RULES OF PROCEDURE

FOR THE

ADMINISTRATIVE LAW COURT

Effective April 14, 2025

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I. GENERAL PROVISIONS

1. Authority and Applicability.

A. The promulgation of the South Carolina Administrative Law Court Rules is authorized by section 1-23-650 of the South Carolina Code (1976) (as amended). As provided in subsection 1-23-650(C), these Rules apply exclusively in all proceedings before the Administrative Law Court. These Rules should be cited "Rule ____, SCALCR."

B. The general provisions of this section apply to all cases filed at the South Carolina Administrative Law Court (SCALC).

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 subsection 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.

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 section 1-23-111 of the South Carolina Code and decide contested cases and appellate cases pursuant section 1-23-310 of the South Carolina Code, *et seq.* and as otherwise provided by law.

B. **Administrative Law Judge** means a judge elected pursuant to section 1-23-510 of the South Carolina Code (1976) (as amended) who is assigned a particular matter by the Chief Administrative Law Judge, or if no administrative law judge has been assigned to 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 a final 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 (S.C. Code Ann. §§1-23-310 to -400 (1976) (as amended)).

E. **Contested Case** is defined in section 1-23-505 of the South Carolina Code (1976) (as amended).

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.

Notes

The definition of a contested case, as set forth in section 1-23-505, 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.

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 that 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 a party serves a notice or other paper upon him by mail, by electronic means, or upon a person designated by statute to accept service, five days shall be added to the prescribed period. However, five days are not added to the prescribed period for filing when the ALC serves an order by electronic means upon the parties.

D. **E-Filing.** The provisions of subsection (C) do not apply to documents filed through the E-Filing System.

Notes

Court staff are not authorized to calculate time.

4. Filing.

A. **Filing with Court.** After the request for relief 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 relief 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. A document is deemed filed with the Court:

1. by 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.

Notwithstanding (1) – (2) the Court may, through an administrative order, require parties to file documents solely using the Court's e-filing system.

C. **Format.** All documents filed with the Court shall be on letter-size paper. Exhibits in their original form, or copies thereof, that exceed letter-size shall be reduced by photocopying or otherwise to letter-size so long as such documents remain legible after reduction. All documents filed with the Court must be printed only on one side of a page, unless the document exceeds thirty (30) pages. Additionally, unless otherwise ordered by an administrative law judge, and except for indentions and footnotes, all typewritten documents filed with the Court shall have the following standard format:

Font = Times New Roman Regular Type
Font Size = 12pt. or larger
Text justification = full
Line spacing = 1.5 or larger
Margins = 1" on all sides.

Notes

All filings are to be made with the assigned administrative law judge after the request for a hearing and filing fee are delivered to the Court. All filed papers must be served upon all parties. Unless otherwise indicated, the postmark will be considered the date of mailing. The date of filing of documents that are hand-delivered to the Court (by a party, attorney, courier, FedEx, UPS, or any means other than U.S. Mail delivery) is the date of receipt.

Parties may not file documents with the Court by email unless authorized to do so by administrative order of the Court. However, a party may send courtesy copies of documents submitted to the Court by email. If a document is too large and cannot be sent as an email attachment, the party may either use Drop Box or Microsoft One Drive. Any electronic communications sent to the Court must include all parties to the proceeding or their representatives.

In addition, filing with the Court may also be effectuated by methods that may be specifically approved by the Court through administrative order. The Court is implementing an e-filing system for attorneys. Once approved by administrative order, the procedures for utilizing the e-filing system will be posted on the Court's website at www.scalc.net. A document filed through the e-filing system must also comply with all other SCALC Rules.

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), SCRCP, 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, and the date of the e-mail is the date of service.

Notes

Service is required of all documents filed. Service is complete upon mailing. Parties who furnish an email address to the Court consent to the service of documents issued by the Court via email. The date of the Court's email is the date of service, and the burden is on a party contesting receipt to show otherwise.

6. **Documents Filed with the Court.**

A. **Content of Documents.** The Clerk of Court shall assign a docket number to each case. Unless otherwise ordered, all documents filed with the Court shall be signed with an original signature and contain:

1. a caption setting forth the title of the case and a brief description of the document;
2. the docket number assigned by the Court; and
3. the name, address, telephone number, and email address of the person who prepared the document. Documents filed with the Court must not be stapled or bound together except with a removable clip.

B. **Privacy Protection for Filings**

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. **Other Identifiers.** 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 Electronic Document Redaction.** A person has a right to request the Court redact any of the personal data identifiers in subsection (1) that appear on an image or copy of an official record placed on a publicly available Internet website. The request must be made in writing and delivered by mail, electronic transmission, or in person to the Clerk of Court. The request must specifically identify the 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.

7. **Confidentiality.** When, by order, statute or rule, a matter subject to the jurisdiction of the Court is required to be kept confidential, all documents filed with the Court, and served on all parties, shall bear the designation "CONFIDENTIAL." Such documents shall be maintained so that only authorized individuals shall have access to those documents.

C. Forms. The Court has developed several forms, some of which are mandatory when required by these Rules, others of which are provided for the parties' and the Court's convenience. Forms are available at the Court's website, www.scalc.net.

7. **Motions.**

A. Content. All motions shall be written and contain the caption of the case, the title of the motion, the docket number, and the name and address of the person preparing it. The motion shall also state the grounds for relief and the relief sought. The motion must also be accompanied by a filing fee as provided in Rule 71.

B. Time for filing. Any party may file a written response to the motion within ten (10) days of the service of the motion unless the time is extended or shortened by the administrative law judge; provided, however, if a party opposes the motion, the party must file a written response. Any party may file a written reply within five (5) days of the service of a response, unless otherwise ordered by the administrative law judge. Failure of a party to timely file a response may be deemed a consent by that party to the relief sought in the motion or petition.

