

The Workers' Compensation Appeals Board (WCAB) and the Division of Workers' Compensation (DWC) are each posting, on their respective web forums, separate packages of proposed regulations for informal public comment. In large part, these regulations relate, directly or indirectly, to the Electronic Adjudication Management System (EAMS), the new state-wide electronic case management and case file system that will be implemented beginning sometime in the summer or fall of 2008. Some of the proposed regulations, however, are not EAMS-related.

Some existing WCAB regulations are being proposed for deletion (as reflected by complete "~~strike-throughs~~"). For the most part, these deleted WCAB regulations are tentatively being moved (with or without significant change) to become regulations of the Court Administrator. Where possible, the current WCAB rule has been cross-referenced with the proposed Court Administrator rule.

Some existing WCAB regulations do not appear in either of the proposed regulation packages. This means either: (1) there is no present intention to amend, delete, or move them; or (2) the issue of whether there will be any action with respect to them is still under consideration.

Also, in the weeks and months to come, both the WCAB and DWC will likely be posting additional proposed regulations (predominately not related to EAMS) on their web forums.

The WCAB emphasizes that the regulation packages that both it and DWC are posting are tentative. As noted in the WCAB's general message on its forum, before any rulemaking process is formally put into motion by the publication of specific regulations and the scheduling of public hearings on those proposals, we want to hear from you, the public, regarding the proposals and we also want you to be able to benefit from reading and responding to the comments of others. We believe that this informal comment approach will help us refine the proposed regulations and aid us in the early identification of any serious problems or concerns. This approach also will expedite the regulatory process that must be implemented following this informal public comment period.

It is not feasible here to provide a detailed description of EAMS and how it will function. However, a brief overview of EAMS will be provided to furnish some background and context that, hopefully, will permit members of the public to offer informed and reasoned comments regarding the proposed EAMS-related regulations.

When EAMS is fully implemented (or "goes live"), all new workers' compensation case files will be created and maintained electronically. Also, where there has been a request for action on a previously existing paper case file (i.e., a "legacy file"), the legacy file will be scanned and then be maintained electronically. However, inactive legacy cases (i.e., those not resolved by settlement or decision and for which no request for action has been received) will likely remain on paper for some period after EAMS goes live.

Once EAMS goes live, most members of the workers' compensation community (i.e., all attorneys, insurance carriers, self-insureds, and third-party administrators, plus most lien claimants) will be required to file all pleadings, medical reports, liens, and other documents electronically – in both new cases and legacy cases. However, unrepresented employees or dependents – and unrepresented uninsured employers – will be allowed to file conventionally in paper form, although they may elect to file electronically.

Electronically filed documents will come in as electronic forms (“e-forms”) and/or as attachments to e-forms, by linking to EAMS through the website of the Department of Industrial Relations (www.dir.ca.gov) using a standard web browser. For the attachments, PDF format will be required. The use of a scanner may be necessary to create electronic images of documents that are not in the filing party's word processing system. Because electronic documents will be filed in cyberspace, there will be no requirement that they be filed in a particular district office. However, the district office where hearings are held or other action is taken in a case file will be subject to the same longstanding venue rules.

For those permitted to file conventionally, their paper documents may be filed with any district office, not just the district office having venue. After the paper documents are scanned, they will be destroyed.

Case participants (i.e., any party, lien claimant, or an attorney or other representative for a party or lien claimant involved in a particular case) will be able to see everything in an EAMS case file that they can see in a paper case file presently. However, to access and view the EAMS case file, the case participant must link to EAMS through the DIR website and enter the case participant's individual login and password, which will be provided by DWC. DWC will issue a login and password to an individual only after he or she has registered and has successfully completed DWC's on-line training course about EAMS. Although individual logins and passwords will be required to access and view individual EAMS case files, logins and passwords will not be required to electronically file documents with EAMS.

A member of the general public who is not a case participant may search for a limited set of basic information regarding cases within EAMS by linking to EAMS through the DIR website. However, a member of the general public who is not a party to a case will use a different route to access to EAMS public records, as they do now, even if he or she has an EAMS login and password for other EAMS cases.

Multiple internal users (i.e., DWC and WCAB staff) and external users (e.g. attorneys, claims administrators, etc.) will be able to access and view an EAMS case file at the same time.

Also, access to EAMS will be available at the district offices, although details have not yet been finalized. DWC and WCAB staff will have access to EAMS in their offices and hearing rooms. DWC is considering several options for external users to access EAMS at the district offices. For example, each office may have kiosks through which injured

workers can access their case files on-line. Also, wireless internet access may be made available so that attorneys and others who bring in laptops can use their own equipment to log into EAMS.

In addition, EAMS may be used to perform a variety of other functions, including but not limited to setting hearings, assigning judges, serving notices of hearings, and serving findings, orders, decisions and awards.

Prior to the EAMS go-live date, there will be pilot programs to test the system throughout the state. Additionally, there will be training and information made available to the workers' compensation community with reasonable lead time prior to mandatory implementation.

There will be no fees for obtaining EAMS logins and passwords or for filing and accessing documents over the Internet using EAMS.

Please once again review the basic rules for participation on this forum set forth on the WCAB forum page, and then read and comment on the proposed package below. We thank you in advance for your participation.

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§10301. Definitions.

As used in this chapter:

- (a) “Administrative Director” means the Administrative Director of the Division of Workers’ Compensation or his or her designee.
- (b) “Appeals Board” means the commissioners and deputy commissioners of the Workers’ Compensation Appeals Board acting en banc or in panels.
- (c) “Applicant” means any person asserting a right to relief under the provisions of Labor Code Section 5300.
- (d) “Application for Adjudication” or “application” means the initial pleading that asserts a right to relief under the provisions of Labor Code Section 5300.
- (e) “Case file” means a Workers’ Compensation Appeals Board adjudication file maintained by the Division of Workers’ Compensation in either paper or electronic format, including a temporary paper case file.
- (f) “Court Administrator” means the administrator of the workers’ compensation adjudicatory process at the trial level, or his or her designee.
- ~~(e)~~(g) “Declaration of Readiness to Proceed” or “Declaration of Readiness” means a request for a proceeding before the Workers’ Compensation Appeals Board.
- ~~(f)~~(h) “Declaration of Readiness to Proceed to Expedited Hearing” means a request for a proceeding before the Workers’ Compensation Appeals Board pursuant to Labor Code section 5502(b).
- ~~(g)~~(i) “Defendant” means any person against whom a right to relief is claimed.
- (j) “Document” is a pleading, petition, medical report, record, declaration, exhibit, or another filing submitted by a party or lien claimant, or by a representative of a party or lien claimant on that party or lien claimant’s behalf. A “document” may be in paper or electronic form, 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.”
- (k) “Document coversheet” means the form placed on top of a document or set of documents being filed at one time in a specific case and that identifies the date of filing, the case number (if previously assigned), the case name (i.e., the injured employee’s name), and the unit to which the document(s) is/are being directed. The “document coversheet” also may identify the title(s) or type(s) of the document(s) being filed, and may specify whether the document or documents are being filed on a walk-through basis.
- (l) “Document separator sheet” means the form that identifies the title, the author, and the date of each document and each attachment being filed and that is: (1) placed on top of each individual document, when one or more documents are being filed at the same

time in the same case; and (2) placed on top of each individual attachment to each document being filed, when an individual document has one or more attachments.

