

## Workers' Compensation Appeals Board--Rules and Practice Procedure

### §10301. Definitions.

As used in this subchapter:

(a) "Administrative Director" means the Administrative Director of the Division of Workers' Compensation or his or her designee.

(b) "Adjudication file" or "ADJ file" means a case file in which the jurisdiction of the Workers' Compensation Appeals Board has been invoked and which is maintained by the Division of Workers' Compensation in paper format, electronic format, or both, including a temporary paper case file.

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

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

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

(f) "Carve-out case" means a workers' compensation case that, in accordance with the criteria specified in Labor Code sections 3201.5 through 3201.9, is subject to an alternative dispute resolution (ADR) system that supplements or replaces all or part of the dispute resolution processes contained in Division 4 of the Labor Code.

(g) "Case opening document" means any document that creates an adjudication case and invokes the jurisdiction of the Workers' Compensation Appeals Board for the first time.

(h) "Court Administrator" means the administrator of the workers' compensation adjudicatory process at the trial level, or his or her designee.

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

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

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

(l) "District office" means a location of a trial court of the Workers' Compensation Appeals Board.

(m) "Document" is a pleading, petition, medical report, record, declaration, exhibit, or another filing submitted by a party or lien claimant, including an electronically filed

document or a scanned version of a document that was filed in paper form. Each medical report or other record having a different author and/or a different date is a separate “document.”

(n) “Document cover sheet” means the form adopted by the Court Administrator under section 10232.1, which is placed on top of a document or set of documents being filed at one time in a specific case.

(o) “Document separator sheet” means the form adopted by the Court Administrator under section 10232.2, which is placed on top of each individual document, when one or more documents are being filed at the same time in the same case, and which is placed on top of each individual attachment to each document being filed, when a document has one or more attachments.

(p) “Electronic Adjudication Management System” or “EAMS” means the computerized case management system used by the Division of Workers’ Compensation to electronically store and maintain adjudication files and to perform other case management functions.

(q) “Fax” means a document that has been electronically served by a facsimile (fax) machine or other fax technology.

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

~~(i)~~(s) “Hearing” means any trial, mandatory settlement conference, rating mandatory settlement conference, status conference, lien conference, or priority conference at a district office or before the Appeals Board.

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

(u) “Lien conference” means a proceeding held for the purpose of assisting the parties in resolving disputed lien claims pursuant to Labor Code section 4903 or 4903.1 or, if the dispute cannot be resolved, to frame the issues and stipulations in preparation for a lien trial.

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

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

~~(l)~~(x) “Party” means: an Applicant or Defendant, (1) a person claiming to be an injured employee or the dependent of a deceased employee; (2) a defendant; or (3) a lien claimant where either (A) the applicant’s underlying case of the injured employee or the dependent(s) of an injured employee has been settled by way of a compromise and

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

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

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

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

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

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

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

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

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

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

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

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

Authority cited: Sections 133, ~~and~~ 5307, 5309, and 5708, Labor Code. Reference: Sections 110, 130, 131, 134, 3201.5 et seq., 4903 et seq., 5300, 5307, 5309, 5310, 5500, 5500.3, 5501, 5501.5, 5501.6, 5502, 5700, 5701, and 5808, Labor Code.

**§ 10302. Working Titles of Workers' Compensation Administrative Law Judges and Presiding Workers' Compensation Administrative Law Judges~~Referees and Referees in Charge.~~**

The Appeals Board hereby declares its intent that the working or organization titles of ~~"referee"~~ "workers' compensation administrative law judge" (formerly, "referee") and ~~"referee in charge"~~ "presiding workers' compensation administrative law judge" (formerly, "referee in charge") shall be respectively "workers' compensation judge" and "presiding workers' compensation judge." The term "workers' compensation judge" shall include pro tempore judges appointed pursuant to section 10350.

Authority cited: Sections 133, 5307, 5309, and 5708, Labor Code. Reference: Sections 27, 123.5, 123.7, 5309, 5310, 5312, Labor Code.

**§10306. Index of Cases.**

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

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

*NOTE: See proposed Court Administrator Rule 10215.*

**§10308. Official Address Record.**

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

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

*NOTE: See proposed Court Administrator Rule 10217.*

**§10324. Ex Parte Communications.**

(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~~10514~~.

(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 section 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.

Authority cited: Sections 133, ~~and~~ 5307, 5309, and 5708, Labor Code. Reference: Sections 5701, 5703.5, 5706, and 5906, Labor Code.

#### **§10346. Assignment or Transfer of Cases.**

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

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

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

Authority cited: Sections 133, ~~and~~ 5307, 5309, and 5708, Labor Code. Reference: Sections 5309 and 5310, Labor Code.

**~~§10347. Assignment of Judges.~~**

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

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

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

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

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

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

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

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

*NOTE: See proposed Court Administrator Rule 10228.*

**~~§10391. Filing of Copies of Documents.~~**

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

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

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

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

*NOTE: See proposed Court Administrator Rule 10236.*

**~~§10392. Form and Size Requirements for Filed Documents.~~**

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

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

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

*NOTE: See proposed Court Administrator Rule 10232.*

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

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

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

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

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

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

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

*NOTE: See proposed Court Administrator Rule 10235.*

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

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

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

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

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

*NOTE: See proposed Court Administrator Rule 10217.*

**§10397. Restrictions on the Rejection for Filing of Documents Subject to a Statute of Limitations or a Jurisdictional Time Limitation.**

(a) An application for adjudication of claim, a petition for reconsideration, a petition to reopen, or any other petition or other document that is subject to a statute of limitations or a jurisdictional time limitation shall not be rejected for filing solely on the basis that:

(1) the document is not filed in the proper office of the Workers' Compensation Appeals Board;



(2) the document has been submitted without the proper form, or it has been submitted with a form that is either incomplete or contains inaccurate information; or

(3) the document has not been submitted with the required document cover sheet and/or document separator sheet(s), or it has been submitted with a document cover sheet and/or document separator sheet(s) not containing all of the required information.

(b) A document that is subject to a statute of limitations or a jurisdictional time limitation may be rejected for filing if it does not contain a combination of information sufficient to establish the case or cases to which the document relates or, if it is a case opening document, sufficient information to open an adjudication file. If a document is rejected in accordance with this subdivision, the Court Administrator shall return the document to the filer and shall notify the filer, through the service of a Notice of Document Discrepancy, that the document has not been accepted for filing. The Notice of Document Discrepancy shall specify the nature of the discrepancy(ies) and the date of the attempted filing, and it shall state that the filer shall have 15 days from the service of the Notice within which to correct the discrepancy(ies) and resubmit the document for filing. If the document is corrected and resubmitted for filing within 15 days, or at a later date upon a showing of good cause, it shall be deemed filed as of the original date the document was submitted.

(d) Nothing in this section shall preclude the discretionary or conditional acceptance for filing of a document that is subject to a statute of limitations or a jurisdictional time limitation, even if it does not contain a combination of information sufficient to establish the case or cases to which the document relates or, if it is a case opening document, sufficient information to open an adjudication file.

(e) Where document that it is subject to a statute of limitations or a jurisdictional time limitation has been accepted for filing in accordance with this rule, but the document nevertheless cannot be processed by EAMS, the Court Administrator may serve a copy of the filed document on the filing party or lien claimant, together with a Notice of Document Discrepancy. The notice may specify the nature of the discrepancy(ies) and request that the party correct the discrepancy(ies) within 15 days after service of the Notice, however, a failure to timely correct the discrepancy(ies) shall not nullify the acceptance of the document for filing.

(f) Nothing in this section shall be deemed to excuse non-compliance with any of other provisions of the rules of the Workers' Compensation Appeals Board or non-compliance with the rules the Court Administrator. Any such non-compliance may still be a basis for the imposition of sanctions under Labor Code section 5813 and Rule 10561.

Authority cited: Article XIV, Section 4, California Constitution; Sections 133, 5307, 5309, and 5708, Labor Code. Reference: Sections 126, 5316, 5500, and 5501, Labor Code.

**§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 ~~or~~, a case opening Stipulations with Request for Award, or a Request for Findings of Fact under section 10405.

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

(b) 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 10229, subdivisions (e)(5)(A) through (e)(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.

Authority cited: Sections 133, ~~and~~ 5307, 5309, and 5708, Labor Code. Reference: Sections 126, 5316, ~~and~~ 5500, and 5501, Labor Code.