8. Right of Parties to Participate.

A. Parties and Their Representatives. Parties in a proceeding before the Court 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 in South Carolina, 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 that is not a natural person must be represented by an attorney. However, in cases arising under the Occupational Safety and Health Act (OSHA), 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 (SCACR).

B. **Notice of Appearance**. If an attorney is retained after a case is assigned to an administrative law judge, the attorney representing a party pursuant to this Rule must file a notice of appearance with the presiding administrative law judge within ten days of being retained 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**.**

D. **Request for Protection.** An attorney or other person authorized to represent a party pursuant to these Rules who wishes to receive protection from the Court from having a case set for hearing on certain dates must file a separate written request for protection with the assigned judge in each case the attorney or other representative has docketed with the Court.

Notes

A party may be represented only by an attorney except in OSHA cases. In OSHA cases, a business entity may be represented by an officer or employee. Representation by a power of attorney is not permitted. Representation of a party before the Court is permitted only to the extent that such representation does not conflict with these Rules and the rules governing the unauthorized practice of law.

II. CONTESTED CASES

GENERAL PROCEDURES

9. **Powers and Duties of Administrative Law Judge**. Upon assignment of a case, the administrative law judge shall rule on all motions, preside at the contested case hearing, rule on the admissibility of evidence, require the parties to submit briefs when appropriate, issue orders and rulings to ensure the orderly conduct of the proceedings, and issue the final order.

10. **Modification of Procedures**. The administrative law judge, upon being assigned a contested case, shall review the request for a contested case hearing and determine the procedure appropriate for the complexity of the issues presented and the types of proof likely to be introduced so that the matter may be fully and fairly presented without unnecessary burden on either the agency or individuals involved in the hearing.

Notes

The statutory authority of the Court encompasses a wide range of administrative actions from the very simple review of hunting and fishing license revocations to complex environmental cases. This section provides specific direction to the administrative law judge to review the case and limit or expand the pre-hearing procedures if they are unnecessary to a full development of the case.

11. Request for a Contested Case Hearing.

A. Place of Filing. A request for a contested case hearing, accompanied by a filing fee as provided in Rule 71, must be filed with the Clerk of Court. Proof of service must be included with the request.

B. Service of Copies of the Request. A copy of the request must also be served on each party and on the affected agency or county official, in accordance with Rule 5.

C. Time for Filing. Unless otherwise provided by statute, a request must be filed and served within thirty (30) days after actual or constructive notice of the agency's final decision. However, if the requesting party has not received actual or constructive notice of the agency's final decision within thirty days of its issuance, no request shall be filed more than ninety (90) days after the date of the issuance of the final decision unless the administrative law judge assigned to the case finds that substantial cause exists for allowing the filing beyond the ninety (90) day period.

D. Content of the Request. The request may be submitted on a form provided by the Court and shall contain the following information:

1. the name, address, telephone number, and email address of the party requesting the hearing;
2. the issue(s) for which the hearing is requested;
3. a copy of the agency's written final decision, order, letter, or determination that gave rise to the request. If no written final decision, order, letter, or determination has been issued, the request must provide information sufficient to identify the agency action or inaction that is the subject of the hearing; and
4. the relief requested.

E. Incomplete Requests. Any request that 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 the filing fee is processed.

Notes

The request for a contested case hearing contains basic information so that the matter may be identified. The use of an official Court-provided form to request a contested case is optional. However, any document requesting a contested case must include all the information and meet all the requirements of the ALC Rules. The stamping of a document as "FILED" by Court staff does not establish that a document was timely filed with the Court.

12. Agency Information Sheet. The agency requesting a contested case hearing or receiving a notice of a request for a contested case hearing from a party shall, within ten (10) business days of the date of the notice of assignment, file with the assigned judge and serve upon all parties an Agency Information Sheet (AIS) on the form prescribed by the Court. The AIS shall contain the following information:

A. the name of the affected agency, along with the name, telephone number, and email address of the contact person in the agency responsible for the matter;

B. the name or title of the agency proceeding and the file number or any other identifying information of the agency action or inaction that is the subject of the hearing, and a copy of the agency's written final decision, if any, that gave rise to the request for a hearing;

C. the names, addresses, telephone numbers, and email addresses of all known parties and their attorneys; and

D. the names, addresses, and telephone numbers, if known, of any persons who have exercised their legal right to object to the issuance of a permit or license.

If the agency fails to file the requested materials with the Court within ten business days, the party requesting the hearing may move the presiding administrative law judge for an order directing the agency to respond forthwith**.**

Notes

This Rule does not apply to County Tax cases.

13. Notice of Assignment of Case to Administrative Law Judge. Upon receipt of the request for contested case hearing and filing fee, the case shall be assigned to an administrative law judge as provided in section 1-23-570 of the South Carolina Code (1976) (as amended). The Court shall notify all parties of the assignment.

14. Prehearing Statements. Once a case has been assigned, the administrative law judge may order each party to prepare and return a Pre-hearing Statement. If so ordered, the Prehearing Statement must set forth with particularity the issues in the contested case.

15. Notice of Contested Case Hearing. Unless otherwise ordered, the administrative law judge assigned to the case must issue a notice of contested case hearing at least thirty (30) days before the hearing date that sets forth the date, time, place, purpose of the hearing, the administrative law judge who will conduct the hearing, and any other matters necessary for the prompt resolution of the matter. This notice may be issued via email pursuant to Rule 5.

Notes

The Court may issue hearing notices to the parties by electronic means. Parties are responsible for ensuring that the Court is provided with an accurate email address.

16. Preliminary Relief. Requests for preliminary or injunctive relief, other than in a pending case, shall be governed according to the procedures set forth in this section for contested cases (II). The administrative law judge may issue remedial writs necessary to give effect to the Court's jurisdiction and, with respect to injunctions, shall follow the procedure in Rule 65, SCRCP.

Notes

This section provides that the administrative law judge may issue remedial writs as provided in section 1-23-630 (1976) (as amended).

