

#### 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.

- B. Quorum and Presiding Judge.** When the administrative law judges sit en banc, a majority of the judges constitutes a quorum. A concurrence of a majority of the judges sitting is necessary for a decision. The Chief Administrative Law Judge shall preside at all en banc proceedings and in his absence, the administrative law judge next senior in service and who is present shall preside.
- C. Petition for Consideration En Banc.** No later than forty-five (45) days after the assignment of a case by the Chief Administrative Law Judge to an administrative law judge, a party may suggest the appropriateness of consideration of a matter en banc by filing a petition with the clerk of the Court. No response to the petition shall be required unless ordered by the assigned judge or by a majority of the judges. The presiding administrative law judge in a case may also request en banc consideration at any time during the proceedings. After receipt of the petition or request, the clerk will immediately circulate to the administrative law judges a vote sheet with the petition seeking an en banc hearing attached. No vote of the judges need be taken to determine whether the cause should be heard en banc unless a judge, within ten (10) days of receipt of the vote sheet, notifies the clerk in writing of his request for a vote of the judges on the suggestion. If no poll is requested, the Chief Administrative Law Judge will issue an order which bears the notation that no judge requested a poll. If a poll is requested and the hearing en banc is granted or denied, the Chief Administrative Law Judge will issue an order reflecting the decision.
- D. Procedure.** En banc consideration in an individual case is limited to only the particular issue(s) of law which meet the criteria set forth in paragraph A of this Rule 70. Upon a majority of the administrative law judges ordering a matter to be considered by the judges sitting en banc, notice will be given to the parties of the issue(s) under consideration. The parties may be required to file briefs and may be allowed to present oral argument on the issue(s). After the hearing, the Chief Administrative Law Judge will assign the authorship responsibility for the opinion.
- E. En Banc Consideration Interlocutory.** En banc consideration of a matter of law in a contested case or appellate case is an interlocutory measure. It is dispositive of the limited issue(s) addressed, but the decision is not final and conclusive until all factual issues and remaining legal issues in the contested case, or all issues in the appellate case, are resolved by the final order of the administrative law judge assigned to preside over the hearing in the case. Parties have no direct right of appeal from an en banc decision. Any appeal must follow the issuance of the final order on the merits of the case.
- F. Effect of an En Banc Order.** The issue(s) addressed in en banc decisions by the administrative law judges are binding upon all individual administrative law judges in all subsequent cases, unless a majority of the judges determine otherwise.

#### 2009 Revised Notes

Rule 70 provides a procedure for en banc consideration of a matter of law in specified circumstances. If an issue in a case before the Court is considered en banc, that consideration must occur prior to the contested case or appeal hearing on the merits by the assigned administrative law judge. En banc consideration does not replace the contested case or appeals hearing before the administrative law judge. An en banc proceeding is not an evidentiary hearing and the administrative law judges sitting en banc cannot make findings of fact. After the judges sitting en banc render their decision, the assigned administrative law judge assigned to the case must conduct all further proceedings and render all further orders necessary in the matter.

#### 71. Filing Fee.

- A. Cases for which Fee Required.** Each request for a contested case hearing, notice of appeal, or request for injunctive relief before the Court must be accompanied by a non-refundable

filing fee in the amount set forth in Rule 71(C). A case will not be assigned to an administrative law judge and will not be processed until the filing fee has been paid or a waiver has been granted pursuant to Rule 71(B). This fee is not required for contested cases, appeals, or requests for injunctive relief brought by the State of South Carolina or its departments or agencies. For appeals brought pursuant to Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000), the fee will be assessed only for the third and subsequent appeals filed by an inmate during a given calendar year.

**B. Request for Waiver.** A party who is unable to pay the filing fee may request a waiver of the fee by filing a completed Request for Waiver and Affidavit and a Financial Statement form with the Clerk of the Court at the same time the request for a contested case, notice of appeal, or request for injunctive relief is filed with the Court. These forms shall be issued by the Clerk of the Court. If the filing fee is not waived, the party must pay the filing fee within ten days of the date of receipt of the order denying waiver of the filing fee. If the filing fee for a case is waived on behalf of a party, any motions filed by that party in that case are exempt from the motion fee as provided in Rule 71(D).