(m) “Electronic Adjudication Management System” or “EAMS” means the computer-based case management system used by the Division of Workers’ Compensation to electronically store and maintain the Workers’ Compensation Appeals Board’s case files and to perform other case management functions.

(n) “Electronic filing” or “e-filing” means the electronic transmission of a document into EAMS for purposes of filing, in accordance with the provisions of these rules.

(o) “Electronic facsimile” or “e-fax” means a document that has been electronically served by the Workers’ Compensation Appeals Board using the dedicated fax servers within EAMS.

(p) “Electronic form” or “e-form” is a non-downloadable form within EAMS, accessed and completed on-line using a standard web browser, that is submitted through EAMS for electronic filing.

~~(h)~~(q) To “file” a document means: (1) to electronically transmit a document to EAMS for the purpose of having it included in the Workers’ Compensation Appeals Board case file or (2) to deliver the a document or cause it to be delivered to the Workers’ Compensation Appeals Board district office with venue or to the Appeals Board for the purpose of having it included in the Workers’ Compensation Appeals Board case file.

~~(i)~~(r) “Hearing” means any trial, mandatory settlement conference, rating mandatory settlement conference, status conference, lien conference, or priority conference.

(s) “Legacy case” or “legacy file” means a paper case file that existed before EAMS.

~~(j)~~(t) “Lien claimant” means any person claiming payment under the provisions of Labor Code section 4903 or 4903.1.

(u) “Lien conference” means a proceeding held 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.

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

(w) “OCR form” (i.e., optical character recognition form) means a paper form designed to be scanned so that its information is automatically extracted and stored in EAMS.

~~(l)~~(x) “Party” means: ~~an Applicant or Defendant~~, (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 applicant’s case of the injured employee or the dependent(s) of an injured employee has been settled by way of a compromise and release, resolved or

~~where~~ (B) the ~~applicant~~ injured employee or the dependent(s) of an injured employee ~~chooses~~ choose(s) not to proceed with his, ~~or~~ her, or their case.

~~(m)~~(y) “Petition” means any request for action by the Workers’ Compensation Appeals Board other than an Application for Adjudication, an Answer or a Declaration of Readiness to Proceed.

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

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

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

~~(q)~~(bb) “Regular hearing” means a trial.

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

(dd) “S-signature” means a representation of a person’s signature on an electronically filed document consisting of the notation “/s/” followed by the person’s typed name (e.g., “/s/ John Doe”).

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

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

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

(hh) “Venue” means the district office of the Workers’ Compensation Appeals Board, 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.

~~(v)~~(ii) “Workers’ Compensation Appeals Board” means the Appeals Board, commissioners, deputy commissioners, presiding workers’ compensation judges and workers’ compensation judges.

Authority cited: Sections 133 and 5307, Labor Code.

~~§10306. Index of Cases.~~

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

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

NOTE: See proposed Rule 10215.

~~§10308. Official Address Record.~~

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

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

NOTE: See proposed Rule 10217.

§10346. Assignment or Transfer of Cases.

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

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

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

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

~~§10347. Assignment of Judges.~~

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

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

~~§10390. Place and Time of Filing Documents.~~

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

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

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

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

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

NOTE: See proposed Rule 10228.

§10391. Filing of Copies of Documents.

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

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

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

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

NOTE: See proposed Rule 10236.

§10392. Form and Size Requirements for Filed Documents.

~~All pleadings, letters, petitions, briefs and notices filed with the Workers' Compensation Appeals Board by any party or lien claimant shall be on 8 ½ x 11 inch paper with two holes punched at the top and centered to fit the Workers' Compensation Appeals Board file. All documents shall include in the heading the name of the injured employee and the Workers' Compensation Appeals Board case number. All pleadings, petitions and briefs shall be double spaced, except that quotations may be single spaced.~~

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

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

NOTE: See proposed Rule 10232.

§10393. Signatures on Electronically Filed Documents.

(a) If a document is electronically filed, an electronically affixed or attached s-signature or an electronic image of a written signature shall constitute an original signature on the document.

(b) For any electronically filed application, answer, declaration of readiness, application for Subsequent Injuries Benefits Trust Fund benefits, or lien claim, the person electronically filing the document shall utilize the appropriate e-form within EAMS and shall:

- (1) Affix an s-signature to the e-form; and
- (2) File the e-form using the filer's EAMS login and password.

(c) For any electronically filed compromise and release agreement or stipulation with request for award:

(1) The filing party shall submit a fully completed compromise and release agreement e-form or stipulation with request for award e-form, as applicable, and the filing party shall:

- (A) Affix an s-signature to the e-form compromise and release agreement or the stipulation with request for award; and
- (B) File the e-form compromise and release agreement or the stipulation with request for award using the filer's EAMS login and password.

(2) The filing party also shall attach a scanned copy of the original fully executed compromise and release agreement or stipulation with request for award as an attachment to the compromise and release agreement e-form or the stipulation with request for award e-form.

(3) By filing a scanned copy of the original fully executed compromise and release agreement or stipulations with request for award, the filer shall be deemed to be certifying that:

(A) the filer has the consent from all other parties to the compromise and release agreement or the stipulations with request for award to electronically file the fully executed copy;

(B) the filer has the original fully executed compromise and release agreement or stipulations with request for award in the his/her possession or control; and

(C) the scanned copy accurately represents the content of the original, without additions, deletions, or other alterations.