PRE-HEARING PROCEDURES

17. Scheduling Order. The administrative law judge may, on the motion of any party or on its own motion, issue an appropriate order governing the procedure and time frames of the case.

18. Amendment of Documents. Any document filed with the Court may be amended at any time upon motion and for good cause shown, unless the amendment would prejudice any other party in the presentation of its case.

19. Motions. All motions filed pursuant to this Rule must also comply with Rule 7.

A. Prehearing Motions. Except as provided in Rule 20, all motions, including supporting memorandums of law and exhibits, shall be filed at least thirty (30) days before the hearing date unless otherwise ordered by the administrative law judge. Any party may file a written response to the motion within ten (10) days of the service of the motion unless the time is extended or shortened by the administrative law judge; provided however, if a party opposes the motion, the party must file a written response.

B. Motions for Continuance. No application for a continuance may be made or granted *ex parte* (without notice) except in an emergency where notice is not feasible.

C. Motions Regarding Discovery. Any motion relating to discovery shall state that the moving party has made a good faith attempt to resolve all the issues raised by the motion with the opposing party.

D. Motions for Consolidation. When two or more hearings are to be held, and the same or substantially similar evidence is relevant and material to the matters at issue at each such hearing, the administrative law judge may upon motion by any party or on his own motion order that a consolidated hearing be conducted. When a consolidated hearing is held, a single record of the proceedings may be made and evidence introduced in one matter may be considered as introduced in others, and a separate or joint decision shall be made, at the discretion of the administrative law judge as appropriate**.**

Notes

All motions filed with the Court must be accompanied by a filing fee as provided in Rule 7 and Rule 71. Notice to all parties is required. Subsection (C) contains a standard provision that the parties must consult with opposing counsel before filing of a discovery motion to discourage frivolous motions. Subsection (D) provides for consolidation of two or more cases if the same or substantially similar evidence is relevant and material in the cases to be consolidated. Motions for leave to intervene are governed by Rule 20 rather than this rule.

20. Intervention.

A. Motions for Intervention. A motion for leave to intervene shall be served on all parties and shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of the intervention on the proceedings.

B. Grounds for Intervention. Any person may intervene in any pending contested case hearing upon a showing that:

1. the movant will be aggrieved or adversely affected by the final order;
2. the interests of the movant are not being adequately represented by existing parties, or that it is otherwise entitled to intervene; and
3. that intervention will not unduly prolong the proceedings or otherwise prejudice the rights of existing parties.

C. Time for Motion for Intervention. The motion for leave to intervene shall be filed as early in the proceedings as possible to avoid adverse impact on the existing parties or the disposition of the proceedings. Unless otherwise ordered by the administrative law judge, the motion to intervene shall be filed at least twenty (20) days before the hearing. Any later motion shall contain a statement of good cause for the failure to intervene earlier.

D. Conditions of Intervention. A person granted leave to intervene is a party to the proceeding. The intervenor shall be bound by any agreement, arrangement, or other matter previously determined in the case. The order granting intervention may restrict the issues the intervenor may raise or otherwise condition the intervenor's participation in the proceeding.

21. Discovery.

A. In General. Discovery shall be available as provided under these Rules. Discovery shall be conducted according to the procedures in Rules 26-37, SCRCP, except that only the standard interrogatories provided by Rule 33(b), SCRCP, as applicable to the pending contested case, are permitted. There shall be no more than three (3) depositions per party under Rule 30, SCRCP, and no more than ten (10) requests to admit per party, including subparts, under Rule 36, SCRCP. Unless otherwise provided by law, all discovery shall be completed within ninety (90) days of the date of the Notice of Assignment. Upon motion for good cause shown or upon his own motion, the administrative law judge may expand or curtail discovery.

B. Discovery in Certificate of Need Cases. Discovery in Certificate of Need (CON) contested cases is limited to the issues presented or considered during the staff review. Only the standard interrogatories provided by Rule 33(b), SCRCP, as applicable to the pending contested case, and ten (10) interrogatories (including subparts) are permitted to each party. Each party shall be permitted no more than thirty (30) requests for production (including subparts); no more than ten (10)

witnesses called by each party in its case in chief; and no more than ten (10) requests to admit (including subparts). Any permitted discovery shall be conducted according to the procedures in Rules 26-37, SCRCP. Discovery may be curtailed 18 by the administrative law judge upon a showing of good cause or expanded by the administrative law judge upon a showing of substantial prejudice to the party seeking expanded discovery.

Notes

This Rule authorizes discovery by depositions, interrogatories, document production, or requests to admit. The mechanism, timing and procedure of discovery is governed by the South Carolina Rules of Civil Procedure (SCRCP), with specific limitations on interrogatories, depositions, and requests to admit. The timeline for completion of discovery runs from the date of the Notice of Assignment. The presiding administrative law judge may expand or curtail discovery either *sua sponte* or upon motion. Subsection (B) provides parameters for discovery in Certificate of Need (CON) cases. The Rule is designed to facilitate the resolution of CON cases in as prompt a manner as possible. The presiding administrative law judge in a CON case may establish a time frame for completion of discovery in a scheduling order.

22. Subpoenas.

A. Issuance and Service. Subpoenas by or on behalf of any party shall be issued in blank form by the Clerk of Court. An unrepresented party requesting a subpoena shall complete the form and return the completed form to the Clerk of Court for signature before service; upon service, the unrepresented party shall file a copy of the subpoena and the return of service with the Clerk of Court. An attorney authorized to practice before the courts of the State of South Carolina, as an officer of the court, may also complete the form and issue and sign a subpoena on behalf of the Court. Upon service, the attorney shall file a copy of the subpoena and the return of service with the Clerk of Court. The party requesting the subpoena shall be responsible for service of the subpoena and the payment of fees and mileage in accordance with Rule 45, SCRCP.

