

**WEST VIRGINIA  
SECRETARY OF STATE**

**KEN HECHLER**

**ADMINISTRATIVE LAW DIVISION**

Form #5

Do Not Mark In this Box

FILED  
1989 NOV -9 PM 3:04  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE  
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: Division of Workers' Compensation TITLE NUMBER: 85

CITE AUTHORITY: W. Va. Code, S S 6-9A-3 and 29A-3-3

RULE TYPE: PROCEDURAL  INTERPRETIVE

EXEMPT LEGISLATIVE RULE

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES , NO

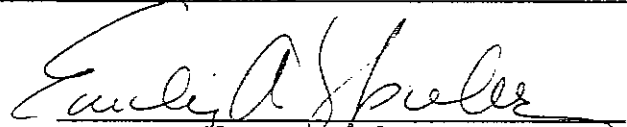
IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF NEW RULE BEING ADOPTED: 10

TITLE OF RULE BEING ADOPTED: Procedural Rules For The Advisory Board  
of The Division of Workers' Compensation

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE  
EFFECTIVE DATE OF THIS RULE IS December 11, 1989

  
Emily A. Spielger  
Commissioner

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TITLE 85  
WEST VIRGINIA PROCEDURAL RULE  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
DIVISION OF WORKERS' COMPENSATION

SERIES 10  
PROCEDURAL RULES FOR THE ADVISORY BOARD OF THE DIVISION OF  
WORKERS' COMPENSATION

§85-10-1. General.

1.1. Scope. -- The West Virginia Open Governmental Proceedings Law, section 1, article 9A, chapter 6 et seq. of the West Virginia Code of 1931, as amended (hereinafter referred to as "The Code"), requires in section three that governing bodies of state public bodies shall promulgate rules by which the time, the place, and the purpose of all regularly scheduled meetings and the time, place, and purpose of all emergency meetings are made available, in advance, to the public and the news media to the extent possible. Similarly, West Virginia Code, §29A-3-3, requires that agencies adopt procedural rules. The purpose of this rule is to comply with these requirements.

1.2. Authority. -- W. Va. Code, §6-9A-3 and §29A-3-3.

1.3. Filing Date. -- November 9, 1989.

1.4. Effective Date. -- December 11, 1989.

§85-10-2. Application and enforcement.

This procedural rule applies to the Advisory Board of the Division of Workers' Compensation of the Department of Health and Human Resources. The enforcement of this rule is vested with the Commissioner of the Division of Workers' Compensation who is the statutory chairperson of the Advisory Board. This rule has received the written approval of the Secretary of the Department of Health and Human Resources.

§85-10-3. Definitions.

3.1. Advisory Board. -- The Advisory Board created under section eighteen, article one, chapter twenty-three of the Code of West Virginia of 1931, as amended.

3.2. Chairperson. -- The Commissioner of the Division of Workers' Compensation shall serve as the Chairperson of the Advisory Board.

3.3. Decision. -- Any determination, action, vote or final disposition of a motion, proposal, resolution, order or measure on which a vote of the Advisory Board is required at any meeting at which a quorum is present.

3.4. Meeting. -- The convening of the Advisory Board for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter.

3.5. Quorum. -- The presence of a majority of the voting members of the Advisory Board.

§85-10-4. Meetings; Rules of Order; Selection of Vice-Chairperson.

4.1. Meetings of the Advisory Board may be called by the chairperson, and the chairperson shall call a meeting upon the written request of a majority of the voting members of the Advisory Board: Provided that, the Advisory Board must meet at least annually.

4.2. The chairperson shall notify Advisory Board members in writing at least seven (7) days in advance of a meeting. The notice shall set forth the time and place of such meeting and the matters to be considered, except that such notice is not required if the time, the place, and the matters for consideration have been fixed in a meeting where all the members are present.

4.3. The chairperson shall notify the public and the news media by filing with the office of the Secretary of State a public notice of the meeting. The notice shall be filed in a manner so as to allow each notice to appear in the state register at least five days prior to the date of the meeting. The public notice shall contain the time, the place, and purpose of the meeting.

4.4. The provisions of this section shall not apply in the event of an emergency requiring immediate official action by the Advisory Board. In the event of an emergency requiring immediate official action, the Advisory Board may file an emergency meeting notice at any time prior to the meeting. The emergency meeting notice shall state the time, place, and purpose of the meeting and the facts and circumstances of the emergency.

4.5. Meetings may be continued to a set time and place by a majority vote of the Advisory Board members present and voting without further notice to the members and without further publication unless such continued meeting is scheduled for more than fourteen (14) days from the date of the voting.

4.6. All members present at a meeting shall have the same right to participate in discussion of matters before the Advisory Board.

4.7. The Advisory Board shall consider any matter brought before it by the Commissioner or any appointed member and may consider any matter referred to it by a person not a member of the Advisory Board. At the conclusion of its consideration of

any proposal, the Advisory Board shall make its recommendation to the Commissioner.

