

FORUM 1

ARTICLE 1 General

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

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

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

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

§ ~~10300~~10302. Rulemaking Notices.

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

Comment [mwh1]: Article 1 currently includes rules 10302, 10322, and 10324. We propose including rule 10320 "Working Titles of Workers' Compensation Administrative Law Judges and Presiding Workers' Compensation Administrative Law Judges" in the definitions (renumbered rule 10305). We propose moving rule 10322 "Workers' Compensation Appeals Board Records Not Subject to Subpoena" to Article 17, Record of Proceedings. We propose moving rule 10324 "Ex Parte Communications" to a new article, Article 4, entitled, "Conduct of Parties, Attorneys, and Representatives."

Comment [mwh2]: Notice of rule-making action and construction of rules are separate subjects and have been moved into separate rules.

Comment [mwh3]: Moved to new rule 10302.

Comment [WU4]: Current rule 10300(b).

Comment [WU5]: Current rule 10304.

Comment [mwh6]: We propose that rule 10300(a) become rule 10302 with the changes tracked below. Because the rule references Labor Code sections 5307 and 5307.4, it is not necessary to repeat the content of those Labor Code sections.

~~regular mail within thirty (30) days following the filing of any order pertaining to the rules with the Secretary of State.~~

~~§ 10301~~**10305. Definitions.**

Comment [mwh7]: We plan to amend the definitions after completing the reorganization of the rules. The rule number will change from 10301 to 10305. We will include a definition of workers' compensation administrative law judge.

ARTICLE 2

Powers, Duties, and Responsibilities

Comment [mwh8]: Article 2 currently includes rules 10349 and 10353. We plan to move rule 10349, "Orders Equivalent to Notices of Intention" to Article 18, Findings, Awards, and Orders. We plan to move rule 10353 "Settlement Conference Authority" to Article 16, Hearings.

~~§ 10340~~**10310. Appeals Board Decisions and Orders.**

Comment [mwh9]: We will renumber rule 10340 as 10310 with the tracked changes reflected below.

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

Comment [mwh10]: Currently, "Appeals Board" is defined as "the commissioners and deputy commissioners of the Workers' Compensation Appeals Board acting en banc, in panels, or individually." The orders decisions and awards discussed in this rule may not be issued by an individual deputy commissioner. Therefore, we will amend the rule for accuracy.

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

Comment [mwh11]: Current subdivision (c) is moved to (a) to emphasize that after a petition for reconsideration is filed, a WCJ may not issue any orders unless allowed by current rule 10859. Rule 10859 will be renumbered. We proposed rewording subdivision (c) for clarity.

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

Comment [mwh12]: Current section a exchanged "and" to "or" for clarity.

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

Comment [mwh13]: Current section b.

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

Comment [mwh14]: Pursuant to Labor Code section 5310, the Appeals Board may "refer, remove to itself, or transfer to a workers' compensation administrative law judge the proceedings on any claim."

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

Comment [mwh15]: Labor Code section 4907 provides that the Appeals Board may remove the privilege of any non-attorney representative to appear before the WCAB. However, the Appeals Board does not have the same power with respect to attorneys. Accordingly, we will amend (d) to reflect current law.

(f) (e) Decisions on remittitur.

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

Comment [mwh16]: To conform to style

§ ~~10341~~10311. En Banc and Significant Panel Decisions.

Comment [mwh17]: We will move rule 10341 to rule 10311 and add subsections. We will also add (b) to define significant panel decisions as decisions involving an issue of general interest and to clarify that significant panel decisions are not binding precedent.

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

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

§ ~~10342~~ 10313. Appeals Board, Member Orders. Authority of Commissioners of the Appeals Board.

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

Comment [mwh18]: Rule 10342 will become rule 10313 with the word "member" replaced by commissioner. Labor Code section 110(a) states: "The title of a member of the board is 'commissioner.'" We will retitle the rule to better reflect the subject of the regulation.

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

(b) directing exhumation or autopsy.

§ ~~10344~~10315. Appeals Board, Authority of Commissioners, Deputy Commissioners and Presiding Workers' Compensation Judges. Orders.

Comment [mwh19]: Rule 10344 will become rule 10315 with minor changes to the title and language for clarity.

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

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

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

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

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

§ 1034610325. Assignment or Transfer of Cases. Authority of Presiding Workers' Compensation Judge to Assign or Transfer Cases.

Comment [mwh20]: We will move rule 10346 to 10325 with non-substantive changes tracked below. We will change the title of the rule for consistency with other titles in this article.

