RULES OF PROCEDURE

FOR THE

ADMINISTRATIVE LAW COURT

Effective May 1, 2013

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I. GENERAL PROVISIONS

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

2009 Revised Notes

These Rules are applicable to all matters within the jurisdiction of the Court, whether they are contested cases under the Administrative Procedures Act or heard pursuant to a constitutional command for a hearing. ***Stono River EPA v. S.C. Dep't of Health and Envtl 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).

Note to 2013 Amendments

Rule 1 is amended to emphasize that, pursuant to S.C. Code Ann. § 1-23-650(C), these Rules of Procedure apply in the Administrative Law Court to the exclusion of any individual agency rules of procedure, whether those rules are contained in statutes or regulations.

2. Definitions.

A. Administrative Law Court means an independent body of administrative law judges who preside over public hearings involving the promulgation of regulations, as authorized in S.C. Code Ann. § 1-23-111 and decide contested cases and appellate cases pursuant to the authority in S.C. Code Ann. § 1-23-310, et seq. and as otherwise provided by law.

B. Administrative Law Judge means a judge appointed pursuant to S.C. Code Ann. § 1-23-510 (1976) (as amended) who is assigned a particular matter by the Chief Administrative Law Judge, or if no administrative law judge has been assigned for a particular matter, the Chief Administrative Law Judge.

C. Agency means a state agency, department, board or commission whose action is the subject of a contested hearing, an appeal heard by an administrative law judge, or a public hearing on a proposed regulation presided over by an administrative law judge.

D. Appeal means the review conducted by an administrative law judge of an agency decision on the record established in the agency and any additional evidence presented to the administrative law judge pursuant to the Administrative Procedures Act.

E. Contested Case is defined in Section 1-23-505. It is a case for which a hearing is conducted pursuant to Article 3, Chapter 23 of Title 1, the South Carolina Administrative Procedures Act, and includes hearings conducted by the Administrative Law Court pursuant to Section 1-23-600(A), hearings required by due process under the South Carolina or United States Constitutions, or as otherwise provided by law.

F. Court means the Administrative Law Court.

G. Docket means the roster of matters pending before the Court, including contested cases, appeals, and hearings on proposed regulations.

H. Party means each person or agency named or admitted as a party or properly seeking and entitled to be admitted as a party, including a license or permit applicant. An applicant or licensee whose application or license is the subject of a request for a contested case hearing shall be deemed a party and shall be served with copies of all papers filed in the case.

2009 Revised Notes

The definition of a contested case includes matters which are heard pursuant to a constitutional command for a hearing and matters, such as county tax cases, which do not come directly from a state agency. The definition of a party makes it clear that the licensee or applicant is to be made a party to any matter which involves the license or permit, and that he shall be served with copies of all papers filed in the action.

3. Time.

A. Computation. In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default after the designated period of time begins to run is not included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a State or Federal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor such holiday. When the period prescribed is less than seven days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation. A half holiday shall be considered as any other day and not as a holiday.

B. Enlargement. For good cause shown, the administrative law judge may extend or shorten the time to take any action, except as otherwise provided by rule or law.

C. Service By Mail. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, by e-mail, or upon a person designated by statute to accept service, five days shall be added to the prescribed period.

2013 Revised Notes

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

4. Filing.

A. Filing with Court. After the request for hearing and filing fee are delivered to the Court, all filings must be made with the administrative law judge assigned to the case and shall contain the docket number assigned. The Court will maintain its official file from the receipt of the request for hearing until a final order is issued by the administrative law judge.

B. Filing Defined. The date of the filing is the date of delivery or the date of mailing. Any document filed with the Court shall be accompanied by proof of service of such document on all parties, and, if filed by mail, shall be accompanied by a certificate of the date of mailing. A document, pleading or motion or other paper is deemed filed with the Court by:

(1) delivering the document to the Court;

(2) by depositing the document in the U.S. mail, properly addressed to the Court, with sufficient first class postage attached; or

(3) as otherwise approved by the Court through administrative order.

C. Paper Size. All papers filed with the Court shall be on letter-size (8½ by 11 inches) paper. Exhibits or copies of exhibits in their original form which exceed that size shall be reduced by photocopying or otherwise to letter-size so long as such documents remain legible after reduction.

2013 Revised Notes

All filings are to be made with the assigned administrative law judge after the request for hearing and filing fee are delivered to the Court. All filed papers must be served upon all parties and, if filed by mail, must be accompanied by a certificate of service. All papers filed with the Court must be letter size. Exhibits or other documents that exceed that size are to be reduced before filing unless the process of reduction would make them illegible. The Court is responsible for the official record from the receipt of the request for a hearing until the administrative law judge issues the final order. Filing with the Court is defined as the date delivered to the Court or the date mailed by first class mail to the Court, along with a certificate of service. Filing with the Court may also be effectuated by methods which may be specifically approved by the Court through administrative order. Unless otherwise approved by administrative order of the Court, parties may not file documents with the Court by e-mail.

5. **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, 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 pursuant to Rule 6, Rule 11 or Rule 33 consents to the service of prehearing statements, notices of hearing, final orders, or other documents issued by the Court via e-mail.

2013 Revised Notes

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

6. **Content of Papers.** The clerk of the Court shall assign a docket number to each case. All papers, pleadings, motions and orders thereafter shall be filed with the Court and a copy served on all other parties of record. All papers shall be signed and contain:

A. a caption setting forth the title of the case and a brief description of the document;

B. the case docket number assigned by the Court;

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

The party filing a document with the Court is responsible for redacting all identifying or personal information, such as social security numbers, from the document before it is filed with the Court. Once a document is filed with the Court, it is a public record subject to disclosure under the Freedom of Information Act.