(d) For any electronically filed petition, miscellaneous stipulation, or other document that requires multiple signatures, notarization, or a verification or other declaration under penalty of perjury (with the exception of electronically filed medical reports, medical-legal reports, or deposition transcripts) the person electronically filing the document shall:

- (1) Submit a fully completed e-form for unstructured documents from within EAMS;

- (2) File the e-form for unstructured documents using the filer's EAMS login and password; and
- (3) Attach a scanned copy of the original fully executed document as an attachment to the e-form for unstructured documents.

Authority cited: Sections 133 and 5307, Labor Code.

~~§10395. Improper Filing of Documents.~~

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

- ~~(a) Letters to opposing parties or counsel;~~
- ~~(b) Subpoenas;~~
- ~~(c) Notices of taking deposition;~~
- ~~(d) Medical appointment letters;~~
- ~~(e) Proofs of service ordered pursuant to Rule 10500;~~
- ~~(f) Medical reports, except as required by Rules 10608 and 10615;~~
- ~~(g) Any other document which is not required to be filed by the Rules of Practice and Procedure of the Workers' Compensation Appeals Board or which does not request action by the Workers' Compensation Appeals Board.~~

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

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

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

NOTE: See proposed Rule 10235.

~~§10396. Duty to Furnish Correct Address.~~

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

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

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

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

NOTE: See proposed Rule 10217.

§10400. Applications.

(a) Proceedings for adjudication of rights and liabilities before the Workers' Compensation Appeals Board shall be initiated by the filing of an Application for Adjudication, Compromise and Release Agreement or Stipulations with Request for Award. The filing party shall serve a copy on all other parties.

~~Applications for Adjudication shall be filed with the Workers' Compensation Appeals Board office with the proper venue. Upon filing, the application shall be assigned a case number and placed in the case file. The person filing the application shall be notified that the application has been filed and shall be given a case number that he or she shall serve on all other parties and lien claimants.~~

(b) For purposes of this section, an "application" shall include a case opening Compromise and Release Agreement or Stipulations with Request for Award.

(c) If the application is being filed by a person or entity subject to section 10229(c), the application shall be filed utilizing the appropriate e-form within EAMS. If the application is being filed by a person or entity not subject to section 10229(c), a paper application may be filed. In either case, if the application being filed is an initial application, the filing person or entity shall designate a venue in accordance with section 10409.

(d) Upon the filing of an initial application, the application shall be assigned a case number and a venue. If a case number has been previously assigned, that number shall be affixed to the application by the filing person or entity.

(e) The person or entity filing the application shall be notified by EAMS that the application has been filed and, if there is no previously assigned case number, shall be notified of the assigned case number and venue.

(f) If the person or entity filing the application is subject to section 10229(c), the person or entity shall, after receiving notification that the application has been filed (and, for an initial application, notification of the assigned case number and venue), download a copy of the application from EAMS and serve a copy of the application (and, for an initial application, notification of the assigned case number and venue) on all other parties and

lien claimants. Such service shall constitute service of a conformed copy for the purpose of Labor Code section 5501.

(g) If the person or entity filing the application is not subject to section 10229(c), the Workers' Compensation Appeals Board shall serve a copy of the application (and, for an initial application, notification of the assigned case number and venue) on the filing person or entity and on all other parties and lien claimants. Such service shall constitute service of a conformed copy for the purpose of Labor Code section 5501.

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

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

NOTE: This proposed Rule combines elements of current Rules 10400 and 10500.

§10408. Forms of Application.

The Application for Adjudication for compensation benefits and death benefits shall be on forms prescribed and approved by the Appeals Board.

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

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

§10409. Venue.

(a) The person filing an initial Application for Adjudication (or other case opening document) shall designate venue pursuant to Labor Code Section 5501.5. However, the designated venue may be rejected if it is inconsistent with Labor Code Section 5501.5 or if there is a timely and proper objection to venue.

(b) When a Division of Workers' Compensation employee files his or her own Application for Adjudication of Claim or other case opening document and he or she designates venue in the same district office where he or she is or has been assigned to work, the venue shall be changed to a different district office within a reasonable geographic distance from the employee's district office. The case shall be assigned to a workers' compensation judge unfamiliar with the employee.

(1) The parties may agree on the appropriate venue, other than the district office where the employee works, subject to the approval of the presiding workers' compensation judge.

(2) If the parties are unable to agree on a suitable venue, or for any other good cause shown, the presiding workers' compensation judge shall consult with the Secretary or other Deputy Commissioner of the Appeals Board to determine the appropriate venue for the Division of Workers' Compensation employee's claim, with the Secretary or other Deputy Commissioner issuing the appropriate order for change of venue. When appropriate, a workers' compensation judge from a region other than the employee's region shall be assigned by the Secretary or other Deputy Commissioner of the Appeals Board.

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

§10410. Objection to Venue.

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

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

§10411. Petition for Change of Venue.

~~A petition for change of venue shall be filed at the district office with venue. Any objection to a petition for a change of venue shall be filed within 10 days of the filing of the petition.~~ The presiding judge of the Workers' Compensation Appeals Board district office having venue, or his or her designee, shall grant or deny any petition for change of venue, or serve notice of a status conference concerning the petition, within 30 days of the filing of the petition. Any objection to a petition for a change of venue shall be filed within 10 days of the filing of the petition.

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

§10412. ~~Location of File~~ Proceedings and Decisions After Venue Change.

When an order changing venue is issued, ~~the Workers' Compensation Appeals Board file shall be sent forthwith to the district office~~ all further trial level proceedings shall be conducted at, and all further trial level orders, decisions, and awards shall be issued by, the district office of the Workers' Compensation Appeals Board to which venue was changed ~~to which venue was changed and that district office shall retain the file until 1) until another order changing venue is issued, or 2) the case is inactive and the file is ready to be sent to the state records center or destroyed.~~

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

~~§10417. Walk-Through Calendar Setting.~~

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

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

§10450. Petitions.

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

(b) Petitions filed electronically shall be attached to the e-form for unstructured documents.

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

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

§10500. Service by the Workers' Compensation Appeals Board.

~~Upon filing an Application for Adjudication, the filing party shall serve a copy of the application on all other parties. If the applicant is the injured worker or dependent and is unrepresented, the injured worker's or dependent's application and accompanying documents shall be served by the Workers' Compensation Appeals Board on the parties listed on the application or on the address record in the case file. If a case number has been previously assigned by the Workers' Compensation Appeals Board, that number must be affixed to the application, and service thereof is deemed service of a conformed copy for the purposes of Labor Code Section 5501. If a case number has not been~~

~~assigned either before or at the time of filing of the application, notification of the case number assigned to the application by the Workers' Compensation Appeals Board shall constitute service of a conformed copy for the purpose of Labor Code section 5501.~~

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

(b) The Workers' Compensation Appeals Board shall serve all parties and lien claimants of record notice of any final order, decision, or award issued by a workers' compensation judge on a disputed issue after submission.