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

(b) shall transfer to another workers' compensation judge the proceedings on any case in In the event of the death, extended absence, unavailability, or disqualification of the workers' compensation judge, the presiding workers' compensation judge may reassign a case to another workers' compensation judge. Where testimony has been received, the new workers' compensation judge shall recommence the proceeding unless the parties agree to waive the requirements of Labor Code section 5700. 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.

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

Comment [mwh21]: We propose splitting subdivision (c) from subdivision (b) for emphasis.

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

(e)(e) 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.

§ ~~10348.10330.~~ Authority of Workers' Compensation Judges.

Comment [mwh22]: Rule 10348 will become rule 10330. The portion of the rule dealing with contempt will be moved to a new rule in Article 4 "conduct of parties, attorneys and representatives."

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

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

Comment [mh23]: Moved to separate rule on contempt. New rule 10422.

§ ~~10350, 10351 and 10352.~~¹10335. Appointment and Authority of Pro Tempore Workers' Compensation Judges.

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

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

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

§ ~~10593~~¹10340. Testimony of Judicial or Quasi-Judicial Officers.

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

- (1) the reasons for or basis of any decision or ruling he or she has made; or
- (2) his or her opinion regarding any statements, conduct, or events occurring in proceedings before him or her, except as follows:

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

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

Comment [mh24]: Combined rules 10350, 10351 and 10352. Because arbitration is available for parties that want to stipulate to have a matter decided by a particular attorney, we removed the provisions of the rule related to pro tempore judges hearing trials by stipulation. We removed the requirement that notice of the name of the pro tempore judge be provided prior to the conference to conform with current practice. Current sections are set forth below in endnote.

Comment [mwh25]: Rule 10593 will become rule 10340 with changes tracked below.

Comment [mwh26]: To conform to style.

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

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

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

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

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

Comment [mwh27]: Because addresses are subject to change, removed address.

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

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

(d) The petition to compel shall be determined:

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

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

Comment [mwh28]: To conform to style.

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

Comment [mwh29]: Moved the last sentence of (d)(3) to (e) because the subject matter more properly fits with (e).

Comment [WU30]: Removed superfluous language.

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

Comment [DIR31]: Redundant language removed.

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

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

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

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

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

(1) any ~~E~~commissioner;

(2) any ~~D~~deputy ~~E~~commissioner;

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

(4) any pro tempore workers' compensation judge;

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

(6) the Administrative Director and his or her designee;

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

(8) any arbitrator or mediator; and

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

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

Comment [mwh32]: To conform with style.

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

Article 3. Parties, Joinder, and Consolidation

Comment [mwh33]: Added consolidation to Article 3.

§ ~~10360~~10350. Necessary Parties.

Comment [mwh34]: Rule 10360 will become rule 10350 without change in language.

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

Comment [WU35]: Removed as superfluous.

§ ~~10380, 10364~~²10352. Joinder of Parties.

Comment [mwh36]: Combined rules. Rules set forth below in endnote. No change in language other than combination.

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

(a) Any person in whom any right to relief is alleged to exist may appear, or be joined, as an applicant in any case or controversy before the Workers' Compensation Appeals Board. A lien claimant may become a party where

the applicant's case has been settled by way of a compromise and release, or where the applicant chooses not to proceed with his or her case.

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

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

(10550)§ 10355. Proper Identification of the Parties and Lien Claimants.

~~Whenever any~~ Any party or lien claimant that appears at a hearing or files a pleading, document, or lien shall: ~~or lien claimant (or any attorney or other representative for a party or lien claimant) either (i) files any Application for Adjudication, Answer, stipulated Findings and Award, Compromise and Release, lien claim, petition or other pleading with the Workers' Compensation Appeals Board or (ii) states its appearance on the record at any hearing before the Workers' Compensation Appeals Board (including but not limited to stating its appearance on any pretrial conference statement, appearance sheet, or minutes of hearing), or lien claimant, the party or its attorney or other representative, shall comply with the following requirements:~~

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

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

Comment [mwh37]: We propose redrafting this rule for clarity and moving it into the section regarding parties. In *Coldiron v. Compuware Corporation* (2002) 67 Cal.Comp.Cases 289 (Appeals Board en banc) (*Coldiron*), the Workers' Compensation Appeals Board held as follows:

"[W]e hold that where an employer's liability for workers' compensation benefits is adjusted by a third-party administrator, the administrator must disclose to the Workers' Compensation Appeals Board, to the other parties in any proceeding in which it is a party, and to its own counsel the identity of its client, whether a self-insured employer or insurance carrier. If the client is an insurance carrier, the administrator must disclose whether the policy includes a 'high self-insured retention,' a large deductible, or any other provision that affects the identity of the entity actually liable for the payment of compensation. Failure of the administrator to disclose the identity of its client may subject it to sanctions pursuant to Labor Code section 5813." (See also *Coldiron v. Compuware Corporation* (2002) 67 Cal.Comp.Cases 1466 (Appeals Board en banc).)