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

**§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.

Authority cited: Sections 133, 5307, 5309, and 5708, Labor Code. Reference: Sections 5300, 5301, 5500, Labor Code.

#### **§10409. Venue.**

(a) The person or entity filing an initial Application for Adjudication (or other case opening document) shall designate venue and shall specify 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)).

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

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

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

Authority cited: Sections 133, and 5307, 5309, and 5708, Labor Code. Reference: Sections 5500 and 5501.5, Labor Code.

#### **§10410. Objection to Venue Under Labor Code Section 5501.5(c).**

Pursuant to Labor Code section 5501.5(c), any employer or insurance carrier listed on the 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

~~served on~~ received by the ~~party-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.

Authority cited: Sections 133, and 5307, 5309, and 5708, Labor Code. Reference: Section 5501.5, Labor Code.

**§10411. Petition for Change of Venue Under Labor Code Section 5501.6.**

A petition for change of venue pursuant to Labor Code section 5501.6 shall be filed at the district office with venue. Any objection to a petition for a change of venue shall be filed within 10 days of the filing of the petition. The presiding judge of the district office having venue, or his or her designee, shall grant or deny ~~at~~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.

Authority cited: Sections 133, and 5307, 5309, and 5708, Labor Code. Reference: Section 5501.6, Labor Code.

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

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

Authority cited: Sections 133, and 5307, 5309, and 5708, Labor Code. Reference: Sections 126 and 5501.6, Labor Code.

**§10414. Declaration of Readiness to Proceed.**

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

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

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

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

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

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

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

*NOTE: See proposed Court Administrator Rule 10250.*

#### **~~§10415. Declaration of Readiness to Proceed to Expedited Hearing.~~**

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

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

#### **~~§10416. Objection to Declaration of Readiness to Proceed.~~**

~~Any objection to a Declaration of Readiness to Proceed shall be filed and served within ten (10) days after service of the Declaration. The objection shall set forth, under penalty of perjury, specific reason(s) why the case should not be set or why the requested proceedings are inappropriate.~~

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

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

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

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

*NOTE: See proposed Court Administrator Rule 10251.*

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

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

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

#### **§10450. Petitions.**

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

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

Authority cited: Sections 133, ~~and~~ 5307, 5309, and 5708, Labor Code. Reference: Section 126, Labor Code.

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

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

(a) Except as provided in subdivision (b) below, the Workers' Compensation Appeals Board may, in its discretion, designate a party or lien claimant, or their attorney or agent of record~~representative~~, to make service of notices of the time and place of hearing, orders approving compromise and release, awards based upon stipulations with request for award and any interim or procedural orders. In deciding whether to exercise this discretion, the Workers' Compensation Appeals Board may consider whether service by it would be more efficient and cost-effective because most or all of the parties, lien claimants, attorneys, or agents of record to be served have specified e-mail or fax as their preferred method of service. If discretion is exercised so as to require designated service, the ~~The~~ party, lien claimant, or attorney or agent of record~~representative~~ designated to make service shall retain the proof of service and shall not file it unless ordered to do so by the Workers' Compensation Appeals Board.

(b) The Workers' Compensation Appeals Board shall serve all parties and lien claimants of record notice of any final order, decision, or award issued by ~~its workers' compensation judge~~ on a disputed issue after submission. The Workers' Compensation Appeals Board shall not designate a party or lien claimant, or their attorney or agent of record, to serve any final order, decision, or award relating to a submitted disputed issue.

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

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

(e) If the Workers' Compensation Appeals Board electronically serves a document through EAMS on persons or entities listed on the official address record who have



designated e-mail or fax as their preferred method of service, the record of electronic service maintained in EAMS shall constitute proof of service on such persons or entities by the Workers' Compensation Appeals Board.

Authority cited: Sections 133, ~~and~~ 5307, 5309, and 5708, Labor Code. Reference: Sections 5316 and 5504, Labor Code.

*NOTE: This proposed Rule combines some elements of current Rules 10500 and 10520.*

**§10505. Service by the Parties or Lien Claimants.**

(a) This section shall apply when a document is served by a party, a lien claimant, or their attorney or other agent of record.

(b) Except when a document is personally served, service of any document shall be made by first-class mail, unless (1) the party, lien claimant, attorney, or agent being served has previously specified that a designated preferred method of service other than first-class mail may be used for any service, consistent with section 10218; or (2) the serving party, lien claimant, attorney, or agent and the receiving party, lien claimant, attorney, or agent previously agreed to some other method of service.

(c) If a document is personally served by a party or lien claimant, the proof of personal service shall be made by endorsement on the document, setting forth the fact of personal service, the name(s) of the person(s) served and the date of service. The endorsement shall bear the signature of the person making the service.

(d) If a document is served by a party or lien claimant by mail on persons listed on the official address record who have designated mail as their preferred method of service, who have failed to make any designation, or who have previously agreed to accept mail service in accordance with subdivision (g), the proof of mail service may be made by: (1) affidavit or declaration of service; (2) written statement endorsed upon the document served and signed by the party making the statement; or (3) letter of transmittal. The proof of service shall set forth the names and addresses of persons served, the fact of service by mail, the date of service, and the address(es) to which mailing was made.

(e) If a document is served by a party or lien claimant by e-mail on persons listed on the official address record who have designated e-mail as their preferred method of service, or who have previously agreed to accept e-mail service in accordance with subdivision (g), the proof of e-mail service must state:

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

Absent evidence to the contrary, service by e-mail shall be deemed complete at the time of transmission, unless a document is re-served in accordance with subdivision (h).

(f) If a document is served by a party or lien claimant by fax on persons listed on the official address record who have designated fax as their preferred method of service, or who have previously agreed to accept fax service in accordance with subdivision (g), the proof of fax service must state:

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

Absent evidence to the contrary, service by fax shall be deemed complete at the time of transmission, unless a document is re-served in accordance with subdivision (h).

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

(h) This subdivision shall apply where, after serving a document in accordance with subdivisions (d), (e), (f), and/or (g), the serving party or lien claimant (or their attorney or agent of record) subsequently receives notification that the service to one or more parties or lien claimants (or to their attorneys or agents of record) failed.

- (1) When the serving party or lien claimant (or their attorney or agent of record) receives notification of failed service to any intended recipient(s), the server shall promptly re-serve the document on the intended recipient(s) using the method of service (i.e., mail, e-mail, fax) best calculated to result in valid service on the intended recipient(s), even if the intended recipient(s) did not previously designate that method as their preferred method of service.
- (2) The server need not re-serve the document on intended recipients for whom the server did not receive notification of failed service.
- (3) On re-service, the server shall execute a new proof of service in accordance with subdivisions (c), (d), (e), and/or (f), showing re-service on the intended recipient(s).

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

Authority cited: Sections 133, ~~and 5307~~, 5309, and 5708 ~~and 5316~~, Labor Code.  
Reference: Section 5316, Labor Code.

*NOTE: This proposed Rule combines some elements of current WCAB Rule 10514.*

**§10507. Mail and Fax Service Time Within Which To Act When A Document Is Served by Mail, Fax, or E-mail.**

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

(a) If a document is served by mail, fax, e-mail, or any method other than personal service, the period of time for exercising or performing any right or duty to act or respond shall be extended by:

(1) five calendar days from the date of service, if the physical address of the party, lien claimant, attorney, or other agent of record being served is within California;

(2) ten calendar days from the date of service, if the physical address of the party, lien claimant, attorney, or other agent of record being served is outside of California but within the United States; and

(3) twenty calendar days from the date of service, if the physical address of the party, lien claimant, attorney, or other agent of record being served is outside the United States.

(b) For purposes of this section, “physical address” means the street address or Post Office Box of the party, lien claimant, attorney, or other agent of record being served, as reflected in the Official Address Record at the time of service, even if the method of service actually used was fax, e-mail, or other agreed-upon method of service.

(c) This rule applies whether service is made by the Workers’ Compensation Appeals Board, a party, a lien claimant, or an attorney or other agent of record.

Authority cited: Sections 133, ~~and~~ 5307, 5309, and 5708, Labor Code. Reference: Section 5316, Labor Code.

**§10508. Extension of Time for Weekends and Holidays.**

If the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers’ Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Section 5316, Labor Code; Sections 6700, 6701, and 6707, Government Code; and Sections 10, 12, 12a, 12b, 13, and 135, Code of Civil Procedure.

