules of the appeals board, to a party, lien claimant, or attorney who is entitled to a copy of the document.

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

(dd) “Submission” means the closing of the record to the receipt of further evidence or argument.

(ee) “Trial” means a proceeding set for the purpose of receiving evidence.

(ff) “Venue” means the district office, as established by Labor Code section 5501.5 or 5501.6, at which any proceedings will be conducted and from which any district office orders, decisions, or awards will be issued.

(gg) “Workers’ compensation administrative law judge” as defined in Labor Code section 123.7 includes pro tempore judges appointed pursuant to California Code of Regulations, title 8, section 10350.

**Proposed Section 10211 Compliance with Rules of the Court Administrator.**

This proposed section provides that the failure to comply with the rules of the court administrator shall be deemed a bad faith action or tactic that is frivolous or solely intended to cause unnecessary delay unless that failure results from mistake, inadvertence, surprise, or excusable neglect.

**Proposed Section 10212 District Office Records Not Subject to Subpoena.**

Subdivision (a) of this proposed section provides that the records, files and proceedings of the district office 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. The records, files and proceedings of the district office shall not be produced pursuant a subpoena issued under Labor Code section 130.

Subdivision (b) of this proposed section provides that certified copies of portions of the records shall be delivered upon payment of fees as provided in California Code of Regulations, title 8, section 9990.

**Proposed Section 10213 Ex Parte and Prohibited Communications.**

Subdivision (a) of this proposed section provides that no document, including letters or other writings, shall be filed by a party or lien claimant with the district office unless service of a copy is made on all parties together with the filing of a proof of service. When a workers' compensation administrative law judge receives an ex parte letter or other document from any party or lien claimant in a case pending before the workers’ compensation administrative law judge, he or she shall serve copies of the letter or document on all other parties to the case with a cover letter explaining that the letter or document was received ex parte in violation of this rule.



Subdivision (b) of this proposed section provides that no party or lien claimant shall discuss with a workers' compensation administrative law judge the merits of any pending case without the presence of all necessary parties to the proceeding, except as provided by these rules.

Subdivision (c) of this proposed section provides that all correspondence concerning the examination and reports of a physician appointed pursuant to Labor Code section 5701 or 5703.5 shall be made through the workers' compensation administrative law judge, and no party, attorney or representative shall communicate with that physician with respect to the merits of the case unless ordered to do so.

**Proposed Section 10214      Compromise and Release forms and Stipulation with Request for Award forms.**

This proposed section provides that the listed optical character recognition forms shall be used to settle case by either a compromise and release or stipulation with request for award. The forms listed are: stipulation with request for award; stipulation with request for award, death case; compromise and release; compromise and release, dependency claim; and compromise and release, third party settlement. The forms, which are numbered 10241(a), 10214(b), 10214(c), 10214(d) and 10214(e) are included in this section.

**Proposed Section 10215      Case Names and Case Index.**

This proposed section provides that an index of all cases filed with a district office shall be maintained in EAMS under the name of the person claimed to have been injured or the identification assigned to that person, whether or not that person is an applicant. Reference to the case shall be by the name of the injured person and the case number.

**Proposed Section 10216      Adjudication Files.**

Subdivision (a) of this proposed section provides that all cases filed on and after the effective date of these regulations shall be maintained by the Division of Workers' Compensation in an electronic format in EAMS. All paper documents properly filed in such cases shall be scanned into the EAMS adjudication file and then destroyed.

Subdivision (b) of this proposed section provides that except as provided in section 10273, the Division of Workers' Compensation shall maintain a paper adjudication file until it is converted to an electronic adjudication file. If, however, a paper adjudication file is maintained on or after the effective date of these regulations, an electronic adjudication file shall also be created and any documents filed thereafter shall be maintained electronically in EAMS, in accordance with subdivision (c).

Subdivision (c) of this proposed section provides that a paper adjudication file or a portion of a paper adjudication file may be converted to an electronic adjudication file by the Division of Workers' Compensation at any time. If a paper adjudication file is completely scanned into EAMS the Division of Workers' Compensation shall notify the parties to the case of the change in how the file is maintained; and the paper adjudication file may be destroyed.

**Proposed Section 10217      Official Address Record and Duty to Furnish Correct Address.**

Subdivision (a) of this proposed section provides that the Division of Workers' Compensation shall maintain an official address record for each adjudication file, which shall contain the names and mailing addresses of all parties and lien claimants, and their attorneys or agents of record. In addition, where parties and lien claimants, or their attorneys or agents of record, have provided or have been required to provide telephone numbers, fax numbers or electronic mail addresses, the official address record shall contain these numbers and addresses.

Subdivision (b) of this proposed section provides that every attorney, every party, every lien claimant, and every representative of any party or lien claimant having an interest in an active case pending before the district office or appeals board shall advise the district office and all parties of any change of mailing address, as well as any change of telephone numbers, fax numbers or electronic mail addresses, where provided or required, by furnishing the current information within five business days of any change.

Subdivision (c) of this proposed section provides that every lien claimant that has filed a lien in a case pending in a district office shall advise all parties within five business days of any change in the identity and/or telephone number of the person with authority to resolve the lien by furnishing the correct name and daytime telephone number of that person to the interested parties; and shall advise the Division of Workers' Compensation of any such change after a declaration of readiness is filed.

Subdivision (d) of this proposed section provides that every party, attorney, hearing representative and lien claimant having an interest in an inactive case: (1) shall advise all other known parties, lien claimants, attorneys, and hearing representative within five business days of any change of address (which shall include any change of mailing address, as well as any change of telephone numbers, fax numbers or electronic mail addresses, where provided or required) by furnishing the correct and current address and/or number; and (2) shall advise the Division of Workers' Compensation of any such change within five business days if there is an outstanding award of further medical treatment or if there is continuing jurisdiction pursuant to Labor Code sections 5410, 5803 and 5804.

### **Proposed §10218 Designated Preferred Method of Service.**

Subdivision (a) of this proposed section provides that a party, a lien claimant, or an attorney or other representative for a party or lien claimant may designate first class mail, electronic mail or fax as their preferred method of service for receiving documents from the district office and the appeals board. A party, a lien claimant, or an attorney or other representative for a party or lien claimant who does not designate a preferred method of service shall be served by first class mail.

Subdivision (b) of this proposed section provides that a represented party, a lien claimant, or an attorney or other representative for a party or lien claimant may agree that his, her, or its designated preferred method of service may be utilized for receiving documents from any other represented party, lien claimant, or attorney or other representative for a party or lien claimant. Absent such an agreement, service between these parties or entities shall be made by first class mail.

Subdivision (c) of this proposed section provides that if the service is being made by or on an unrepresented injured worker, dependent or uninsured employer, then the service shall be made by first class mail.

Subdivision (d) of this proposed section provides that a party, a lien claimant, or an attorney or other representative for a party or lien claimant may change the designated preferred method of service at any time in accordance with section 10217, subd. (b).

**Proposed Section 10223      Corrective Measures for Misfiled or Misdirected Documents into the Case Management System.**

Subdivision (a) of this proposed section provides that the Division of Workers' Compensation may perform document substitution on filed documents; repair scanned documents; and move documents to other adjudication files.

Subdivision (b) of this proposed section provides that a document substitution may occur where a technical problem of readability and/or legibility exists with a filed document. The filer may seek a substitution of the document by filing a petition to substitute. The proposed document for substitution must be appended to a petition to substitute. If the petition to substitute is granted, the proposed document for substitution will replace the document that was unreadable or illegible.

Subdivision (c) of this proposed section provides that a document repair may occur where a document scanned into an electronic adjudication file by the Division of Workers' Compensation fails to reflect the original paper document. The Division of Workers' Compensation may repair the document so that the scanned image accurately reflects the original paper document. The Division of Workers' Compensation may repair a document at any time or a party may request a document be repaired. EAMS will retain as viewable the original document for those who have access to the electronic file.

Subdivision (d) of this proposed section provides that a document may be moved when a document originally scanned by the Division of Workers' Compensation is filed into the wrong electronic file.

Subdivision (e) of this proposed section provides that documents that are in the process of being substituted or repaired shall not be moved.

**Proposed Section 10225      Extended System Unavailability.**

Subdivision (a) of this proposed section provides if, for any reason, there is a technical failure of EAMS for longer than 24 hours, the court administrator, in his or her discretion, may declare that EAMS is unavailable for an extended period of time.

Subdivision (b) of this proposed section provides that after issuing a declaration of extended system unavailability, the court administrator shall issue an order that includes, but is not limited to the following determinations:

- (1) requiring that the district office or the appeals board shall serve all documents by first class mail;
- (2) providing that filed documents shall be maintained in temporary paper adjudication files;
- (3) providing that the time for performing any action, whether by the parties or by the district office, shall be extended by a specified period or until EAMS is declared to be operational; or
- (4) requiring or allowing any other actions or remedies, as deemed appropriate under the circumstances.