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

Comment [mwh38]: Simplified language.

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

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

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

~~(c) if an insurance carrier is appearing, it shall disclose: (1) whether it is appearing solely on its behalf, or also on behalf the insured employer; and (2) whether its policy includes a high self insured retention, a large deductible, or any other provision that affects the identity of the entity actually liable for the payment of compensation; and shall identify the insurer and/or employer as the party or parties and not identify a third party administrator as a party. The third party administrator may be included on the official address record and case caption if identified as such.~~

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

§ 10589.10356. Consolidation of Cases.

(a) Consolidation of two or more related cases, involving either the same injured employee or multiple injured employees, rests in the sound discretion of the Workers' Compensation Appeals Board. In exercising that discretion, the Workers' Compensation Appeals Board shall take into

Comment [mwh39]: Language simplified and moved to subdivision (c).

Comment [mwh40]: Currently, most representatives of parties file notices of representation. By requiring a notice of representation before appearing before the WCAB, we will enable efficient administration of cases. We note that current rule 10774.5 imposes specific requirements with respect to notices of representation of lien claimants.

Comment [mwh41]: This rule is more appropriately included in the article regarding liens.

Comment [mwh42]: Rule 10589 will become rule 10356 without change in language.

consideration any relevant factors, including but not limited to the following:

- (1) whether there are common issues of fact or law;
- (2) the complexity of the issues involved;
- (3) the potential prejudice to any party, including but not limited to whether granting consolidation would significantly delay the trial of any of the cases involved;
- (4) the avoidance of duplicate or inconsistent orders; and
- (5) the efficient utilization of judicial resources.

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

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

- (1) list all named parties in each case;
- (2) contain the adjudication case numbers of all the cases sought to be consolidated, with the lowest numbered case shown first;
- (3) be filed in each case sought to be consolidated; and
- (4) be served on all attorneys or other representatives of record and on all non-represented parties in each case sought to be consolidated.

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

(d) If consolidation is ordered, the Workers' Compensation Appeals Board, in its discretion, may designate one case as the master file for exhibits and pleadings. If a master file is designated, any subsequent exhibits and pleadings filed by the parties and lien claimants during the period of consolidation shall be filed only in the master case. ⁷ hHowever, all pleadings and exhibit cover sheets filed shall include the caption and case number of the master file case, followed by the case numbers of all of the other consolidated cases.

Comment [mwh43]: Amended for ease of reading.

(e) If a master file has been designated and the consolidated cases are tried, all relevant documentary evidence previously received in an individual case shall be deemed admitted in evidence in the consolidated proceedings under the master file and shall be deemed part of the record of each of the several consolidated cases. Evidence received subsequent to the designation of the master file shall be similarly received with like force and effect.

(f) When cases are consolidated, joint minutes of hearing, summaries of evidence, opinions, decisions, orders, findings, or awards may be used. ⁷ however, copies shall be filed in the record of proceedings of each case.

Comment [mwh44]: To conform to style.

§ 10592.10360. Assignment of Consolidated Cases.

Comment [mwh45]: Rule 10592 will become rule 10360 without change in language.

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

(b) Any request or petition to consolidate cases involving the same injured worker that are assigned to workers' compensation judges at different district offices, or that have not been assigned but are venued at different district offices, shall first be referred to the presiding workers'

compensation judges of the district offices to which the cases are assigned. If the presiding workers' compensation judges are unable to agree on where the cases will be assigned for hearing, the conflict shall be resolved by the Chief Judge of the Division of Workers' Compensation or his or her designee upon referral by one of the presiding workers' compensation judges.

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

(d) In resolving any request or petition to consolidate cases under subdivision (b) or (c), the Chief Judge or his or her designee shall set the request or petition for a conference regarding the place of hearing. At or after the conference, the Chief Judge or his or her designee shall determine the place of hearing and may determine the workers' compensation judge to whom the cases will be assigned, giving consideration to the factors set forth in section rule 10589-10356. In reaching any determination, the Chief Judge or his or her designee may assign a workers' compensation judge to hear any discovery motions and disputes relevant to discovery in the action and to report their findings and recommendations to the Chief Judge or his or her designee.

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

Comment [mwh46]: Changed "section" to "rule" to conform to style.

Comment [WU47]: Removed superfluous language.

Comment [mwh48]: Changed "sections" to "rules" to conform to style. Cross references will change after reorganization.

ARTICLE 4
Conduct of Parties, Attorneys, and Representatives

Comment [mwh49]: New article.

§ 10324-10400. Ex Parte Communications.