B. Enforcement. The administrative law judge shall enforce, by proper proceedings, the attendance and testimony of witnesses and the production and examination of records, books, and papers. The administrative law judge has the power to punish non-compliance with a subpoena with contempt, including a fine, imprisonment, or both.

C. Motions to Quash or Modify Subpoenas. A person to whom a subpoena has been issued may move the administrative law judge to issue an order quashing or modifying the subpoena.

Notes

The Clerk of Court will not sign a subpoena form which is incomplete or contains erroneous information. The administrative law judge has the power to enforce subpoenas and to sanction parties for failure to comply with subpoenas through its contempt power.

23. Adverse Disposition of Contested Case.

A. Default. A default occurs when a party fails to plead or otherwise prosecute or defend, fails to appear at a hearing without the proper consent of the judge or fails to comply with any interlocutory order of the administrative law judge. The administrative law judge may, on motion of the non-defaulting party or on its own motion, dismiss a contested case or dispose of a contested case adversely to the defaulting party.

B. Dismissal of Contested Case for Failure to Comply with the Rules. Upon motion of any party, or on its own motion, the Court may dismiss a contested case or resolve the contested case adversely to the offending party for failure to comply with any of the rules of procedure for contested cases, including the failure to comply with any of the time limits provided in these Rules or by order of the Court.

24. [Reserved].

HEARING PROCEDURES

25. Evidence. The South Carolina Rules of Evidence shall govern questions of evidence. S.C. Code Ann. § 1-23-600(A)(5) (1976) (as amended)**.**

26. [RESERVED]

27. Pre-Hearing Exchange of Evidence. Upon notice, the administrative law judge may, in appropriate cases, require the parties to exchange the following prior to the hearing:

A. a final list of witnesses the party reasonably expects to testify at the hearing;

B. a final list of all exhibits expected to be offered at the hearing; and/or

C. a final list of all facts that the party intends to request be judicially noticed by the administrative law judge and the information supporting the judicial notice of the facts requested.

Any witness or exhibit not exchanged prior to the hearing may be excluded from admission into evidence. Multiple documents submitted as one exhibit must be consecutively numbered. The pre-hearing exchange may be amended upon motion and for good cause shown, unless the amendment would substantially prejudice any other party in the presentation of its case**.**

2009 Revised Notes

This Rule provides the administrative law judge another technique for limited pre-hearing exchange of information. It might be appropriate with other pre-hearing procedures in complex cases, or be the only disclosure in simple hearings. Multiple documents submitted as one exhibit, such as an agency file, must be consecutively paginated to facilitate reference to the individual documents during a hearing.

28. Pre-Hearing Conference. The administrative law judge may hold a pre-hearing conference prior to the hearing. The purpose is to obtain stipulations of law and fact, rule on the admissibility of evidence and to identify matters which any party intends to have judicially noticed. The administrative law judge may consider pending motions, and any other matter that will expedite the hearing.

Notes

This Rule provides another tool to help the administrative law judge manage the case. This conference is discretionary and may be held shortly before the hearing to permit the pre-hearing resolution of any matter that would expedite the hearing itself.

29. Contested Case Hearings.

A. Order of Proceedings. The administrative law judge shall conduct the hearing in the following manner:

1. The parties shall be given an opportunity to briefly present opening statements.
2. Parties shall present their evidence in the order determined by the administrative law judge.
3. Each witness shall be sworn or affirmed by the administrative law judge or the court reporter and be subject to examination. In the discretion of the administrative law judge, witnesses may be sequestered during the hearing.
4. Parties have the right to introduce evidence on the points at issue and to cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts.
5. All objections to procedure, admission of evidence or any other matter shall be timely made and stated on the record, in accordance with Rule 103, SCRE.
6. When all the parties and witnesses have been heard, the parties shall be given the opportunity to present final arguments.
7. Proposed orders may be requested by the administrative law judge, and if requested, shall be filed with the administrative law judge and served upon all parties at the same time.

B. Burden of Proof. In matters involving the assessment of civil penalties, the imposition of sanctions, or the enforcement of administrative orders, the agency shall have the burden of proof.

C. Final Decision. The administrative law judge shall issue the final decision in a written order that shall include separate findings of fact and conclusions of law.

D. Motion for Reconsideration. Any party may move for reconsideration of a final decision of an administrative law judge in a contested case. A party must file a

motion for reconsideration prior to filing a notice of appeal and must state with particularity the points supposed to have been overlooked or misapprehended by the Court. A motion for reconsideration is subject to the grounds for relief set forth in Rule 59, SCRCP, as follows:

1. Within ten (10) days after notice of the final decision concluding the matter before the administrative law judge, a party may move for reconsideration of the decision. The opposing party may file a response to the motion within ten (10) days of the filing of the motion.

2. The administrative law judge shall act on the motion for reconsideration within thirty (30) days after it is filed if an opposing party does not file a response or within thirty (30) days after an opposing party files a response. If no action is taken by the administrative law judge within the applicable period, the inaction shall be deemed a denial of the relief sought in the motion.

3. The filing of a motion for reconsideration shall not stay effect of the final decision of the administrative law judge or excuse or delay compliance with the final decision.

4. The time for appeal for all parties shall be stayed by a timely motion for reconsideration, and shall run from receipt of an order granting or denying such motion. If no order is filed regarding the motion, the time for appeal shall begin to run thirty (30) days from the date the motion is deemed denied pursuant to subsection (D)(2).

E. Stay of Final Order. An administrative law judge who issues a final decision subject to appeal may, in the order, stay its effect. At any time prior to the filing of a notice of appeal, and upon the motion of any party, with notice to all parties, the administrative law judge may stay the final order upon appropriate terms. The filing of a motion for a stay does not alter the time for filing an appeal.