4.8. Meetings of the Advisory Board shall be conducted in accordance with the most recent edition of Robert's Rules of Order.

4.9. The members of the Advisory Board, not including the Chairperson, shall select from one of their number a member to serve as Vice-Chairperson who shall preside in the absence of the Chairperson. The term of the Vice-Chairperson shall be for one calendar year; from January 1 to December 31. Vacancies may be filled by electing a new Vice-Chairperson for the remainder of a term. A member may be reelected as Vice-Chairperson.

§85-10-5. Proceeding to be open; exceptions; executive session permitted.

5.1. All meetings of the Advisory Board shall be open to the public; Except that, an executive session closed to the public may be held during a regular or emergency meeting, after the presiding officer has identified the authorization under section four, article nine-A, chapter six of the West Virginia Code for the holding of such executive session and has presented it to the Advisory Board and to the general public, but no decision shall be made in such executive session.

5.2. An executive session may be held only upon a majority affirmative vote of the Advisory Board members present for the following (as from section four, article nine-A, chapter six of the West Virginia Code) reasons:

5.2.1. Matters of war, threatened attack from a foreign power, civil insurrection or riot; or

5.2.2. The appointment, employment, retirement, promotion, demotion, disciplining, resignation, discharge, dismissal or compensation of any public officer or employee, or other personnel matters, or for the purpose of conducting a hearing on a complaint against a public officer or employee, unless such public officer or employee requests an open meeting; or

5.2.3. The issuance, effecting, denial, suspension or revocation of a license, certificate or registration under the laws of this State or any political subdivision, unless the person seeking such license, certificate or registration or whose license, certificate or registration was denied, suspended or revoked requests an open meeting; or

5.2.4. The physical or mental health of any person, unless such person requests an open meeting; or

5.2.5. Matters which, if discussed in public, would be likely to affect adversely the reputation of any person; or

5.2.6. The development of security personnel or devices;  
or

5.2.7. Matters involving or affecting the purchase, sale or lease of property, advance construction planning, the investment of public funds or other matters involving competition which, if made public, might adversely affect the financial or other interest of the state or any political subdivision.

5.3. The Advisory Board may limit the number of members of the public present for a meeting if there is not room enough for all members of the public who wish to attend. This limitation may take the form of a limit on the number of members of the public present or the amount of time individual members of the public may remain, or both.

5.4. The Chairperson is authorized to order the removal from a meeting of any member of the public who is disrupting the meeting to the extent that orderly conduct of the meeting is compromised.

5.5. Upon majority approval of the members of the Advisory Board present, members of the public may be permitted to address the Advisory Board for a reasonable length of time or for such time as is fixed by the Advisory Board. Members of the public desiring to address the Advisory Board shall indicate their desire to do so by marking the register of attendance accordingly; Provided that, such person shall not be required to register to address the Advisory Board more than fifteen minutes prior to the time the scheduled meeting is to commence.

5.6. All members of the public present for a meeting of the Advisory Board shall indicate their presence by signing their name to a register of attendance which may also require the giving of each such person's address and who such person is representing. The register of attendance shall also provide a place for members of the public who wish to address the Advisory Board to so indicate.

§85-10-6. Minutes.

6.1. The Advisory Board shall provide for the preparation of written minutes of all its meetings. All such minutes shall be available to the public within a reasonable time after the meeting and shall include the following information:

6.1.1. The date, time and place of the meeting;

6.1.2. The name of each Advisory Board member present or absent;

6.1.3. All motions, proposals, resolutions, orders, ordinances and measures proposed, the name of the person proposing the same and their disposition; and

6.1.4. The results of all votes and, upon request of a member, the vote of each member, by name.

6.2. Minutes of executive sessions may be limited to material the disclosure of which is not inconsistent with the provisions of section four, article nine-A, chapter six of the West Virginia Code listed above.

§85-10-7. Majority vote required; vote by proxy prohibited.

The vote of a majority of all voting members present at any meeting of the Advisory Board shall be necessary to take any action. Proxy voting is prohibited.

§85-10-8. Public Hearings. \_\_\_\_\_

8.1. The Advisory Board may conduct public hearings at any time and place within the state. Notice of such public hearings shall be given in the same manner as for a meeting of the Advisory Board. In addition, the Advisory Board may direct that further notice be given to the public by the use of news releases, direct mailings, advertisements, or otherwise.

8.2. A quorum of the members of the Advisory Board shall not be required for the conducting of a public hearing. A hearing shall be controlled by the hearing officer who shall be the Chairperson, the Vice-Chairperson, or such member appointed by the Chairperson for such purpose.

8.3. The hearing officer may set such guidelines for the conducting of a hearing as the size of the room and the number of persons present may require. Such guidelines may include limiting the length of any presentation, limiting the number of representatives of a common interest who may give testimony, or limiting the length of time of the hearing. Testimony at such a public hearing need not be given under oath, but an oath may be required if the hearing officer finds that such would be useful under the circumstances of any given hearing or the purpose thereof.