**C. Schedule of Filing Fees.** The filing fee will be assessed according to the following schedule:

Case Type	Fee
Dept. of Corrections (4th and subsequent filing per calendar year)	\$25
DHEC–Health Licensing	\$200
DHEC--Individual Septic Tanks	\$100
DHEC–(All other, including OCRM, CON and NAD)	\$500
Dept. of Health and Human Services (Provider Appeals)	\$150
Dept. of Health and Human Services (All Other Cases)	\$25
Dept. of Insurance–Rate Cases	\$350
Dept. of Insurance–Agent Application	\$200
Dept. of Insurance–Agent Disciplinary	\$200
Dept. of Insurance–All Other	\$200
LLR– Wage Disputes (Department of Labor)	\$50
LLR– Appeals (Professional and Occupational Licensing Boards)	\$200
Dept. of Natural Resources	\$50
DOR–Alcoholic Beverage License Applications	\$150
DOR–Alcoholic Beverage License Violations	\$150
DOR–Bingo Violations	\$200
DOR–State Tax Cases (<\$100,000 in controversy)	\$150
DOR–State Tax Cases (>\$100,000 in controversy)	\$500
County Tax Cases (Residential & Personal Property)	\$75
County Tax Cases (Commercial)	\$350
Dept. of Social Services (Day Care Appeals)	\$100
Dept. of Social Services (All Other)	\$25
Dept. of Transportation	\$200
PEBA (Retirement, EIP)	\$50
SLED	\$100
Setoff Debt Collection Act	\$50
Requests for Injunctive Relief	\$200
Other Contested Cases and Appeals (including cases from agencies not listed herein)	\$150

- D. Motion Fees.** A fee of \$50 will be imposed for the following motions filed with the Court:
- (1) Motion for Summary Judgment
  - (2) Motion to Intervene
  - (3) Motion to Dismiss
  - (4) Motion for Injunctive Relief (in a pending case)
  - (5) Motion to Compel
  - (6) Motion for Reconsideration
  - (7) Second and subsequent Motions for Continuance

A fee of \$25 will be imposed for all other motions filed with the Court. The fee must be submitted to the Clerk of the Court at the same time the motion is filed, unless a waiver of the filing fee in the case was previously granted to the party filing the motion. A motion will not be deemed filed until the fee is paid. The motion fee is not required for motions filed by the State of South Carolina or its departments or agencies.

#### **2014 Revised Notes**

Rule 71 provides for a schedule of filing fees as authorized by law. The filing fee varies according to the type and complexity of the case and is non-refundable. The fee is required for all requests for a contested case hearing, notices of appeal, or requests for injunctive relief except for those brought by the State of South Carolina or its departments or agencies. For those appeals brought pursuant to Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000), the fee applies only to the third and subsequent filings by an inmate during a given calendar year. If a party is unable to pay the filing fee, he may request a waiver of the fee by filing the prescribed form with the Clerk of the Court. Applications for waivers must include a completed Request for Waiver and Affidavit form and a Financial Statement form. A case will not be assigned to an administrative law judge until the filing fee has been received or a waiver has been granted. Subsection (D) provides for a fifty dollar motion fee for certain substantive motions filed with the Court, and for second and subsequent motions for continuance filed in a given case. For motions not listed specifically, a twenty-five dollar motion fee is imposed. A motion will not be deemed filed with the Court until the fee has been paid. However, the motion fee is not required for motions filed by the State of South Carolina or its departments or agencies. In addition, if a party is granted a waiver of the filing fee, any fees for motions filed by that party are likewise waived.

#### **Notes to 2016 Amendments**

The rule has been amended to provide a uniform fifty dollar filing fee for all cases from the Department of Natural Resources.

- 72. Sanctions for Frivolous Cases.** If the presiding administrative law judge determines that a contested case, appeal, motion, or defense 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 72 provides that an administrative law judge may impose sanctions for contested cases, appeals, motions or defenses which are determined to be frivolous or taken for purposes of delay. In determining whether a case or defense is frivolous, the administrative law judge may refer to S.C. Code Ann. § 15-36-10, the Frivolous Civil Proceedings Sanctions Act. The amount and type of sanction to be imposed is within the discretion of the presiding administrative law judge.

- 73. Admission Pro Hac Vice.** An attorney desiring to appear *pro hac vice* in a proceeding before the Court must file an Application for Admission *Pro Hac Vice* as provided in Rule 404, SCACR.

#### **2009 Revised Notes**

In accordance with the amendments to Rule 404, SCACR, effective March 1, 2005, Rule 73 provides that an attorney wishing to appear *pro hac vice* in a proceeding before the Court must file an application as provided in Rule 404.