Notes

In accordance with applicable case law on issue preservation, a motion for reconsideration is a prerequisite to filing a notice of appeal. In certain matters, such as enforcement actions, the agency has the burden of proof. The filing of a motion for reconsideration does not stay the effectiveness of the administrative law judge's order but does toll the time for appeal until the motion is resolved or deemed denied pursuant to subsection (D)(2). A motion for reconsideration made after a notice of appeal has been filed is untimely because jurisdiction then resides with the Court of Appeals. Subsection (E) permits the administrative law judge to stay the effect of any final decision that is subject to appeal. The authority to stay the order is derived from section 1-23-380(A)(2) of the South Carolina Code (2005) (as amended), which gives the agency or the reviewing court the power to stay an order. When the administrative law judge issues a final decision subject only to appeal, agency action is completed, and the administrative law judge is the appropriate authority to consider the issue of a stay. Motions for stay do not alter the time for filing an appeal, which is jurisdictional.

30. Record After Final Decision. The record of the contested case shall consist of:

A. all documents filed with or by the Court;

B. all evidence received or considered;

C. a statement of matters judicially noticed;

D. all proffers of proof of excluded evidence; and

E. the transcript of the testimony taken during the proceeding, if prepared**.**

31. Appeal of Final Order. The decision of the administrative law judge may be appealed as provided by law. An appellant shall file a copy of the notice of appeal with the clerk of the Court at the same time the notice of appeal is filed with the reviewing authority.

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.

32. Transcript. Contested case hearings shall be available for transcription as required by section 1-23-600(C) of the South Carolina Code (2005) (as amended). The cost of preparing a copy of a transcript shall be borne by the party requesting the transcript.

III. MATTERS HEARD ON APPEAL FROM FINAL DECISIONS OF CERTAIN AGENCIES

33. Notice of Appeal.

A. Time for Filing. The notice of appeal from the final decision of an agency shall be filed with the Court and a copy served on each party and the agency within thirty (30) days of receipt of the decision. In appeals from decisions of the Department of Employment and Workforce (DEW), the notice of appeal must be filed and served within thirty (30) days of the date of mailing of the decision of the Department of Employment and Workforce Appellate Panel.

B. Contents of Notice of Appeal. The notice shall be accompanied by a filing fee as provided in Rule 71 and shall contain the following information:

1. the name, address, telephone number and email address of the party requesting the appeal, and the name, address, telephone number and email address of the attorney, if any, representing that party;

2. a general statement of the grounds for appeal as provided in section 1-23-380(5). The appellant may later amend, supplement or modify the grounds for appeal in the Statement of Issues on Appeal in the brief pursuant to Rule 37(B)(1);

3. a copy of the final decision that is the subject of the appeal and the date of receipt;

4. a copy of the request for a transcript pursuant to SCALC Rule 35; and

5. proof of service of the notice of appeal on all parties.

Any notice of appeal that 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 the filing fee is processed.

C. Automatic Stay of Proceedings Upon Filing Notice of Appeal. The filing of an appeal from the final decision of an agency shall stay the final decision of that agency unless the effect of filing an appeal is otherwise established by statute, the Administrative Procedures Act notwithstanding; or the administrative law judge has entered an order regarding the effect of the proceedings in the agency. Notwithstanding the foregoing, upon the filing of an appeal from the final decision of an agency, any party may apply to the administrative law judge for an order regarding the effect of the appeal on the agency decision.

Notes

The notice of appeal must be filed with the Court within thirty days of receipt of the decision being appealed. The notice of appeal should include a general statement of the issues on appeal, but the statement of issues in the brief shall be considered the final statement of the issues on appeal. The notice of appeal must include the email addresses of the appellant and the appellant's attorney and must be accompanied by a filing fee as provided in Rule 71 and proof of service of the notice on all parties. Any incomplete notice of appeal, or a notice not accompanied by the filing fee, will not be assigned to an administrative law judge until all required information and fees are received. Notices of appeal in Department of Employment and Workforce cases must be filed within 30 days of the date of mailing of the agency decision in accordance with the applicable statute. The stamping of a document as "FILED" by the ALC staff does not establish that a document was timely filed with the Court.

34. Motions.

A. Content and Filing of Motions. All motions shall comply with Rule 7. The motion shall also state the grounds for relief and the relief sought. Any party may file a written response to the motion within ten (10) days of the service of the motion unless the time is extended or shortened by the administrative law judge. Any party may file a written reply within five (5) days of the service of a response, unless otherwise ordered by the administrative law judge. Failure of a party to timely file a response may be deemed a consent by that party to the relief sought in the motion.

B. Effect of Motions upon Time Limits. Unless otherwise ordered by the presiding administrative law judge, the filing of a motion shall not stay the time limits imposed by these Rules. A motion to dismiss an appeal or a motion to relieve counsel shall, however, automatically stay the time limits for perfecting the appeal until the motion is decided. 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.

Notes

For those motions that do stay the time limits, the time frames for perfecting the appeal resume from the date of the order deciding the motion.

35. Ordering and Filing of Transcript. The party filing the notice of appeal shall be responsible for ordering a transcript and shall file a copy of the request for a transcript with the notice of appeal. Unless otherwise agreed by all parties in writing, the appellant must order the entire transcript. The transcript of the proceedings shall be filed with the clerk of the Court by the agency pursuant to Rule 36.

36. Record on Appeal.

A. Time for Service and Filing. Within forty-five (45) days of the date of the notice of assignment to an administrative law judge, the agency with possession of the Record shall file an original and one (1) electronic copy of the Record with the Court and serve one (1) copy on each party to the appeal, unless the time for filing the Record is extended by the administrative law judge assigned to the appeal. In appeals from decisions of the Department of Employment and Workforce, the Department must file and serve the Record within thirty (30) days of the date of the notice of assignment. In preparing the Record, the agency must comply with the provisions of Rule 6(B) regarding privacy protection. The time for filing the Record on Appeal is not tolled if the case is subsequently reassigned to another administrative law judge.