Comment [mwh50]: Rule 10324 will become rule 10400 without change in language.

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

Comment [mwh51]: Removed capitalization. Cross reference will change after rules renumbered.

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

(c) No party or lien claimant shall discuss with the Appeals Board or a workers' compensation judge the merits of any case pending before the Appeals Board or that judge without the presence of all necessary parties to the proceeding, except as provided by these rules.

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

§ 10561-10410. Sanctions.

Comment [mwh52]: Rule 10561 will become rule 10410 with (e) becoming (c) to correct an error in numbering. We also propose eliminating subdivision (f) due to the passage of time.

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

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

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

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

(4) Failing to comply with the Workers' Compensation Appeals Board's Rules of Practice and Procedure, with the regulations of the Administrative Director, or with any award or order of the Workers' Compensation Appeals Board, including an order of discovery, which is not pending on

reconsideration, removal or appellate review and which is not subject to a timely petition for reconsideration, removal or appellate review, unless that failure results from mistake, inadvertence, surprise or excusable neglect.

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

(A) that:

- (i) contains false or substantially false statements of fact;
- (ii) contains statements of fact that are substantially misleading;
- (iii) contains substantial misrepresentations of fact;
- (iv) contains statements of fact that are made without any reasonable basis or with reckless indifference as to their truth or falsity;
- (v) contains statements of fact that are literally true, but are intentionally presented in a manner reasonably calculated to deceive; and/or
- (vi) conceals or substantially conceals material facts; and

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

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

(A) that is:

- (i) indisputably without merit;

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

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

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

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

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

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

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

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

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

(A) where the language or gesture:

Comment [mwh53]: To conform to style.

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

Comment [mwh54]: To conform to style.

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

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

Comment [DIR55]: Not capitalized.

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

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

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

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

§ 10782-10420. Vexatious Litigants.

Comment [mwh56]: Rule 10782 will become rule 10420 with minor non-substantive changes in language tracked below.

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

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

Comment [DIR57]: Removed superfluous language.

that party or lien claimant by the Workers' Compensation Appeals Board or by an appellate court;

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

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

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

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

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

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

Comment [mwh58]: Amended for ease of reading.

(c) No party or lien claimant shall be declared a vexatious litigant without being given notice and an opportunity to be heard. If a hearing is requested, the presiding workers' compensation judge or the Appeals

Board, in his, her or its discretion, either may take and consider both oral and documentary evidence or may take and consider solely documentary evidence, including affidavits or other written declarations of fact made under penalty of perjury.

(d) If a party or lien claimant is declared to be a vexatious litigant, a presiding workers' compensation judge or the Appeals Board may enter a "prefiling order," i.e., an order which prohibits the vexatious litigant from filing, in propria persona, any Application for Adjudication of Claim, Declaration of Readiness, petition, or other request for action by the Workers' Compensation Appeals Board without first obtaining leave of the presiding workers' compensation judge of the district office where the request for action is proposed to be filed or, if the matter is pending before the Appeals Board on a petition for reconsideration, removal or disqualification, without first obtaining leave from the Appeals Board. For purposes of this rule, a "petition" shall include, but not be limited to, a petition to reopen under Labor Code sections 5410, 5803 and 5804, a petition to enforce a medical treatment award, a penalty petition, or any other petition seeking to enforce or expand the vexatious litigant's previously determined rights.

(e) If a vexatious litigant proposes to file, in propria persona, any Application for Adjudication of Claim, Declaration of Readiness, petition, or other request for action by the Workers' Compensation Appeals Board, the request for action shall be conditionally filed. Thereafter, the presiding workers' compensation judge, or the Appeals Board if the petition is for reconsideration, removal, or disqualification, shall deem the request for action to have been properly filed only if it appears that the request for action has not been filed in violation of subdivision (a). In determining whether the vexatious litigant's request for action has not been filed in violation of subdivision (a), the presiding workers' compensation judge, or the Appeals Board, shall consider the contents of the request for action and the Workers' Compensation Appeals Board's existing record of proceedings, as well as any other documentation that, in its discretion, the

presiding workers' compensation judge or the Appeals Board asks to be submitted. Among the factors that the presiding workers' compensation judge or the Appeals Board may consider is whether there has been a significant change in circumstances (such as new or newly discovered evidence or a change in the law) that might materially affect an issue of fact or law that was previously finally determined against the vexatious litigant.

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

Comment [WU59]: Removed unnecessary comma.

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

§10422. Contempt.