2013 Revised Notes

Documents filed with the Court should contain the e-mail address of the person who prepared the document. Furthermore, the proponent of a document filed with the Court is responsible for redacting any personal or identifying information which is not subject to disclosure under FOIA from the document prior to filing it with the Court.

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

8. Right of Parties to Participate.

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

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

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

2009 Revised Notes

A party may be represented only by an attorney, in tax related matters by a certified public accountant, or in OSHA cases only, a business entity may be represented by an officer or employee. Representation of a party before the Court is permitted only to the extent that such representation does not conflict with the rules governing the unauthorized practice of law. Parties representing themselves are not relieved of the responsibility to comply with these Rules and the Administrative Procedures Act. A representative who is retained after assignment of the case must file a notice of appearance with the presiding administrative law judge within ten days of being retained, and any person representing a party before the Court must file a written motion with the presiding judge to withdraw from representation of that party.

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 insure the orderly conduct of the proceedings and issue the final order.

10. Simplification 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 to 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. The administrative law judge may limit the pre-hearing procedures and simplify the pre-hearing exchange of materials and otherwise take such reasonable measures so that the burdens of procedure do not unfairly prevent the presentation of the facts.

2009 Revised 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 the pre-hearing procedures if they are unnecessary to a full development of the case. The administrative law judge, through the scheduling conference, which can be held by telephone, can consider the comments of the parties and then issue an appropriate order defining the pre-hearing procedures.

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 the Court.

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. A certificate of service must be included with the request.

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 determination. In county tax matters and cases arising under the Setoff Debt Collection Act, the request must be filed and served within thirty (30) days after the date of the written decision. Howeverif the requesting party has not received actual or constructive notice of the agency's determination within thirty days of its issuance, no request shall be filed more than ninety (90) days after the date of the issuance of the order or determination 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 prescribed by the Court and shall contain the following information:

1. The name, address, telephone number and e-mail address of the party requesting the hearing and the issue(s) for which the hearing is requested;
2. The caption or other information sufficient to identify the decision, order, letter, determination, action or inaction which is the subject of the hearing;
3. A copy of the written agency decision, order, letter or determination, if any, which gave rise to the request;
4. The relief requested.

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

2009 Revised Notes

The request for a contested case hearing contains basic information so that the matter may be identified. The request must be filed directly with the clerk of the Court rather than with the affected agency and must include the requesting party's address, telephone number and e-mail address. The request must be accompanied by a filing fee as provided in Rule 71, and a certificate of service upon all parties, including the affected agency or county official. The use of an official request form provided by the Court is optional. A copy of the written agency decision must also be included with the request for a hearing.

The thirty-day time period for filing a request for a contested case hearing begins to run when the party filing the request has actual or constructive notice of the agency order or determination. A request based upon failure to receive notice may not be filed more than 90 days after the date of the agency order or determination, unless for substantial cause shown the administrative law judge allows the filing to be made. For county tax matters and cases arising under the Setoff Debt Collection Act, the request must be filed and served within 30 days of the date of the written decision. A case will not be assigned to an administrative law judge until all information required by the rule, and the filing fee, is received.

Note to 2013 Amendments

Rule 11(C) is amended to clarify that the last sentence of the rule applies only in instances where a party has not received actual or constructive notice of a final agency determination within thirty days of its issuance.

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) working days of the date of the notice of assignment of the case to an administrative law judge, file with the clerk of the Court and serve upon all parties an information sheet on the form prescribed by the Court, containing the following information:

A. the name of the affected agency, along with the name, telephone number, and e-mail 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 written agency decision, if any, which gave rise to the request for a hearing;

C. the names, addresses, telephone numbers and e-mail addresses of all known parties, and their attorneys or authorized representatives;

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 working days, the party requesting the hearing may move before the presiding administrative law judge for an order directing the agency to respond forthwith.

2013 Revised Notes

Within ten working days from the date of the notice of assignment to an administrative law judge, the agency must file with the Court and serve upon all parties an agency information sheet on the form prescribed by the Court, containing the information formerly submitted in the agency transmittal form. The agency information sheet must include the e-mail addresses of the agency's contact person, as well as the e-mail addresses of known parties and their representatives. A copy of the written agency decision must be included with the agency information sheet. If the agency fails to comply with this Rule, the party requesting the hearing may move for an order compelling the agency to respond.

13. **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 S. C. Code Ann. §1-23-570 (1976) (as amended).

2009 Revised Notes

The request for a contested case hearing and filing fee must be received before a contested case is assigned to an administrative law judge. Once a case is assigned to a judge, that judge will be responsible for all decisions in the case.

14. **Notification of Assignment and Request for Information.** Upon receipt of the request for contested case hearing and filing fee, the Court shall notify all parties of the assignment of an administrative law judge, and the administrative law judge assigned to the case, by pre-hearing order, may request each party to prepare and return a Pre-Hearing Statement describing the contested case.

15. **Notice of Contested Case Hearing.** 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, and 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 e-mail pursuant to Rule 5.

2013 Revised Notes

In accordance with the Administrative Procedures Act, the administrative law judge assigned to the case issues the notice of the contested case hearing at least 30 days before the hearing date. The Court may issue notices of hearing to the parties via e-mail. Parties are responsible for ensuring that the Court is provided with an accurate e-mail address.

16. Preliminary Relief. The administrative law judge may issue remedial writs as are necessary to give effect to its jurisdiction and with respect to injunctions shall follow the procedure in Rule 65, SCRCP.

2009 Revised Notes

This section provides that the administrative law judge may issue remedial writs as provided in S. C. Code Ann. §1-23-630 (2005) (as amended). The procedure for issuing the injunction is provided by Rule 65, SCRCP.