(c) If the Workers' Compensation Appeals Board effects personal service of a document at a hearing or at a walk-through proceeding, the proof of personal service shall be made by endorsement on the document, setting forth the fact of personal service, the name(s) of the person(s) served and the date of service. The endorsement shall bear the signature of the person making the service.

(d) If a document is served by the Workers' Compensation Appeals Board by mail, the proof of mail service shall be made by endorsement on the document, setting forth the fact of mail service on the persons listed on the official address record who have not designated e-mail or e-fax as their preferred method of service. The endorsement shall state the date of mail service and it shall bear the signature of the person making the service.

(e) If a document is electronically served by the Workers' Compensation Appeals Board through EAMS on persons listed on the official address record who have designated e-mail or e-fax as their preferred method of service, the record of electronic service maintained in EAMS shall constitute proof of service on such persons by the Workers' Compensation Appeals Board.

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

§10505. Service by the Parties or Lien Claimants.

(a) Except when a document is personally served, every attorney, self-insured employer, insurance carrier, third-party administrator, and lien claimant shall serve all documents on all other parties, representatives and lien claimants using the receiving party's designated preferred method of service.

(b) If a document is personally served by a party or lien claimant, the proof of personal service shall be made by endorsement on the document, setting forth the fact of personal

service, the name(s) of the person(s) served and the date of service. The endorsement shall bear the signature of the person making the service.

(c) If a document is served by a party or lien claimant by mail on persons listed on the official address record who have not designated e-mail or e-fax as their preferred method of service, the proof of mail service may be made by: (1) affidavit or declaration of service; (2) written statement endorsed upon the document served and signed by the party making the statement; or (3) letter of transmittal. The proof of service shall set forth the names and addresses of persons served, the fact of service by mail, the date of service, and the address(es) to which mailing was made.

(d) If a document is served by a party or lien claimant by e-mail on persons listed on the official address record who have designated e-mail as their preferred method of service, the proof of e-mail service must state:

- (1) the e-mail address of the person making the e-mail service;
- (2) the date and time of the e-mail service;
- (3) the name and e-mail address(es) of the person served; and
- (4) that the document was served by e-mail and that there was no report of any error or delay in the transmission of the e-mail.

(e) If a document is served by a party or lien claimant by e-fax on persons listed on the official address record who have designated e-fax as their preferred method of service, the proof of e-fax service must state:

- (1) the sending fax machine telephone number of the person making the e-fax service;
- (2) the date and time of the e-fax service;
- (3) the name and the fax machine telephone number of the person served; and
- (4) that the document was served fax transmission and the transmission was reported as complete and without error.

(f) For all methods of service, the proof of service shall be filed with the document(s) to which the proof of service pertains, with the exception that if the document is an e-form being electronically filed within EAMS, the proof of service shall be filed immediately after: (1) the e-form has been received by EAMS; and (2) the e-form was then served in accordance with subdivisions (c), (d), or (e).

~~(g) Service of any document may be made by mail or personal service. By agreement of the parties or lien claimants, or where authorized or requested by the receiving party or lien claimant, service of any document may be made by facsimile transmission methods other than the designated preferred method of service by agreement of the parties or lien claimants, or where authorized or requested by the receiving party or lien claimant.~~

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

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

~~§10506. Service: Mailbox.~~

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

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

~~§10507. Mail and Fax Service by Mail.~~

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

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

§10508. Service by Facsimile Transmission (Fax) or E-Mail.

Where a document is served by fax, e-fax, or e-mail in accordance with these rules, the period of time for exercising any right or duty shall be extended by two calendar days.

Authority cited: Sections 133 and 5307, Labor Code.

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

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

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

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

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

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

NOTE: See proposed Rule 10505.

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

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

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

NOTE: See proposed Rule 10500.

§10541. Submission at Conference.

(a) A workers' compensation judge may receive evidence and submit an issue or issues for decision at a conference hearing if the parties so agree.

(b) If documentary evidence is required to determine the issue or issues being submitted, the parties shall record all of the following information on the minutes of the conference or on the pretrial conference statement:

(1) The author, date, and title of each document being offered in evidence (e.g., "the July 1, 2008 medical report of John Doe, M.D. (3 pages)"). Each medical report, medical record, or other paper or record having a different author and/or a different date of service is a separate "document" and must be listed as a separate exhibit; and

(2) The exhibit number or initial that identifies each document being offered in evidence (e.g., Applicant's 1, 2, 3, et seq., and Defendant's A, B, C, et seq.).

(c) After the parties have fully complied with subdivision (b), each party shall have five court days, or whatever other period specified by the workers' compensation judge, to:

(1) electronically file and serve any exhibit listed that was not previously filed and served, except that an unrepresented injured worker, dependent or uninsured employer may file and serve in paper form; and

(2) electronically file and serve a list that specifies the last four digits of the EAMS document number for each exhibit, which number the party shall have obtained from within EAMS, except that an unrepresented injured worker, dependent or uninsured employer is not required to file and serve this list.

(d) After the period of time set forth in subdivision(c), the matter shall be deemed submitted for decision on the issue(s) presented, without further order.

(e) Failure to comply with either subdivision (b) or subdivision (c) may result in monetary or evidentiary sanctions.

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

§10561. Sanctions.

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

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

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

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

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

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

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

(4) Failing to comply with the Workers' Compensation Appeals Board's Rules of Practice and Procedure, with the regulations of the Administrative Director or the Court Administrator, or with an order of the Workers' Compensation Appeals Board, including an order of discovery, 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.

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

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

§10603. Oversized Exhibits, Medical Imaging, Physical Exhibits, and Exhibits on Media.

(a) The following exhibits shall be filed only at the time of trial:

- (1) Oversized documents, other than medical reports, that are: (A) larger than 11 x 17 inches (e.g., maps, diagrams, and schematic drawings) or (B) over 25 pages in length;
- (2) X-rays, MRIs, or similar medical imagings;
- (3) Permanent business or office records;
- (4) Physical objects or other tangible things;
- (5) Any CD-ROM, DVD, or other electronic media, including but not limited to: (A) digital photographs; (B) digital, tape and other video recordings; and (C) digital, tape and other audio recordings; and
- (6) Conventional photographs.