Subdivision (c) of this proposed section provides that the court administrator shall post the declaration of extended system unavailability on the website of the Division of Workers' Compensation, if the website remains operational, and shall post it at every district office and at the office of the appeals board.

Subdivision (d) of this proposed section provides that any declaration of extended unavailability shall remain in effect until the court administrator issues a subsequent declaration that EAMS is operational.

**Proposed Section 10228 Place of Filing Documents.**

Subdivision (a) of this proposed section provides that after the filing and processing of an initial application for adjudication of claim or other case opening document, all documents required or permitted to be filed under these regulations or under the rules of the appeals board shall be filed only with the district office having venue, except as provided by subdivision (b) or by the rules of the appeals board, unless otherwise ordered by a workers' compensation administrative law judge or the appeals board.

Subdivision (b) of this proposed section provides that where a petition for reconsideration, a petition for removal, or a petition for disqualification has been properly filed pursuant to rules 10840, 10843, or 10452, all answers or requests for action relating to the reconsideration, removal, or disqualification process, all requests for withdrawal of the petition for reconsideration, removal or disqualification, and all notifications of change of address from the parties or lien claimants shall be filed with the appeals board in San Francisco, except that these documents shall be filed with the district office having venue where: (1) the 15-day periods for preparation of a report under rule 10860, or for amendment or correction under rules 10859 or 10843, has not elapsed or (2) the appeals board has issued its decision on the petition for reconsideration, removal, or disqualification. The subdivision further provides that all other documents unrelated to the reconsideration, removal, or disqualification process shall be filed with the district office having venue.

Subdivision (c) of this proposed section provides that documents received in any other district office or the office of the appeals board in San Francisco, except as provided by subsections (a) and (b) of this regulation or by the rules of the appeals board, shall not be accepted for filing or deemed filed and shall not be acknowledged or returned to the filing party and may be discarded. The subdivision further provides that such documents, however, may be returned where the filing party includes a self addressed envelope with sufficient return postage. In any proceeding before a workers' compensation administrative law judge or the appeals board, the judge or the board may excuse a failure to comply with this rule resulting from mistake inadvertence, surprise, or excusable neglect.

Subdivision (d) of this proposed section provides that all case opening documents shall be given a case number by the district office where no case number has been previously assigned for the injured worker for the alleged date of injury. If a case number has been previously assigned by the Division of Workers' Compensation, the prefix "ADJ" shall precede the assigned case number when a form or document is filed.

Subdivision (e) of this proposed section provides that a document that has been sent by electronic mail or by fax directly to the district office or the appeals board shall not be accepted for filing or deemed

filed, shall not be acknowledged, and may be discarded unless otherwise ordered by the workers' compensation administrative law judge or the appeals board.

**Proposed Section 10229 Manner of Filing Documents.**

Subdivision (a) of this proposed section provides that except as provided by section 10603, subd. (a), all documents shall be filed in paper form.

Subdivision (b) of this proposed section provides that all paper documents shall be scanned into the electronic adjudication file and then destroyed, unless otherwise provided by these rules or ordered by a workers' compensation administrative law judge or the appeals board. A scanned document shall have the same legal effect as a document filed in paper form.

Subdivision (c) of this proposed section provides that each of the following persons or entities shall file optical character recognition forms completed by using a computer or typewriter:

- (1) any attorneys representing any party or any lien claimant;
- (2) any insurance carrier or any representative of any insurance carrier (including any claims adjustor);
- (3) any self-insured employer or any representative of a self-insured employer (including any claims adjustor);
- (4) any third-party administrator or any representative of a third-party administrator (including any claims adjustor); and
- (5) any lien claimant or any representative of any lien claimant, with the exception of: (A) a lien claimant (or a non-attorney representative of a lien claimant) asserting a living expenses lien under Labor Code section 4903(c); (B) a lien claimant (or a non-attorney representative of a lien claimant) asserting a burial expenses lien under Labor Code section 4903(d); or (C) a non-governmental lien claimant (or a non-attorney representative of a lien claimant) asserting a spousal or child support expenses lien under Labor Code section 4903(e).

Subdivision (d) of this proposed section provides that all unrepresented employees, dependents, uninsured employers, or lien claimants listed in subdivision (c)(5)(A), (B) or (C) shall utilize optical character recognition forms, where such forms are required, but if they do not have ready access to a computer or typewriter, the form may be hand-printed in ink.

Subdivision (e) of this proposed section provides that whenever any party or lien claimant files any document utilizing an optical character recognition form, the party or lien claimant shall use the appropriate OCR form required by these rules.

**Proposed Section 10230 Time of Filing Documents.**

Subdivision (a) of this proposed section provides a paper document, including one filed by mail (regardless of when posted), is deemed filed on the date it is received, if received prior to 5 p.m. of a court day (i.e., Monday through Friday, except designated State holidays). A paper document received after 5 p.m. of a court day shall be deemed filed as of the next court day.

Subdivision (b) of this proposed section provides that when a document is filed by mail or by personal service, the appeals board or the district office that received the document for filing shall affix on it an appropriate endorsement as evidence of receipt. The endorsement may be made by handwriting, hand-stamp, electronic date stamp, or by other means.

**Proposed Section 10232 Form and Size Requirements for Filed Documents.**

Subdivision (a) of this proposed section provides that all documents except the medical reports of treating physicians, secondary physicians, qualified or agreed medical evaluators and proposed exhibits, shall be filed in accordance with the following standards:

- (1) Only one side of each paper shall be used;
- (2) All documents shall be printed with black ink on white paper that is 8½ x11 inches and at least twelve pound weight. All margins shall be at least 1 inch and shall be without typed or handwritten text in any margin;
- (3) The first page shall include a case caption that shall include the name of the injured worker or dependent claiming benefits, the name of the employer and the employer's insurer or indicating the employer is self-insured and a case number if one has been assigned by the district office. If a case number has been assigned the number shall be preceded by the abbreviation "ADJ";
- (4) All non-form legal pleadings shall contain a heading above the case caption containing the name of the filing attorney and their state bar membership number and the attorney's law firm name and address.
- (5) Except as otherwise provided in this section, documents shall be printed in Times New Roman, Times, Courier, Palatino, Century Schoolbook or similar serif font of at least 12 points in size;
- (6) No single document shall exceed 25 pages in length without the prior permission of the appeals board or the presiding workers' compensation administrative law judge of the district office with venue over the case;
- (7) The text of a document shall be double spaced or one and one half spaces; however, captions, headings, headers, footnotes, footers and block quotations shall be single spaced.

Subdivision (b) of this proposed section provides that all documents shall be filed with document cover sheets and document separator sheets as follows:

- (1) A completed document cover sheet shall be the first page of each individual document or set of documents filed at one time in the same case. A document separator sheet shall precede each document within a set of documents.
- (2) If an individual document that includes an attachment, a completed document separator sheet shall precede the attachment and if an individual document includes multiple attachments, a document separator sheet shall precede each individual attachment.

(3) This subdivision shall not apply to any unrepresented employees, dependents or uninsured employers who do not have ready access to document cover sheets and document separator sheets.

Subdivision (c) of this proposed section provides that oversized documents shall be filed only at the time of trial in accordance with the provisions of section 10603.

Subdivision (d) of this proposed section provides that if an unrepresented worker, an unrepresented uninsured employer, or an unrepresented dependent does not have ready access to a computer or typewriter and compliance with subdivisions (a)(3) and (a)(5) is not feasible, a hand-printed document may be submitted. Any hand-printed document shall be legible and shall otherwise comply with subdivision (a), including the requirements of subdivision (a)(3) regarding margins and text in the margins.

**Proposed Section 10232.1 Document cover sheet form.**

This section provides the mandatory document cover sheet form, which is placed on top of a document or set of documents filed at one time in a specific case when filing with EAMS.

**Proposed Section 10232.2 Document separator sheet form.**

This section provides the mandatory document separator sheet form, which is placed on top of each individual document, when one or more documents are being filed at the same time in the same case and placed on top of each individual attachment to each document being filed, when a document has one or more attachments.

**Proposed Section 10233 Filing of Medical Reports, Medical-Legal Reports, and Various Records.**

Subdivision (a) of this proposed section provides that except as provided by section 10603, medical reports, medical-legal reports, and medical records, and other records and documents shall be filed only in accordance with the following provisions.

Subdivision (b) of this proposed section applies where a declaration of readiness (other than a declaration of readiness for an expedited hearing) is being filed, including a walk-through declaration of readiness.