PRE-HEARING PROCEDURES

17. Scheduling Conferences and Orders.

A. Scheduling Conference. At any time after the case has been assigned, the administrative law judge may hold a scheduling conference with the parties of record, by telephone if convenient, to determine:

(1) the necessity or desirability of prehearing statements or amendments;
(2) the simplification of the issues;
(3) the possibility of obtaining stipulations of fact and of documents to avoid unnecessary proof;
(4) the limitation and exchange of expert testimony;
(5) the scheduling of discovery;
(6) the possibility of resolving the matter through settlement, reference to mediation or other alternative forms of dispute resolution.

B. Scheduling Order. The administrative law judge, after the conference, may issue an appropriate order containing the action, if any, taken at the scheduling conference.

2009 Revised Notes

This rule gives the judge the power to hold a pre-hearing conference in any case, preferably by telephone. The matters discussed include the opportunity for settlement conferences or alternative dispute resolution if appropriate. The administrative law judge issues an appropriate order to guide the pre-hearing proceedings.

Note to 2013 Amendments

In accordance with the repeal of former Rule 18, this Rule is revised to substitute "prehearing statements" for "pleadings" in subpart (A)(1). Subpart (A)(3) is also amended to substitute "stipulations" for "admissions."

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.

Note to 2013 Amendments

Former Rule 18, which provided for pleadings, has been repealed and replaced with a new Rule 18 providing for amendment of documents filed with the Court upon motion and for good cause shown. In lieu of pleadings, the Court may order the submission of prehearing statements.

19. Motions.

A. Content and Filing. All pre-hearing motions shall be written, contain the caption of the case and the title of the motion, the contested case docket number assigned by the Court and the

name and address of the person preparing it. The motion shall also state the grounds for relief and the relief sought. Except as provided in Rule 20, all motions shall be filed not later than 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 filing 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 filing of a response, unless otherwise ordered by the administrative law judge.

B. Motions for Continuance. A motion for continuance shall be in writing, state the reasons therefor, and be signed by the requesting party or representative. 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. Opposing parties may respond within ten (10) days of the filing of the motion unless the time is otherwise altered by the administrative law judge, who may rule on the basis of the written motion and any response thereto, or may order argument on the motion.

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. Where consolidated hearings are 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.

2009 Revised Notes

Subsection (A) contains the requirement that motions be made at least ten days before the contested case hearing. A special rule for continuances was added because of their common usage. 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 in the event that the same or substantially similar evidence is relevant and material in the cases to be consolidated. The language of the subsection is adapted from 29 C.F.R., Part 18, Subpart A §18.11, which is applicable to proceedings before Federal administrative law judges.

Note to 2013 Amendments

Subsection (A) has been amended to provide that all motions must be filed no later than thirty days prior to the scheduled hearing date, unless the presiding administrative law judge orders otherwise. Motions for leave to intervene are governed by Rule 20 rather than this rule. The amendment further provides time frames for filing responses and replies to motions, which may be adjusted in the discretion of the presiding administrative law judge.

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;

(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 to be raised or otherwise condition the intervenor's participation in the proceeding. If appropriate, the administrative law judge may order consolidation of petitions and briefs and limit the number of representatives allowed to participate in the proceedings.

2009 Revised Notes

This rule contains the standard for intervention and specifically provides that the intervenor's participation can be limited in the discretion of the administrative law judge. The rule encourages early joinder of parties, and requires a good cause explanation if intervention is sought immediately before the hearing.

Note to 2013 Amendments

Rule 20(A) is amended to delete the requirement that a proposed answer or position in intervention must be attached to a motion for leave to intervene.

21. Discovery.

A. In General. Discovery shall be available as provided in S.C. Code Ann. §1-23-320 (2005) (as amended), and 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 SCRCP 33(b), 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. All discovery shall be completed within 90 days of the receipt of the Notice of Assignment and Request for Information. Upon motion for good cause shown or upon his own motion, discovery may be expanded or curtailed by the administrative law judge.

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) to each party are permitted; there shall be no more than thirty (30) requests for production (including subparts); there shall be no more than ten (10) witnesses called by each party in their case in chief; and no more than ten (10) requests to admit (including subparts) to each party are permitted. Any permitted discovery shall be conducted according to the procedures in Rules 26-37, SCRCP. Discovery may be curtailed 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.

2013 Revised Notes

The Administrative Procedures Act permits discovery by depositions, and this rule authorizes discovery by interrogatories, document production or requests to admit. The mechanism, timing and procedure of discovery is governed by the Rules of Civil Procedure, with specific limitations on interrogatories, depositions and requests to admit. 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.

Note to 2013 Amendments

Rule 21(B) is amended to correct inconsistencies with S.C. Code Ann. § 44-7-210(F)(3) and to clarify that ten, rather than thirty, interrogatories are permitted as a matter of course in a certificate of need case.

22. Subpoenas.

A. Issuance and Service. Subpoenas by or on behalf of any party shall be issued in blank by the clerk of the Court. The party requesting the subpoena shall complete the form and return the completed form to the clerk of the Court for signature before service, and shall file a copy of the subpoena and the return of service with the clerk of the Court upon service. An attorney authorized to practice before the courts of the State of South Carolina, as an officer of the court, may also issue and sign a subpoena on behalf of the Court. The attorney shall complete the form before service and file a copy of the subpoena and the return of service with the clerk of the Court upon service. 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, and have the power to punish as for contempt of court, by fine or imprisonment or both, the unexcused failure or refusal to attend and give testimony or produce books, papers, and records that have been required by subpoena to be produced.

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

2009 Revised Notes

Rule 22(A) provides the procedure for issuance and service of subpoenas. An unrepresented party requesting a subpoena must complete the blank form and return the completed form to the clerk for signature before service. However, attorneys may issue and sign subpoenas on behalf of the Court. Rule 22(C) provides the procedure for motions to quash or modify subpoenas. The administrative law judge has the power to enforce subpoenas and to sanction parties for failure to comply with subpoenas as for contempt.