**§10510. Service on Represented Employees or Dependents and on Attorneys or Agents.**

(a) All orders, decisions, findings, awards, minutes of hearing, notices of hearing, correspondence, and any other documents issued by the Workers' Compensation Appeals Board, including those being served by designated service in accordance with section 10500, shall be served on:

(1) the injured employee or any dependent(s) of a deceased employee, whether or not the employee or dependent is represented by an attorney or other agent of record;

(2) each attorney or other agent of record of the injured employee or any dependent(s) of a deceased employee; and

(3) each attorney or other agent of record for any other affected party or affected lien claimant, unless that party or lien claimant is unrepresented, in which event service shall be made directly on the party or lien claimant.

(b) Except for designated service under section 10500 or as otherwise provided by ~~Rule 10500~~ these rules, service by any party or lien claimant shall be made on the attorney(s) or agent(s) of record of each other affected party or affected lien claimant, unless ~~the~~ that party or lien claimant is unrepresented, in which event service shall be made directly on the party or lien claimant. Except as provided in section 10500, or as otherwise ordered by a workers' compensation judge or the Appeals Board, no party or lien claimant shall be required to serve any document on the injured employee or any dependent(s) of a deceased employee, if the employee or dependent is represented by an attorney or other agent of record.

(c) Nothing in this rule shall preclude more comprehensive service, either as ordered by the Workers' Compensation Appeals Board or in the discretion of the Workers' Compensation Appeals Board or the parties.

Authority cited: Sections 133, ~~and~~ 5307, 5309, and 5708, Labor Code. Reference: Section 5316, Labor Code.

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

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

~~(a) affidavit or declaration of service;~~

~~(b) written statement endorsed upon the document served and signed by the party making the statement;~~

~~(c) letter of transmittal.~~

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

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

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

*NOTE: See proposed WCAB Rule 10505.*

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

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

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

*NOTE: See proposed WCAB Rule 10500.*

#### **~~§10541. Submission at Conference.~~**

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

~~(b) If documentary evidence is required to determine the issue or issues being submitted, the parties shall comply with the provisions of Rule 10629 regarding the listing and filing of exhibits.~~

~~Authority cited: Sections 133, and 5307, 5309, and 5708, Labor Code. Reference: Sections 5708 and 5709, Labor Code.~~

#### **~~§10548. Continuances.~~**

~~(a) Continuances are not favored. Requests for continuances are inconsistent with the requirement that workers' compensation proceedings be expeditious. Continuances will be granted only upon a clear showing of good cause. Where possible, reassignment pursuant to Rule 10346 shall be used to avoid continuances.~~

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

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

*NOTE: See proposed Court Administrator Rule 10243.*

### **§10550. Proper Identification of the Parties and Lien Claimants.**

Whenever any party 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), the party or lien claimant, 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;
- (b) if an adjusting agent or third-party claims administrator is appearing, it shall disclose: (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;
- (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
- (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.

Authority cited: Sections 133, 5307, 5309, and 5708, Labor Code. Reference: Sections 3755-3759, 4903.1(c), 5001, 5002, 5003, 5004, 5500, 5502, 5503, 5505, 5702, and 5709, Labor Code.

#### **~~§10555. Priority Conference Calendar.~~**

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

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

*NOTE: See proposed Rule 10254.*

#### **§10561. Sanctions.**

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

(b) ~~A bad~~ Bad faith actions or tactics that is are frivolous or solely intended to cause unnecessary delay is one ~~include actions or tactics that results from a willful failure to comply with a statutory or regulatory obligation, or that result from a willful intent to disrupt or delay the proceedings of the Workers' Compensation Appeals Board, or A frivolous bad faith action or tactic is one~~ that is are done for an improper motive or is 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 shall be deemed a bad faith action or tactic solely intended to cause unnecessary delay~~ where a reasonable excuse is not offered or the offending party has demonstrated a pattern of such conduct.

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

(3) ~~Failure to timely serve evidentiary documents, (including but not limited to medical reports and medical-legal reports) pursuant to rule 10608 as required by~~

the rules of the Appeals Board, the Court Administrator, or the Administrative Director, where the documents are within the party or lien claimant's possession or control~~shall be deemed a bad faith action or tactic that is frivolous or solely intended to cause unnecessary delay~~, unless that failure resulted from mistake, inadvertence, or excusable neglect.

(4) Failing to comply with the Workers' Compensation Appeals Board's Rules of Practice and Procedure, with the regulations of the Administrative Director or the Court Administrator, or with 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,~~shall be deemed a bad faith action or tactic that is frivolous or solely intended to cause unnecessary delay~~unless that failure results from mistake, inadvertence, surprise, or excusable neglect.

(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 nonfrivolous 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 (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 (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.

(e) 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.

Authority cited: Sections 133, ~~and~~ 5307, 5309, and 5708, Labor Code. Reference: Sections 4903.6(c) and 5813, Labor Code.

### **§10563. Appearances Required.**

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

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

~~the lien claimant shall have a person available with settlement authority in the same manner as set forth above.~~

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

*NOTE: See proposed Rule 10240.*

**§10589. Consolidated Consolidation of Cases.**

~~(a) Consolidation of two or more related cases, involving either the same injured employee or multiple injured employees, may be ordered for the purpose of receiving evidence. Whether consolidation is ordered or a master file is designated to accommodate exhibits rests in the sound discretion of the Workers' Compensation Appeals Board. In exercising that discretion, the Workers' Compensation Appeals Board shall take into 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; and~~
- ~~(3) the potential prejudice of 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, however, 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.

(e) If a master file has been designated and the consolidated cases are tried, Under consolidation, all relevant documentary evidence previously received in an individual case shall be reintroduced deemed admitted in evidence in the consolidated proceedings under the master file, if so designated. When so adduced, the evidence and shall be deemed part of the record of each of the several consolidated cases. Evidence received subsequent to the order of consolidation 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, however, copies shall be filed in the record of proceedings of each case.

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

Authority cited: Sections 133, 5307, 5309, and 5708, Labor Code. Reference: Sections 5300, 5301, 5303, and 5708, Labor Code.

#### **~~§10590. Consolidated Cases--Same Injured Worker.~~**

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

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

*NOTE: See proposed Court Administrator Rule 10260.*

#### **~~§10591. Consolidating Cases--Different Offices.~~**

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

Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5303, 5310 and 5708, Labor Code.

*NOTE: See proposed WCAB Rule 10589 and proposed Court Administrator Rule 10260.*

**~~§10592. Pleadings in Consolidated Cases.~~**

~~Where cases are consolidated, joint minutes of hearing, summaries of evidence and opinions may be used.~~

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

*NOTE: See proposed WCAB Rule 10589.*

**§10593. Testimony of Judicial or Quasi-Judicial Officers of the Workers' Compensation Appeals Board or of the Division of Workers' Compensation.**

(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.

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.]
- (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; (2) by a 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 (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.
- (e) 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 or the Appeals Board may consider, among other things:
- (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 Commissioner; (2) any Deputy 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) the Court Administrator and his or her designee; (8) any workers' compensation consultant of the Rehabilitation Unit or of the Retraining and Return to Work Unit; and (9) any arbitrator or mediator.

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

(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.

Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 5300, 5301, 5309, 5700, 5701, and 5708, Labor Code; Section 703.5, Evidence Code.

### **§10603. Oversized Exhibits, Diagnostic Imaging, Physical Exhibits, and Exhibits on Media.**

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

- (1) Oversized documents, other than medical reports, that are: (A) larger than 11 x 17 inches (e.g., maps, diagrams, and schematic drawings) or (B) over 25 pages in length;
- (2) Diagnostic imaging, including but not limited to any X-ray, computed axial tomography (CAT) scan, magnetic resonance imaging (MRI), nuclear medicine, positron emission tomography (PET) scan, mammography, ultrasound, or other similar medical imaging that is stored on digital, film, or other non-paper media;
- (3) Original business or office records;
- (4) Physical objects or other tangible things;
- (5) Any CD-ROM, DVD, or other digital media, including but not limited to: (A) digital photographs; (B) digital video recordings; and (C) digital audio recordings;
- (6) Videotapes, audiotapes, films and other non-digital video and/or audio recordings or images; and
- (7) Photographs printed on paper.