(b) Unless otherwise ordered by the Appeals Board or a workers' compensation judge, any exhibit listed in subdivision (a) that is offered into evidence (whether or not admitted into evidence) shall be retained by the filing party (or an agent of the filing party) for a period of either (1) five years after the filing of the initial application for adjudication (or other case opening document) or (2) least six months after all appeals have been exhausted or the time for seeking appellate review has expired, whichever is later. After expiration of the later of these two time periods, the party may destroy the exhibit, unless the Appeals Board or a workers' compensation judge orders that the exhibit be preserved for a longer period.

(c) Before and during the period of retention, the filing party shall:

- (1) Maintain the exhibit under conditions that will protect it against loss, destruction, or tampering, and that will preserve its quality and integrity as far as practicable;
- (2) At the request of any other party to the action, promptly permit the party to inspect or view the exhibit; and
- (3) At the request of any other party to the action, and if practicable, promptly furnish the party a copy of the exhibit or promptly permit the party to make a copy.

(d) Any disputes regarding subdivision (c), including but not limited to issues of timing and costs, may be submitted for determination to a workers' compensation judge.

Authority cited: Sections 133 and 5307, Labor Code.

~~§10608. Physicians' Reports.~~

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

~~(b) A Declaration of Readiness to Proceed, a Declaration of Readiness to Proceed to Expedited Hearing, or an objection to either shall be accompanied by the physicians' reports that are in the possession or under control of the declarant. At the time of filing, it shall be the duty of the declarant to serve copies of physicians' reports that have not been previously served and that are in the possession or under the control of the declarant on all other parties and all lien claimants requesting service.~~

~~(c) Within six (6) days after service of the Declaration of Readiness to Proceed or Declaration of Readiness to Proceed to Expedited Hearing, all other parties and lien claimants shall serve upon the opposing parties copies of all reports of physicians that are in their possession or under their control, and that have not been previously served. All reports that have not been previously filed, and whose filing is not required by subsection (b), shall be filed at the next hearing.~~

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

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

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

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

NOTE: See proposed Rule 10233.

~~§10615. Continuing Duty to Serve.~~

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

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

NOTE: See proposed Rule 10233.

§10626. Hospital and Physicians' Records.

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

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

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

NOTE: See proposed Rule 10238.

§10629. Listing of Exhibits For Trial.

(a) On the day of trial, each party (with the exception of any unrepresented injured employee, dependent or uninsured employer) shall submit directly to the workers' compensation judge, and shall personally serve on each opposing party, a list of the exhibits that the party proposes to offer in evidence. The list shall separately identify:

- (1) the exhibits that the party listed at the time of the mandatory settlement conference;
- (2) the exhibits that the party did not list at the time of the mandatory settlement conference.

(b) Each exhibit listed must be clearly identified by author/provider, date, and title or type (e.g., "the July 1, 2008 medical report of John Doe, M.D. (3 pages)"). Each medical report, medical record, or other paper or record having a different author/provider and/or a different date of service is a separate "document" and must be listed as a separate exhibit.

(c) Each exhibit listed must specify an exhibit number or initial that identifies it (e.g., Applicant's 1, 2, 3, et seq., and Defendant's A, B, C, et seq.).

(c) For each exhibit listed (unless the exhibit is being filed for the first time at the time of trial), the party also shall specify the EAMS document number for the document, which the party shall have obtained from within EAMS.

(d) Nothing in this section shall prevent a workers' compensation judge from referring an unrepresented injured employee, dependent or uninsured employer to the Information

and Assistance Office to prepare an exhibit list in accordance with the provisions of subdivisions (a), (b), and (c).

Authority cited: Sections 133 and 5307, Labor Code.

§10630. Return of Exhibits.

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

(a) Unless otherwise ordered by a workers' compensation judge or the Appeals Board, ~~S~~sixty (60) days after decision is final in any proceeding, or after a case has been ordered off calendar, all exhibits listed in section 10603 and all laboratory, clinical and hospital records and charts shall be returned to the party that offered the exhibit(s) in evidence. ~~the Workers' Compensation Appeals Board may, on its own motion, with or without notice, return:~~

- ~~(a) to the owners or persons producing the same, all exhibits of a physical, mechanical or demonstrative evidentiary character unless some other disposition is expressly provided for; and~~
- ~~(b) to the respective owners or custodians, all permanent office records, X rays, laboratory, clinical and hospital records and charts.~~

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

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

§10750. Record of Proceedings.

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

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

§10751. Legal File.

The Workers' Compensation Appeal Board's legal file includes the record of proceedings. Upon approval of a compromise and release or stipulations with request for award, all medical reports that have been filed as of the date of approval shall be transferred to the legal file in a legacy case and shall be deemed to have been transferred to the legal file in an EAMS case.

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

§10753. Inspection of Files.

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

~~A file will not be sent from one office to another for inspection except for good cause by order of a workers' compensation judge and upon the payment of a fee required by the Administrative Director. At the request of a party to the case, or his or her attorney, a 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. 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 the Administrative Director.~~

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

- ~~(a) Decisions, reports, opinions, orders, recommendations and other documents that are in the process of preparation, or, although fully prepared, have not yet been signed and filed.~~
- ~~(b) Agreed Medical Examiner or Qualified Medical Examiner reports and ratings that have been received but have not yet been served.~~
- ~~(c) The working papers, personal notes, deliberation records, and other private notations made by a workers' compensation judge, commissioner, deputy commissioner or Appeals Board attorney in the course of hearing or deliberation relating to the case.~~

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

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

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

NOTE: See proposed Rule 10271.

~~§10754. Sealed Documents.~~

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

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

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

NOTE: See proposed Rule 10272.

~~§10755. Destruction of Records.~~

~~Following a period of:~~

- ~~(a) two years after date of last entry thereon, the Workers' Compensation Appeals Board may destroy any miscellaneous record, not otherwise expressly covered by these Rules, which is kept and maintained in the proceeding of cases, case files and decisions; and~~
- ~~(b) five years after the date of filing of the Application for Adjudication or upon transfer to archive storage, whichever date first occurs, the Workers' Compensation Appeals Board may eliminate from the case file and destroy;~~

- ~~(1) extra copies of pleadings, notices, findings, orders, decisions, awards and other documents; and~~
- ~~(2) correspondence and other miscellaneous material not part of the legal record in the case, excepting originals of all medical reports found in the correspondence section of the file.~~

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

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

NOTE: See proposed Rule 10273.

~~§10758. Destruction of Case Files.~~

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

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

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

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

NOTE: See proposed Rule 10274.