23. Adverse Disposition of Contested Case.

A. Default. The administrative law judge may dismiss a contested case or dispose of a contested case adverse to the defaulting party. 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. Any non-defaulting party may move for an order dismissing the case or terminating it 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.

2009 Revised Notes

The administrative law judge may dispose of a contested case adverse to a defaulting party. Rule 23(B) allows the administrative law judge to dismiss a contested case for failure to comply with the rules of procedure for contested cases.

Note to 2013 Amendments

Rule 23(B) is amended to provide that the administrative law judge may dismiss a contested case or resolve it adversely to the offending party for failure to comply with the ALC Rules of Procedure or an order of the Court.

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

HEARING PROCEDURES

25. Evidence.

A. Governing Statute. S.C. Code Ann. §1-23-330 (2005) (as amended) shall govern questions of evidence.

B. Objections. Objections to evidence shall be timely made and noted in the record. Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony. If the evidence excluded consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

C. Preference for Stipulations, Documentary Evidence. Stipulations of law, fact and testimony are encouraged. Subject to these rules and when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in documentary form.

2009 Revised Notes

This section establishes that the rules of evidence apply to administrative hearings as required by the Administrative Procedures Act. Stipulations are encouraged, and the judge may receive evidence in documentary form where appropriate. However, the use of prepared statements and exhibits in lieu of testimony, as formerly provided in Rule 25(D), is no longer permitted.

26. Admissibility of Documents. The established rules of evidence as provided in S.C. Code Ann. §1-23-330 shall be followed. The administrative law judge shall apply the tests under established rules of evidence otherwise relating to admissibility and credibility and determine the weight to be given such evidence. The administrative law judge may require the submitting party to identify the portions of voluminous records, or depositions that are relevant and material.

2009 Revised Notes

The established rules of evidence apply in all contested case proceedings, as provided in the Administrative Procedures Act. In lieu of the procedures formerly provided in this rule, parties may stipulate to the authenticity of documents in order to avoid delay or difficulty involved in establishing the foundation for those documents.

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

C. a final list of all facts which 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 list 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. A procedure is provided for the amendment of the pre-hearing exchange. Multiple documents submitted as one exhibit, such as an agency file, must be consecutively numbered in order 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.

2009 Revised 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 administrative law judge shall give an opening statement briefly describing the nature of the proceeding.

(2) The parties shall be given an opportunity to briefly present opening statements.

(3) Parties shall present their evidence in the order determined by the administrative law judge. The party with the burden of proof will be the first to present evidence, all other parties being allowed to cross-examine in an orderly fashion. When that party rests, other parties will then be allowed to present their evidence, again allowing for orderly cross-examination. Rebuttal and surrebuttal evidence are allowed only in the discretion of the administrative law judge.

(4) 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.

(5) Parties have the right to introduce evidence on the points at issue, to cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, to present evidence in rebuttal and to submit briefs.

(6) All objections to procedure, admission of evidence or any other matter shall be timely made and stated on the record.

(7) When all of the parties and witnesses have been heard, the parties shall be given the opportunity to present final arguments.

(8) Briefs and proposed findings of fact and conclusions of law may be requested by the administrative law judge, and if served upon the administrative law judge shall be served at the same time and by the same method on all parties. Briefs shall set forth

the factual and legal position of the party and be served on the Court and on all parties of record.

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. Decision. The administrative law judge shall issue the decision in a written order which 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 to alter or amend the final decision, subject to the grounds for relief set forth in Rule 59, SCRCP, as follows:

(1) Within ten (10) days after notice of the order concluding the matter before the administrative law judge, a party may move for reconsideration of the decision, provided that a notice of appeal from the decision has not been filed. 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 the order of the administrative law judge or excuse or delay compliance with the order of the administrative law judge.

(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).

The filing of a motion for reconsideration is not a prerequisite to filing a notice of appeal from a final decision of an administrative law judge.

E. Stay of Final Order. An administrative law judge who issues a final order subject to judicial review may in the order stay its effect. At any time prior to the filing of a petition for judicial review, 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 a petition for judicial review.

2013 Revised Notes

Subsection (A) describes the procedure at the hearing which follows the standard civil trial format. In certain matters, such as enforcement actions, the agency has the burden of proof. The decision is to be written with separate statements of fact and law. Issues raised in the contested case proceedings but not addressed in the written order are no longer deemed denied, but must be raised by the parties in a motion for reconsideration in order to be preserved for appeal. Subsection (D) provides for a motion for reconsideration of the decision of an administrative law judge in a contested case. The motion for reconsideration is subject to the grounds for relief set forth in SCRCP 59. The administrative law judge must decide the motion within 30 days or it is deemed denied. 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 petition for judicial review has been filed is untimely because jurisdiction then resides in the Court of Appeals. The filing of a motion for reconsideration is not a prerequisite to filing a notice of appeal from the final decision of an administrative law judge. Subsection (E) permits the administrative law judge to stay the effect of any final order that is subject only to judicial

review. The authority to stay the order is derived from S.C. Code Ann. §1-23-380(A)(2) (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 order subject only to judicial review, agency action is completed and the administrative law judge is the appropriate authority to consider the issue of a stay. Motions for stays do not alter the time for filing a petition for judicial review, which is jurisdictional.

Note to 2013 Amendments

Rule 29(D) is amended to specify a ten day time frame for filing a response to a motion for reconsideration. The administrative law judge has thirty days from the date of the motion to act upon the motion, but if an opposing party files a response to the motion, the thirty day time frame begins to run from the date the response is filed.