Paragraph (1) provides that when filing of a declaration of readiness, the filing party or lien claimant shall file the report of any agreed medical evaluator and any qualified medical evaluator that: (A) are then in its possession or control, (B) are relevant to the issue being raised by the declaration of readiness, and (C) have not been filed previously. No other medical reports, medical-legal reports, medical records, or other documents shall be filed at that time, unless otherwise ordered by the appeals board or a workers' compensation administrative law judge.

Paragraph (2) provides that when filing of an objection to a declaration of readiness, or within ten days of the filing of the declaration of readiness if no objection is timely filed, each opposing party

or lien claimant shall file the report of any agreed medical evaluator and any qualified medical evaluator that: (A) are then in its possession or control, (B) are relevant to the issue being raised by the declaration of readiness, and (C) have not been filed previously. No other medical reports, medical-legal reports, medical records, or other documents shall be filed at that time, unless otherwise ordered by the appeals board or a workers' compensation administrative law judge.

Subdivision (c) of this proposed section applies where a declaration of readiness for an expedited hearing is being filed.

Paragraph (1) provides that when filing of a declaration of readiness for an expedited hearing, the filing party or lien claimant shall file the report of any agreed medical evaluator, any qualified medical evaluator, and any treating physician that: (A) are then in its possession or control, (B) are relevant to the issue being raised by the declaration of readiness, and (C) have not been filed previously. No other medical reports, medical-legal reports, medical records, or other documents shall be filed at that time.

Paragraph (2) provides that when filing of an objection to a declaration of readiness for an expedited hearing, or within ten days of the filing of the declaration of readiness if no objection is timely filed, each opposing party or lien claimant shall file the report of any agreed medical evaluator, any qualified medical evaluator, and any treating physician that: (A) are then in its possession or control, (B) are relevant to the issue being raised by the declaration of readiness, and (C) have not been filed previously. No other medical reports, medical-legal reports, medical records, or other documents shall be filed at that time.

Paragraph (3) provides that all other medical reports, medical-legal reports, medical records, or other documents that are being proposed as exhibits with respect to the issue being raised by the declaration of readiness, and that have not been filed previously, shall be filed at the time of trial, unless otherwise ordered by the appeals board or a workers' compensation administrative law judge.

Subdivision (d) of this proposed section applies where a compromise and release or a stipulations with request for award is being filed, with the exception that this subsection shall not apply when the compromise and release or the stipulations with request for award is being filed on a walk-through basis in accordance with section 10280.

Paragraph (1) provides that when filing of a compromise and release or a stipulations with request for award, the filing party shall file all agreed medical evaluator report, qualified medical evaluator report, treating physician report, and any other medical records or other records (e.g., wage statements) that: (A) are relevant to a determination of the adequacy of the compromise and release or stipulations with request for award; and (B) have not been filed previously.

Paragraph (2) provides that if the compromise and release or the stipulations with request for award is not approved, and the matter is set for a hearing on the adequacy of the proposed settlement, any additional reports, records, or other documents not previously filed that are being proposed as exhibits shall be filed at the time of the adequacy hearing, unless otherwise ordered by the appeals board or a workers' compensation administrative law judge.



Paragraph (3) provides that if the compromise and release or the stipulations with request for award is not approved at or after the adequacy hearing, and the matter is set for a mandatory settlement conference or trial, then any additional medical reports, medical-legal reports, medical records, or other documents that are being proposed as exhibits shall be filed in the same manner as set forth in subsections (b)(3) and (b)(4).

Subdivision (e) of this proposed section provides that excerpted portions of relevant physician, hospital or dispensary records shall be filed in accordance with section 10232.

Subdivision (f) of this proposed section provides that excerpted portions of relevant personnel records, wage records and statements, job descriptions, and other business records shall be filed in accordance with section 10232.

Subdivision (g) of this proposed section provides that at a mandatory settlement conference, all other medical reports, medical-legal reports, medical records, or other documents that are being proposed as exhibits with respect to the issue being raised by the declaration of readiness, and that have not been filed previously, shall be filed, but only if the matter is being set for trial, unless otherwise ordered by the appeals board or a workers' compensation administrative law judge.

Subdivision (h) of this proposed section provides that at trial, any additional medical reports, medical-legal reports, medical records, or other documents that are being proposed as exhibits with respect to the issue being raised by the declaration of readiness shall be filed, unless otherwise ordered by the appeals board or a workers' compensation administrative law judge.

### **Proposed Section 10235      Improper Filing of Documents.**

Subdivision (a) of this proposed section provides that the following documents shall not be filed with the district office or the appeals board, except upon the order of a workers' compensation administrative law judge or the appeals board:

- (1) letters to opposing parties or counsel;
- (2) subpoenas;
- (3) notices of taking deposition;
- (4) medical appointment letters;
- (5) proofs of service ordered pursuant to California Code of Regulations, title 8, section 10500, subd. (a);
- (6) medical reports, except as required by section 10233;
- (7) copies of any decision of any federal or state court opinion otherwise available.
- (8) copies of any decision of the appeals board or a workers' compensation administrative law judge that is otherwise available.
- (9) duplicate medical and medical-legal reports.
- (10) no diagnostic imaging as defined in Labor Code section 139.3, subd. (b)(1), shall be transmitted to the district office or the appeals board unless it is ordered.

Subdivision (b) of this proposed section provides that documents improperly submitted pursuant to this section shall not be accepted for filing or deemed filed and shall not be acknowledged and may be discarded.

### **Proposed Section 10236 Filing of Copies of Documents.**

Subdivision (a) of this proposed section provides that except as provided by section 10603, subd. (a), no “original” business, medical, or other documents shall be filed with a district office.

Subdivision (b) of this proposed section provides that only a photocopy or other reproduction of an original document shall be filed, and it is presumed the filed document is an accurate representation of the original document.

Subdivision (c) of this proposed section provides that if a party or lien claimant alleges that a filed document is an inaccurate or unreliable, the party alleging the document is inaccurate or unreliable shall state the basis for the objection. The filing party must establish that the document is an accurate representation of the original document.

Subdivision (d) of this proposed section provides that a party or lien claimant that elects to retain the original of an exhibit or proposed exhibit need not retain the original after either (1) the exhibit has been authenticated at trial or (2) a settlement that resolves all pending issues has been approved and all appeals have been exhausted or the time for seeking appellate review has expired.

### **Proposed Section 10240 Appearances Required.**

Subdivision (a) of this proposed section provides that every defendant and lien claimant, with a lien more than \$2,500, shall appear or have a representative appear at a hearing, unless the appearance is excused by the workers’ compensation administrative law judge conducting the hearing. Unless the notice otherwise provides, the applicant shall be present at a mandatory settlement conference as provided in Labor Code section 5502, subd. (e), and the defendant and lien claimants whose liens have not been resolved or withdrawn shall have a person available with settlement authority.

Subdivision (b) of this proposed section provides that the person designated by the defendant or a lien claimant to be available with settlement authority need not be present if an attorney or representative who is present can obtain immediate authority by telephone.

Subdivision (c) of this proposed section provides that at the time of trial, all parties and lien claimants shall be present or have a representative appear. The defendants and lien claimants shall have a person available with settlement authority in the same manner as set forth in subdivision (b).

### **Proposed Section 10241 Failure to Appear.**

Subdivision (a) of this proposed section provides that where a party or a lien claimant is served with notice of trial and fails to appear either in person or by attorney or representative, the workers’ compensation administrative law judge may:

- (1) dismiss the application after issuing a notice of intention to dismiss pursuant to California Code of Regulations, title 8, section 10562;
- (2) dismiss the lien claim after issuing a notice of intention to dismiss pursuant to California Code of Regulations, title 8, section 10562;

(3) hear the evidence and, after service of the minutes of hearing and summary of evidence that shall include notice of intention to submit the case for decision pursuant to California Code of Regulations, title 8, section 10562.

Subdivision (b) of this proposed section provides that where a party or a lien claimant is served with notice of a conference or mandatory settlement conference fails to appear at the conference, the workers' compensation administrative law judge may

- (1) dismiss the application after issuing a notice of intention to dismiss pursuant to California Code of Regulations, title 8, section 10562;
- (2) dismiss the lien claim after issuing a notice of intention to dismiss with or without prejudice pursuant to California Code of Regulations, title 8, section 10562;
- (3) close discovery and forward the case to the presiding workers' compensation administrative law judge to set for trial.

Subdivision (c) of this proposed section provides that where a party, after notice, fails to appear at either a trial or a conference and good cause is shown for failure to appear, the workers' compensation administrative law judge may take the case off calendar or may continue the case to a date certain.

#### **Proposed Section 10243      Continuances.**

This proposed section provides that requests for continuances are inconsistent with the requirement that workers' compensation proceedings be expeditious and are not favored. Continuances will be granted only upon a clear showing of good cause. Where possible, reassignment pursuant to section 10346 shall be used to avoid continuances.

