

- E. Opportunity for Presenting Statements and Evidence.** Interested persons shall be given an opportunity to present oral and written statements and evidence regarding the proposed regulations.
 - F. Questioning by Administrative Law Judge.** The administrative law judge may question all persons, including the agency representatives.
 - G. Further Agency Evidence.** The agency may present any further evidence that it considers appropriate in response to statements made by interested persons. Upon presentation by the agency, interested persons may respond thereto.
 - H. Receipt of Written Materials.** The administrative law judge may permit any interested person to submit written materials after the close of oral testimony on such terms and conditions as permit all parties an opportunity to comment on subsequent submissions.
- 48. Report of Administrative Law Judge.** After the time for the submission of all written materials, the administrative law judge shall issue a written report with findings as to the need and reasonableness of the proposed regulation, and if there is a finding of a lack of need or of reasonableness, may include suggested modifications to the proposed regulation.
- 49. Record of Proceeding.** The hearing record for the proposed regulations shall be closed on the date established by the administrative law judge, but not later than twenty (20) days after the hearing ends. The full record shall include:
- A. all pre-filed documents submitted to the Court;
 - B. copies of all publications in the State Register pertaining to these rules;
 - C. all written petitions, requests, submissions or comments received by the agency or the administrative law judge pertaining to the substance and jurisdiction of the proceeding on the proposed regulation;
 - D. the proposed regulation as submitted to the administrative law judge;
 - E. the transcript of the proceedings, if one has been prepared; and
 - F. the report of the administrative law judge.
- 50. Transcript.** A transcript of the proceedings shall be prepared upon the order of the administrative law judge or the request of an agency or interested person. The party or person requesting the transcript shall pay for its production.

V. SPECIAL APPEALS

- 51. Applicability.** The Rules in this section shall apply exclusively in matters heard on appeal from final decisions pursuant to Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000).

2009 Revised Notes

The Special Appeals Rules are the exclusive rules of procedure used in appeals from final decisions of the Department of Corrections and the Department of Probation, Parole and Pardon Services. The Court's jurisdiction to hear such matters is derived entirely from the decisions of the South Carolina Supreme Court in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000), and Furtick v. S.C. Dep't of Probation, Parole and Pardon Services, 352 S.C. 594, 576 S.E.2d 146 (2003). These Rules are based upon the Court's existing general procedural and appellate rules, with adaptations for this specific type of appeal.

- 52. Computation of Time.** 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.

53. Filing.

A. Filing Defined. The date of the filing is the date of delivery or the date of mailing as shown by the postmark or by the date stamp affixed by the mail room at the appellant's correctional institution. Any document filed with the Court shall be accompanied by proof of service of such document on all parties. A document, pleading or motion or other paper is deemed filed with the Court by:

- (1) delivering the document to the Court; or
- (2) depositing the document in the U.S. mail or in the mail room at the appellant's correctional institution, properly addressed to the Court, with sufficient first class postage attached.

B. Paper Size. All papers filed with the Court shall be on letter-size (8 ½ 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.

54. Service. Any document, pleading, motion, brief or memorandum or other paper 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, or by mail to the last known address. Service is deemed complete upon mailing. Service that complies with Rule 5(b)(1), SCRCP, also shall satisfy this Rule.

55. Docket Number and Subsequent Filings. The clerk of the Court shall assign a docket number to each case. All documents thereafter shall be filed with the presiding administrative law judge and a copy served on all other parties of record. All documents shall be signed and contain:

- A. a caption setting forth the title of the case and a brief description of the document;
- B. the case docket number assigned by the Court;
- C. the name, address and telephone number of the person who prepared the document.

2009 Revised Notes

After the Clerk assigns a docket number to the case, all filings must be made with the presiding administrative law judge, must be served upon all parties, and must contain the information prescribed in the Rule.

Notes to 2014 Amendments

The 2014 amendments deleted obsolete references to pleadings.

56. Legibility of Documents. Any document filed with the Court may be typewritten or handwritten, but in either event must be legible. In the discretion of the Court, any illegible document may be returned unfiled to the party who submitted it.

Notes to 2014 Amendments

The 2014 amendments deleted obsolete references to pleadings.

- 57. 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.
- 58. Record After Final Decision.** Where applicable, the record of the contested case shall consist of:
- A. All documents filed;
 - B. All evidence received or considered, including copies of all relevant sentencing sheets in sentence calculation matters, and copies of specific policies relied upon by the agency;
 - C. A statement of matters judicially noticed;
 - D. All proffers of proof of excluded evidence;
 - E. The final order or decision which is subject to administrative review;
 - F. Any transcript taken of the testimony during the proceeding.

Notes to 2014 Amendments

Rule 58 is revised to provide that the record of the contested case must include copies of all relevant sentencing sheets in sentence calculation matters. In every case, copies of all specific policies relied upon by the agency must likewise be included in the record.