(a) A workers' compensation judge or a deputy commissioner may issue writs or summons, warrants of attachment, warrants of commitment and all necessary process in proceedings for direct and hybrid contempt as

Comment [mwh60]: Subdivision (a) was originally part of rule 10348. Pursuant to Labor Code section 5309(c) a workers' compensation judge may conduct proceedings for direct and hybrid contempt. Labor Code section 5309(c) also defines "hybrid contempt" and by implication defines direct contempt. Labor Code section 134 provides that the Appeals Board may conduct proceedings for contempt and is not limited to direct or hybrid contempt. California Code of Civil Procedure sections 1209-1222 describes the process for conducting contempt proceedings.

defined by Labor Code section 5309(c) in a like manner and to the same extent as courts of record.

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

§ ~~10779.~~ 10425. Disbarred and Suspended Attorneys.

Comment [mwh61]: Rule 10779 will become rule 10425 with changes in language tracked below.

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

Comment [mwh62]: We amended this rule to clarify that a disbarred or suspended attorney cannot represent a non-party lien claimant.

ARTICLE 5

Applications and Answers

Comment [mwh63]: New article.

§ ~~10403, 10400.~~³ 10450. Invoking the Jurisdiction of the Workers' Compensation Appeals Board.

Comment [mwh64]: Rule 10403 will be combined with rule 10400.

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

Comment [mwh65]: New cross reference.

(b) Until an application or other case opening document has been filed, the Workers' Compensation Appeals Board may not conduct hearings,

Comment [mwh66]: This rewords rule 10403(a) and (c)

issue orders or authorize the commencement of formal, compelled discovery, including the use of subpoenas to obtain records or sworn testimony.

Comment [mwh67]: Pursuant to *Donna Yee-Sanchez v. Permanente Medical Group* (2002) 68 Cal.Comp.Cases 638 (Appeals Board Significant Panel Decision), while non-compelled pre-application discovery is permissible, discovery cannot be compelled until an application is filed.

Comment [mwh68]: From rule 10400(b).

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

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

Comment [mwh69]: From rule 10403.

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

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

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

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

§ ~~10400, 10401, 10402.~~⁴ 10455. Applications.

Comment [mwh70]: Portions of rules 10400, 10401 and 10402 were combined to create a general rule on applications. We have included most of the content of these three rules, but have tracked some changes and comments regarding the portions of the rules we decided to simplify or eliminate.

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

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

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

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

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

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

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

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

(2) If the party or lien claimant filing the application is represented, the Workers' Compensation Appeals Board shall serve a conformed copy of

Comment [WU71]: Removed unnecessary article

Comment [mwh72]: Probate Code section 8503 provides that an administrator of an estate may be removed from office on the petition of the surviving spouse or relative if is such a person is higher in priority than the administrator. However, death benefits do not go through probate (see e.g. Labor Code section 4700). Therefore, it appears that a minor's nomination is not necessary for the administration of death benefits. Accordingly, it need not be included with the application.

Comment [mwh73]: Reworded rule 10400(h). Non-substantive language change.

the application on the filing party or lien claimant. Upon receipt of the conformed copy of the application, the filing party or lien claimant shall forthwith serve a copy of the conformed application on all other parties and lien claimants.

§ ~~10405.~~ 10457. Request for Findings of Fact.

Comment [mwh74]: Rule 10405 will become rule 10457 with no change in language.

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

Comment [mwh75]: To conform to style

§ ~~10480 10484.~~ 10460. Answers.

Comment [mwh76]: Rules 10480 and 10484 will be combined and become rule 10460 with the changes tracked in below. Declarations of Readiness to proceed are not "required." The answer should be filed and served no later than 10 days after a DOR. The original rule could be misconstrued to require filing and service exactly 10 days after the DOR. The initial sentence of the rule is former rule 10480. Subdivisions (a) through (c) are former rule 10484 with no change in language other than the addition of subdivisions.

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

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

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

(c) Evidence upon matters and affirmative defenses not pleaded by Answer will be allowed only upon such terms and conditions as the

Appeals Board or workers' compensation judge may impose in the exercise of sound discretion.

§ ~~10404~~, 10462. Labor Code Section 4906(g) Statement.

Comment [mwh77]: Rule 10404 will become rule 10462 with the changes tracked below. We removed language that is duplicative of Labor Code section 4906(g) and added subdivisions for ease of reading and citation. In new subdivision (b) we clarified that failure to file the statement required by Labor Code section 4906(g) rather than failure to follow the rule shall result in refusal to file a party's application or answer.

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

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

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

ARTICLE 6

Venue

Comment [mwh78]: New article.

§ 1040910470. Venue.

Comment [mwh79]: Rule 10409 will become rule 10470 with the tracked changes reflected below. We removed material that is duplicative of Labor Code section 5501.5. A portion of rule 10409 will become rule 10472.