#### **Proposed Section 10244      Appearances in Settled Cases.**

This proposed section provides that when the parties represent to the workers' compensation administrative law judge assigned to the case, the presiding workers' compensation administrative law judge or his or her designee that a case has been settled, the case shall be taken off calendar and no appearances shall be required.

#### **Proposed Section 10245      Minutes of Hearing form.**

This proposed section is the mandatory minutes of hearing form.

#### **Proposed Section 10246      Electronically Filed Decisions, Findings, Awards, and Orders.**

This proposed section provides that the district office may electronically file any decision, findings, award, order or other document issued by a workers' compensation administrative law judge. Any document that is electronically filed shall have the same legal effect as a document in paper form.

#### **Proposed Section 10250      Declaration of Readiness to Proceed.**

Subdivision (a) of this proposed section provides that applications or petitions shall not be placed on calendar for mandatory settlement conferences, status conferences, priority conferences, expedited hearing 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 court administrator. The declaration of readiness shall be served on all other parties and lien claimants.

Subdivision (b) of this proposed section provides that all declarations of readiness to proceed shall state under penalty of perjury the moving party has made a genuine, good faith effort to resolve the dispute before filing the declarations of readiness to proceed, and shall state with specificity the same on the declarations of readiness to proceed.

Subdivision (c) of this proposed section provides that a false declaration or certification by any party, lien claimant, attorney or representative may give rise to proceedings under Labor Code section 134 for contempt or Labor Code section 5813 for sanctions.

Subdivision (d) of this proposed section provides that if a party or lien claimant is represented by an attorney or representative any declaration of readiness filed on behalf of the party shall be executed by the attorney or representative.

#### **Proposed Section 10250.1 Declaration of Readiness to Proceed form.**

This proposed section is the declaration of readiness to proceed form.

#### **Proposed Section 10251 Objection to Declaration of Readiness to Proceed.**

Subdivision (a) of this proposed section provides that any objection to a declaration of readiness to proceed shall be filed and served within ten (10) calendar days after service of the declaration. The objection shall set forth, under penalty of perjury, specific reason why the case should not be set or why the requested proceedings are inappropriate.

Subdivision (b) of this proposed section provides that a false declaration or certification filed under this section by any party, lien claimant, attorney or representative may give rise to proceedings under Labor Code section 134 for contempt or Labor Code section 5813 for sanctions.

Subdivision (c) of this proposed section provides that if a party or lien claimant is represented, the attorney or representative shall execute any objection to the declaration of readiness to proceed on behalf of the party. Declarations of readiness to proceed shall be reviewed by the presiding workers' compensation administrative law judge or any workers' compensation administrative law judge designated by the presiding workers' compensation administrative law judge, who will determine on the basis of the facts stated in the declaration whether the objection should be sustained.

Subdivision (d) of this proposed section provides that 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 shall be deemed to have waived any and all objections to proceeding on the issues specified in the declaration, absent extraordinary circumstances.

#### **Amended Section 10252 Expedited Hearing Calendar.**

The name of this amended section has been changed from "Filing the Request" to "Expedited Hearing Calendar."

Former subdivision (a) has been deleted.

Former subdivision (b) has been changed as follows:

~~(b) An applicant (a) Where injury to any part or parts of the body is accepted as compensable by the employer, a party is entitled to an expedited priority hearing and decision upon the filing of an Application for Adjudication of Claim and Request for Expedited Hearing, DWC Form 4, showing of an a bona fide dispute application for adjudication of claim and a declaration of readiness to proceed pursuant to section 10250 establishing a bona fide, good faith dispute as to:~~

~~(1) the employee's entitlement to medical treatment pursuant to Labor Code section 4600;~~

~~(2) the employee's entitlement to, or the amount of, temporary disability indemnity payments or amount;~~

~~(3) appeal from a decision and order of the rehabilitation unit, enforcement thereof, or termination; or~~

~~(3) the employee's entitlement to vocational rehabilitation services, or the termination of an employer's liability to provide these services to an employee; or~~

~~(4) liability for benefits among employers;~~

~~(4) the employee's entitlement to compensation from one or more responsible employers when two or more employers dispute liability as among themselves.~~

Former subdivisions (c) and (d) have been deleted.

Proposed subdivision (b) provides that an expedited hearing may be set upon request where injury to any part or parts of the body is accepted as compensable by the employer and the issues include medical treatment or temporary disability for a disputed body part or parts.

Proposed subdivision (c) provides that a workers' compensation administrative law judge assigned to a case involving a disputed body part or parts may redesignate the expedited hearing as a mandatory settlement conference, receive a pretrial conference statement pursuant to Labor Code section 5502, subd. (e) (3), close discovery, and schedule the case for trial on the issues presented, if the workers' compensation administrative law judge determines, in consultation with the presiding workers' compensation administrative law judge, that the case is not appropriate for expedited determination.

Proposed subdivision (d) provides that grounds for the redesignation of an expedited hearing includes, but is not limited to, cases where the direct and cross-examination of the applicant will be prolonged, or where there are multiple witnesses who will offer extensive testimony.

Proposed subdivision (e) provides that the parties are expected to submit for decision all matters properly in issue at a single trial and to produce all necessary evidence, including witnesses, documents, medical reports, payroll statements and all other matters considered essential in the proof of a party's claim or defense.

Labor Code sections 127 and 55502(b) have been added to the authorities and Labor Code section 5307.3 has been deleted.

**Amended Section 10252.1 Expedited Hearing form.**

The name of this amended section has been changed from “Form” to “Expedited Hearing form.”

This proposed section is the new mandatory expedited hearing form.

Labor Code sections 127 and 55502(b) have been added to the authorities and Labor Code section 5307.3 has been deleted.

**Proposed Section 10253 Settlement Conference Calendar.**

Proposed subdivision (a) provides that in accordance with Labor Code section 5502, subd. (e) (2), the workers’ compensation administrative law judge 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, to 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 by the workers’ compensation administrative law judge, and may submit and decide the dispute on the record pursuant to the agreement of the parties. The workers’ compensation administrative law judge shall not hear sworn testimony at any conference.

Proposed subdivision (b) provides that the workers’ compensation administrative law judge may continue a conference to a time certain to facilitate a specific resolution of the dispute subject to Labor Code section 5502, subd. (e)(1).

Proposed subdivision (c) provides that subject to the provisions of Labor Code section 5502.5, upon a showing of good cause, the workers’ compensation administrative law 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 administrative law 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.

Proposed subdivision (d) provides that absent resolution of the dispute, the parties shall file at the mandatory settlement conference a joint pre-trial conference statement setting forth the issues and stipulations for trial, witnesses, and exhibits.

Proposed subdivision (e) provides that a summary of conference proceedings including the joint pre-trial conference statement and the disposition shall be filed by the workers’ compensation administrative law judge in the adjudication file and shall be served on the parties and lien claimants.

**Proposed Section 10253.1 Pre-trial Conference Statement form.**

This proposed section is the new pre-trial conference statement form.

### **Proposed Section 10254      Priority Conference Calendar.**

Proposed subdivision (a) provides that a priority conference shall 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.

Proposed subdivision (b) provides that upon a showing of good cause, a workers' compensation administrative law 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.

Proposed subdivision (c) provides that to the extent possible, all priority and status conferences in a case shall be conducted by the same workers' compensation administrative law judge. When discovery is complete, or when the workers' compensation administrative law judge determines that the parties have had sufficient time to complete reasonable discovery, the case shall be set for trial as expeditiously as possible.

### **Proposed Section 10256      Setting the Case.**

Proposed subdivision (a) provides that a presiding workers' compensation administrative law judge or a workers' compensation administrative law judge, using sound discretion, may on his or her own motion set any case for hearing.

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

### **Proposed Section 10260      Assignment of Consolidated Cases.**

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

Proposed subdivision (b) provides that any request or petition to consolidate cases involving the same injured worker that are assigned to workers' compensation administrative law judges at different district offices, or that have not been assigned but are venued at different district offices, shall first be referred to the presiding workers' compensation administrative law judges of the district offices to which the cases are assigned. If the presiding workers' compensation administrative law judges are unable to agree on where the cases will be assigned for hearing, the conflict shall be resolved by the court administrator upon referral by one of the presiding judges.

Proposed subdivision (c) provides that any request or petition to consolidate cases involving multiple injured workers that are assigned to workers' compensation administrative law judges at different district offices, or that have not been assigned but are venued at different district offices, shall be referred to the court administrator.

Proposed subdivision (d) provides that in resolving any request or petition to consolidate cases that are assigned to workers' compensation administrative law judges at different district offices, or that have not been assigned but are venued at different district offices, the court administrator shall set the request or petition for a conference regarding the place of hearing. At or after the conference, the court administrator shall determine the place of hearing and may determine the workers' compensation administrative law judge to whom the cases will be assigned, giving consideration to the factors set forth in California Code of Regulations, title 8, section 10589. In reaching any determination, the court administrator may assign a workers' compensation administrative law judge to hear any discovery motions and disputes relevant to discovery in the action and to report their findings and recommendations to the court administrator.