(b) Unless otherwise ordered by the Workers' Compensation Appeals Board, any exhibit listed in subdivision (a) that is offered into evidence (whether or not admitted into evidence) shall be retained by the filing party (or an agent of the filing party) until the later of either: (1) five years after the filing of the initial application for adjudication (or other case opening document) or (2) at least six months after all appeals have been exhausted or the time for seeking appellate review has expired with respect to the decision on the issue(s) for which the exhibit was offered in evidence. After expiration of the later of these two time periods, the party may destroy the exhibit, unless the Workers'

Compensation Appeals Board has ordered that the exhibit be preserved for a longer period.

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

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

For purposes of subsection (c), the term “exhibit” shall include any item listed in subsection (a), whether or not the party or lien claimant in possession or control of that item intends to offer it in evidence.

(d) Any disputes regarding subdivision (c), including but not limited to issues of timing and costs, may be submitted for determination to the Workers’ Compensation Appeals Board.

Authority cited: Sections 133, 5307, 5309, and 5708, Labor Code. Reference: Sections 5309, 5701, 5703, 5704, and 5708, Labor Code

#### **§10608. Filing and Service of Physicians’ Medical Reports and Medical-Legal Reports.**

(a) All medical reports and medical-legal reports filed with the Workers’ Compensation Appeals Board shall be filed in accordance with the regulations of the Court Administrator, or as otherwise provided by these rules. Service of all medical reports and medical-legal reports on other parties and lien claimants shall be made in accordance with the provisions of this section.

~~(a)~~(b) After the filing of an Application for Adjudication, if a party or lien claimant is requested by another party or lien claimant to serve copies of medical reports and medical-legal reports relating to the claim, the party or lien claimant receiving the request shall serve copies of the reports that are in its possession or under its control on the requesting party or lien claimant within six (6) days of the request, if the reports have not been previously served; the The party or lien claimant receiving the request also shall serve a copy of any subsequently-received medical report or medical-legal report within six (6) days of receipt of the report.

~~(b)~~(c) At the time of the filing of any A Declaration of Readiness to Proceed, a or Declaration of Readiness to Proceed to Expedited Hearing, or an objection to either shall be accompanied by the physicians’ reports that are in the possession or under control of the declarant. At the time of filing, it shall be the duty of the filing declarant to shall concurrently serve copies of all medical reports and medical-legal physicians’ reports relating to the claim that have not been previously served and that are in the possession or

under the control of the filing declarant on: (1) all other parties, whether or not they have previously requested service; and (2) all lien claimants that have previously requested service. The filing declarant also shall serve a copy of any subsequently-received medical report or medical-legal report relating to the claim within six (6) days of receipt of the report.

~~(e)(d)~~ Within six (6) days after service of the any Declaration of Readiness to Proceed or Declaration of Readiness to Proceed to Expedited Hearing, all other parties and lien claimants shall serve upon the opposing parties copies of all medical reports and medical-legal reports of physicians relating to the claim that are in their possession or under their control, and that have not been previously served, on: (1) all other parties, whether or not they have previously requested service; and (2) all lien claimants that have previously requested service. All reports that have not been previously filed, and whose filing is not required by subsection (b), shall be filed at the next hearing. The other parties and lien claimants also shall serve a copy of any subsequently-received medical report or medical-legal report relating to the claim within six (6) days of receipt of the report, consistent with subsections (d)(1) and (d)(2).

~~(d)(e)~~ If, at any time after the periods specified in subsections (b), (c) and (d), a lien claimant initiates a request for service of medical reports and medical-legal reports, all parties and other lien claimants shall serve the requesting lien claimant with copies of all medical reports and medical-legal reports relating to the claim that are in their possession or under their control, and that have not been previously served, within six (6) days of receipt of the request. The parties and other lien claimants also shall serve a copy of any subsequently-received medical report or medical-legal report relating to the claim within six (6) days of receipt of the report. All physicians' reports that have not been previously filed shall be filed upon the filing of a compromise and release or stipulations with request for award. (e) Any report filed in violation of this section may be discarded by the Workers' Compensation Appeals Board.

(f) All medical reports or medical-legal reports relating to the claim that have not been previously served shall be served on all other parties and lien claimants upon the filing of a compromise and release or stipulations with request for award, unless the rights and/or liabilities of those parties or lien claimants were previously fully resolved. X-rays shall not be transmitted to the Workers' Compensation Appeals Board except under a specific order directing their production.

Authority cited: Sections 133, ~~and~~ 5307, 5309, and 5708, Labor Code. Reference: Sections 5001, 5502, 5703 and 5708, Labor Code.

#### **§10610. Admissibility and Service of Reports from Non-Medical Experts.**

(a) Absent an alternative basis for its exclusion, the written report of a non-medical expert may be admitted in evidence, in lieu of or in addition to the expert's sworn testimony at hearing, if:



- (1) The written report conforms to the requirements of subdivision (b); and
- (2) The written report is the sort of evidence on which responsible persons are accustomed to rely in the conduct of their serious affairs.

(b) The report shall meet all of the following requirements:

(1) The report shall contain declaration by the non-medical expert signing the report stating: “I declare under penalty of perjury that the information contained in this report and its attachments, if any, is true and correct to the best of my knowledge and belief, except as to information that I have indicated I received from others. As to that information, I declare under penalty of perjury that the information accurately describes the information provided to me and, except as noted herein, that I believe it to be true.” The foregoing declaration shall be dated and signed by the non-medical expert and shall indicate the county wherein it was signed.

(2) The report shall disclose the qualifications of the non-medical expert signing the report, which may be satisfied by attaching a curriculum vitae.

(3) The body of the report shall contain a statement, above the declaration under penalty of perjury, that: “No person, other than the non-medical expert signing the report, has participated in the nonclerical preparation of the report, including all of the following: (i) taking a history from the employee; (ii) reviewing and summarizing medical and/or non-medical records; (iii) composing and drafting the conclusions of the report.”

(4) Notwithstanding subdivision (b)(3), above, it is permissible for a person or persons, other than the non-medical expert signing the report, to prepare an initial outline of the employee’s history and/or to excerpt prior medical and non-medical records. If this is done, however, the non-medical expert signing the report: (i) shall review the excerpts and the entire outline and shall make additional inquiries as are necessary and appropriate to identify and determine the relevant issues; (ii) shall include in the statement required by subdivision (b)(3) that, as applicable, an initial outline of the employee’s history and/or an excerpt of the employee’s prior medical and non-medical records were prepared by another person or persons, and that the non-medical expert signing the report has reviewed any such excerpts and/or outline and has made any additional inquiries necessary and appropriate to identify and determine the relevant issues; and (iii) shall comply with subdivision (b)(5), below.

(5) The report shall disclose the name(s) and qualifications of each person who performed any services in connection with the report, other than its clerical preparation.

(c) If the written report of a non-medical expert fails to comply or to fully comply with the requirements of subdivision (b), then, upon notice of the defects, the non-medical expert shall be given a reasonable time to cure the defects by a supplemental written report made under penalty of perjury or by sworn testimony.

(d) The written report of a non-medical expert shall be served on all other parties (and all lien claimants whose liens have been placed in issue by the declaration of readiness) in the same time and manner required by these rules for the service of medical and medical-legal reports. Absent a showing of good cause, the failure to timely serve the written report of a non-medical expert may result in its exclusion from evidence.

(e) The written report may be excluded from evidence if the author of the report does not qualify as an expert.

(f) Regardless of whether a non-medical expert's report is or is not admitted in evidence, this section shall have no bearing on whether any of the costs associated with the report and/or its preparation are allowable under Labor Code section 5811 or under any other provision of law.

Authority cited: Article XIV, Section 4, California Constitution; Sections 133, 4628, 5307, 5309, and 5708, Labor Code. Reference: Sections 5703, 5708, and 5709, Labor Code; Sections 140 and 720, Evidence Code; and Section 11513(c), Government Code.

#### **§10616. Employer-Maintained Medical Records.**

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

Authority cited: Sections 133, ~~and~~ 5307, 5309, and 5708, Labor Code. Reference: Sections 4600, 5703 and 5708, Labor Code.

#### **§10626. Examining and Copying Hospital and Physicians' Records.**

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

~~A party offering such records shall designate the particular portion or portions thereof believed to be relevant, specifically stating where in the records it may be found. The~~

~~Workers' Compensation Appeals Board prefers that the designation be in writing and before the hearing.~~

Authority cited: Authority cited: Sections 133, ~~and~~ 5307, 5309, and 5708, Labor Code.  
Reference: Section 4600, Labor Code.

