

## I. GENERAL PROVISIONS

1. **Authority and Applicability.** The promulgation of these Rules is authorized by S.C. Code Ann. § 1-23-650 (1976) (as amended). These Rules shall govern all proceedings before the Administrative Law Court, in which the right to a hearing (a) is provided by the Administrative Procedures Act; (b) is specifically required by other statutes or regulations; or (c) is required by due process under the South Carolina or United States Constitutions. As provided in S.C. Code Ann. § 1-23-650(C), these Rules apply exclusively in all proceedings before the Administrative Law Court. These Rules should be cited “SCALC Rule \_\_\_\_.”

### 2014 Revised Notes

These Rules are applicable to all matters within the jurisdiction of the Court, whether they are contested cases under the Administrative Procedures Act or heard pursuant to a constitutional command for a hearing. *Stono River EPA v. S.C. Dep’t of Health and Env’tl Control*, 305 S.C. 90, 406 S.E.2d 340 (1991); *League of Women Voters v. Litchfield-by-the-Sea*, 305 S.C. 424, 406 S.E.2d 378 (1991). Pursuant to S.C. Code Ann. § 1-23-650(C), these Rules of Procedure apply in the Administrative Law Court to the exclusion of any individual agency rules of procedure, whether those rules are contained in statutes, regulations, or agency rules.

### Notes to 2016 Amendments

This Rule has been amended to provide a uniform citation form for the Administrative Law Court Rules of Procedure.

2. **Definitions.**
  - A. **Administrative Law Court** means an independent body of administrative law judges who preside over public hearings involving the promulgation of regulations, as authorized in S.C. Code Ann. § 1-23-111 and decide contested cases and appellate cases pursuant to the authority in S.C. Code Ann. § 1-23-310, *et seq.* and as otherwise provided by law.
  - B. **Administrative Law Judge** means a judge appointed pursuant to S.C. Code Ann. § 1-23-510 (1976) (as amended) who is assigned a particular matter by the Chief Administrative Law Judge, or if no administrative law judge has been assigned for a particular matter, the Chief Administrative Law Judge.
  - C. **Agency** means a state agency, department, board or commission whose action is the subject of a contested hearing, an appeal heard by an administrative law judge, or a public hearing on a proposed regulation presided over by an administrative law judge.
  - D. **Appeal** means the review conducted by an administrative law judge of an agency decision on the record established in the agency and any additional evidence presented to the administrative law judge pursuant to the Administrative Procedures Act.
  - E. **Contested Case** is defined in Section 1-23-505. It is a case for which a hearing is conducted pursuant to Article 3, Chapter 23 of Title 1, the South Carolina Administrative Procedures Act, and includes hearings conducted by the Administrative Law Court pursuant to Section 1-23-600(A), hearings required by due process under the South Carolina or United States Constitutions, or as otherwise provided by law.
  - F. **Court** means the Administrative Law Court.
  - G. **Docket** means the roster of matters pending before the Court, including contested cases, appeals, and hearings on proposed regulations.
  - H. **Party** means each person or agency named or admitted as a party or properly seeking and entitled to be admitted as a party, including a license or permit applicant. An applicant or licensee whose application or license is the subject of a request for a contested case hearing shall be deemed a party and shall be served with copies of all papers filed in the case.

### 2009 Revised Notes

The definition of a contested case includes matters which are heard pursuant to a constitutional command for a hearing and matters, such as county tax cases, which do not come directly from a state agency. The definition of a party makes it

clear that the licensee or applicant is to be made a party to any matter which involves the license or permit, and that he shall be served with copies of all papers filed in the action.

#### 3. Time.

- A. **Computation.** In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default after the designated period of time begins to run is not included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a State or Federal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor such holiday. When the period prescribed is less than seven days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation. A half holiday shall be considered as any other day and not as a holiday.
- B. **Enlargement.** For good cause shown, the administrative law judge may extend or shorten the time to take any action, except as otherwise provided by rule or law.
- C. **Service By Mail.** Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, by e-mail, or upon a person designated by statute to accept service, five days shall be added to the prescribed period.

### 2013 Revised Notes

The method of calculating time in Rule 6 (a) and 6 (e), SCRCP, is adopted. A simplified procedure for extending time is adopted rather than Rule 6 (b), SCRCP. The 10 day notice requirement for motions in Rule 6 (d) is not adopted, but the additional five days available if service is made by mail is included in this Rule. Parties served with a notice or paper by the Court via e-mail in accordance with Rule 5 have the same amount of time to respond as if the party had been served by mail.