Proposed subdivision (e) provides that any party aggrieved by the determination of the court administrator may request proceedings pursuant to Labor Code section 5310, except that an assignment to a particular workers' compensation administrative law judge shall be challenged only in accordance with the provisions of California Code of Regulations, title 8, sections 10452 and 10453.

#### **Proposed Section 10270      Access to and Viewing Adjudication Files.**

Proposed subdivision (a) provides that a party, a lien claimant, or an attorney or other representative for a party or lien claimant may access and view specific adjudication files in which the party, lien claimant, attorney, or representative is a case participant except as provided for in section 10271.

Proposed subdivision (b) provides that except as otherwise by law or sections 10271 and 10272, any person may inspect the contents of any electronic adjudication file at any district office, whether or not the district office has venue over the case.

Proposed subdivision (c) provides that except as otherwise by law or sections 10271 and 10272, any person may inspect the contents of any paper adjudication file at the district office or office of the appeals board where the file is located during regular office hours.

Proposed subdivision (d) provides that the paper adjudication file and the records and documents contained therein may not be removed from the district office or the office of the appeals board for copying or for any other purpose.

Proposed subdivision (e) provides that copying operators must operate their equipment in the room assigned to them and any person copying a paper adjudication 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.

Proposed subdivision (f) provides that a paper adjudication file shall not be sent from one office to another for inspection except for good cause by order of a workers' compensation administrative law judge or the appeals board and upon the payment of a fee required by California Code of Regulations, title 8, section 9990. At the request of a party to the case, or his or her attorney, a paper adjudication file



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. Paper adjudication files that have been transferred to a record storage center will be made available for inspection by any other person upon payment of the fee required by California Code of Regulations, title 8, section 9990.

### **Proposed Section 10271 Prohibitions on Document Inspection.**

This proposed section provides that the following documents shall not be made available for inspection by any person:

- (1) Decisions, reports, opinions, orders, recommendations and other documents that are in the process of preparation, or, although fully prepared, have not yet been signed and filed.
- (2) Ratings that have not yet been served.
- (3) The working papers, personal notes, deliberation records, and other private notations made by a workers' compensation administrative law judge, commissioner, deputy commissioner or appeals board attorney or legal assistant in the course of hearing or deliberation relating to the case.
- (4) Any legal memorandum or analysis prepared by a workers' compensation administrative law judge, commissioner, deputy commissioner, appeals board attorney or legal assistant to assist a workers' compensation administrative law judge, deputy commissioner or commissioner in his or her deliberations concerning a case.

### **Proposed Section 10272 Sealing Documents.**

Proposed subdivision (a) provides that the presiding workers' compensation administrative law judge or the appeals board may order sealed medical reports, medical records or other documents filed in a case containing references to or discussions of mental or emotional health of any person, sexual habits or practice, use of or addiction to alcohol or other drugs, or other matters of similar character. In a case involving an unrepresented injured employee, the presiding workers' compensation administrative law judge or appeals board may on his, her, or its own motion seal a document or documents after compliance with subdivision (d). Within twenty court days after the order sealing documents, the presiding workers' compensation administrative law judge or the appeals board shall allow the injured worker an opportunity to object to the order.

Proposed subdivision (b)(1) provides that a party requesting that a document or documents be sealed shall file a petition for an order sealing the requested records. The petition must be accompanied by a memorandum of points and authorities and a declaration containing facts sufficient to justify the sealing.

Proposed subdivision (b)(2) provides that the party requesting that a record or records be filed under seal must lodge it with the district office under (d) when the petition is filed or with the appeals board if the matter is pending on petition for reconsideration, removal or disqualification, unless good cause exists for not lodging it. Pending the determination of the petition, the lodged records will be conditionally under seal.

Proposed subdivision (b)(3) provides that if necessary to prevent disclosure, the petition, any opposition, and any supporting documents must be filed in a public redacted version and lodged in a complete version conditionally under seal.

Proposed subdivision (b)(4) provides that if the presiding workers' compensation administrative law judge or appeals board denies the petition to seal, the clerk must return the lodged record to the submitting party and must not place it in the adjudication file.

Proposed subdivision (b)(5) provides that a document filed with the district office or appeals board shall not disclose material contained in a previously filed document that is sealed, conditionally under seal, or subject to a pending petition to seal.

Proposed subdivision (c)(1) provides that the party requesting that a record be filed under seal shall put it in a manila envelope or other appropriate container, seal the envelope or container, and lodge it with the district office or with the appeals board if the matter is pending on petition for reconsideration, removal or disqualification.

Proposed subdivision (c)(2) provides that the envelope or container lodged with the court must be labeled "CONDITIONALLY UNDER SEAL."

Proposed subdivision (c)(3) provides that the party submitting the lodged record shall affix to the envelope or container a cover sheet that:

- (A) Contains a case number and
- (B) States that the enclosed record is subject to a petition to file the record under seal.

Proposed subdivision (c)(4) provides that upon receipt of a record lodged under this rule, the district office or the appeals board shall endorse the affixed cover sheet with the date of its receipt and must retain but not file the record unless ordered to do so.

Proposed subdivision (d) provides that the presiding workers' compensation administrative law judge or the appeals board may order that a document be filed under seal or sealed only if he, she, or it expressly finds facts that establish:

- 1) There exists an overriding public interest that overcomes the right of public access to the record;
- 2) The overriding public interests supports sealing the record;
- 3) A substantial probability exists that the overriding public interest will be prejudiced if the record is not sealed;
- 4) The proposed sealing is narrowly tailored; and
- 5) No less restrictive means exists to achieve the overriding public interest.

Proposed subdivision (e)(1) provides that if an order is made that a document or documents be sealed, the order shall be filed in the record of the proceedings. The order shall set forth the facts that support the findings and direct the sealing of only those documents and pages, or if practicable, portions of those documents and pages, that contain the material that needs to be placed under seal.

Proposed subdivision (e)(2) provides that if the order directs that an entire document shall be sealed, and if the sealed document is contained in a paper adjudication file, the sealed document shall be placed in a sealed envelope, which shall be removed from the file before the file is made available for public inspection. If the sealed document is in an electronic adjudication file, the document shall be marked as sealed. No entirely sealed document in a paper file or an electronic file shall be available for public inspection.

Proposed subdivision (e)(3) provides that if the order directs that a portion or portions of a document be sealed, and if the partially sealed document is contained in a paper adjudication file, the partially sealed document shall be placed in a sealed envelope, however, a version of the document with the sealed portion redacted shall be made available for public inspection. If the sealed document is in an electronic adjudication file, a version of the document with the sealed portion redacted also shall be electronically maintained and shall be made available for public inspection.

Proposed subdivision (f) provides that sealed documents shall be made available for inspection by any party to the case or by his representative, subject to any reasonable conditions and limitations as the presiding workers' compensation administrative law judge or the appeals board may impose.

Proposed subdivision (g) provides that sealed documents shall not otherwise be made available for public inspection except by order of a workers' compensation administrative law judge or the appeals board which shall be made only on a showing that good cause exists to permit the inspection.

#### **Proposed Section 10273      Retention, Return and Destruction of Records and Exhibits.**

Proposed subdivision (a) provides that the Division of Workers' Compensation shall retain for at least fifty years after the filing of case opening documents (i.e., the initial application for adjudication of claim or, where an application has not previously been filed, either a stipulations with request for award or a compromise and release) the following records in a adjudication file, in either electronic or paper form:

- (1) the application for adjudication of claim and any amended application;
- (2) all settlement documents;
- (3) all orders, decisions, or awards;
- (4) all medical-legal reports;
- (5) all permanent and stationary medical reports of treating physicians;
- (6) all rating instructions;
- (7) all formal ratings, summary rating determinations, and consultative ratings; and
- (8) any other documents as determined by the appeals board, the administrative director, the court administrator.

Proposed subdivision (b) provides that after five years from the date of filing of the initial application, the Division of Workers' Compensation may eliminate from the adjudication file and destroy paper or

electronic correspondence and other miscellaneous material or records, including non-permanent and stationary medical reports of treating physicians, not listed in subdivision (a), above.

Proposed subdivision (c) provides that at any time, the Division of Workers' Compensation may eliminate from the adjudication file and destroy any of the following paper or electronic documents:

- (1) extra copies of pleadings, notices, findings, orders, decisions, awards and other documents; and
- (2) any documents filed in violation of section 10395.

Proposed subdivision (d) provides that following a period of fifty (50) years after the filing of the application or other case opening document, the Division of Workers' Compensation may destroy the electronic and/or paper file in each case.