**§10629. Filing and Listing of Exhibits.**

(a) Proposed exhibits shall be filed in accordance with the provisions of section 10233 and 10603.

(b) At every mandatory settlement conference, regular hearing, expedited hearing, and conference at which any issue will be submitted for decision, each party or lien claimant shall submit, and shall personally serve on each other appearing party or appearing lien claimant, a list of the exhibits that the party or lien claimant proposes to offer in evidence.

(1) If any such hearing is continued, a new list identifying all of the party or lien claimant's proposed exhibits (including all previously listed exhibits that the party or lien claimant still intends to offer, and any new exhibits) shall be prepared and served, with the exceptions that: (A) any exhibit already admitted in evidence, or marked in evidence but not admitted, need not be re-listed; (B) if the previous list was accepted for filing and scanned into EAMS, and no changes have been made to the previous list, a new list need not be prepared and served; and (C) if the previous list was served (but not accepted for filing and scanned into EAMS), and no changes have been made to the previous list, a new list need not be served, but the list still must be filed.

(2) If a list of exhibits is being submitted after an initial mandatory settlement conference, the list shall separately identify:

(A) the exhibits that the party listed at the time of the initial mandatory settlement conference; and

(B) the exhibits that the party did not list at the time of the initial mandatory settlement conference.

(c) If a party or lien claimant with a currently pending issue fails to appear after proper notice at any hearing described in subdivision (b), even if the party or lien claimant was excused from appearing, then:

(1) the non-appearing party or lien claimant with a currently pending issue shall forthwith file and serve its exhibit list, but consideration of its exhibits shall be subject to the limitations or evidentiary sanctions set forth in section 10562; and

(2) the appearing party(ies) or lien claimant(s) shall forthwith serve their exhibit list(s) on the non-appearing party or lien claimant.

For purposes of this subdivision, a party or lien claimant will be deemed to have a “currently pending issue” if an issue directly related to that party or lien claimant has been raised in a declaration of readiness and that issue has not been resolved by a stipulation or adjudication, it has not been withdrawn (including by failure to raise the issue at the mandatory settlement conference or trial), and it has not been judicially deferred.

(d) Each exhibit listed must be clearly identified by author/provider, date, and title or type (e.g., “the July 1, 2008 medical report of John Doe, M.D. (3 pages)”). Each medical report, medical-legal report, medical record, or other paper or record having a different author/provider and/or a different date of service is a separate “document” and must be listed as a separate exhibit, with the exception that the following documents may be listed as a single exhibit, unless otherwise ordered by the Workers’ Compensation Appeals Board:

- (1) excerpted portions of physician, hospital or dispensary records, provided that the party offering the exhibit designates each excerpted portion by the title of the record or document, by the date or dates of treatment or other service(s) covered by the record or document, by the author or authors of the record or document, and by any available page number(s) (e.g., Bates-numbered pages of records or documents photocopied and numbered by a legal copy service). Only the relevant excerpts of physician, hospital or dispensary records shall be admitted in evidence; and
- (2) excerpted portions of personnel records, wage records and statements, job descriptions, and other business records provided that the party offering the exhibit designates each excerpted portion by the title of the record or document, by the date or dates covered by the record or document, by the author or authors of the record or document, and by any available page number(s) (e.g., Bates-numbered pages of records or documents photocopied and numbered by a legal copy service). Only the relevant excerpts of personnel records, wage records and statements, job descriptions, and other business records shall be admitted in evidence.

(e) Each exhibit listed must specify an exhibit number or initial that identifies it and the party, parties, or lien claimant offering it (e.g., Applicant’s Exhibit 1, 2, 3, etc.; Defendant’s Exhibit A, B, C, etc.; Lien Claimant’s AA, BB, CC, etc.; Joint Exhibit XX, YY, etc.).

(f) Nothing in this section shall prevent a workers’ compensation judge from referring an unrepresented injured employee, dependent or uninsured employer to the Information and Assistance Office to prepare an exhibit list in accordance with the provisions of subdivisions (a), (b), (c), (d) and (e).

Authority cited: Sections 133, 5307, 5309, and 5708, Labor Code. Reference: Sections 5309 and 5708, Labor Code.

**~~§10630. Return of Exhibits.~~**

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

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

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

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

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

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

*NOTE: See proposed Court Administrator Rule 10273.*

**§10750. Record of Proceedings.**

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

(b) Upon approval of a compromise and release or stipulations with request for award, all medical reports that have been filed as of the date of approval shall be deemed to have

been admitted in evidence and shall be deemed to have been transferred to the record of proceedings.

Authority cited: Sections 133, ~~and~~ 5307, 5309, and 5708, Labor Code. Reference: Section 126, Labor Code.

#### **§10751. Legal Adjudication File.**

(a) The Workers' Compensation Appeal Board's legal adjudication file shall consist of:

(1) all findings, orders, decisions, awards and correspondence issued by the Workers' Compensation Appeals Board, but not including documents that, under the rules of the Court Administrator, shall not be made available for inspection by any person (see current Rule 10271); and

(2) all documents filed by any party, lien claimant, attorney or other agent of record, but not including documents that, under the rules of the Court Administrator, shall not be filed (see current Rule 10235(a)), unless the Workers' Compensation Appeals Board has ordered that the document be filed.

(b) The adjudication file includes the record of proceedings.

~~Upon approval of a compromise and release or stipulations with request for award, all medical reports that have been filed as of the date of approval shall be transferred to the legal file.~~

Authority cited: Sections 133, ~~and~~ 5307, 5309, and 5708, Labor Code. Reference: Section 126, Labor Code.

#### **§10753. Inspection of Files.**

Except as provided by sections 10754, 10271, and 10272, or as ordered by a workers' compensation judge or the Appeals Board, the adjudication case files of the Workers' Compensation Appeals Board may be inspected in accordance with the provisions of section 10270.

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

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

~~that has been transferred to a record storage center for storage will be made available for inspection through the office from which the file was transferred. Files that have been transferred to a record storage center will be made available for inspection by any other person upon payment of the fee required by the Administrative Director.~~

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

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

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

Authority cited: Sections 133, ~~and 5307~~, 5309, and 5708, Labor Code. Reference: Section 126, Labor Code.

*NOTE: See also proposed Court Administrator Rules 10270 and 10271.*

#### **§10754. Sealed Documents.**

Medical reports and other records contained in the adjudication case files of the Workers' Compensation Appeals Board shall be sealed only in accordance with the provisions of section 10272.

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

~~Sealed documents in a case shall be made available for inspection by any party to the case or by his representative on order of a workers' compensation judge and subject to~~

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

Authority cited: Sections 133, ~~and 5307, 5309, and 5708~~, Labor Code. Reference: Section 5708, Labor Code.

*NOTE: See also proposed Court Administrator Rule 10272.*

#### **§10755. Destruction of Records.**

Except as otherwise provided by these rules, or as ordered by a workers' compensation judge or the Appeals Board, the adjudication case files of the Workers' Compensation Appeals Board shall be retained, returned, and destroyed in accordance with the provisions of section 10273.

~~Following a period of:~~

- ~~(a) two years after date of last entry thereon, the Workers' Compensation Appeals Board may destroy any miscellaneous record, not otherwise expressly covered by these Rules, which is kept and maintained in the proceeding of cases, case files and decisions; and~~
- ~~(b) five years after the date of filing of the Application for Adjudication or upon transfer to archive storage, whichever date first occurs, the Workers' Compensation Appeals Board may eliminate from the case file and destroy:~~
  - ~~(1) extra copies of pleadings, notices, findings, orders, decisions, awards and other documents; and~~
  - ~~(2) correspondence and other miscellaneous material not part of the legal record in the case, excepting originals of all medical reports found in the correspondence section of the file.~~

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

Authority cited: Sections 133, ~~and 5307, 5309, and 5708~~, Labor Code. Reference: Section 135, Labor Code.

*NOTE: See also proposed Court Administrator Rule 10273.*

#### **§10758. Destruction of Case Files.**

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

~~A case file may be destroyed by the Workers' Compensation Appeals Board after its contents, as stripped in accordance with Section 10755, have been reproduced in a~~



manner permitted by law. The reproduction may be destroyed after a period of five (5) years from the date of filing of the Application or other opening document.