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

A. All pleadings, motions, intermediate rulings and depositions filed with the Court;
B. All evidence received or considered;
C. A statement of matters judicially noticed;
D. All proffers of proof of excluded evidence;
E. The final order or decision which is subject to judicial review;
F. 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.

2009 Revised Notes

Pursuant to Act 387 of 2006, the South Carolina Appellate Court Rules govern the procedure for appealing a final order of an administrative law judge. A copy of the notice of appeal must be filed with the clerk of the Court at the same time the notice is filed with the Court of Appeals.

32. Transcript. The hearings concerning a contested case shall be available for transcription as required by S.C. Code Ann. §1-23-600 (a) (1976) (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. 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 whose final decision is the subject of the appeal within thirty (30) days of receipt of the decision from which the appeal is taken. In appeals from decisions of the Department of Employment and Workforce, the notice of appeal must be filed and served within thirty (30) days of the date of the decision of the Department of Employment and Workforce Appellate Panel. The notice shall be accompanied by a filing fee as provided in Rule 71 and shall contain the following information:

A. the name, address, telephone number and e-mail address of the party requesting the appeal, and the name, address, telephone number and e-mail address of the attorney or other authorized representative, if any, representing that party;
B. a general statement of the grounds for appeal as provided in S.C. Code Ann. §1-23-380(A)(6). The grounds for appeal may be amended, supplemented or modified in the statement of issues in the brief required by Rule 37(B)(1);
C. a copy of the final decision which is the subject of the appeal and the date received;
D. a copy of the request for a transcript;

E. a certificate 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 the filing fee is processed.

2013 Revised Notes

The notice of appeal is filed with the Court as the entity hearing the appeal. The time is set at 30 days because it is the same time for civil appeals. 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 e-mail addresses of the appellant and the appellant's attorney or other authorized representative, and must be accompanied by a filing fee as provided in Rule 71. 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 the agency decision in accordance with the applicable statute.

34. Automatic Stay of Proceedings Upon 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.

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 administrative law judge may also order the agency to prepare a transcript. The transcript of the proceedings shall be filed with the clerk of the Court by the agency pursuant to Rule 36.

2009 Revised Notes

The party filing the notice of appeal must order the transcript at the same time as the service of the notice of appeal. A copy of the request for a transcript must be filed with the notice of appeal. The appellant must order the entire transcript unless the parties agree otherwise in writing.

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) 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 twenty (20) days of the date of the notice of assignment.

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

(1) All pleadings, motions, and intermediate rulings;
(2) All evidence received or considered;
(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;
(6) The transcript of the testimony taken during the proceeding.

The agency with possession of the Record is responsible for redacting all identifying or personal information, such as social security numbers, from the Record before it is filed with the Court. Once a document is filed with the Court, it is a public record subject to disclosure under the Freedom of Information Act.

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.

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 the Court.

G. **Review Limited to 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 e-mail addresses of counsel.

I. **Margins and Bindings.** Typewritten papers or reproductions must have a blank margin of an inch and a half on the left and must be securely fastened on the left margin.

2013 Revised 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 copy of the record with the Court within forty-five 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. The agency is responsible for redacting any identifying or personal information not subject to disclosure under FOIA prior to filing the Record on Appeal with the Court. 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 and one copy 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 and one copy of their briefs in response. A reply brief and one 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 stated in question form. Broad general statements may be disregarded by the Court. Ordinarily, no point will be considered that is not set forth in the statement of issues on appeal.

(2) Statement of the Case. The statement shall contain a concise history of the proceedings, insofar as necessary to an understanding of the appeal. The statement shall not contain contested matters and shall contain as a minimum, the following information: the date of 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 as may have affected the appeal, or may throw light upon the questions involved in the appeal. Any matters stated or alleged in a party's statement shall be binding on that party.

(3) Argument. The brief shall be divided into as many parts as there are issues to be argued, and each such part shall bear an appropriate caption, followed by a discussion and citation of authority. A party may also include a separate statement of facts relevant to the issues presented for review, with reference to the record on appeal, which may include contested matters and summarize that party's contentions.

(4) Conclusion. A short conclusion stating the precise relief requested.

(5) Certificate of Service. A certificate showing the service of the brief on all parties of record.

C. **Service of Brief.** At the time of filing the brief with the Court, one copy of the brief and any appendix shall be served on each party to the appeal.

D. **Cover of Brief.** The cover of the appellant's brief shall be blue; that of the respondent red; that of an intervenor or amicus curiae green; and that of any reply brief gray. The cover of a brief shall contain only the caption and the names, addresses, telephone numbers and e-mail addresses of counsel. This subsection shall not apply to briefs filed by pro se litigants.

2013 Revised 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. These deadlines provide a readily ascertainable time for the submission of the briefs. Statements of fact set forth in the briefs are binding upon the proponent of the statement. The format of the briefs is similar to that used in the South Carolina Appellate Court Rules. The requirements of subsection (D), which specify the colors to be used for the cover of the briefs, do not apply to briefs filed by pro se litigants. The original and one copy of each brief must be filed with the Court. A shorter time frame for the filing of briefs applies in DEW appeals, in accordance with S.C. Code Ann. § 41-35-750, which provides that DEW appeals must be heard in a summary manner.

Note to 2013 Amendments

This rule is amended to delete former Rule 37(E). Appellate briefs filed with the Court are no longer required to be bound.

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.

2009 Revised 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.

Note to 2013 Amendments

This rule is amended to provide that 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 ALC Rules of Procedure for appeals or for failure to comply with an order of the Court.