B. Content. The Record shall consist of the following:

1. all pleadings, motions, and intermediate rulings;
2. all evidence received or considered, including copies of specific policies relied upon by the agency;
3. a statement of matters judicially noticed;
4. all proffers of proof of excluded evidence;
5. the final order or decision which is subject to review; and
6. the transcript of the testimony taken during the proceeding.

C. Order of Record. The Record shall be arranged in the following order: the title page, index, orders, judgments, decrees, pleadings, transcript, exhibits, other materials or documents, and a certificate of service. Each page of the Record shall be numbered consecutively beginning with the index.

D. Title Page. The title page shall contain only the caption, the docket number, and the title "Record on Appeal."

E. Index. Every Record shall contain an index to the principal matters therein, to include orders, judgments, pleadings, prehearing matters, opening statements, testimony, motions, closing arguments, post-hearing motions, and exhibits. For witness testimony, the index shall show the pages on which direct, cross, redirect, and recross examination begins.

F. **Exhibits.** Photographs, plats and diagrams, and other paper exhibits shall be inserted in the Record where they can be reduced or drawn to a size which permits them to be printed and inserted in the Record, without folding more than one time. Where exhibits are larger, or do not reasonably lend themselves to accurate reproduction, they need not be included in the Record, but shall be filed separately. All exhibits other than paper exhibits must be delivered to the Clerk of Court.

G. **Review Limited to the Record.** The administrative law judge will not consider any fact which does not appear in the Record.

H. **Cover of Record.** The cover of the Record must be white in color and contain only the caption and the names, addresses, telephone numbers and email addresses of counsel.

Notes

The agency with possession of the record in the contested case (other than Department of Employment and Workforce (DEW) cases) must file an original and one electronic copy of the record with the Court within forty-five (45) days of the date the case is assigned to an administrative law judge. This ensures that the agency must file the record only after the appellant has perfected the appeal by filing the notice of appeal and submitting the appropriate filing fee. If the electronic copy of the Record is too large and cannot be sent as an email attachment, the party may either use Drop Box or Microsoft One Drive. The copy served on each party may be electronic or paper. The agency is responsible for compliance with Rule 6(B) regarding privacy protection. The format of the Record on Appeal is similar to that used in the South Carolina Appellate Court Rules. The administrative law judge's review is limited to those facts appearing in the record. For appeals involving the Department of Employment and Workforce (DEW), a shorter time frame for the filing and service of the Record on Appeal applies. The shorter time frame is designed to expedite the resolution of DEW appeals in accordance with S.C. Code Ann. § 41-35-750, which provides that these appeals must be heard in a summary manner.

37. Briefs.

A. **Time for Filing.** The party first noticing the appeal shall file an original of its brief with the Court within thirty (30) days after the filing of the Record on Appeal. Within thirty (30) days thereafter, the respondent and other parties shall file an original of their briefs in response. A reply copy may be filed ten (10) days thereafter. The principal briefs shall not exceed thirty (30) pages and the reply brief shall not exceed ten (10) pages. In appeals from the Department of Employment and Workforce, the appellant shall file its brief with the Court within twenty (20) days after the Record on Appeal is filed, and the respondent must file its brief within twenty (20) days after the date the appellant's brief is filed. The appellant may file a reply brief within ten (10) days after the respondent's brief is filed.

B. **Content of Brief.** Each brief shall contain:

1. **Statements 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 written 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, at a minimum, the following information: the date of the 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 the service of the notice of appeal; the date of and description of any orders or proceedings in the agency that 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.** This section shall be divided into as many parts as there are issues to be argued, and each such part shall bear an appropriate heading, 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.

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 shall be served on each party to the appeal.

D. **Amicus Curiae Brief.** A brief of an amicus curiae may be filed only by leave of the presiding administrative law judge, or at the request of the presiding administrative law judge. The brief may be conditionally filed with a motion for leave to file. A motion for leave to file shall identify the interest of the movant and shall state the reasons why a brief of an amicus curiae is desirable. The brief shall be limited to argument of the issues on appeal as presented by the parties and shall comply with the requirements of subsections (A) through (D) of this Rule. If leave to file an amicus curiae brief is granted, the Court will specify the period in which a response to the brief may be filed.

Notes

Except in cases involving the Department of Employment and Workforce (DEW), the appellant's brief must be filed within thirty days after the filing of the Record on Appeal, and the respondent's brief must be filed within thirty days after the appellant's brief is filed. Statements of fact set forth in the briefs are binding upon the proponent of the statement. Briefs must not be bound pursuant to Rule 6. In accordance with section 41-35-750 of the South Carolina Code, there is a shorter time frame for filing briefs in DEW appeals because they must be heard in a summary manner.

The presiding administrative law judge must request the filing of amicus briefs or must grant leave to file them. This provision is based upon Rule 223, SCACR.

38. **Dismissal of Appeal for Failure to Comply with the Rules.** 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 in these Rules or by order of the Court.

Notes

In all cases involving pro se litigants or those without substantial knowledge and experience in administrative matters, the administrative law judge may make reasonable efforts to assure fairness. Nevertheless, such litigants remain responsible for complying with these Rules and all applicable statutes. An administrative law judge may dismiss an appeal or resolve an appeal adversely to the offending party for failure to comply with any of the SCALC Rules of Procedure for appeals or for failure to comply with an order of the Court.

39. Oral Argument. Oral argument will not be ordered by the administrative law judge unless the proceeding involves a novel issue or a question of exceptional importance. If ordered, the oral argument shall follow the procedure in Rule 218, SCACR.

Notes

The Court may decide any case without oral argument if it determines that oral argument would not aid the Court in resolving the issues.

40. Final Decision and Motion for Rehearing.

A. 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 Court. The administrative law judge may affirm, reverse, or remand any ruling, order, or judgment upon any ground(s) appearing in the Record and need not address a point that is manifestly without merit. Appeal from any decision of the Court shall be as provided in section 1-23-610 of the South Carolina Code (1976) (as amended).