Proposed subdivision (e) provides that any party given leave, pursuant to California Code of Regulations, title 8, section 10603, subd. (a), to file any original document or other pieces of evidence shall, at the time of filing, either (1) arrange for the return of the document or evidence, at the filing party's sole expense, at the conclusion of all proceedings and appeals thereof; or (2) be deemed by not making such arrangements, to have consented to destruction, without notice, of the document or other evidence at the conclusion of all proceedings and appeals thereof.

Proposed subdivision (f) provides that stenographic reporters' notes or electronic sound recording of testimony shall be retained for a period of six (6) years after the taking of them and thereafter may be destroyed or otherwise disposed of.

### **Proposed Section 10275      Recording of Trial Level Proceedings.**

Proposed subdivision (a) provides that for the purposes of this section, "recording" means any photographing, recording, or broadcasting of trial level proceedings using video, film, audio, any digital media or other equipment.

Proposed subdivision (b) provides that except as provided in this rule, trial level proceedings shall not be photographed, recorded, or broadcast. This rule does not prohibit the Division of Workers' Compensation from photographing or videotaping sessions for judicial education or publications and is not intended to apply to closed-circuit television broadcasts solely within the Division of Workers' Compensation or between Division of Workers' Compensation facilities if the broadcasts are controlled by the Division of Workers' Compensation and Division of Workers' Compensation personnel.

Proposed subdivision (c) provides that recording shall be permitted only on written order of the workers' compensation administrative law judge assigned to the case as provided in this subdivision. The workers' compensation administrative law judge in his or her discretion may permit, refuse, limit, or terminate recording.

- (1) Any person who wishes to record a trial level proceeding shall make a written request to the presiding workers' compensation administrative law judge for permission to record the proceeding at least five business days before the proceeding commences unless good cause to shorten time is shown. The workers' compensation administrative law judge assigned to the

proceeding shall rule upon the request. The district office shall promptly notify the parties that a request has been filed.

(2) The workers' compensation administrative law judge may hold a hearing on the request or rule on the request without a hearing.

(3) In ruling on the request, the workers' compensation administrative law judge shall consider the following factors:

- (A) Importance of maintaining public trust and confidence in the workers' compensation system;
- (B) Importance of promoting public access to the workers' compensation system;
- (C) Parties' support of or opposition to the request;
- (D) Nature of the case;
- (E) Privacy rights of all participants in the proceeding, including witnesses;
- (F) Effect on any minor who is a party, prospective witness, or other participant in the proceeding;
- (G) Effect on any ongoing law enforcement activity in the case;
- (H) Effect on any subsequent proceedings in the case;
- (I) Effect of coverage on the willingness of witnesses to cooperate, including the risk that coverage will engender threats to the health or safety of any witness;
- (J) Effect on excluded witnesses who would have access to the televised testimony of prior witnesses;
- (K) Security and dignity of the trial level proceeding;
- (L) Undue administrative or financial burden to the Division of Workers' Compensation or participants;
- (M) Interference with neighboring hearing rooms;
- (N) Maintaining orderly conduct of the proceeding;
- (O) Any other factor the workers' compensation administrative law judge deems relevant.

(4) The workers' compensation administrative law judge's ruling on the request to permit recording is not required to make findings or a statement of decision. The workers' compensation administrative law judge may condition the order permitting recording of the proceedings on the requestor's agreement to pay any increased costs incurred by the Division of Workers' Compensation resulting from recording the proceeding (for example, for additional security). The requestor shall be responsible for ensuring that any person who records the trial level proceedings on their behalf know and follow the provisions of the order and this rule.

(5) The order permitting recordation may be modified or terminated on the workers' compensation administrative law judge's own motion or upon application to the workers' compensation administrative law judge without the necessity of a prior hearing or written findings. Notice of the application and any modification or termination ordered pursuant to the application shall be given to the parties and each person permitted by the previous order to record the proceeding.

(6) The workers' compensation administrative law judge shall not permit recording of the following:

- (A) Proceedings held in chambers which are not transcribed by a hearing reporter;
- (B) Proceedings closed to the public; and
- (C) Conferences between an attorney and a client, witness, or aide, between attorneys, or between counsel and the workers' compensation administrative law judge at the bench, unless transcribed by a hearing reporter.

(7) The workers' compensation administrative law judge may require a demonstration that people and equipment comply with this rule. The workers' compensation administrative law judge may specify the placement of equipment to minimize disruption of the proceedings.

(8) The following rules shall apply to all recording:

- (A) One video recording device and one still photographer shall be permitted.
- (B) The equipment used shall not produce distracting sound or light. Signal lights or devices to show when equipment is operating shall not be visible.
- (C) Microphones and wiring shall be unobtrusively located in places approved by the workers' compensation administrative law judge and shall be operated by one person.
- (D) Operators shall not move equipment or enter or leave the courtroom while the proceeding is in session, or otherwise cause a distraction.
- (E) Equipment or clothing shall not bear the insignia or marking of a media agency.

(9) If two or more people request recordation of a proceeding, they shall file a statement of agreed arrangements. If they are unable to agree, the workers' compensation administrative law judge may deny a request to record the proceeding.

Proposed subdivision (d) provides that any violation of this rule or an order made under this rule is an unlawful interference with the proceedings may be the basis for an order terminating recording, a citation for contempt, or an order imposing monetary or other sanctions as provided by law.

Proposed subdivision (e) provides that notwithstanding (a) through (d), a workers' compensation administrative law judge may permit inconspicuous personal recording devices to be used by parties in a courtroom to make sound recordings as personal notes of the proceedings. A person proposing to use a recording device shall obtain advance permission from the workers' compensation administrative law judge before recording the proceeding. The recording shall not be used for any purpose other than as personal notes, and shall not constitute evidence as to any matter recorded. The right on any individual to use a personal recording device shall be suspended if, in the workers' compensation administrative law judge's sole discretion, it appears that (1) the continued recording of the proceedings will inhibit any party or witness from participation in the proceeding; or (2) the recording is done in a manner that threatens to disrupt the proceeding.

### **Proposed Section 10280 Walk-Through Documents.**

Proposed subdivision (a) provides that "walk-through" document is a document that is presented to a workers' compensation administrative law judge for immediate action. Notwithstanding the provisions

of section 10250 (relating to the filing of declarations of readiness) and section 10544 (relating to notices of hearing), the following provisions shall govern walk-through documents.

Proposed subdivision (b) provides that each district office will have a designee of the presiding workers' compensation administrative law judge available to assign walk-through cases from 8:00 a.m. to 11:00 a.m. and 1:00 p.m. to 4:00 p.m. on court days.

Proposed subdivision (c) provides that the following documents may be submitted on a walk-through basis: (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.

Proposed subdivision (d) provides that the following procedures shall be followed for filing walk-through documents:

(1) A walk-through settlement document (i.e., a compromise and release or a stipulations with request for award), and all supporting medical reports and other supporting documents not previously filed, shall be filed directly with the workers' compensation administrative law judge at the date and time of the walk-through. The party presenting the walk-through settlement shall use the appropriate form, cover sheet, and document separator sheet. Permanent and stationary medical or medical-legal reports shall be indicated as such. In addition, each walk-through settlement document (i.e., a compromise and release or a stipulations with request for award) shall be accompanied by a proof of service showing that the settlement document was served on all other parties to the settlement, on any defendant not executing the settlement who may be liable for the payment of additional compensation, and on all lien claimants whose liens have not been resolved.

(A) A case opening settlement document being submitted for a walk-through shall be submitted no later than noon (12:00 p.m.) of the court day before any action on the walk-through, and shall be designated as a walk-through document. All documents in support of the settlement document shall be submitted at the walk-through with the assigned judge.

(2) A walk-through petition (i.e., a petition for vocational rehabilitation attorney's fees, a petition for deposition attorney's fees, or a petition to compel attendance at a medical examination or deposition) and all other documents relating to the walk-through petition, including any supporting documentation shall be filed directly with the workers' compensation administrative law judge at the date and time of the walk-through. The party presenting the walk-through petition shall use the appropriate form, cover sheet, and document separator. In addition, at the date and time of the walk-through, the party filing the walk-through petition shall file a proof of service directly to the workers' compensation administrative law judge, as follows:

(A) For a petition for attorney's fees for representation of the applicant in vocational rehabilitation, a proof of service showing service on the injured worker and the defendant alleged to be liable for paying the fees.

(B) For a petition for attorney's fees for representation of the applicant at a deposition, a proof of service showing service on the injured worker and the defendant alleged to be liable for paying the fees.

(C) For a petition to compel attendance at a medical examination or deposition, a proof of service showing service on the injured worker, the injured worker's attorney, and all defendants.