39. Oral Argument. The administrative law judge shall provide at least twenty (20) days notice of oral argument. The oral argument shall follow the procedure in Rule 218, SCACR. In the discretion of the administrative law judge, oral argument may not be required. Oral argument will ordinarily not be ordered by the Administrative Law Judge in appeals from the Office of Motor Vehicle Hearings or the Department of Employment and Workforce unless the proceeding involves a novel issue or a question of exceptional importance.

2013 Revised Notes

The administrative law judge, rather than the clerk of the Court, provides the notice of oral argument. Oral argument is discretionary with the presiding judge, and is ordinarily not ordered in appeals from the Office of Motor Vehicle Hearings or the Department of Employment and Workforce (DEW) unless the appeal involves a novel issue or a question of exceptional importance.

40. Opinion. The administrative law judge shall render a decision in a written order which shall be served on all parties and filed with the clerk of the Court. The administrative law judge may affirm any ruling, order or judgment upon any ground(s) appearing in the Record and need not address a point which is manifestly without merit. Judicial review of any decision of the Court shall be as provided in S.C. Code Ann. §1-23-610 (2005) (as amended). Motions for rehearing may be allowed in the discretion of the presiding administrative law judge. Any motion for rehearing must be filed within ten days of receipt of the order. The time for appeal is stayed by a timely motion for rehearing, and runs from receipt of an order granting or denying the motion. A motion for rehearing is not a prerequisite to filing a notice of appeal from the decision of the administrative law judge.

2013 Revised 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 order are no longer deemed denied. Motions for rehearing must be filed within ten days of receipt of the order, and are only allowed in the discretion of the presiding judge. Motions for rehearing are not a prerequisite to filing a notice of appeal.

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.

2009 Revised Notes

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

IV. REGULATION HEARING PROCEDURES

42. Request for Hearing on Proposed Regulation. An agency desiring a hearing on a proposed regulation pursuant to S.C. Code Ann. §1-23-111 (1976) (as amended) shall file with the clerk of the Court a transmittal form including a description of the subject matter of the regulation and a request that a hearing be scheduled. Within five (5) days the chief administrative law judge shall assign an administrative law judge to preside over the proceedings.

43. Documents Filed with Request for Hearing. 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;
(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;
(e) a suggested date for the hearing.

2009 Revised 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.

44. Scheduling of Hearing on Proposed Regulation. Within ten (10) days of receipt of the request for a hearing and the required documents, the administrative law judge to whom the matter is assigned shall notify the agency of the location, date, and time of the hearing to allow participation by all affected interests and shall advise the agency to issue the proposed Notice of Hearing for the Proposed Regulation for publication in the State Register.

2009 Revised 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 date scheduled for the hearing, the agency shall file a statement confirming whether or not there is a need for a hearing as required by S.C. Code Ann. §1-23-110 (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 not later than ten (10) days before the date scheduled for the hearing, 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 the Notice; 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.

Note to 2013 Amendments

Rule 45 is amended to provide that an agency proposing regulations must notify the Court whether a hearing is needed or not.

46. Powers of Administrative Law Judge. Consistent with law, the administrative law judge is authorized to do all things necessary and proper to the performance of the foregoing and to promote justice, fairness, and economy, including, but not limited to the power 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; and 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 S.C. Code Ann. §1-23-111 (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 its 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 regulations or a suggested modification, or may be conducted for other purposes, if material to the evaluation or formulation of the proposed regulations.

E. Opportunity for Presenting Statements and Evidence. Interested persons shall be given

an opportunity to present oral and written statements and evidence regarding the proposed regulations.

F. Questioning by Administrative Law Judge. The administrative law judge may question all persons, including the agency representatives.

G. Further Agency Evidence. The agency may present any further evidence that it considers appropriate in response to statements made by interested persons. Upon presentation by the agency, interested persons may respond thereto.

H. Receipt of Written Materials. The administrative law judge may permit any interested person to submit written materials after the close of oral testimony on such terms and conditions as permit all parties an opportunity to comment on subsequent submissions.

48. Report of Administrative Law Judge. After the time for the submission of all written materials, the administrative law judge shall issue a written report with findings as to the need and reasonableness of the proposed regulation, and if there is a finding of a lack of need or of reasonableness, may include suggested modifications to the proposed regulation.

49. Record of Proceeding. The hearing record for the proposed regulations shall be closed on the date established by the administrative law judge, but not later than twenty (20) days after the hearing ends. The full record shall include:

A. all pre-filed documents submitted to the Court;
B. copies of all publications in the State Register pertaining to these rules;
C. all written petitions, requests, submissions or comments received by the agency or the administrative law judge pertaining to the substance and jurisdiction of the proceeding on the proposed regulation;
D. the proposed regulation as submitted to the administrative law judge;
E. the transcript of the proceedings, if one has been prepared; and
F. the report of the administrative law judge.

50. Transcript. A transcript of the proceedings shall be prepared upon the order of the administrative law judge or the request of an agency or interested person. The party or person requesting the transcript shall pay for its production.

V. SPECIAL APPEALS

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

2009 Revised Notes

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

52. Computation of Time. In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default after the designated period of time begins to run is not included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a State or Federal holiday, in which event the period runs until the

end of the next day which is neither a Saturday, Sunday nor such holiday. When the period prescribed is less than seven days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation. A half holiday shall be considered as any other day and not as a holiday.

53. Filing.

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

(1) delivering the document to the Court; or

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

B. Paper Size. All papers filed with the Court shall be on letter-size (8 ½ by 11 inches) paper. Exhibits or copies of exhibits in their original form which exceed that size shall be reduced by photocopying or otherwise to letter-size so long as such documents remain legible after reduction.

54. Service. Any document, pleading, motion, brief or memorandum or other paper filed with the Court shall be served upon all parties to the proceeding. Service shall be made upon counsel if the party is represented, or if there is no counsel, upon the party. Service shall be made by delivery, or by mail to the last known address. Service is deemed complete upon mailing. Service that complies with Rule 5(b)(1), SCRCP, also shall satisfy this Rule.