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

§ 10472. Venue When Applicant is Employee of Division of Workers' Compensation.

Comment [mwh80]: Rule 10472 is a new rule containing the portion of rule 10409 related to venue where an employee of DWC has filed an application. We separated this from the general rule on venue because it is a specific situation that only applies to a limited number of applicants.

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

Comment [mwh81]: To conform to style.

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

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

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

with the secretary or other deputy commissioner issuing the appropriate venue order.

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

Comment [mh82]: To conform to style.

§ ~~10410.10474.~~ Objection to Venue Based on an Attorney's Principal Place of Business. Under Labor Code Section 5501.5(c).

Comment [mwh83]: Rule 10410 will become rule 10474 with changes to the article title to remove an unnecessary reference to the Labor Code and clarify that the objection is based on an attorney's principal place of business. We will also add a sentence to clarify that a timely objection results in automatic reassignment.

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

Comment [mwh84]: Added sentence to clarify that a timely objection automatically results in mandatory venue reassignment in accordance with Labor Code section 5501.5.

§ ~~10411.10478.~~ Petition for Change of Venue For Good Cause. Under Labor Code Section 5501.6.

Comment [mwh85]: Rule 10411 will become rule 10478 with changes to the article title to remove an unnecessary reference to the Labor Code and the addition of language to clarify that, when a case is venued at a permanently staffed satellite office, a judge at the satellite office may take action on the petition.

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

§ 10412.10479. Proceedings and Decisions After Venue Change.

Comment [mwh86]: Rule 10412 will become rule 10479 with no change in language.

When an order changing venue is issued, 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 to which venue was changed until another order changing venue is issued.

Comment [mh87]: Although a permanently staffed satellite office is a district office for most purposes and venue can be assigned to a permanently staffed satellite office, the phrase "district office" might connote an office with a presiding judge. Therefore, to remove any ambiguity, we have stricken the word "district."

ARTICLE 7
Petitions, Pleadings, and Forms

§ 10408.10480. ~~Application for Adjudication of Claim Form and Other Forms~~ Form Pleadings.

Comment [mwh88]: Rule 10408 will become rule 10480 with the changes reflected below. The title was changed to "Form Pleadings" to better reflect the content of the article. Subdivision (c) became (a), (a) became (b) and (b) became (c).

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

Comment [mwh89]: Moved from (c).

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

Comment [mwh90]: Moved from (a).

(1) An application for adjudication of claim for compensation benefits or death benefits;

(2) a lien;

(3) a declaration of readiness ~~(including for an expedited hearing);~~

(4) a pretrial conference statement ~~(including for a lien conference);~~

Comment [mh91]: Removed superfluous language.

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

(6) a compromise and release (including for dependency and third-party claims);

(7) stipulations with request for award (including death cases);

Comment [mh92]: Removed superfluous parentheses.

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

(9) a special notice of lawsuit; and

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

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

Comment [mwh93]: Moved from (b).

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

(2) optical character recognition versions of those forms (i.e., OCR forms), either in fillable format or otherwise, for posting on the Division's Forms webpage. Any hard copy, e-form, or OCR form for proceedings before the Workers' Compensation Appeals Board created by the Division shall be presumed to have been prescribed and approved by the Appeals Board unless the Appeals Board issues an order or a formal written statement to the contrary.

§ 10450.10482. Petitions and Answers to Petitions.

Comment [mwh94]: Rule 10450 will become rule 10482 with the changes tracked below. The subdivisions have been reordered.

(a) After jurisdiction of the Workers' Compensation Appeals Board is invoked pursuant to section 10450, A—a request for action by the Workers' Compensation Appeals Board, other than a section 10480 form pleading, an Application for Adjudication, an Answer, or a Declaration of Readiness,

shall be made by petition. The caption of each petition shall contain the case title and adjudication case number and shall indicate the type of relief sought.

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

Comment [mwh95]: Former rule 10450(f).

Comment [mwh96]: There will be a new filing rule after reorganization.

Comment [mwh97]: There will be a new service rule after reorganization.

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

Comment [mwh98]: (b) and (c) combined. We propose limiting this subdivision to answers and clarifying that the 10 days (extended depending on method of service) runs from the date of service rather than filing.

Comment [mh99]: Changed “sections” to “rules” to conform to style. Will update cross reference after service rules are renumbered and redrafted.

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

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

Comment [mwh100]: Former rule 10450(g).

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

Comment [mwh101]: Former rule 10450(d).

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

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

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

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

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

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

Comment [mwh102]: By amending subdivision (a) to state after jurisdiction has been invoked, these subdivisions become unnecessary.