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

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

*NOTE: See proposed Court Administrator Rule 10273.*

#### **§10762. Reporters' Notes.**

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

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

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

*NOTE: See proposed Court Administrator Rule 10273.*

#### **§10770. Lien Procedure.**

(a) Unless the lien claimant is excepted by parts (A) through (C) of section 10229(c)(5), Any lien claimant under Labor Code sections 4903 or 4903.1 shall file its lien in writing upon a utilizing an optical character recognition lien form approved by the Appeals Board or electronically as approved by the Administrative Director or the Court Administrator. Lien claimants excepted by parts (A) through (C) of section 10229(c)(5) may file a lien utilizing a non-optical character recognition form provided that it is in the same format and contains the same information as the corresponding OCR form approved by the Appeals Board.

(b) All Lien claims filed in writing shall be accompanied by: (1) a full statement or itemized voucher supporting the lien and justifying the right to reimbursement; and (2) and a proof of service.

(c) All liens, along with a the full statement or itemized voucher supporting the lien, shall be concurrently served as follows:

(1) upon the applicant, the injured worker (or, if deceased, upon the worker's dependent(s)) shall be served, unless: (A) the worker or dependent is represented by an attorney or other agent of record, in which event service may be made solely upon the attorney or agent of record; or (B) the underlying case of the worker or dependent(s) has been resolved. For purposes of this subdivision, the underlying case will be deemed to have been resolved if:

(i) in a stipulated findings and award or in a compromise and release agreement, a defendant has agreed to hold the worker or dependent(s) harmless from the specific lien claim being filed and has agreed to pay, adjust, or litigate that lien;

(ii) a defendant had written notice of the lien in accordance with Labor Code section 4904(a) before the lien was filed and, in a stipulated findings and award or in a compromise and release agreement, that defendant has agreed to hold the worker or dependent harmless from all lien claims and has agreed to pay, adjust, or litigate all liens;

(iii) the application for adjudication of claim filed by the worker or the dependent(s) has been dismissed, and the lien claimant is filing or has filed a new application; or

(iv) the worker or the dependent(s) choose(s) not to proceed with his, her, or their case.

(2) the any employer(s), the or insurance carrier(s) that are parties to the case shall be served, unless the employer(s) or insurance carrier(s) is/are represented by an attorney or other agent of record, in which event service may be made solely upon the respective attorney(s) or other representatives agent(s) of record.

Service of a lien on a party shall constitute notice to it of the existence of the lien.

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

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

~~(d)(f)~~ After a lien has been filed, the lien claimant shall ~~continue to file and serve any~~ amendments to the lien, together with a full statement or itemized voucher supporting the amendment, and it shall serve the amended lien in accordance with subsection (c) on the parties. When filing an amended lien, the lien claimant shall indicate on the box set forth on the lien form that it is an "amended" lien. For purposes of this subdivision, an "amended" lien includes: (1) a lien that is for or includes additional services or charges for the same injured employee for the same date or dates of injury; (2) a lien that reflects a change in the amount of the lien based on payments made by the defendant; or (3) a lien that has been corrected for clerical or mathematical error. A subsequent lien claim that adds an additional adjudication case number or numbers is an "amended" lien with respect to the adjudication case number(s) originally listed. ~~After a lien has been filed, amendments to the lien shall be filed only upon the filing of a Declaration of Readiness, compromise and release, or stipulations with request for award or order, or upon receipt~~

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

(g) Within five business days after a lien has been resolved or withdrawn, the lien claimant shall notify the Workers' Compensation Appeals Board, the party defendant(s), and the worker or dependent(s) (except as provided in subsection (c)).

~~(e)(h)~~ The lien claimant shall be notified by the Workers' Compensation Appeals Board when a any hearing is scheduled, whether or not the hearing directly involves the lien.

Authority cited: Sections 133, ~~and~~ 5307, 5309, and 5708, Labor Code. Reference: Sections 4903, ~~and~~ 4903.1, 4903.4, 4903.5, 4903.6, and 4904, Labor Code.

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

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

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

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

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

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

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

(2) A statement specifying in detail the facts establishing that the filing lien claimant has made a diligent search and has determined that no adjudication case number exists for the same injured worker and same date of injury at any district

office. A diligent search shall include contacting the injured worker, contacting the employer or carrier, or inquiring at the district office with appropriate venue pursuant to Labor Code section 5501.5(a)(1) or Labor Code section 5501.5(a)(2).

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

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

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s/s \_\_\_\_\_ on \_\_\_\_\_

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

Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 4903 and 4903.6, Labor Code.

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

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

The verification shall be in the following form:

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

☐ that the underlying case has been resolved.

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

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s/s \_\_\_\_\_ on \_\_\_\_\_

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

Authority cited: Sections 133, 5307, 5309, and 5708, Labor Code. Reference: Sections 4903 and 4903.6, Labor Code.

**~~§10771. Medical-Legal Expense.~~**

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

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

*NOTE: This would be covered by proposed WCAB Rule 10770.5.*

**§10779. Disbarred and Suspended Attorneys.**

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

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

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

Authority cited: Sections 133, ~~and~~ 5307, 5309, and 5708, Labor Code. Reference: Section 4907, Labor Code; Section 6126, Business and Professions Code.

### **§10782. Vexatious Litigants.**

(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 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 a vexatious litigant.

(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.

(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.

Authority cited: Sections 133, 5307, 5309, and 5708, Labor Code. Reference: Article XIV, section 4, California Constitution; Sections 391, 391.2, and 391.7, Code of Civil Procedure.

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

The Appeals Board or a workers' compensation judge may electronically file any decision, findings, award, order or other document within EAMS, either by preparing the document in paper form and then scanning it into EAMS or by preparing the document directly within EAMS. Any such electronically filed document shall have the same legal effect as a document filed in paper form.

Authority cited: Sections 133, 5307, 5309, and 5708, Labor Code. Reference: Sections 126, 5313, 5908.5.

### **ARTICLE 17**

#### **Reconsideration, Removal, and Disqualification**

##### **§10840. Filing Petitions for Reconsideration, Removal, and Disqualification and Answers.**

(a) Except as provided in sections 10865 and 10953, ~~P~~petitions for reconsideration, removal, or disqualification ~~from final orders, decisions or awards and answers thereto may~~ shall be filed ~~at~~with ~~any~~the district office of the Workers' Compensation Appeals Board ~~from which the order, decision or award issued. Petitions for reconsideration from final orders, decisions or awards issued by the Appeals Board in San Francisco and answers thereto shall be filed at~~or with the office of the Appeals Board in San Francisco. Duplicate copies of petitions filed with a district office shall not also be filed with any other district office or with the Appeals Board in San Francisco. ~~Petitions for reconsideration received in any district office or the office of the Appeals Board in San Francisco, except as provided by this rule, shall neither be accepted for filing nor deemed filed for any purpose.~~

(b) Except as provided in sections 10865 and 10953, the following persons and entities may file petitions for reconsideration, removal, or disqualification (and answers thereto) electronically within EAMS:



(a) a party, lien claimant, attorney, or other representative who has been assigned an individual EAMS login and password by the Division of Workers' Compensation as part of an electronic filing trial group; and

(b) a law firm, an insurance company, a self-insured employer, a third party administrator, or lien claimant who has been assigned an organizational EAMS login and password by the Division of Workers' Compensation as part of an electronic filing trial group.

Authority cited: Sections 133, ~~and 5307~~, 5309, and 5708. Reference: Sections 5900, 5902 and 5905, Labor Code.

#### **§10842. Contents of Petitions for Reconsideration, Removal, and Disqualification and Answers.**

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

(a) Every petition for reconsideration, removal, or disqualification shall fairly state all of the material evidence relative to the point or points at issue. Each contention contained in a petition for reconsideration, removal, or disqualification shall be separately stated and clearly set forth. A failure to fairly state all of the material evidence may be a basis for denying the petition.

(b) Each petition for reconsideration, removal, or disqualification, and each answer thereto, shall support its evidentiary statements by specific references to the record.

(1) References to any stipulations, issues, or testimony contained in any Minutes of Hearing, Summary of Evidence, or hearing transcript shall specify: (A) the date and time of the hearing; and (B) if available, the page(s) and line number(s) of the Minutes, Summary, or transcript to which the evidentiary statement relates (e.g., "Summary of Evidence, 5/1/08 trial, 1:30pm session, at 6:11-6:15").