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

A. a caption setting forth the title of the case and a brief description of the document;

B. the case docket number assigned by the Court;

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

2009 Revised Notes

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

56. Legibility of Documents. Any document, pleading, motion, brief or memorandum or other paper filed with the Court may be typewritten or handwritten, but in either event must be legible. In the discretion of the clerk 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 After Final Decision. Where applicable, the record of the contested case shall consist of:

A. All pleadings, motions, intermediate rulings and depositions filed;
B. All evidence received or considered;
C. A statement of matters judicially noticed;
D. All proffers of proof of excluded evidence;
E. The final order or decision which is subject to administrative review;
F. Any transcript taken of the testimony during the proceeding.

59. Notice of Appeal. The notice of appeal from the final decision to be heard by the Administrative Law Court shall be filed with the Court and a copy served on each party, including the agency, within thirty (30) days of receipt of the decision from which the appeal is taken. The notice shall be on the form prescribed by the Court pursuant to Rule 57 and shall contain the following information:

A. the name, address, SCDC number, and telephone number of the party requesting the appeal, and the name, address, and telephone number of the attorney or other authorized representative, if any, representing that party;
B. a brief factual basis for each expressly and specifically asserted constitutional violation;
C. a copy of the final decision which is the subject of the appeal and the date received;
D. a certificate showing the service of the notice of appeal on all parties.

Any notice of appeal which is incomplete or not in compliance with this rule or Rule 71 will not be assigned to an administrative law judge until all required information is received and any applicable filing fee is processed. Within forty-five (45) 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.

2009 Revised Notes

The notice of appeal must be on the Court's prescribed form and must be filed and served within 30 days of receipt of the order appealed from. The notice must contain the prescribed information and must be accompanied by a certificate 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, the party first noticing the appeal shall file an original brief within sixty-five (65) days after the date of assignment. Within eighty-five (85) days after the date of assignment, the respondent shall file an original brief in response. A reply brief may be filed within ninety-five (95) 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) 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 stated in question form. Broad general statements may be disregarded by the Court. Ordinarily, no point will be considered that is not set forth in the statement of issues on appeal.

(2) Statement of the Case. The statement shall contain a concise history of the proceedings, insofar as necessary to an understanding of the appeal. The statement shall not contain contested matters and shall contain as a minimum, the following information: the date of commencement of the action; the nature of the action; the

nature of the defense or response; the date and nature of the agency action appealed from; the date of service of the notice of appeal; the date of and description of any orders or proceedings in the agency as may have affected the appeal, or may throw light upon the questions involved in the appeal. Any matters stated or alleged in a party's statement shall be binding on that party.

(3) Argument. The brief shall be divided into as many parts as there are issues to be argued, and each such part shall bear an appropriate caption, followed by a discussion and citation of authority. A party may also include a separate statement of facts relevant to the issues presented for review, with reference to the record on appeal, which may include contested matters and summarize that party's contentions. Any facts stated or alleged in a party's argument shall be binding on that party.

(4) Conclusion. A short conclusion stating the precise relief requested.

(5) Certificate of Service. A certificate showing the service of the brief on all parties of record.

C. Service of Brief. At the time of filing the brief with the Court, one copy of the brief and any appendix shall be served on each party to the appeal.

2009 Revised Notes

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

61. Record on Appeal. The record on appeal shall consist of the transcript of the proceedings before the agency, if any, and the record of the contested case as described by Rule 58.

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

2009 Revised Notes

Rule 62 allows an administrative law judge to dismiss an appeal for failure to comply with any applicable rule of procedure, and to impose appropriate sanctions for inmate appeals which are frivolous or taken solely for the purpose of delay.

Note to 2013 Amendments

Rule 62 is amended to clarify that an administrative law judge may 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.

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

2009 Revised Notes

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

64. Oral Argument. In the discretion of the Administrative Law Judge, oral argument may not be required. Oral argument will ordinarily not be ordered by the Administrative Law Judge unless the proceeding involves a novel issue or a question of exceptional importance. If so ordered, at least twenty (20) days notice of oral argument shall be provided. The oral argument shall follow the procedure in Rule 218, SCACR.

65. Opinion. The Administrative Law Judge shall render a decision in a written order which shall be served on all parties and filed with the clerk of the Court. The Administrative Law Judge may affirm any ruling, order or judgment upon any ground(s) appearing in the Record and need not address a point which is manifestly without merit. The decision of the Administrative Law Judge is a final decision and motions for reconsideration will not be considered. Judicial review of any decision of the Court shall be as provided in S.C. Code Ann. § 1-23-610 (2005) (as amended).

2009 Revised Notes

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

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

2009 Revised Notes

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

VI. MISCELLANEOUS PROVISIONS

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

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

2009 Revised Notes

The South Carolina Appellate Court Rules may, in the discretion of the presiding administrative law judge, be applied in appellate proceedings before the Court to resolve questions which are not addressed by the Court's appellate rules.

Note to 2013 Amendments

The amendment to Rule 68 clarifies that the South Carolina Rules of Civil Procedure may only be applied in contested cases, and the South Carolina Appellate Court Rules may only be applied in appeals, in the discretion of the presiding administrative law judge.

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

2009 Revised Notes

Rule 69 provides for situations in which the procedural rules of the agency where the case arose differ from the ALC Rules. The Rule makes clear that the ALC Rules, rather than the rules of the agency, govern the proceedings once the Court acquires jurisdiction. Thus, questions of preliminary relief, content and form of pleadings, discovery and other procedural matters are resolved exclusively by the ALC Rules.