#### 4. Filing.

- A. **Filing with Court.** After the request for hearing and filing fee are delivered to the Court, all filings must be made with the administrative law judge assigned to the case and shall contain the docket number assigned. The Court will maintain its official file from the receipt of the request for hearing until a final order is issued by the administrative law judge.
- B. **Filing Defined.** The date of the filing is the date of delivery or the date of mailing. Any document filed with the Court shall be accompanied by proof of service of such document on all parties, and, if filed by mail, shall be accompanied by a certificate of the date of mailing. A document is deemed filed with the Court by:
  - (1) delivering the document to the Court;
  - (2) by depositing the document in the U.S. mail, properly addressed to the Court, with sufficient first class postage attached; or
  - (3) as otherwise approved by the Court through administrative order.
- C. **Paper Size.** All papers filed with the Court shall be on letter-size (8½ by 11 inches) paper. Exhibits or copies of exhibits in their original form which exceed that size shall be reduced by photocopying or otherwise to letter-size so long as such documents remain legible after reduction.

### 2013 Revised Notes

All filings are to be made with the assigned administrative law judge after the request for hearing and filing fee are delivered to the Court. All filed papers must be served upon all parties and, if filed by mail, must be accompanied by a certificate of service. All papers filed with the Court must be letter size. Exhibits or other documents that exceed that size are to be reduced before filing unless the process of reduction would make them illegible. The Court is responsible for the official record from the receipt of the request for a hearing until the administrative law judge issues the final order.

Filing with the Court is defined as the date delivered to the Court or the date mailed by first class mail to the Court, along with a certificate of service. Filing with the Court may also be effectuated by methods which may be specifically approved by the Court through administrative order. Unless otherwise approved by administrative order of the Court, parties may not file documents with the Court by e-mail.

### Notes to 2014 Amendments

The 2014 amendments deleted obsolete references to pleadings.

- 5. Service.** Any document filed with the Court shall be served upon all parties to the proceeding. Service shall be made upon counsel if the party is represented, or if there is no counsel, upon the party. Service shall be made by delivery, by mail to the last known address, or as otherwise approved by the Court through administrative order. Service is deemed complete upon mailing. Service that complies with Rule 5(b)(1), SCRCF, also shall satisfy this Rule. A party who furnishes an e-mail address to the Court consents to the service of documents issued by the Court via e-mail.

### 2013 Revised Notes

Service is required of all documents filed. It is complete upon mailing. The method of service is by delivery or mailing, but not fax. Any service that satisfies Rule 5, SCRCF also satisfies this Rule. Service of documents may also be effectuated by methods which may be specifically approved by the Court through administrative order. Parties who furnish an e-mail address to the Court consent to the service of documents issued by the Court via e-mail. Unless otherwise approved by administrative order of the Court, e-mail service applies only to documents issued and served upon a party by the Court, such as prehearing statements, notices of hearing, or final orders, and parties may not serve documents by e-mail.

### Notes to 2014 Amendments

The 2014 amendments deleted obsolete references to pleadings.

## 6. Documents Filed with the Court.

- A. Content of Documents.** The clerk of the Court shall assign a docket number to each case. All documents filed with the Court shall be signed and contain:
1. a caption setting forth the title of the case and a brief description of the document;
  2. the case docket number assigned by the Court;
  3. the name, address, telephone number and e-mail address of the person who prepared the document.
- B. Privacy Protection for Filings Made with the Court.**
1. **Redaction Required.** Unless the court orders otherwise, a party or nonparty making an electronic or paper filing with the court shall not include, or will redact where inclusion is necessary, the following personal data identifiers:
    - a. Social Security Numbers. If a Social Security Number must be included, only the last four digits of the number should be used.
    - b. Dates of Birth. If a date of birth must be included, only the year should be used.
    - c. Names of Minor Children. If the name of a minor child must be included, only the minor's first name and first initial of the last name should be used (e.g., John S.). If the parent's name also must be included, then only the