- 59. Notice of Appeal.** The notice of appeal from the final decision to be heard by the Administrative Law Court shall be filed with the Court and a copy served on each party, including the agency, within thirty (30) days of receipt of the decision from which the appeal is taken. The notice shall be on the form prescribed by the Court pursuant to Rule 57 and shall contain the following information:
- A. the name, address, SCDC number, and telephone number of the party requesting the appeal, and the name, address, and telephone number of the attorney or other authorized representative, if any, representing that party;
 - B. a brief factual basis for each expressly and specifically asserted constitutional violation;
 - C. a copy of the final decision which is the subject of the appeal and the date received;
 - D. proof of service of the notice of appeal on all parties.

Any notice of appeal which is incomplete or not in compliance with this rule or Rule 71 will not be assigned to an administrative law judge until all required information is received and any applicable filing fee is processed. Within seventy (70) days of the date the case is assigned to an Administrative Law Judge (date of assignment), the agency shall file the record with the Court, including a statement of the contents of the record, unless the time for filing the record is extended by the Administrative Law Judge assigned to the appeal. Motions to extend the time for filing the record will only be granted in exceptional circumstances. If the agency files a motion to dismiss the appeal prior to filing the record, such a motion shall stay the time for the agency to prepare the transcript and file the record pending resolution of the motion. The time for filing briefs shall likewise be stayed by the filing of a motion to dismiss. Unless otherwise ordered, the initial time frames for the filing of the record and briefs shall begin upon the resolution of the motion by the court. The time frames shall run from the date of the order resolving the motion rather than the date of assignment, without regard to any time which elapsed prior to the filing of the motion.

2014 Revised Notes

The notice of appeal must be on the Court's prescribed form and must be filed and served within 30 days of receipt of the order appealed from. The notice must contain the prescribed information and must be accompanied by proof of service and any applicable filing fee. Notices which are not in compliance with this Rule or Rule 71 will not be assigned to an administrative law judge until all required information and applicable fees are received.

Note to 2015 Amendments

Rule 59 is amended to provide a new time frame for the agency to file the record with the Court. The record must be filed within seventy days of the date of assignment to an Administrative Law Judge. The amendments further provide that when the agency files a motion to dismiss prior to filing the record, the motion to dismiss stays the time for filing the record and for the submission of briefs. Upon resolution of the motion to dismiss, the initial time frames for filing the record and briefs are in effect, and the time runs from the date of the order resolving the motion rather than the date of assignment.

Note to 2016 Amendments

The rule has been amended to provide that motions to extend the time for filing the record on appeal will only be granted in exceptional circumstances.

60. Briefs.

- A. Time for Filing Briefs.** Unless otherwise ordered or stayed by the operation of Rule 59, the party first noticing the appeal shall file an original brief within ninety (90) days after the date of assignment. Within one hundred ten (110) days after the date of assignment, the respondent shall file an original brief in response. A reply brief may be filed within one hundred twenty (120) days after the date of assignment. The principal briefs shall not exceed ten (10) pages and the reply brief shall not exceed five (5) pages. Motions to extend the time for filing briefs will only be granted in exceptional circumstances.
- B. Content of Brief.** Each brief shall contain:
- (1) **Statement of the Issues on Appeal.** A statement of each of the issues presented for review. The statement shall be concise and direct as to each issue and may be stated in question form. Broad general statements may be disregarded by the Court. Ordinarily, no point will be considered that is not set forth in the statement of issues on appeal.
 - (2) **Statement of the Case.** The statement shall contain a concise history of the proceedings, insofar as necessary to an understanding of the appeal. The statement shall not contain contested matters and shall contain as a minimum, the following information: the date of commencement of the action; the nature of the action; the nature of the defense or response; the date and nature of the agency action appealed from; the date of service of the notice of appeal; the date of and description of any orders or proceedings in the agency as may have affected the appeal, or may throw light upon the questions involved in the appeal. Any matters stated or alleged in a party's statement shall be binding on that party.
 - (3) **Argument.** The brief shall be divided into as many parts as there are issues to be argued, and each such part shall bear an appropriate caption, followed by a discussion and citation of authority. A party may also include a separate statement of facts relevant to the issues presented for review, with reference to the record on appeal, which may include contested matters and summarize that party's contentions. Any facts stated or alleged in a party's argument shall be binding on that party.
 - (4) **Conclusion.** A short conclusion stating the precise relief requested.
 - (5) **Proof of Service.** Proof of service of the brief on all parties of record.
- C. Service of Brief.** At the time of filing the brief with the Court, one copy of the brief and any appendix shall be served on each party to the appeal.

2014 Revised Notes

This rule provides the time frames for filing, format, and content of appellate briefs. Statements of fact set forth in the briefs are binding upon the proponent of the statement. The brief must be accompanied by proof of service.

Notes to 2015 Amendments

The rule has been amended to extend the time frames for filing briefs and to conform to the amendments to Rule 59.

Notes to 2016 Amendments

Rule 60(A) has been amended to provide that motions to extend the time for filing briefs will only be granted in exceptional circumstances.