§ ~~10490.10483.~~ Demurrer, Judgment on the Pleadings, and Summary Judgment Not Permitted; ~~Unintelligible Pleadings~~

Comment [mwh103]: Removed rule regarding unintelligible pleadings because does not necessarily reflect current practice with respect to such pleadings.

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

§ ~~10492.10484.~~ When Pleadings Deemed Amended.

Comment [mwh104]: Rule 10492 will become rule 10484 with no change in language except removal of an unnecessary article.

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

§ ~~10440.10445.~~⁵10486. Pleadings—Petition for Increased or Decreased Compensation -- Serious and Willful Misconduct.

Comment [mwh105]: Rules 10440 and 10445 are combined into a single rule. We changed "charge" and "allegation" to claim throughout the rule for consistency. We did not include language about the purpose of the requirement that each theory be set forth separately, ("so that the adverse parties and the Workers' Compensation Appeals Board may be fully advised") Although that is one reason that the each theory must be set forth separately, the language is superfluous. The language of the current rules is set forth in the endnote.

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

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

§ ~~10447.10488.~~ Pleadings— Petition for Increased Compensation -- Discrimination under Labor Code Section 132a.

Comment [mwh106]: Rule 10447 will become rule 10488 with changes tracked below. We will change the title to conform with the other titles in this article.

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

Comment [mwh107]: Unnecessary language.

The Workers' Compensation Appeals Board may refer, or any worker may complain of, suspected violations of the criminal misdemeanor provisions

of Labor Code section 132a to the Division of Labor Standards Enforcement or directly to the Office of the Public Prosecutor.

§ ~~10470.10490.~~ Emergency Petition for Stay.

Comment [mwh108]: Rule 10470 will become rule 10490 with changes in language tracked below.

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

Comment [mwh109]: A permanently staffed satellite office does not have a presiding workers' compensation judge but a case may be venued there.

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

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

- (1) The notice given, including the date, time, manner and name of the party informed;
- (2) the relief sought; and
- (3) whether opposition is expected. In addition, if the petitioner was unable to give timely notice to the opposing party, the declaration under

penalty of perjury ~~also~~ shall state that the petitioner in good faith attempted to inform the opposing party but was unable to do so, specifying and shall specify the efforts made to inform the opposing party.

Comment [WU110]: Amended for consistency and clarity.

§10455.10492. Petition to Reopen.

Comment [mwh111]: Rule 10455 will become rule 10492 without change in language.

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

§ 10458.10493. Petition for New and Further Disability.

Comment [mwh112]: Rule 10458 will become rule 10493 without change in language.

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

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

§ 10462 10464.10466.10495. Contents of Petition to Terminate Liability for Continuing Temporary Disability.

Comment [mwh113]: Rules 10462, 10464 and 10466 will be combined into a single rule. While a petition to terminate liability for temporary disability is rarely used after the cap on temporary disability was instituted for injuries after April 19, 2004, there are limited circumstances where a defendant may still need to file a petition to terminate. By combining the three sections into a single regulation, we will maintain the procedure without overemphasizing its importance.

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

Comment [mh114]: Labor Code section 4651.1 provides that: "Where a petition is filed with the appeals board concerning a continuing award of [disability]...there shall be a rebuttable presumption that such temporary disability continues for at least one week following the filing of such petition."

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

Comment [mh115]: The form Petition to Terminate Liability for Continuing Temporary Disability has capital letters that are not underlined.

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

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

Comment [mwh116]: Begin rule 10466.

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

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

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

Said interim order shall not be considered a final order, and will not preclude a complete adjudication of the petition to terminate or the issue of temporary disability or any other issue after full hearing of the issues.

§ 10498. Petition for Credit.

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

- (1) A description of the payments made by the employer;
- (2) a description of the benefits against which the employer seeks a credit; and
- (3) the amount of the claimed credit.

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

- (1) A copy of the settlement or judgment; and
- (2) An itemization of any credit applied to expenses and attorneys' fees pursuant to Labor Code sections 3856, 3858, and 3860.

¹ **§10350. Trials: Appointment and Authority of Pro Tempore Workers' Compensation Judges.**

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

Comment [mwh117]: We propose adding a new regulation that precludes the unilateral taking of credit by an employer.

Under ~~LC~~ Labor Code section 4909, "[a]ny payment...received by the injured employee during the period of his incapacity...which by the terms of this division was not then due and payable or when there is any dispute or question concerning the right to compensation, shall not, in the absence of any agreement, be an admission of liability for compensation on the part of the employer..."