Note to 2013 Amendments

Rule 69 is amended to clarify that agency procedural statutes, regulations, and rules are inapplicable in proceedings before the Administrative Law Court, in accordance with S.C. Code Ann. § 1-23-650(C).

70. Judges Sitting En Banc.

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

B. Quorum and Presiding Judge. When the administrative law judges sit en banc, a majority of the judges constitutes a quorum. A concurrence of a majority of the judges sitting is necessary for a decision. The Chief Administrative Law Judge shall preside at all en banc proceedings and in his absence, the administrative law judge next senior in service and who is present shall preside.

C. Petition for Consideration En Banc. No later than forty-five (45) days after the assignment of a case by the Chief Administrative Law Judge to an administrative law judge, a party may suggest the appropriateness of consideration of a matter en banc by filing a petition with the clerk of the Court. No response to the petition shall be required unless ordered by the assigned judge or by a majority of the judges. The presiding administrative law judge in a case may also request en banc consideration at any time during the proceedings. After receipt of the petition or request, the clerk will immediately circulate to the administrative law judges a vote sheet with the petition seeking an en banc hearing attached. No vote of the judges need be taken to determine whether the cause should be heard en banc unless a judge, within ten (10) days of receipt of the vote sheet, notifies the clerk in writing of his request for a vote of the judges on the suggestion. If no poll is requested, the Chief Administrative Law Judge will issue an order which bears the notation that no judge requested a poll. If a poll is requested and the hearing en banc is granted or denied, the Chief Administrative Law Judge will issue an order reflecting the decision.

D. Procedure. En banc consideration in an individual case is limited to only the particular issue(s) of law which meet the criteria set forth in paragraph A of this Rule 70. Upon a majority of the administrative law judges ordering a matter to be considered by the judges sitting en banc, notice will be given to the parties of the issue(s) under consideration. The parties may be required to file briefs and may be allowed to present oral argument on the issue(s). After the hearing, the Chief Administrative Law Judge will assign the authorship responsibility for the opinion.

E. En Banc Consideration Interlocutory. En banc consideration of a matter of law in a contested case or appellate case is an interlocutory measure. It is dispositive of the limited

issue(s) addressed, but the decision is not final and conclusive until all factual issues and remaining legal issues in the contested case, or all issues in the appellate case, are resolved by the final order of the administrative law judge assigned to preside over the hearing in the case. Parties have no direct right of appeal from an en banc decision. Any appeal must follow the issuance of the final order on the merits of the case.

F. Effect of an En Banc Order. The issue(s) addressed in en banc decisions by the administrative law judges are binding upon all individual administrative law judges in all subsequent cases, unless a majority of the judges determine otherwise.

2009 Revised Notes

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

71. Filing Fee.

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

B. Request for Waiver. A party who is unable to pay the filing fee may request a waiver of the fee by filing a completed Request for Waiver 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. Request for Waiver forms shall be issued by the Clerk of the Court. If the filing fee is not waived, the party must pay the filing fee within ten days of the date of receipt of the order denying waiver of the filing fee. If the filing fee for a case is waived on behalf of a party, any motions filed by that party in that case are exempt from the motion fee as provided in Rule 71(D).

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

Case Type	Fee
Dept. of Corrections (3rd and subsequent filing per calendar year)	$25
DHEC–Health Licensing	$200
DHEC--Individual Septic Tanks	$100
DHEC–(All other, including OCRM, CON and NAD)	$500
Dept. of Health and Human Services	$25
Dept. of Insurance–Rate Cases	$500
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– Hunting/Fishing	$50
Dept. of Natural Resources– Coastal Fisheries	$50
DOR–Alcoholic Beverage License Applications	$150
DOR–Alcoholic Beverage License Violations	$150
DOR–Bingo Violations	$200
DOR–State Tax Cases (<$100,000 in controversy)	$150
DOR–State Tax Cases (>$100,000 in controversy)	$500
County Tax Cases (Residential & Personal Property)	$75
County Tax Cases (Commercial)	$350
Dept. of Social Services (Day Care Appeals)	$100
Dept. of Social Services (All Other)	$25
Dept. of Transportation	$200
SLED	$100
Setoff Debt Collection Act	$50
Requests for Injunctive Relief	$200
Other Contested Cases and Appeals (including cases from agencies not listed herein)	$150

D. Motion Fees. A fee of $50 will be imposed for the following motions filed with the Court:

(1) Motion for Summary Judgment
(2) Motion to Intervene
(3) Motion to Dismiss
(4) Motion for Injunctive Relief (in a pending case)
(5) Motion to Compel
(6) Motion for Reconsideration
(7) Second and subsequent Motions for Continuance

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

2010 Revised Notes

Rule 71 provides for a schedule of filing fees as authorized by law. The filing fee varies according to the type and complexity of the case. The fee is required for all requests for a contested case hearing, notices of appeal, or requests for injunctive relief except for those brought by the State of South Carolina or its departments or agencies. For those appeals brought pursuant to Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000), the fee applies only to the third and subsequent filings by an inmate during a given calendar year. If a party is unable to pay the filing fee, he may request a waiver of the fee by filing the prescribed form with the Clerk of the Court. 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.

Note to 2013 Amendments

Rule 71(A) is amended to provide that filing fees are non-refundable.

72. Sanctions for Frivolous Cases. If the presiding administrative law judge determines that a contested case, appeal, motion, or defense is frivolous or taken solely for purposes of delay, the judge may impose such sanctions as the circumstances of the case and discouragement of like conduct in the future may require.

2009 Revised Notes

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

Note to 2013 Amendments

Rule 72 is amended to provide that the presiding administrative law judge may sanction a party for interposing a defense which is frivolous or taken solely for purposes of delay.

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

2009 Revised Notes

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