B. Prior to filing a notice of appeal from the final decision of an administrative law judge, a party must file a motion for rehearing stating with particularity the points supposed to have been overlooked or misapprehended by the Court. A motion for rehearing must be filed within ten (10) days of receipt of the order. The opposing party may file a response to the motion within ten (10) days of the filing of the motion. The time for appeal is stayed by a timely motion for rehearing and runs from receipt of an order granting or denying the motion.

C. The administrative law judge shall act on the motion for rehearing within thirty (30) days after it is filed if an opposing party does not file a response or within thirty (30) days after an opposing party files a response. If no action is taken by the administrative law judge within the applicable period, the inaction shall be deemed a denial of the relief sought in the motion.

Notes

The rules for hearing matters on appeal from the final decision of an agency are based on the South Carolina Appellate Court Rules as modified for the less complex matters heard by the Court. The South Carolina Appellate Court Rules should be examined to resolve novel issues of appellate procedure in the Court. The administrative law judge may affirm upon any ground appearing in the Record and may decline to address

points which are without merit; however, issues raised on appeal but not addressed in the final decision are no longer deemed denied.

41. 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.

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.

IV. REGULATION HEARING PROCEDURES

42. Request for Hearing on Proposed Regulation. An agency desiring a hearing on a proposed regulation pursuant to section 1-23-111 of the South Carolina Code (1976) (as amended) shall file a transmittal form with the Clerk of Court including a description of the subject matter of the regulation and that meets the requirements of Rule 43. Within five (5) days the chief administrative law judge shall assign an administrative law judge to preside over the proceedings.

43. Request for Hearing Requirements. At the time the request for a hearing is made, the agency shall file with the clerk of the Court the following:

A. a copy of the drafting notice for the proposed regulation as published in the State Register;

B. the State Register Document Number of the proposed regulation, if known;

C. the proposed date of submission of the proposed regulation to the State Register for publication;

D. the proposed date of publication in the State Register of the text or synopsis of the proposed regulation; and

E. a suggested date for the hearing.

Notes

The Request for a Hearing on Proposed Regulations should include documentation showing that the requirements for publication in the State Register have been met. Since the State Register Document Number is usually not known at the time the request for a hearing is made, subsection b was amended to recognize that it need not be set forth if it's unknown.

44. Scheduling of Hearing on Proposed Regulation. Within ten (10) days of receipt of the request for a hearing and the required documents, the assigned administrative law judge shall notify the agency of the location, date, and time of the hearing to allow participation by all affected interests.

Notes

The administrative law judge notifies the agency of the hearing date, location, and time. The agency then publishes the Notice of Hearing for the Proposed Regulation in the State Register.

45. Documents to be Pre-Filed with Court. At least ten (10) days before the scheduled hearing date, the agency shall file a statement confirming whether or not there is a need for a hearing as required by section 1-23-110 of the South Carolina Code (1976) (as amended) on the basis that a request for a hearing was made by twenty-five (25) persons, a governmental subdivision or agency, or an association having not less than twenty-five (25) members.

A. Agency Statement of Need and Reasonableness. An agency desiring to adopt a regulation shall prepare and pre-file, at least ten (10) days before scheduled hearing date, the full text of the proposed regulation, and a statement of need and reasonableness that contains a summary of anticipated evidence and argument to be presented by the agency at the hearing. The statement shall include citations to any statutes or case law, citations to any economic, scientific, or other manuals or treatises, and a list of any witnesses to be called by the agency to testify on its behalf with a summary of their anticipated testimony. The statement may contain evidence and argument in rebuttal of evidence and argument presented by the public.

B. Other Pre-Filed Documents. At the time the agency confirms the hearing, it also shall file: a copy of the State Register containing a notice of hearing; all materials received by the agency during the initial drafting period; a list of the agency personnel who will represent the agency at the hearing; a list of all persons who contacted the agency orally or in writing regarding the proposed regulation; and a list of all persons expected to testify or present evidence at the hearing.

46. Powers of Administrative Law Judge. Consistent with law, the administrative law judge has the power to do all things necessary and proper to administer the regulation hearing and to promote justice, fairness, and economy, including, but not limited to preside at the hearing; administer oaths or affirmations; hear and rule on objections and motions; question witnesses when appropriate to make a complete record; rule on the admissibility of evidence; strike from the record objectionable evidence; limit repetitive or immaterial oral statements and questions; and determine the order of making statements and questions.

47. Order of Proceedings. All hearings held pursuant to section 1-23-111 of the South Carolina Code (1976) (as amended) shall proceed substantially in the following manner:

A. Registration of Participants. All persons intending to present evidence or ask questions shall register with the administrative law judge before the hearing begins by legibly printing their names, addresses, telephone numbers, and names of any individuals or associations that the person represents on a register provided by the administrative law judge.

B. **Notice of Procedure.** The administrative law judge shall convene the hearing at the proper time, and shall explain to all persons present the purpose of the hearing and the procedure to be followed at the hearing so that all persons are treated fairly and impartially. The administrative law judge may impose time limitations on testimony by the agency or interested persons. The administrative law judge also shall announce when the record of the hearing is to be closed, and in their discretion, may permit the filing of additional written statements and materials within five (5) days after the hearing. The time period may be extended in the discretion of the administrative law judge, but not later than twenty (20) days after the hearing ends.

C. **Agency Presentation.** The agency representatives will identify themselves and the witnesses expected to testify on the agency's behalf for the record, and make available copies of the proposed regulation at the hearing. The agency shall make its showing of the need for and the reasonableness of the regulation, and shall present any other evidence it considers necessary to fulfill all statutory or regulatory requirements. The agency may rely on its pre-filed statement of need and reasonableness to satisfy its burden, and it may also present oral evidence.