Proposed subdivision (e) provides that when appearing for the walk-through proceeding, the party filing the walk-through document shall appear before the district office staff person designated by the presiding workers' compensation administrative law judge to assign the walk-through document to a workers' compensation administrative law judge. The filing party shall then appear before the assigned judge. If the assigned judge is unavailable for any reason, the filing party shall then proceed to the presiding workers' compensation administrative law judge for possible reassignment to another judge.

Proposed subdivision (f) provides that a workers' compensation administrative law 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 administrative law judge is presented with so many walk-through settlement documents that review of them will interfere with the cases scheduled before him or her for hearing, the judge may refer the walk-through settlement to the presiding judge for possible reassignment to another judge.

Proposed subdivision (g) provides that a walk-through document may be acted on only by a workers' compensation administrative law judge at the district office that has venue. If an injured worker has existing cases at two or more district offices that have venue, a walk-through document may be filed at any office having venue over an existing case that is a subject of the walk-through document. An existing case is a case that has been filed and assigned a case number prior to the filing of the walk-through document.

Proposed subdivision (h) provides that a walk-through document may be acted on by any workers' compensation administrative law judge except as follows:

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

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

Proposed subdivision (i) provides that a workers' compensation judge who is presented with a walk-through petition for attorney's fees or petition to compel attendance shall issue an order in compliance with section 10349.

### **Proposed Section 10281      Emergency Petitions for Stay.**

Proposed subdivision (a) provides that a party may present to the presiding workers' compensation administrative law judge of the district office having venue a petition to stay an action by another party pending a hearing.



Proposed subdivision (b) provides that each district office will have a designee of the presiding workers' compensation administrative law judge available to assign petitions for stay from 8:00 a.m. to 11:00 a.m. and 1:00 p.m. to 4:00 p.m. on court days.

Proposed subdivision (c) provides that a party who walks through a petition to stay an action shall provide notice to the opposing party or parties no later than 10:00 a.m. of the immediately preceding court day. This notice shall: (1) state with specificity the nature of the relief to be requested by the petition to stay; and (2) state the date, time, and place that the petition to stay will be presented. A copy of the petition to stay shall be attached to the notice. The notice shall be given by either fax or e-mail. If notice by fax or e-mail fails, or if an opposing party's fax number or e-mail address are unknown, notice shall be given in the manner best calculated to expeditiously and timely advise the opposing party of the information set forth in subdivisions (c)(1) and (c)(2), including notice by phone or by overnight mail or delivery service. First-class mail shall not be utilized for notice of a petition to stay an action.

Proposed subdivision (d) provides that a petition to stay an action shall be accompanied by a declaration regarding notice stating under penalty of perjury: (1) the notice given, including the date, time, manner, and name of the party informed; (2) the relief sought; and (3) whether opposition is expected. In addition, if the petitioner was unable to give timely notice to the opposing party, the declaration under penalty of perjury also shall state that the petitioner in good faith attempted to inform the opposing party but was unable to do so, specifying the efforts made to inform the opposing party.

Proposed subdivision (e) provides that upon the receipt of a proper petition to stay an action, the presiding workers' compensation or his or her designee shall, in his or her discretion, either: (1) deny the petition; (2) grant a temporary stay and set the petition for a formal hearing; or (3) set the petition for a formal hearing, without either denying the petition or granting a temporary stay.

**Proposed Section 10290      Petition Appealing Order Granting or Denying Petition for Order Requiring Employee to Select Employer-Designated Physician.**

Proposed subdivision (a) provides that upon receipt of a timely petition appealing a decision granting or denying a change of primary treating petition, pursuant to California Code of Regulations, title 8, section 9786, subd. (e) (2) or (e) (3), the matter shall be referred to a workers' compensation administrative law judge for hearing and determination of the issues raised. The petition shall be accompanied by a copy of the administrative director's order, a declaration of readiness, an application for adjudication if one has not been previously filed, and any other documents deemed relevant that have not been previously filed. A party aggrieved by the determination of the workers' compensation administrative law judge may seek relief therefrom within the same time and in the same manner specified for petitions for reconsideration.

Proposed subdivision (b) provides that any party aggrieved by an order issued by a workers' compensation administrative law judge pursuant to a referral under California Code of Regulations, title 8, section 9786, subd. (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.

**Proposed Section 10291      Petition Appealing Notice of Compensation Due.**

Proposed subdivision (a) provides that the petition appealing notice of compensation due shall be served on the injured worker or dependent and on the audit unit, concurrently with its filing.

Proposed subdivision (b) provides that the petition appealing notice of compensation due shall specify the factual and legal basis for the petition and shall include the audit unit's file number. The petition appealing 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.

Proposed subdivision (c) provides that if an application for adjudication has not been previously filed, venue shall be designated and determined in accordance with Labor Code section 5501.5 and California Code of Regulations, title 8, section 10409. If an application for adjudication has been previously filed, the petition appealing notice of compensation due shall be filed at the district office having venue and the case number assigned to the application for adjudication shall be assigned to the petition.

Proposed subdivision (d) provides that an appeal of notice of compensation due shall be set for a hearing before a workers' compensation administrative law judge within forty-five (45) days of filing unless the employee's claim is already before a workers' compensation administrative law judge 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 hearing and copies of subsequent notices of orders issued in the case. Following the hearing, the workers' compensation administrative law 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.

Proposed subdivision (e) provides that 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 injured worker is represented by an attorney, the workers' compensation administrative law judge may determine the amount of attorney fees reasonably incurred in resisting the appeal of notice of compensation due and may assess 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).

### **Proposed Section 10293      Petition Appealing Order of the Rehabilitation Unit.**

Proposed subdivision (a) provides that appeals from decisions of the rehabilitation unit of the Division of Workers' Compensation shall be commenced as follows:

- (1) if an application for adjudication is already on file, by filing and serving a declaration of readiness and a petition setting forth the reason for the appeal;
- (2) if no application for adjudication is on file, by filing and serving an application for adjudication, a declaration of readiness, and a petition setting forth the reason for the appeal.

Proposed subdivision (b) provides that the party appealing the rehabilitation unit decision and the party opposing the appeal shall file and serve any documents that the parties deems relevant that have not already been filed in the rehabilitation unit case file.

Proposed subdivision (c) provides that if an application for adjudication has not been previously filed, venue shall be designated and determined in accordance with Labor Code section 5501.5 and California Code of Regulations, title 8, section 10409. If an application for adjudication has been previously filed,

the petition appealing a decision of the rehabilitation unit shall be filed at the district office having venue and the case number assigned to the application for adjudication shall be assigned to the petition. Proposed subdivision (d) provides that a petition appealing a decision of the rehabilitation unit shall be filed within twenty (20) days from the date of the issuance of the rehabilitation unit decision.

**Proposed Section 10294      Petition Appealing Determination of a Return to Work Reimbursement.**

Proposed subdivision (a) provides that an eligible employer may appeal the administrative director's notice under section 10119, subd. (i) (1) and (2), by filing a "Petition Appealing Administrative Director's Reimbursement Allowance," setting forth the basis of the appeal. The petition shall be filed within twenty (20) days from the date of the issuance of the administrative director's notice.

Proposed subdivision (b) provides that if an application for adjudication has been previously filed, the petition appealing the administrative director's notice shall be filed at the district office having venue and the case number assigned to the application for adjudication shall be assigned to the petition. If an application for adjudication has not been previously filed, an application shall be filed together with the petition, and venue shall be designated and determined in accordance with Labor Code section 5501.5 and California Code of Regulations, title 8, section 10409.

Proposed subdivision (c) provides that a "Petition Appealing Administrative Director's Reimbursement Allowance" shall be accompanied by a declaration of readiness.

Proposed subdivision (d) provides that a copy of the petition shall be concurrently served on the administrative director.

**Proposed Section 10294.5      Petition Appealing Determination Regarding Supplemental Job Displacement Benefits.**

Proposed subdivision (a) provides that either party may appeal the determination and order of the administrative director issued under California Code of Regulations, title 8, section 10133.54 by filing a petition together with a declaration of readiness to proceed pursuant to section 10250 within twenty calendar days of the issuance of the decision or within twenty days after a request is deemed denied pursuant to California Code of Regulations, title 8, section 10133.54, subd. (f), except that the time for filing shall be extended in accordance with California Code of Regulations, title 8, sections 10507 and 10508. The petition shall set forth the specific factual and legal basis for the appeal.

Proposed subdivision (b) provides that if an application for adjudication has been previously filed, the petition appealing the administrative director's notice shall be filed at the district office having venue and the case number assigned to the application for adjudication shall be assigned to the petition. If an application for adjudication has not been previously filed, an application shall be filed together with the petition, and venue shall be designated and determined in accordance with Labor Code section 5501.5 and California Code of Regulations, title 8, section 10409.

Proposed subdivision (c) provides that a copy of the petition shall be concurrently served on the administrative director.