(2) References to any documentary evidence shall specify: (A) the exhibit number or letter of the document; (B) the date and time of the hearing at which the document was admitted or offered into evidence; (C) where applicable, the author(s) of the document; (D) where applicable, the date(s) of the document; and (E) the relevant page number(s) and, if available, at least one other relevant identifier (e.g., line number(s), paragraph number(s), section heading(s)) that helps pinpoint the reference within the document (e.g., "the 6/16/08 report of John A. Jones, M.D., at p. 7, Apportionment Discussion, 3rd full ¶ [Defendant's Exh. B, admitted at 8/1/08 trial, 1:30pm session]").

(3) References to any deposition transcript shall specify: (A) the exhibit number or letter of the document; (B) the date and time of the hearing at which the deposition transcript was admitted or offered into evidence; (C) the name of the

person deposed; (D) the date and time of the deposition; and (E) the relevant page number(s) and line(s) (e.g., “the 6/20/08 depo of William A. Smith, M.D., at 21:20-22:5 [Applicant’s Exh. 3, admitted at 12/1/08 trial, 8:30am session]”).

(c) Copies of documents that have already been received in evidence or that have already been made part of the ~~legal adjudication~~ file shall not be attached as exhibits to petitions for reconsideration, removal, or disqualification or answers thereto ~~to petitions for reconsideration~~. Except as provided by section 10856, Documents attached in violation of this rule may be detached from the petition for reconsideration or answer and discarded.

Authority cited: Sections 133, ~~and 5307, 5309, and 5708~~, Labor Code. Reference: Sections 126, 5310, 5311, 5900, and 5902, and 5904, Labor Code.

### **§10843. Petitions to for Remove Removal and Answers.**

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

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

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

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

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

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

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

(d) The workers’ compensation judge may, within fifteen (15) days of the filing of the petition ~~to for removeremoval~~, rescind the order or decision in issue, or take action to

resolve the issue raised in the petition ~~to remove~~. If the judge so acts, or if the petitioner withdraws the petition at any time, the petition ~~to for remove~~removal will be deemed automatically dismissed, requiring no further action by the Appeals Board. The issuance of a new order or decision, or the occurrence of a new action, will recommence the time period for filing a petition ~~to for remove~~removal as described above.

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

Authority cited: Sections 133, ~~and 5307~~, 5309, and 5708, Labor Code. Reference: Section 5310, Labor Code.

#### **§10844. Petitions for Disqualification and Answers.**

In addition to the requirements of section 10452, the petition for disqualification and any answer thereto shall be verified upon oath in the manner required for verified pleadings in courts of record.

Authority cited: Sections 133, 5307, 5309, and 5708, Labor Code. Reference: Section 5311, Labor Code; and Section 641, Code of Civil Procedure.

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

(a) Except as otherwise provided by sections 10840 or 10865, all documents filed in connection with any petition for reconsideration, petition for removal, petition for disqualification or any other matter pending before the Appeals Board shall comply with the requirements of sections 10228, 10229, 10230, 10232, 10235, and 10236, including but not limited to the 25-page limitation of section 10232(a)(6), except that any supplemental petition or answer allowed by the Appeals Board under section 10848 shall not exceed ten pages. Any verification, proof of service, exhibit, or document cover sheet filed with the petition or answer shall not be counted in determining the page limitation.

(b) Upon its own motion, or upon a clear and convincing showing of good cause, the Appeals Board may allow the filing of a petition, answer, or supplemental petition or answer that does not comply with the provisions of subdivision (a), including but not limited to the page limitations. A request to exceed the page limitations shall be made by

a separate petition, made under penalty of perjury, that specifically sets forth the facts or other reasons why the request should be granted.

(c) A document that has been sent directly to the Appeals Board by fax or e-mail will not be accepted for filing, unless otherwise ordered by the Appeals Board.

Authority cited: Sections 133, 5307, 5309, and 5708, Labor Code. Reference: Sections 5310, 5311, 5900, and 5905, Labor Code.

#### **§10846. Skeletal Petitions.**

A petition for reconsideration, removal, or disqualification may be denied or dismissed if ~~it contains no more than allegations of the statutory grounds for reconsideration~~ is unsupported by specific references to the record and to the principles of law involved.

Authority cited: Sections 133, ~~and 5307,~~ 5309, and 5708, Labor Code. Reference: Sections 5310, 5311, 5902, 5903 and 5904, Labor Code.

#### **§ 10848. Supplemental Petitions.**

When a petition for reconsideration, removal or disqualification has been timely filed, supplemental petitions or pleadings or responses other than the answer shall be considered only when specifically requested or approved by the Appeals Board. Supplemental petitions or pleadings or responses other than the answer, except as provided by this rule, shall neither be accepted nor deemed filed for any purpose and shall not be acknowledged or returned to the filing party.

Authority cited: Sections 133, ~~and 5307,~~ 5309, and 5708, Labor Code. Reference: Sections 5310, 5311, and 5900, Labor Code.

#### **§10850. Proof of Service.**

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

Authority cited: Sections 133, ~~and 5307,~~ 5309, and 5708, Labor Code. Reference: Sections 5310, 5311, 5902 and 5903, Labor Code.

#### **§10860. Report of Workers' Compensation Judge.**

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

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

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

Authority cited: Sections 133, ~~and~~ 5307, 5309, and 5708, Labor Code. Reference: Sections 5900 and 5906, Labor Code.

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

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

(b) Notwithstanding any other provision of these rules, a petition for reconsideration in a carve-out case shall be filed directly with the office of the Appeals Board in San Francisco, and not with any district office, including the San Francisco district office. The street address and the post office box address of the Appeals Board may be found at the website of the Department of Industrial Relations, Workers' Compensation Appeals Board (currently, at [http://www.dir.ca.gov/wcab/WCAB\\_PetitionforReconsideration.htm](http://www.dir.ca.gov/wcab/WCAB_PetitionforReconsideration.htm)) or by telephoning the Appeals Board in San Francisco (currently, (415) 703-4550). Any petition for reconsideration in a carve-out case that is received by any district office shall neither be accepted for filing nor deemed filed for any purpose. If a carve-out petition for reconsideration is submitted to a district office in violation of this rule, the petition shall be returned to the petitioner with a letter referencing this rule, noting that the petition was improperly submitted to a district office and has been rejected, and indicating that the

petition should be filed directly with the Appeals Board in San Francisco consistent with this rule.

(b)(c) The petition for reconsideration in a carve-out case, which shall be submitted with a document cover sheet, shall also comply with each of the following requirements:

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

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

(3) it shall append, under a document separator sheet, In addition, a copy of that portion of the collective bargaining agreement relating to the workers' compensation arbitration and reconsideration processes shall be submitted by the petitioner;

(4) it shall append, under a document separator sheet, a completed application for adjudication of claim (but without any venue designation), which is required solely for the purpose of obtaining the information set forth therein (e.g., the injured employee's date(s) of injury, date of birth and social security number; the names and mailing addresses of the parties); therefore, it shall not be deemed an application for purposes of Labor Code section 4064(c); and

(5) it shall contain a proof of service of the petition, including service on the arbitrator or board of arbitrators.

(d) After the filing of the carve-out petition for reconsideration, an adjudication file will be created and an adjudication case number will be assigned, if there is no existing adjudication case number. Any new adjudication case number will be served by the Appeals Board on the parties and attorneys, and on the arbitrator or board of arbitrators, at the addresses listed in the proof of service to the petition.

(e) Following the Appeals Board's service of the adjudication case number (or, if there is an existing case, following the filing of the carve-out petition for reconsideration), and until the Appeals Board issues a decision disposing of all issues raised in the petition, all further documents shall be filed directly with the office of the Appeals Board in San Francisco, and not with any district office.

(f) ~~Upon~~ Within 15 days after receiving the petition for reconsideration, the arbitrator or board of arbitrators shall ~~forward~~ submit to the Appeals Board in San Francisco a photocopy of the complete record of proceedings, including: (1) the transcript of proceedings, if any; (2) a summary of testimony if the proceedings were not transcribed; (3) the documentary evidence submitted by each of the parties; and (4) an opinion that sets forth the rationale for the decision as to each contention raised by the petition; and (5) a report on the petition for reconsideration, consistent with the provisions of section 10860. The original arbitration record shall not be filed.

(g) The Appeals Board ~~shall~~ may scan the petition for reconsideration, any answer, and the photocopied record of the arbitration proceedings into the adjudication file within EAMS. Upon scanning, the paper documents shall be destroyed.