8.4. Testimony and other proceedings at a public hearing may be electronically recorded or recorded in some other manner.

§85-10-9. Records of the Advisory Board - Public.

Records of the Advisory Board are public records that may be inspected in accordance with section three, article one, chapter twenty-nine-B of the West Virginia Code and copied at a charge of twenty-five cents (\$0.25) per page.

TITLE 85  
WEST VIRGINIA PROCEDURAL RULE  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
DIVISION OF WORKERS' COMPENSATION

SERIES 10  
PROCEDURAL RULES FOR THE ADVISORY BOARD OF THE DIVISION OF  
WORKERS' COMPENSATION

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## WORKERS' COMPENSATION FUND

601 MORRIS STREET

CHARLESTON, WEST VIRGINIA 25301

TELEPHONE: (304) 348-0475


GASTON CAPERTON  
GOVERNOR

EMILY A. SPIELER  
COMMISSIONER

JOHN H. KOZAK  
EXECUTIVE SECRETARY

### M E M O R A N D U M

TO: The Honorable Ken Hechler  
Secretary of State

FROM: Emily A. Spielier  
Commissioner 

DATE: November 8, 1989

RE: Final Filing of Procedural Rule:  
"Procedural Rules For The Advisory  
Board Of The Division of Workers'  
Compensation," Title 85, Series 10.

Pursuant to your office's requirement for the filing of procedural rules, please find enclosed herewith the following documents:

- 1) The original and three copies of the procedural rule as adopted by the Advisory Board at its November 8, 1989, meeting.
- 2) The original and three copies of a fiscal note for this rule.
- 3) The original and three copies of a "Notice Of Agency Adoption Of A Procedural ... Rule...."
- 4) The original and three copies of each of the following items: the attendance sheet for the public hearing indicating that no one attended the hearing; and, the transcript of the public hearing. There were no amendments to the rule as it was proposed.
- 5) The original and three copies of the Promulgation History Abstract for this rule.

The Hon. Ken Hechler

November 8, 1989

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6) The original and three copies of a letter from Taunja Willis Miller, Secretary, Department of Health and Human Resources, stating her approval of the filing of this rule.

Please stamp two of the copies and return them to us for our files.

Thank you.



# WORKERS' COMPENSATION FUND

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GOVERNOR

EMILY A. SPIELER  
COMMISSIONER

JOHN H. KOZAK  
EXECUTIVE SECRETARY

## PROMULGATION HISTORY ABSTRACT

Rule Title: "Procedural Rules For The Advisory Board Of The  
Division of Workers' Compensation."


Rule Type: Procedural

Filed Notice for Public Hearing: September 7, 1989.

Public Hearing Held: Tuesday, October 17, 1989, at 9:30 am.

Final Rule Filed with Secretary of State: November 9, 1989.

Effective Date: December 11, 1989.

  
Emily A. Spuler  
Commissioner

November 9, 1989  
Date Entered



## WORKERS' COMPENSATION FUND

601 MORRIS STREET

CHARLESTON, WEST VIRGINIA 25301

GASTON CAPERTON  
GOVERNOR

TELEPHONE: (304) 348-0475

EMILY A. SPIELER  
COMMISSIONER

JOHN H. KOZAK  
EXECUTIVE SECRETARY

November 9, 1989

The Honorable Ken Hechler  
Secretary of State  
State Capitol Building  
Charleston, W. Va. 25305

Dear Secretary Hechler:

RE: Final Filing of Procedural Rule, Title 85, Series 10  
"Procedural Rules For The Advisory Board Of The  
Division Of Workers' Compensation."

Pursuant to West Virginia Code, §5F-2-2(a)(12), please consider this letter to be my written approval for the purposes of filing of the above noted procedural rule.

With much appreciation for your assistance in this matter, I remain

Very truly yours,

A handwritten signature in cursive script that reads "Taunja Willis Miller".

Taunja Willis Miller  
Secretary

TWM/jhk



MR. KOZAK:

This is the public hearing on the proposed procedural rule for the Advisory Board of the Division of Workers' Compensation. It's been designated as Title No. 85, Series No. 10. Today is Tuesday, October 17, 1989, and the public notice for this hearing indicated that it was to start at 9:30 a.m. It is now 9:32 a.m. and I'll note for the record that there are no members of the public present. With that, I'll close the hearing.

RECEIVED  
COMMISSIONER'S OFFICE

OCT 24 1989

W. VA. WORKERS' COMPENSATION  
FUND

STATE OF WEST VIRGINIA  
WORKERS' COMPENSATION FUND, to wit:

I, Susan L. Settle, Reporter for the Workers' Compensation Fund, do hereby certify that the foregoing is a correct record of the proceedings.

Given under my hand this the 24th day of October, 1989.

Susan L. Settle  
Susan L. Settle, Reporter.

Workers' Compensation Fund  
Charleston, WV