**Proposed Section 10295      Mandatory Arbitration.**

Proposed subdivision (a) provides that this rule applies to injuries occurring on or after January 1, 1990.

Proposed subdivision (b) provides that any application for adjudication that lists one or more disputes involving an issue set forth in Labor Code section 5275, subd. (a), shall be accompanied by an arbitration submittal form. The arbitration submittal form shall indicate that either:

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

Proposed subdivision (c) provides that if the parties have agreed to an arbitrator pursuant to Labor Code section 5271, subd. (c), the presiding workers' compensation administrative law 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.

Proposed subdivision (d) provides that if the arbitration submittal form requests a panel pursuant to Labor Code section 5271, subd. (b), the presiding workers' compensation administrative law 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, subd. (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 administrative law judge shall randomly select two additional arbitrators to add to the panel in accordance with the selection process set forth in Labor Code section 5721, subd. (c). Each of the parties shall strike two arbitrators from the list and return it to the presiding workers' compensation administrative law 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 administrative law 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 administrative law judge shall randomly select an arbitrator from the remaining panelists.

Proposed subdivision (e) provides that if the parties to the dispute have stricken all the arbitrators from the panel, the presiding workers' compensation administrative law judge shall, within six (6) days of receipt of the last of the returned lists, serve on each of the parties to the dispute a new list of five arbitrators and any additional arbitrators required by Labor Code section 5271, subd. (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 administrative law 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 administrative law judge.

Proposed subdivision (f) provides that the parties shall provide all necessary materials to the arbitrator. Any paper file shall remain in the custody of the district office.

Proposed subdivision (g) provides that a copy of any final decision, order or award from the arbitrator, together with a copy of the record developed as set forth in Labor Code sections 5276 and 5277, shall be filed with the presiding workers' compensation administrative law judge of the district office having

venue. The district office shall scan the copies of the arbitrator's the decision, order or award and record into the EAMS adjudication file and, after scanning, shall destroy the copies.

### **Proposed Section 10296 Voluntary Arbitration.**

Proposed subdivision (a) provides that at any time, the parties may agree to submit any issue for arbitration pursuant to Labor Code section 5275, subdivision (b), by submitting an arbitration submittal form that indicates that the parties have selected an arbitrator pursuant to Labor Code section 5271, subdivision (a), and by filing an application for adjudication if one has not been previously filed.

Proposed subdivision (b) provides that within six (6) days of receipt of the arbitration submittal form, the presiding workers' compensation administrative law judge shall order the issues in dispute submitted for arbitration pursuant to Labor Code sections 5272, 5273, 5276 and 5277.

Proposed subdivision (c) provides that 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, subdivisions (b) and (c), as set forth in section 10295.

Proposed subdivision (d) provides that the parties shall provide all necessary materials to the arbitrator.

Proposed subdivision (e) provides that a copy of any final decision, order or award from the arbitrator, together with a copy of the record developed as set forth in Labor Code sections 5276 and 5277, shall be filed with the presiding workers' compensation administrative law judge of the district office having venue. The district office shall scan the copies of the arbitrator's decision, order or award and the record into the EAMS adjudication file and, after scanning, shall destroy the copies.

### **Proposed Section 10297 Arbitration Submittal form.**

This proposed section is the mandatory arbitration submittal form.

## **DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION**

The Court Administrator has made the following initial determinations:

- Significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None. The only entities subject to these administrative penalties are those who have knowingly and unreasonably delayed or refused compensation to injured workers with a frequency indicating a general business practice.
- Adoption of these regulations will not: (1) create or eliminate jobs within the State of California, (2) create new businesses or eliminate existing businesses within the State of California, or (3) affect the expansion of businesses currently doing business in California.
- Effect on Housing Costs: None.

- Cost impacts on representative private persons or business: The proposed regulations will not have a significant adverse economic impact on representative private persons or directly affected businesses. The only entities subject to these administrative penalties are those who have knowingly and unreasonably delayed or refused compensation to injured workers with a frequency indicating a general business practice.

## **EFFECT ON SMALL BUSINESS**

The Administrative Director has determined that the proposed regulations will not affect small businesses. The businesses that are subject to these regulations are insurers, self-insured employers (who must by regulation have substantial net worth and income) and third party administrators, all of whom do not qualify as “small business.”

## **FISCAL IMPACTS**

- Costs or savings to state agencies or costs/savings in federal funding to the State: The proposed regulations may impose costs on State agencies. (State government accounts for about 3% of the occupational injuries and illnesses.) Any such costs are, however, are non-reimbursable since the requirement on an employer to comply with California’s workers’ compensation laws is not unique to State agencies and applies to all employers alike, public and private. All penalties collected must be deposited into the Workers’ Compensation Return-to-Work Fund established pursuant to Labor Code § 139.48, to promote the early and sustained return to work of employees following work-related injuries or illnesses. The proposed regulations will not affect any federal funding.
- Local Mandate: None. The proposed regulations will not impose any new mandated programs or increased service levels on any local agency or school district.
- Cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None. (See “Local Mandate” section above.)
- Other nondiscretionary costs/savings imposed upon local agencies: None. (See “Local Mandate” section above.)

## **CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code § 11346.5(a)(13), the Administrative Director must determine that no reasonable alternative considered or that has otherwise been identified and brought to the Administrative Director’s attention would be more effective in carrying out the purpose for which the actions are proposed or would be as effective and less burdensome to affected private persons than the proposed actions.

The Administrative Director invites interested persons to present statements or arguments with respect

to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

## **PUBLIC DISCUSSIONS OF PROPOSED REGULATIONS**

Pursuant to Government Code § 11346.45, the text of the draft proposed regulations was made available for pre-regulatory public comment through the Division's Internet message board (the DWC Forums).

### **AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, RULEMAKING FILE AND DOCUMENTS SUPPORTING THE RULEMAKING FILE / INTERNET ACCESS**

An Initial Statement of Reasons and the text of the proposed regulations in plain English have been prepared and are available from the contact person named in this notice. The entire rulemaking file will be made available for inspection and copying at the address indicated below.

As of the date of this notice, the rulemaking file consists of the notice, the initial statement of reasons, the proposed text of the regulations, pre-rulemaking comments, and the Form 399. Also included are studies and documents relied upon in drafting the proposed regulations.

In addition, the Notice, Initial Statement of Reasons, and proposed text of regulations may be accessed and downloaded from the Division's website at [www.dir.ca.gov](http://www.dir.ca.gov). To access them, click on the "Proposed Regulations - Rulemaking" link and scroll down the list of rulemaking proceedings to find the current "Rules of the Court Administrator" rulemaking link.

Any interested person may inspect a copy or direct questions about the proposed regulations and any supplemental information contained in the rulemaking file. The rulemaking file will be available for inspection at the Department of Industrial Relations, Division of Workers' Compensation, 1515 Clay Street, Oakland, California, between 9:00 a.m. and 4:30 p.m., Monday through Friday. Copies of the proposed regulations, initial statement of reasons and any information contained in the rulemaking file may be requested in writing to the contact person.

### **CONTACT PERSON**

Nonsubstantive inquiries concerning this action, such as requests to be added to the mailing list for rulemaking notices, requests for copies of the text of the proposed regulations, the Initial Statement of Reasons, and any supplemental information contained in the rulemaking file may be requested in writing at the same address. The contact person is:

Maureen Gray  
Regulations Coordinator  
Department of Industrial Relations  
Division of Workers' Compensation  
Post Office Box 420603  
San Francisco, CA 94142

E-mail: [mgray@dir.ca.gov](mailto:mgray@dir.ca.gov)

The telephone number of the contact person is (510) 286-7100.

### **BACKUP CONTACT/PERSON CONTACT PERSON FOR SUBSTANTIVE QUESTIONS**

In the event the contact person is unavailable, or to obtain responses to questions regarding the substance of the proposed regulations, inquiries should be directed to the following backup contact persons:

Destie Overpeck ([doverpeck@dir.ca.gov](mailto:doverpeck@dir.ca.gov))  
Division of Workers' Compensation  
Post Office Box 420603  
San Francisco, CA 94142

The telephone number of the backup contact person is (510) 286-7100.

### **AVAILABILITY OF CHANGES FOLLOWING PUBLIC HEARING**

If the Administrative Director makes changes to the proposed regulations as a result of the public hearing and public comment received, the modified text with changes clearly indicated will be made available for public comment for at least 15 days prior to the date on which the regulations are adopted.

### **AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the website: [www.dir.ca.gov](http://www.dir.ca.gov)

### **AUTOMATIC MAILING**

A copy of this Notice, the Initial Statement of Reasons, and the text of the regulations, will automatically be sent to those interested persons on the Administrative Director's mailing list.

If adopted, the regulations as amended will appear in Title 8, California Code of Regulations, commencing with section 10210.