61. **Record on Appeal.** The record on appeal shall consist of the transcript of the proceedings before the agency, if any, and the record of the contested case as described by Rule 58.
62. **Dismissal of Appeal; Sanctions.** Upon motion of any party, or on its own motion, an Administrative Law Judge may dismiss an appeal or resolve the appeal adversely to the offending party for failure to comply with any of the rules of procedure for appeals, including the failure to comply with any of the time limits provided by this section (V), or for the failure to provide a factual basis for each expressly and specifically asserted constitutional violation as prescribed by Rule 59(B). Notwithstanding the time frames established herein, the Administrative Law Judge has the discretion to determine that a document is timely filed upon a finding that the party who filed the document made a good faith effort to file the document within the applicable time limits. If the presiding judge determines that the appeal is frivolous or taken solely for purposes of delay, the judge may impose such sanctions as the circumstances of the case and discouragement of like conduct in the future may require.

2014 Revised Notes

Rule 62 allows an administrative law judge to dismiss an appeal or resolve it adversely to an offending party for failure to comply with the rules of procedure for appeals, or for the failure to provide a factual basis for each alleged constitutional violation. Furthermore, the presiding judge may impose appropriate sanctions for inmate appeals which are frivolous or taken solely for the purpose of delay.

63. **Motions.** Any motions filed shall be in written form and shall state the grounds for relief and the relief sought. Any response to the motion must be filed within ten (10) days after receipt of the motion, unless the time is extended or shortened by the Administrative Law Judge. Except as provided in Rule 59, the filing of a motion does not toll any time limits imposed by these Rules.

2009 Revised Notes

This rule provides the procedure for filing motions. However, pursuant to Rule 65, motions for reconsideration or rehearing are not permitted and will not be considered by the administrative law judge.

Note to 2015 Amendments

The rule has been amended to conform to the amendments to Rule 59.

64. **Oral Argument.** In the discretion of the Administrative Law Judge, oral argument may not be required. Oral argument will ordinarily not be ordered by the Administrative Law Judge unless the proceeding involves a novel issue or a question of exceptional importance. If so ordered, at least twenty (20) days notice of oral argument shall be provided. The oral argument shall follow the procedure in Rule 218, SCACR.
65. **Opinion.** The Administrative Law Judge shall render a decision in a written order which shall be served on all parties and filed with the clerk of the Court. The Administrative Law Judge may affirm any ruling, order or judgment upon any ground(s) appearing in the Record and need not address a point which is manifestly without merit. The decision of the Administrative Law Judge is a final decision and motions for reconsideration will not be considered. Judicial review of any decision of the Court shall be as provided in S.C. Code Ann. § 1-23-610 (2005) (as amended).

2009 Revised Notes

Rule 65 incorporates the portion of Rule 220, SCACR, which allows the judge to affirm upon any ground appearing in the Record and to decline to address points which are without merit. Motions for reconsideration are not allowed.

- 66. Appeal of Final Order.** The appellant shall file a copy of the notice of appeal from the decision of the Administrative Law Judge with the clerk of the Court.

2009 Revised Notes

Pursuant to Act 387 of 2006, the South Carolina Appellate Court Rules govern the procedure for appealing a final order of an administrative law judge.

VI. MISCELLANEOUS PROVISIONS

- 67. Clerical Mistakes.** Clerical mistakes in orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the administrative law judge at any time of his own initiative or on the motion of any party and after such notice, if any, as the administrative law judge orders. During the pendency of an appeal from the decision of an administrative law judge, leave to correct the mistake must be obtained from the appellate court.

- 68. Applicability of South Carolina Rules of Civil Procedure and South Carolina Appellate Court Rules.** The South Carolina Rules of Civil Procedure and the South Carolina Appellate Court Rules, in contested cases and appeals respectively, may, in the discretion of the presiding administrative law judge, be applied to resolve questions not addressed by these rules.

2015 Revised Notes

In contested cases only, the South Carolina Rules of Civil Procedure may, in the discretion of the presiding administrative law judge, be applied to resolve questions not addressed by these Rules. Furthermore, the South Carolina Appellate Court Rules may be applied in like manner in appellate proceedings only. The South Carolina Rules of Civil Procedure and the South Carolina Appellate Court Rules do not automatically apply when invoked by a party. Rather, the presiding judge must determine whether to apply the rules.

- 69. Applicability of Rules of the Court.** Once the Court acquires jurisdiction of a matter from an agency, the ALC Rules shall govern all procedural aspects of the matter, notwithstanding any other procedural statute, agency regulation or rule.

2014 Revised Notes

Rule 69 provides for situations in which the procedural statutes, regulations, or rules of the agency where the case arose differ from the ALC Rules. As provided in S.C. Code Ann. § 1-23-650(C), the Rule makes clear that the ALC Rules, rather than the rules of the agency, govern the proceedings once the Court acquires jurisdiction, and that any agency-specific procedural statutes, regulations or rules are inapplicable. Thus, questions of preliminary relief, content and form of prehearing statements, discovery and other procedural matters are resolved exclusively by the ALC Rules.

- 70. Judges Sitting En Banc.**

- A. Grounds for Consideration En Banc.** A majority of the administrative law judges may order that a matter of law be considered by all the judges sitting en banc where (1) consideration by all the judges is necessary to serve or maintain uniformity of its decisions, or (2) when the proceeding involves a question of exceptional importance and public concern.