(h) The petition for reconsideration, any answer, and the arbitration record shall be deemed part of the Workers' Compensation Appeals Board's record of proceedings under section 10750.

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

Authority cited: Sections 133, ~~and~~ 5307, 5309, and 5708, Labor Code. Reference: Sections 3201.5 and 3201.7, Labor Code.

**§10866. Reconsideration of Arbitrator's Decisions or Awards Made Pursuant To the Mandatory or Voluntary Arbitration Provisions of Labor Code Sections 5270 through 5275.**

(a) Any final order, decision or award filed by an arbitrator under the mandatory or voluntary arbitration provisions of Labor Code Sections 5270 through 5275 shall be subject to the reconsideration process as set forth in Labor Code Sections 5900 through 5911 and Rules ~~40840~~10842 through 10850~~and 10842~~. The parties, respectively, shall serve the arbitrator with the petition for reconsideration and the answer.

(b) A petition for reconsideration from any final order, decision or award filed by an arbitrator under the mandatory or voluntary arbitration provisions of Labor Code sections 5270 through 5275, and any answer to such a petition, may be filed with any district office or with the office of the Appeals Board in San Francisco. Duplicate copies of petitions filed with a district office shall not also be filed with any other district office or with the Appeals Board in San Francisco.

(c) When a petition for reconsideration is filed from any final order, decision or award made by an arbitrator under Labor Code Sections 5270 through 5275, the arbitrator shall prepare and serve a report on reconsideration as provided in Rule 10860. Upon completion of the report on reconsideration, the arbitrator ~~and~~ shall concurrently forward the arbitrator's original report and a photocopy of the complete arbitration file directly to the presiding workers' compensation judge of the district office having venue over the matter. Upon receipt of the arbitrator's original report and the photocopy of the arbitration file, the district office shall scan the report and the photocopied file into the EAMS adjudication file and, after scanning, shall destroy these documents. Thereafter, the adjudication file ~~will~~ shall be electronically transferred to the Appeals Board for action on the petition for reconsideration or, to the extent that the adjudication file is in paper form, the file shall be delivered to the Appeals Board.

(d) The petition for reconsideration, any answer, and the arbitration record shall be deemed part of the Workers' Compensation Appeals Board's record of proceedings under section 10750.

(e) The costs of photocopying the arbitrator's file shall be reimbursed to the arbitrator in accordance with the provisions of Labor Code section 5273, within 30 days after the liable party or parties receives the arbitrator's billing for those costs.

Authority cited: Sections 133, ~~and~~ 5307, 5309, and 5708, Labor Code. Reference: Sections 5273, 5275, 5277(c) and 5900-5911, Labor Code.

*NOTE: This proposed Rule incorporates current WCAB Rule 10867.*

#### **§10867. Report of Arbitrator.**

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

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

*NOTE: The provisions of current WCAB Rule 10867 have been moved to propose WCAB Rule 10866.*

#### **10890. Walk-Through Documents.**

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



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

~~(1) Compromise and releases;~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*NOTE: See proposed Court Administrator Rule 10280.*

#### **§10946. Medical Reports in Subsequent Injuries Benefits Trust Fund Cases.**

When an application is filed against the Subsequent Injuries Benefits Trust Fund, any party who has previously filed medical reports shall forthwith serve copies on the Division of Workers' Compensation, Subsequent Injuries Benefits Trust Fund, and in no case later than thirty (30) days prior to the mandatory settlement conference or other

hearing, unless service is waived by the Division of Workers' Compensation, Subsequent Injuries Benefits Trust Fund.

Authority cited: Sections 133, ~~and 5307~~, 5309, and 5708, Labor Code.

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

Except as provided in Rule 10953, petitions appealing orders issued by the Administrative Director shall be filed in accordance with the provisions of Article 9 (section 10290 et seq.) of the Rules of the Court Administrator. Where a workers' compensation judge has determined such an appeal, any aggrieved party may file a petition for reconsideration in accordance with the provisions of Labor Code section 5900 et seq. and Appeals Board Rules 10840 et seq.

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

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

Authority cited: Sections 133, ~~and 5307~~, 5309, and 5708, Labor Code. Reference: Sections 129, 5300, 5301, 4603, 4604 and 5302, Labor Code.

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

### **§10952. Appeal of Notice of Compensation Due.**

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

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

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

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

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

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

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

*NOTE: See proposed Court Administrator Rule 10291.*

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

(a) An insurer, self-insured employer, or third-party administrator may file a petition appealing from a civil penalty assessment issued pursuant to subdivision (e) (g) of Labor Code section 129.5 by filing a petition with any district office or with the Appeals Board in San Francisco, in the same time and manner as provided by the Labor Code and Rule 10840 et seq. for the filing of a petition for reconsideration, except that a copy of the petition also shall be served on the Administrative Director. The petition shall be accompanied by a completed document cover sheet.

(b) The Administrative Director may answer the petition in the same time and manner provided for the filing of an answer to a petition for reconsideration.

(c) After the filing of a petition appealing a civil penalty assessment issued pursuant to Labor Code section 129.5(g), an adjudication case will be created and an adjudication case number will be assigned. The adjudication case number will be served by the Appeals Board on the Administrative Director and on the parties and attorneys listed on the proof of service to the petition.

(d) Within 15 days after the Administrative Director receives a copy of petition appealing a civil penalty assessment issued pursuant to Labor Code section 129.5(g), the Administrative Director shall submit to the Appeals Board in San Francisco a certified copy of the complete record of proceedings created by the Administrative Director in accordance with Article 6 of the Administrative Director's rules (Cal. Code Regs., tit. 8, § 10113 et seq.) The certified copy of the record shall include, but shall not necessarily be limited to: (1) the Order to Show Cause Re: Assessment of Civil Penalty and Notice of Hearing; (2) the Answer to the Order to Show Cause; (3) any amended complaint or supplemental Order to Show Cause that may have been issued, and any Amended Answer filed in response thereto; (4) any pre-hearing written statement filed by the claims administrator; (5) any pre-hearing Minutes and pre-hearing Orders; (6) the Minutes of any Hearing, a transcript or summary of any oral testimony offered at the hearing, any documentary evidence or affidavits offered at the hearing; and (7) the Administrative Director's written Determination and statement of the basis for the Determination. The original record of the proceedings conducted pursuant to Labor Code section 129.5(g) shall not be filed.

(e) The Appeals Board may scan the appeal, any answer, and the photocopied record of the Administrative Director's proceedings into the adjudication file within EAMS. Upon scanning, the paper documents may be destroyed.

(f) The Appeals Board shall determine the appeal using the record created by the Administrative Director in accordance with Article 6 of the Administrative Director's rules (Cal. Code Regs., tit. 8, § 10113 et seq.) The Administrative Director's record shall be deemed part of the Workers' Compensation Appeals Board's record of proceedings under section 10750.

, together with a Declaration of Readiness requesting a mandatory settlement conference, at the district office of the Workers' Compensation Appeals Board closest to petitioner within seven days after receipt of the notice. If petitioner is domiciled out of state, the

~~petition shall be filed at the San Francisco district office. Petitioner shall attach a copy of the notice of penalty assessment and any other evidence it wishes to submit. Petitioner shall serve upon the Administrative Director copies of all documents filed. Upon stipulation of petitioner and the Administrative Director, the matter may be submitted for decision at the mandatory settlement conference. Otherwise, it shall be set for trial.~~

Authority cited: Sections 133, ~~and 5307~~, 5309, and 5708, Labor Code. Reference: Section 129.5(g), Labor Code.

**~~§10955. Rehabilitation Appeals.~~**

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

- ~~(1) if an Application for Adjudication is already on file, by filing a Declaration of Readiness and a petition setting forth the reason for the appeal;~~
- ~~(2) if no Application for Adjudication is on file, by filing an application, a Declaration of Readiness, and a petition setting forth the reason for the appeal.~~

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

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

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

*NOTE: See proposed Court Administrator Rule 10293.*

**~~§10957. Deposition of Rehabilitation Consultants.~~**

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

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

*NOTE: See proposed WCAB Rule 10593.*

#### **§10995. Mandatory Arbitration.**

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

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

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

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

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

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

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

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

*NOTE: See proposed Court Administrator Rule 10295.*

**§10996. Voluntary Arbitration.**

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

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

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

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

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

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

*NOTE: See proposed Court Administrator Rule 10296.*