~~§10762. Reporters' Notes.~~

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

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

~~Authority cited: Section 133, 5307, Labor Code. Reference: Section 14755, Labor Code.~~

NOTE: See proposed Rule 10276.

§10770. Lien Procedure.

(a) Unless the lien claimant is excepted by parts (A) through (C) of section 10229(c)(5), Any lien claimant under Labor Code sections 4903 or 4903.1 shall file its lien in writing upon a form approved by the Appeals Board or electronically, utilizing the e-form residing in EAMS and approved by the Appeals Board. Lien claimants excepted by parts (A) through (C) of section 10229(c)(5) may file a paper lien upon a form approved by the Appeals Board or may file a lien by e-form as approved by the Administrative Director.

(b) All Lien claims filed in writing shall be accompanied by a full statement or itemized voucher supporting the lien and justifying the right to reimbursement and proof of service. All liens, along with a full statement or itemized voucher supporting the lien, shall be served upon the applicant, the injured worker (or, if deceased, upon the worker's dependents), the employer, the insurance carrier and the respective attorneys or other representatives of record. Service of a lien on a party shall constitute notice to it of the existence of the lien.

(c) The Workers' Compensation Appeals Board shall not accept for filing a lien that does not bear a case number previously assigned by the Workers' Compensation Appeals Board for the injury, unless the lien claimant is also filing an initial (case opening) application in accordance with section 10770.5.

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

(e) After a lien has been filed, the lien claimant shall continue to file and serve any amendments to the lien on the parties. When filing an amended lien, the lien claimant shall indicate on the box set forth on the lien form that it is an "amended" lien. For purposes of this section, an "amended" lien includes: (1) a lien that is for or includes additional services for the same injured employee for the same date or dates of injury; (2) a lien that reflects a change in the amount of the lien based on payments made by the defendant; or (3) a lien that has been corrected for clerical or mathematical error. A subsequent lien claim that adds an additional case number or numbers is an "amended" lien with respect to the case number(s) originally listed. After a lien has been filed, amendments to the lien shall be filed only upon the filing of a Declaration of Readiness, compromise and release, or stipulations with request for award or order, or upon receipt of a notice of hearing. An amendment to a lien filed at any other time, and any attachments thereto, will not be filed and may be discarded by the Workers' Compensation Appeals Board. If a lien has been filed electronically, upon the filing of a Declaration of Readiness, compromise and release, or stipulations with request for award or order, or upon receipt of a notice of hearing, the lien claimant shall file a full statement or itemized voucher supporting the lien unless the lien claimant advises in writing, or electronically that the,

(f) Whenever a lien has been resolved or withdrawn, the lien claimant shall forthwith notify the defendant, the injured worker, and the Workers' Compensation Appeals Board.

~~(e)~~(g) The lien claimant shall be notified by the Workers' Compensation Appeals Board when a hearing is scheduled.

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

§10770.5. Verification to Filing of Lien Claim or Application by Lien Claimant.

(a) Any lien claim or application for adjudication filed under Labor Code section 4903(b) shall have attached to it a verification under penalty of perjury which shall contain a statement specifying in detail the facts establishing that one of the following has occurred:

(1) Sixty days have elapsed since the date of acceptance or rejection of liability for the claim, or the time provided for investigation of liability pursuant to Labor Code section 5402(b) has elapsed, whichever is earlier.

(2) The time provided for payment of medical treatment bills pursuant to Labor Code section 4603.2 has elapsed.

(3) The time provided for payment of medical-legal expenses pursuant to Labor Code section 4622 has elapsed.

(b) In addition, if an application for adjudication is being filed, the verification under penalty of perjury also shall contain:

(1) A statement specifying in detail the facts establishing that venue in the district office being designated is proper pursuant to Labor Code section 5501.5(a)(1) or Labor Code section 5501.5(a)(2); and

(2) A statement specifying in detail the facts establishing that the filing lien claimant has made a diligent search and has determined that no case number exists for the same injured worker and same date of injury at any district office. A diligent search shall include contacting the injured worker, contacting the employer or carrier, searching EAMS, or inquiring at the district office with appropriate venue pursuant to Labor Code section 5501.5(a)(1) or Labor Code section 5501.5(a)(2).

(c) The verification shall be in the following form:

I declare under penalty of perjury under the laws of the State of California that one of the time periods set forth in Rule 10770.5(a) has elapsed and, if an application for adjudication is being filed, that venue is proper as set forth in Rule 10770.5(b) and that I have made a diligent search and have determined that no case number exists for the same injured worker and the same date of injury. In determining that no case number exists for the same injured worker and the same

date of injury, I have made a diligent search consisting of the following efforts (specify):

s/s _____ on _____

Failure to attach the verification or an incorrect verification may be a basis for sanctions.

Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 4903 and 4903.6, Labor Code.

§10770.6. Verification to Filing of Declaration of Readiness By or On Behalf of Lien Claimant.

No Declaration of Readiness to Proceed shall be filed for a lien under Labor Code section 4903(b) without an attached verification certifying under penalty of perjury either (1) that the underlying case has been resolved or (2) that at least six months have elapsed from the date of injury and the injured worker has chosen not to proceed with his or her case. The declarant shall make a diligent search to determine that the injured worker has chosen not to proceed with his or her case and the verification shall specify the efforts made in conducting the diligent search. A diligent search shall include contacting the injured worker, contacting the employer or carrier, searching EAMS, or inquiring at the district office with appropriate venue pursuant to Labor Code section 5501.5(a)(1) or Labor Code section 5501.5(a)(2).

The verification shall be in the following form:

I declare under penalty of perjury under the laws of the State of California:
(Check at least one box)

☐ that the underlying case has been resolved.

☐ that at least six months have elapsed from the date of injury and the injured worker has chosen not to proceed with his or her case. In determining that the injured worker has chosen not to proceed with his or her case, I have made a diligent search consisting of the following efforts (specify):

s/s _____ on _____

Failure to attach the verification or an incorrect verification may be a basis for sanctions.

Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 4903 and 4903.6, Labor Code.

§10771. Medical-Legal Expense.

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

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

NOTE: This would be covered by proposed Rule 10770.5.

§10785. Electronically Filed Decisions, Findings, Awards, and Orders.

The Appeals Board or a workers' compensation judge may electronically file any decision, findings, award, order or other document. Any such document that is electronically filed shall have the same legal effect as a document in paper form.

Authority cited: Sections 133 and 5307, Labor Code.

ARTICLE 17

Reconsideration, Removal, and Disqualification

§10840. Filing Petitions for Reconsideration and Answers.