- parent's first name and first initial of the last name should be used (e.g., Amy S.).
- d. Financial Account Numbers. If a checking account, savings account, credit card, or debit card number or any other financial account number must be included, only the last four digits of the number should be used.
  - e. Driver's license, state identification, or passport number.
- 2. Filings Made Under Seal.**
- a. If a person wishes to file documents containing the personal data identifiers listed in (1), the person may file unredacted documents under seal, together with redacted versions for public view. No order of the court will be required to file the unredacted documents under seal.
  - b. Subject to the waiver in (6), if the person filing a document fails to redact the personal data identifiers listed in (1), the court, on its own motion or the motion of a party or affected nonparty, may order the unredacted documents to be sealed and order the person to file redacted versions for public view.
  - c. The sealed, unredacted documents shall be filed separately and the bottom of each page shall be marked "Sealed and Confidential." Only one original unredacted document shall be filed unless otherwise ordered by the court.
- 3. Caption.** If the caption of the case contains any of the personal identifiers listed in (1), the court, on its own motion or the motion of a party or affected nonparty, shall redact the identifier.
- 4. Additional Considerations.** Any person filing a document with the court should exercise caution in including other sensitive personal data in the filings, such as personal identifying numbers, medical records, employment history, individual financial information, proprietary or trade secret information, information regarding an individual's cooperation with the government, information regarding the victim of any criminal activity, or national security information. Upon motion by the person filing the document, a party, or an affected nonparty, the court may order the unredacted documents to be sealed and order the person to file redacted versions for public view.
- 5. Request for Redaction from Electronic Document.** A person has a right to request the court remove from an image or copy of an official record placed on a publicly available Internet web site any of the personal data identifiers in (1). The request must be made in writing and delivered by mail, facsimile, or electronic transmission or in person, to the clerk of the court. The request must specify the identification page number that contains the personal data identifier. There is no fee for the redaction pursuant to this request.
- 6. Waiver of Protection of Identifiers.** The responsibility for ensuring that personal data identifiers set forth in (1) are redacted or sealed rests with the person filing the document. A person waives the protection of this Rule as to the person's own information by filing it or producing it pursuant to a discovery request without redaction and not under seal.

#### 2014 Revised Notes

Rule 6 is amended to eliminate obsolete references to pleadings, to renumber former Rule 6 (which prescribes the content of documents filed with the Court) as Rule 6(A), and to add new Rule 6(B) in lieu of the former second paragraph of Rule 6(A), regarding privacy protection for documents filed with the Court. Rule 6(B) specifies the personal data identifiers which must be redacted from documents before they are filed with the Court. Parties may file unredacted documents

containing such identifiers under seal without prior Court order. If a person files a document or produces it pursuant to a discovery request without having redacted these identifiers or filing the document under seal, that person waives any protection for his or her own information. Affected nonparties may move to seal unredacted documents containing either the specified personal data identifiers or other sensitive information. In addition, subsection (4) of Rule 6(B) sets forth other types of information which should only be included with caution, and which may be subject to a motion to seal.

Finally, subsection (5) provides procedures for requesting the removal of personal data identifiers from court documents available on the Internet.

**7. Forms.** The Court shall prescribe the content and format of forms required by these rules. The use of required forms as prescribed is mandatory. The Court may also prescribe the content and format of other forms which would facilitate administrative efficiency and judicial economy.

**8. Right of Parties to Participate.**

**A. Parties and Their Representatives.** Parties in a contested case have the right to participate or to be represented in all hearings or pre-hearing conferences related to their case. Any party may be represented by an attorney admitted to practice, either permanently or pro hac vice. No one shall be permitted to represent a party where such representation would constitute the unauthorized practice of law. Any party which is not a natural person must be represented by an attorney. However, in cases arising under the Occupational Safety and Health Act, a partnership, corporation, or other business entity may be represented by an officer or employee. A party proceeding without legal representation shall remain fully responsible for compliance with these Rules and the Administrative Procedures Act. This Rule shall not be construed to permit law student practice except to the extent authorized by Rule 401 of the South Carolina Appellate Court Rules.

**B. Notice of Appearance.** After a case is assigned to an administrative law judge, an attorney or other person authorized to represent a party pursuant to this rule must file a notice of appearance with the presiding administrative law judge within ten days of being retained or authorized to represent the party.

**C. Motion to Withdraw from Representation.** An attorney or other person authorized to represent a party pursuant to these Rules must file a written motion to withdraw from representation.

**2014 Revised Notes**

A party may be represented only by an attorney, or in OSHA cases only, a business entity may be represented by an officer or employee. Representation by a certified public accountant in tax matters is no longer permitted. Representation of a party before the Court is permitted only to the extent that such representation does not conflict with the rules governing the unauthorized practice of law. Parties representing themselves are not relieved of the responsibility to comply with these Rules and the Administrative Procedures Act. A representative who is retained after assignment of the case must file a notice of appearance with the presiding administrative law judge within ten days of being retained, and any person representing a party before the Court must file a written motion with the presiding judge to withdraw from representation of that party.

**Notes to 2016 Amendments**

Rule 8(A) has been amended to clarify that any party which is not a natural person, such as corporations, partnerships, and other business entities, must be represented by an attorney in proceedings before the Court.