

## **Work Comp Intervenors: Appear or Forfeit Claim**

In August, Chief Workers' Compensation Judge Tammy Pust issued the Standing Order Regarding Required Appearance by Intervenors in Workers' Compensation Matters. The Standing Order, effective for proceedings scheduled on or after September 15, 2015, is aimed at streamlining the process of dealing with medical [intervenors](#) – often the most evasive parties in work comp cases.

Medical intervenors claim a right to reimbursement for healthcare services rendered or benefits paid to or on behalf of an injured employee. The new Standing Order requires that unless a case is set for a settlement conference by telephone, like the employee, employers and insurers, any intervenor must make a personal appearance at a scheduled proceeding.

The Standing Order stems from the Minnesota Supreme Court's decision in *Sumner v. Jim Lupient Infiniti*, 865 N.W.2d 706 (Minn. 2015). In *Sumner*, the Court held that workers' compensation intervenors must be *present* at conferences and hearings, unless their interest has been established by stipulation or by failure of any party to object to the intervenor's motion to intervene. The Supreme Court ruled that as a penalty for an intervenor's failure to uphold its mandatory duty to personally appear, its claim for reimbursement must be denied.

In practice, most intervenors will ensure their interests are protected by utilizing the exception to this newly clarified rule, also set forth in the Standing Order. The exception holds that if an intervenor serves and files a [Notice](#) of Election to Appear by Telephone at Settlement Conference, Prehearing or Other Pretrial Conference with its intervention application, or otherwise provides required contact information with its motion to intervene, i.e. the name and telephone number of its authorized representative, the intervenor need not appear in person. A Notice of Election can be emailed or faxed to the Office of Administrative Hearings, or filed by mail. It must be filed and served on all parties in a case at least fifteen days before a conference or other proceeding.

For defense attorneys attending settlement and other prehearing conferences with intervention interests at issue, the upshots of Judge Pust's Standing Order include the following:

- First, if an intervenor is not present by telephone at the contact number provided in the Notice of Election when the judge calls that number at any time during a scheduled prehearing proceeding, the claim of the intervenor may be denied by order of the Chief Judge.

- In addition, any party can object to an intervenor's election to appear by telephone within ten days before a settlement conference. To do so, a party must file a written objection setting forth a sufficient legal basis to require the intervenor's representative to appear in person at the proceeding, which the Chief Judge will grant or deny. If no party objects, however, the intervenor's Notice of Election will be automatically granted under the Standing Order.
- If more than one telephone number is provided on a Notice of Election, only one number will be utilized, and the rest will be disregarded. And, if an intervenor fails to provide the required contact information on a Notice of Election, or in its motion to intervene, the Office of Administrative Hearings will not seek out the information. Instead, the intervenor will be deemed to have waived its right to appear by phone.
- Under the new Standing Order, the claim of an intervenor is denied by issuance of an Order of Denial by the Chief Judge. An Order of Denial is appealable by the intervenor as a final order pursuant to Minn. Stat. § 176.421, but if no appeal is made within thirty days, as prescribed by statute, the intervenor will have no further right to appear as a party in the action. In some cases, however, an intervenor may still receive reimbursement of expenses for causally related, reasonable and necessary treatment or benefits paid if such claim is established by any other party to the matter.

Although it might be to the advantage of defendants in these cases, if an intervenor's Notice of Election is granted and the intervenor does not appear in person at a proceeding, the presiding judge may only call the intervenor when there is a legally sufficient reason to do so – not merely to make sure that the intervenor is actually at the other end of the phone call.

As with settlement conferences, a similar procedure is now in place for [hearings](#) under the Standing Order, except that a Notice of Election to Appear by Telephone must be filed by an intervenor no less than fifteen days *and no more than 45 days before* hearing. If a hearing is continued, an intervenor does not need to file a new Notice of Election form.

Any party can object to a Notice of Election filed by an intervenor in advance of a hearing if such objection is made at least ten days before a proceeding and sufficient legal basis for the objection is asserted. If no party objects, the Notice will be granted pursuant to the Standing Order. If an objection is filed, the judge assigned to the hearing block will issue a determinative order.

When it comes to hearings, there are also benefits for the defense under the new Standing Order:

- Unlike in the instance of telephone settlement conferences, where intervenors must simply wait and see whether they will be called by the judge, during a hearing, like all other parties to the case, an intervenor appearing by phone must join a conference call as prescribed by the Notice of Hearing and must stay connected for the full duration of the proceeding, or until excused by the judge. At the beginning of a telephone hearing, the judge presiding will require all parties, including intervenors, to note their appearances for the record. If, at that time, an intervenor is not present on the conference line, its claim may be denied by the judge's Findings and Order.

As with any rule or decision of the court, the Standing Order is not without certain allowances. If an intervenor fails to appear at a settlement conference, hearing or pretrial conference by telephone or in person, but can establish good cause for such failure to appear, including, for example, circumstances beyond the intervenor's control, an order denying the intervenor's claim may not necessarily be issued.

Likewise, a judge may excuse an intervenor from a portion of a settlement conference, pretrial conference or other prehearing conference at the judge's discretion, unless any party objects to such excusal, and unless the excusal would prejudice any party to the proceeding.

The Standing Order does not have any effect on existing procedures for administrative conferences under Minn. Stat. §176.106; administrative conferences as to discontinuance of compensation under Minn. Stat. § 176.239; or hearings on petition, pursuant to Minn. Stat. § 176.341. Similarly, hearings under Minn. R. 1420.1850 and stipulation status conferences are also exempted from the provisions of the new Standing Order.

In addition to the Standing Order's obvious ramifications, it is important that defense counsel caution their clients that under the Minnesota Statutes, even if an intervention claim is dismissed, an employee may still seek reimbursement of expenses for medical, chiropractic, surgical, psychological, podiatric, or hospital treatment if such direct claim is properly raised by the employee in the litigation.

All in all, while most intervenors seem to have readily adapted to the Standing Order and its new requirement for filing a Notice of Election to Appear by Telephone, the long-term implications of the Standing Order's provisions remain to be seen. For the time being, the best practice for defense attorneys in cases where an intervenor is party may be to ensure that proper objection is filed to any intervention motion and to make certain that intervenors – and all parties – are kept in the loop when it comes to scheduling of settlement conferences and other proceedings. With these practices, the new Standing Order should help the system run more smoothly and fairly for the parties.

For further information about material included in this publication, or other workers' compensation-related matters, please contact [Keith Czechowicz](#), or see [Workers' Compensation defense](#) practice page.