When, however, an employer owes an employee benefits but believes there has been an overpayment and unilaterally takes credit without first obtaining an order from the WCAB, the employer risks a 5814 penalty. (*Rohrbach v. Workers' Comp. Appeals Bd.* (1983) 144 Cal.App.3d 896 [employer subject to section 5814 penalty for unilaterally withholding awarded permanent disability due to alleged overpayment of vocational rehabilitation benefits]; *California Comp. Ins. Co., et al. v. Workers' Comp. Appeals Bd.* (2001) 66 Cal.Comp.Cases 1076 (writ den.) [unilateral ceasing of permanent disability awarded for alleged credit due to civil recovery resulted in section 5814 penalty where credit amount did not exceed permanent disability owed]).

Per settled case law, this rule makes clear that an employer must not unilaterally take credit for alleged overpayment of benefits, but must file a petition for credit with the WCAB to have the issue adjudicated.

stipulation shall set out in full the name and the office address of the attorney agreed upon to conduct the trial as a pro tempore workers' compensation judge.

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

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

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

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

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

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

§10352. Reconsideration of Pro Tempore Workers' Compensation Judge's Orders, Decisions or Awards.

Any final order, decision or award filed by a pro tempore workers' compensation judge shall be subject to the reconsideration process as set forth in Labor Code Sections 5900 through 5911.

² §10380. Joinder of Parties.

After filing of an Application for Adjudication, the Appeals Board, a workers' compensation judge may order the joinder of additional parties necessary for the full adjudication of the case. A party not present or represented at the time of joinder shall be served with copies of the order of joinder, the application,

minutes of hearing and summary of evidence, medical reports and other documents, as directed in the order of joinder. The Workers' Compensation Appeals Board may designate the party or parties who are to make service.

§ 10364. Parties Applicant.

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

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

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

³ § 10403. Application Required Before Jurisdiction Invoked and Before Compelled Discovery May Be Commenced.

The jurisdiction of the Workers' Compensation Appeals Board is invoked only by the filing of an initial Application for Adjudication of Claim or other case opening document. The pre-application assignment of a non-adjudication EAMS case number by any ancillary unit of the Division of Workers' Compensation (e.g., the Disability Evaluation Unit, the Information and Assistance Office, the Rehabilitation Unit, or the Retraining and Return to Work Unit):

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

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

(c) does not authorize the commencement of formal, compelled discovery.

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

§10400. Filing and Service of Applications.

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

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

(c) Upon the filing of an initial application, the application shall be assigned an adjudication case number and a venue.

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

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

(f) If the party filing the application is an unrepresented injured employee, an unrepresented dependent of a deceased employee, or a lien claimant or non-attorney representative of a lien claimant who falls within one of the exceptions of section 10228, subdivisions (c)(5)(A) through (c)(5)(C), the Workers' Compensation Appeals Board:(1) shall serve a conformed copy of the application on all parties and lien claimants, including the filing applicant, who are listed on either on the application, on the proof of service to the application, or on the address record (if an address record was previously created for an earlier application); and

(2) if it is an initial application, shall concurrently give notification of the assigned adjudication case number and venue.

Such service shall be deemed service of a conformed copy of the application for purposes of Labor Code section 5501.

(g) For all other parties and lien claimants, the Workers' Compensation Appeals Board:

(1) shall serve a conformed copy of the application on the filing party or lien claimant (or, if represented, on the filing party or lien claimant's attorney or other representative); and

(2) if it is an initial application, shall concurrently give notification of the assigned adjudication case number and venue.

Upon receipt of the conformed copy of the application, the filing party or lien claimant (or, if represented, the filing party or lien claimant's attorney or other representative) shall forthwith serve a copy of the conformed application on all other parties and lien claimants who are listed on the application or on the proof of service to the application, and, if it is an initial application, shall concurrently notify all other parties and lien claimants of the assigned adjudication case number and venue.

Such service shall be deemed service of a conformed copy of the application for purposes of Labor Code section 5501.

(h) Disclosure of the applicant's Social Security number is voluntary, not mandatory. A failure to provide a Social Security number will not have any adverse consequences. Nevertheless, although an applicant is not required by law to provide a Social Security number, he or she is encouraged to do so. Social Security numbers are used solely for identification and verification purposes in order to administer the workers' compensation system. A Social Security number will not be disclosed, made available, or otherwise used for purposes other than those specified, except with the consent of the applicant, or as permitted or required by statute, regulation, or judicial order.

§ 10401. Separate Application for Each Injury.

A separate Application for Adjudication shall be filed for each separate injury for which benefits are claimed even though the employer is the same in each case. Separate pleadings shall be filed in each case. All claims of all persons arising out of the same injury to the same employee shall be filed in the same proceeding.

§10402. Minors, Incompetents as Applicants.

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

⁵ **§10440. Pleadings--Serious and Willful Misconduct.**

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

§10445. Allegations.

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

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

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