D. **Opportunity for Questions.** Interested persons shall be given an opportunity to address questions to the agency representatives or witnesses or to interested persons making oral statements. Agency representatives may question interested persons making oral statements. Questioning may extend to the proposed regulation(s) or a suggested modification, or may be conducted for other purposes, if material to the evaluation or formulation of the proposed regulation(s).

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 regulation(s).

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 has ended, the administrative law judge shall issue a written report with findings as to the need for, and reasonableness of, the proposed regulation. If there is a finding of a lack of need or of reasonableness, the administrative law judge 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) and *Furtick v. S.C. Dep't of Probation, Parole and Pardon Services,* 352 S.C. 594, 576 S.E.2d 146 (2003).

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. [Reserved]

53. Filing.

A. Filing Defined. The date of 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 paper (8 ½ by 11 inches). 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 Court shall assign a docket number to each case. All documents submitted after the notice of appeal 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 assigned docket number; and

C. the name, address, and telephone number of the person who prepared the document.

Notes

After the Clerk of Court 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.

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.

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 on Appeal. 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. Where applicable, the record on appeal 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 decision that is subject to administrative review; and

F. any transcript taken of the testimony during the proceeding.

In appeals from decisions of the Probation, Pardon and Parole Board, the Department need only provide a copy of the agency decision, and where applicable, the decision following a motion for reconsideration.

Notes

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 a 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 specific constitutional violation asserted;

C. a copy of the final decision that is the subject of the appeal and the date of receipt; and

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.

Notes

The notice of appeal must be on the Court's prescribed form and must be filed and served within thirty (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.

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.

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 written 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, at 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 that 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. This section shall be divided into as many parts as there are issues to be argued, and each such part shall bear an appropriate heading, 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 shall be served on each party to the appeal.

D. **Multiple Briefs.** Only one initial brief and reply brief will be considered by the Court unless the Court, upon motion or on its own motion, allows the filing of an additional brief.

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. Motions to extend the time for filing briefs will only be granted in exceptional circumstances.

61. **Motions in Special Appeals.** In addition to the requirements of Rule 7, the following provisions apply:

Motions to extend the time for filing the record will only be granted in exceptional circumstances. Motions to extend the time for filing briefs will also 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 that elapsed prior to the filing of the motion. The filing of a motion other than a motion to dismiss shall not stay any time limits imposed by these Rules.

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 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 warrant to discourage similar conduct in the future.

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 that are frivolous or actions taken solely for the purpose of delay.

63. [Reserved]

64. Oral Argument. Oral argument will not be ordered by the administrative law judge unless the proceeding involves a novel issue or a question of exceptional importance. If 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. Final Decision. The administrative law ~~j~~judge shall render a final decision in a written order which shall be served on all parties and filed with the Clerk of Court. The ~~a~~administrative law judge may affirm, reverse, or remand any ruling, order or judgment upon any ground(s) appearing in the Record and need not address a point that is manifestly without merit. The decision of the administrative law judge is a final decision and motions for reconsideration will not be considered. An appeal of any decision of the Court shall be as provided in section 1-23-610 of the South Carolina Code (1976) (as amended).

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. Any document received after the case is closed will be disregarded.

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.

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 their own initiative or on the motion of any party and after such notice, 38 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.

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 SCALC Rules shall govern all procedural aspects of the matter, notwithstanding any other procedural statute, agency regulation or rule.

Notes

Rule 69 provides for situations in which the procedural statutes, regulations, or rules of the agency where the case arose differ from the SCALC Rules. As provided in section 1-23-650(C) of the South Carolina Code, this 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 SCALC 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 the Court's 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 next senior administrative law judge who is present shall preside.

C. Petition for Consideration En Banc.

1. By Party. Within forty-five (45) days after the assignment of a case, a party may request that a matter be heard en banc by filing a petition with the Clerk of Court. No response to the petition shall be required unless ordered by the assigned judge or by a majority of the judges.

2. By Judge. The presiding administrative law judge may also request en banc consideration at any time during the proceedings.

3. Vote. After receipt of the petition or request by a judge, the Clerk of Court will immediately circulate to the administrative law judges a vote sheet with the petition or request 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 of Court in writing of their request for a vote. If no vote is requested, the Chief Administrative Law Judge will issue an order stating that no judge requested a vote and the petition is denied. If a vote is requested and a majority of the judges vote to hear the matter en banc, then the Chief Administrative Law Judge will issue an order granting the petition or request.

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 subsection A of this Rule. Once the petition or request is granted, notice will be given to the parties of the issue(s) under consideration and the date of the hearing, if any. 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 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 resolution(s) of 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.

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 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 fourth 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 for the 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
DPH–Health Licensing	$200
DPH-CON and NAD	$500
DES - Individual Septic Tanks	$100
DES –(All Other)	$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)	$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 or Rehearing

(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.

E. **Electronic Processing Fee.** Any documents filed using the Court's e-filing system may be assessed an additional fee up to $10.

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 42 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 fourth and subsequent filings by an inmate during a given calendar year, and no waiver of this fee may be requested. In cases other than those involving the Department of Corrections, 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. If the filing fee is only partially waived, fees for motions will be required unless otherwise ordered by the Court. The 2022 amendment allows a processing fee to be added to the filing fee. Finally, an administrative order issued by the ALC on September 6, 2022, clarified that the following uncontested motions are not subject to filing fees:

- Motion to Withdraw Request for Contested Case or Appeal
- Consent Motion for Dismissal (signed by all parties)
- Initial Consent Scheduling Order (amended request requires motion and fee)
- Consent Confidentiality Order
- Consent Order filed resolving a motion for which the fee has been paid.
- Consent Protective Order.

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 warrant to discourage similar conduct in the future.

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 utilize section 15-36-10 of the South Carolina Code, 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.

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.

74. Remittitur. When the remittitur is received from the appellate court at the conclusion of an appellate case taken under Rule 31, 41, or 66, it shall be filed in the Court's case file and the case will be closed, unless it is remanded for further action.