Except as provided in section 10865, Ppetitions for reconsideration from final orders, decisions or awards and answers thereto shall be filed as follows:

(a) If the petition or answer is being filed in paper form, in accordance with section 10229(a), the petition or answer shall be filed at the with any district office of the Workers' Compensation Appeals Board from which the order, decision or award issued. No paper Ppetitions for reconsideration from final

~~orders, decisions or awards issued by the Appeals Board in San Francisco and or answers thereto shall be filed at~~ with the office of the Appeals Board in San Francisco, even if the petition seeks reconsideration of an Appeals Board decision. A paper ~~P~~petitions for reconsideration or answer received in ~~any district office or the office of the Appeals Board in San Francisco, except as provided by this rule,~~ shall neither be accepted for filing nor deemed filed for any purpose and may be discarded.

(b) The petition for reconsideration and any answer thereto shall be verified upon oath in the manner required for verified pleadings in courts of record.

(c) Electronically filed petitions for reconsideration and answers are filed through EAMS using the e-form for unstructured documents and document coversheets.

Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5900 and 5905, Labor Code.

§10843. Petitions ~~to for Remove~~ Removal and Answers.

(a) ~~Petitions to remove~~ for removal and responses or answers thereto shall be filed as follows:

(1) If the petition or answer is being filed in paper form, in accordance with section 10229(a), the petition or answer shall be filed with any the district office. A paper petition or answer filed with the Appeals Board of the Workers' Compensation Appeals Board from which relief is sought or from which an order subject to the removal process issued. Petitions to remove received in any district office except as provided by this rule shall neither be accepted for filing nor deemed filed for any purpose and may be discarded.

(2) Electronically filed petitions for removal and answers are filed through EAMS using the e-form for unstructured documents and document coversheets.

(b) The petition for removal and any answer thereto shall be verified upon oath in the manner required for verified pleadings in courts of record.

(c) Copies of documents that have already been received in evidence or that have already been made part of the legal file shall not be attached as exhibits to petitions for removals or answers to petitions for removal. Documents not previously filed may be attached to the petition for removal or answer, using the appropriate document divider sheets.

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

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

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

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

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

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

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

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

§10845. General Requirements for Petitions for Reconsideration, Removal, and Disqualification, and for Answers and Other Documents.

Except as otherwise provided by sections 10840 or 10865, all documents filed in connection with any petition for reconsideration, petition for removal, petition for disqualification or any other matter pending before the Appeals Board shall comply with the requirements of sections 10228, 10229, 10230, and 10232.

Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5900, 5905, 5310 and 5311, Labor Code.

§10850. Proof of Service.

Service of copies of any petition for reconsideration, removal, or disqualification or any answer thereto shall be made, in accordance with Rule 10505, on all parties to the case and on any lien claimant, the validity of whose lien is specifically questioned by the petition, and to any case that has been consolidated therewith pursuant to Section 10590. Failure to file proof of service shall constitute valid ground for dismissing the petition.

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

§10860. Report of Workers' Compensation Judge.

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

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

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

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

§10865. Reconsideration of Arbitration Decisions Made Pursuant To—Labor Code Sections 3201.5, and 3201.7.

(a) A petition for reconsideration from an arbitration decision made pursuant to Labor Code Section 3201.5(a)(1) or Section 3201.7(a)(1) (known as "carve-out" cases) shall be filed within twenty (20) days of the service of the final order, decision, or award made and filed by the arbitrator or board of arbitrators. A copy of the petition for reconsideration shall be served on the arbitrator or arbitration board.

(b) Notwithstanding any other provision of these rules, a petition for reconsideration in a carve-out case shall be filed only in paper form (i.e., not electronically) and shall be filed directly with the office of the Appeals Board, and not with any district office.

(b)(c) The petition for reconsideration in a carve-out case shall comply with each of the following requirements:

(1) it shall be captioned so as to identify it as a “Petition for Reconsideration from Arbitrator’s Decision Under Labor Code section 3201.5 or 3201.7” and it shall caption: (A) the injured employee’s first and last names; (B) the name(s) of the defendant(s); (C) the alternative dispute resolution (ADR) case number (i.e., the carve-out arbitration case number); and (D) the Workers’ Compensation Appeals Board case number, if previously assigned; and

(2) it shall set forth the injured worker’s name, date of birth, social security number, and the date on which the arbitrator or board of arbitrators served the arbitration decision. Proof of service of the arbitration decision on the parties shall be either by a verified statement of the arbitrator or board indicating the date of service and listing the names and addresses of the persons served or by written acknowledgment of receipt by the parties at the time of the arbitration proceedings;

(3) it shall append ~~In addition,~~ a copy of that portion of the collective bargaining agreement relating to the arbitration and reconsideration processes ~~shall be submitted by the petitioner;~~ and

(4) it shall be accompanied by a coversheet that shall set forth: (A) the injured employee’s first and last names; (B) the injured employee’s date of birth; (C) the injured employee’s social security number; (D) the injured employee’s date(s) of injury; (E) the injured employee’s mailing address; (F) the name, mailing address, telephone number, fax number, and e-mail address of the injured employee’s attorney, if any; (G) the name(s), mailing address(es), telephone number(s), fax number(s), and e-mail address(es) of the employer(s) involved in the claim(s); (H) the name(s), mailing address(es), telephone number(s), fax number(s), and e-mail address(es) of the insurance carrier(s) involved in the claim(s), if any; (I) the name(s), mailing address(es), telephone number(s), fax number(s), and e-mail address(es) of the third party administrator(s) involved in the claim(s), if any; and (J) the name(s), mailing address(es), telephone number(s), fax number(s), and e-mail address(es) of the attorney(s), if any, representing the employer(s), insurance carrier(s), and/or third party administrator(s).

(d) After the filing of the carve-out petition for reconsideration and the carve-out coversheet, a case file will be created in EAMS and a case number will be assigned, if

there is no existing case. Any new case number will served by the Appeals Board on the parties and attorneys listed on the coversheet, and on the arbitrator or board of arbitrators.

(e) Following the Appeals Board's service of the case number (or, if there is an existing case, following the filing of the carve-out petition for reconsideration), and until the Appeals Board issues a decision disposing of all issues raised in the petition, all further filing and service of documents shall comply with the rules of the Workers' Compensation Appeals Board and the Court Administrator, including all EAMS filing requirements, except as provided by subdivision (f) below.

(f) Upon receiving the petition for reconsideration, the arbitrator or board of arbitrators shall forward to the Appeals Board ~~in San Francisco~~ the paper record of proceedings, including: (1) the transcript of proceedings, if any;; (2) a summary of testimony if the proceedings were not transcribed;; (3) the documentary evidence submitted by each of the parties;; and (4) an opinion that sets forth the rationale for the decision as to each contention raised by the petition.

(g) Upon receipt of the petition for reconsideration (and of any answer, if filed prior to or essentially concurrent the service of the EAMS case number), the Appeals Board shall scan the petition (and answer, as above) into EAMS. Upon receipt of the paper record of proceedings, the Appeals Board shall scan the record into the EAMS case file and, after scanning, shall return it to the arbitrator or board of arbitrators.

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

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

§10866. Reconsideration of Arbitrator's Decisions or Awards Made Pursuant To Labor Code Sections 5270 through 5275.

(a) Any final order, decision or award filed by an arbitrator under Labor Code Sections 5270 through 5275 shall be subject to the reconsideration process as set forth in Labor Code Sections 5900 through 5911 and Rules 10840 and 10842. The parties, respectively, shall serve the arbitrator with the petition for reconsideration and the answer.

(b) When a petition for reconsideration is filed from any final order, decision or award made by an arbitrator under Labor Code Sections 5270 through 5275, the arbitrator shall prepare and serve a report on reconsideration as provided in Rule 10860. Upon completion of the report on reconsideration, the arbitrator ~~and~~ shall concurrently forward the arbitrator's file and the original report directly to the presiding workers' compensation judge of the district office having venue over the matter. Upon receipt of the arbitrator's file and original report, the district office shall scan them into the EAMS

case file and, after scanning, shall return them to the arbitrator. Thereafter, the case file will be electronically transferred to the Appeals Board for action on the petition.

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

NOTE: This proposed Rule incorporates current Rule 10867.

~~§10867. Report of Arbitrator.~~

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

~~Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5275, 5277(c) and 5900-5911, Labor Code.~~

~~10890. Walk-Through Documents.~~

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

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

~~(1) Compromise and releases;~~

~~(2) Stipulations with request for award;~~

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

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

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

~~(c) At any time, a party may present to the presiding judge a petition to stay an action by an opposing party pending a hearing. The presiding judge may act on the petition or~~

~~assign it to another judge for action. A party who walks through a petition to stay an action shall provide notice to the opposing party or parties in accordance with subsections (b) and (c) of Rule 379 of the California Rules of Court.~~

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

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

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

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

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

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

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

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

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

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

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

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

NOTE: See proposed Rule 10280.

~~§10946. Medical Reports.~~

~~When an application is filed against the Subsequent Injuries Fund, any party who has previously filed medical reports shall forthwith serve copies on the Division of Workers' Compensation, Subsequent Injuries Fund, and in no case later than the mandatory settlement conference, unless service is waived by the Division of Workers' Compensation, Subsequent Injuries Fund.~~

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

~~§10950. Appeals from Orders Issued by the Administrative Director Granting or Denying Petition for Order Requiring Employee to Select Employer-Designated Physician.~~

Appeals from orders issued by the Administrative Director shall be filed in accordance with the provisions of Article 9 (section 10290 et seq.) of the Rules of the Court Administrator. Where a workers' compensation judge has determined such an appeal, any aggrieved party may file a petition for reconsideration in accordance with the provisions of Labor Code section 5900 et seq. and Appeals Board Rules 10840 et seq.

~~(a) Where either party petitions the Workers' Compensation Appeals Board within twenty (20) days pursuant to Section 9787 as the result of a grant or denial pursuant to Section 9786(e)(2) or Section 9786(e)(3) of the Rules of the Administrative Director, the~~

~~matter shall be referred to a workers' compensation judge for hearing and determination of the issues raised. A party aggrieved by the determination of the workers' compensation judge may seek relief therefrom within the same time and in the same manner specified for petitions for reconsideration. The petition for reconsideration shall be filed in the district office having venue.~~

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

Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 4603, 4604 and 5302, Labor Code.

NOTE: For appeals from orders issued by the Administrative Director granting or denying a petition for an order requiring employee to select employer-designated physician, see proposed Rule 10290.

§10952. Appeal of Notice of Compensation Due.

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

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

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

~~The case number assigned to the Application for Adjudication shall be assigned to the Appeal of Notice of Compensation Due.~~

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

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

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

NOTE: See proposed Rule 10291.

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

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

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

NOTE: See proposed Rule 10292.

~~§10955. Rehabilitation Appeals.~~

~~(a) Appeals from decisions of the Division of Workers' Compensation Rehabilitation Unit or an arbitrator appointed pursuant to Labor Code Sections 4645, subdivisions (b) and (c), shall be commenced as follows:~~

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

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

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

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

NOTE: See proposed Rule 10293.

§10995. Mandatory Arbitration.

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

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

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

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

~~If the arbitration submittal form requests a panel pursuant to Labor Code section 5271, subdivision (b), the presiding workers' compensation judge shall, within six (6) days of receipt of the arbitration submittal form, serve on each of the parties an identical list of five arbitrators selected at random pursuant to Labor Code 5271(b). For each party in excess of one party in the capacity of employer and one party in the capacity of injured employee or lien claimant, the presiding workers' compensation judge shall randomly select two additional arbitrators to add to the panel in accordance with the selection process set forth in Labor Code section 5271, subdivision (c). Each of the parties shall strike two arbitrators from the list and return it to the presiding workers' compensation judge within six (6) days after service. Failure to timely return the list shall constitute a~~

~~waiver of a party's right to participate in the selection process. If one arbitrator remains, the presiding workers' compensation judge shall, within six (6) days of return of the lists from the parties, order the issue or issues submitted for arbitration before the selected arbitrator pursuant to Labor Code sections 5272, 5273, 5276 and 5277. If more than one arbitrator remains on the panel, the presiding workers' compensation judge shall randomly select an arbitrator from the remaining panelists.~~

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

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

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

NOTE: See proposed Rule 10295.

§10996. Voluntary Arbitration.

~~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 prescribed and approved by the Appeals Board that indicates that the parties have selected an arbitrator from the list prepared by the presiding workers' compensation judge pursuant to Labor Code section 5271, subdivision (a) and by filing an Application for Adjudication if one has not been previously filed.~~

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

~~Any final decision, order or award from the arbitrator, together with the notice of claim form and the record developed as set forth in Labor Code sections 5276 and 5277, shall be filed with the presiding workers' compensation judge.~~

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

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

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

NOTE: See proposed Rule 10296.