

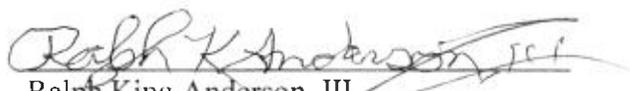
**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

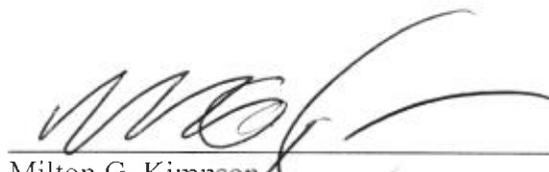
ORDER

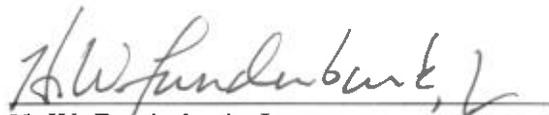
Pursuant to S.C. Code Ann. § 1-23-650 (Supp. 2018), the Administrative Law Court hereby adopts the attached amendments to its Rules of Procedure.

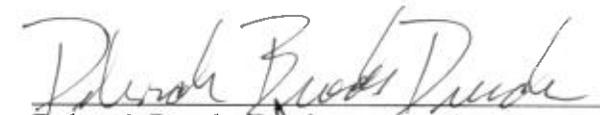
These amendments shall be submitted to the General Assembly as provided by S.C. Code Ann. § 1-23-650 and Art. V, §4A of the South Carolina Constitution and shall be effective ninety days after submission, unless disapproved.

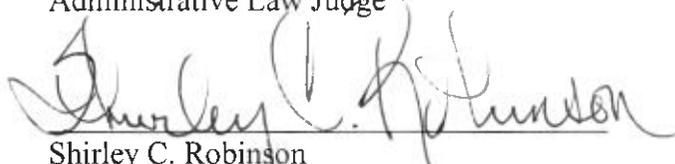
AND IT IS SO ORDERED.

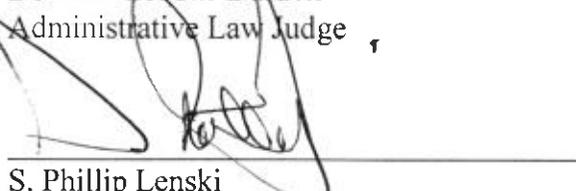

Ralph King Anderson, III
Chief Administrative Law Judge


Milton G. Kimpson
Administrative Law Judge


H. W. Funderburk, Jr.
Administrative Law Judge


Deborah Brooks Durden
Administrative Law Judge


Shirley C. Robinson
Administrative Law Judge


S. Phillip Lenski
Administrative Law Judge

Columbia, South Carolina
January 30th, 2019

2019 Proposed Amendments

ALC Rules of Procedure

Amend Rule 1 to delete part of the second sentence as follows:

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

Amend Rule 2(E) to refer only to the statutory definition of contested case:

2. Definitions.

- 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.~~

Amend Rule 4(C) to require that documents submitted to the Court be printed only on one side of a sheet of paper:

4. Filing.

- 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. All papers filed with the Court must be printed only on one side of a page, unless the document exceeds 30 pages.

Amend Rule 5 to add a provision that the date of an e-mail by the Court is the date of service:

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

Amend Rule 6(A) to provide that documents filed with the Court must not be stapled or bound:

6. Documents Filed with the Court.

A. Content of Documents. The clerk of the Court shall assign a docket number to each case. All documents filed with the Court shall be signed and contain:

1. a caption setting forth the title of the case and a brief description of the document;
2. the case docket number assigned by the Court;
3. the name, address, telephone number and e-mail address of the person who prepared the document.

Documents filed with the Court must not be stapled or bound together, except with a removable clip.

Amend Rule 8 to add a provision concerning requests for protection and to provide that the rule applies to all proceedings:

8. Right of Parties to Participate.

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

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

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

D. Request for Protection. An attorney or other person authorized to represent a party pursuant to these Rules who wishes to receive protection from the Court from having a case set for hearing on certain dates must file a separate written

request for protection with the assigned judge in each case the attorney or other representative has docketed with the Court.

Amend Rule 11(C) to provide that all cases filed under the Revenue Procedures Act, not just county tax cases, must be filed within thirty days of the date the written decision was mailed:

11. Request for a Contested Case Hearing.

- 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.~~ However, if 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.

Amend Rule 19(A) to clarify that the time for responding to motions and the time for submitting a reply to the response runs from the date of service:

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 service of the motion unless the time is extended or shortened by the administrative law judge. Any party may file a written reply within five (5) days of the filing service of a response, unless otherwise ordered by the administrative law judge.

Amend Rule 21(A) to delete the reference to Section 1-23-320, which no longer applies to proceedings before the ALC:

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, SCRPC, except that only the standard interrogatories provided by SCRPC 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, SCRPC; and no more than ten (10) requests to admit per party, including subparts under Rule 36, SCRPC. Unless otherwise provided by law, All discovery shall be completed within 90 days of the date of the Notice of Assignment. Upon motion for good cause shown or upon his own motion, discovery may be expanded or curtailed by the administrative law judge.

Amend Rules 25 and 26 to provide that the South Carolina Rules of Evidence govern questions of evidence and admissibility in proceedings before the Court:

25. Evidence.

A. ~~Governing Statute.~~ ~~S.C. Code Ann. §1-23-330 (2005) (as amended)~~ The South Carolina Rules of Evidence 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.~~

26. ~~[Reserved] 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.~~

Amend Rule 29(A) to delete Rule 29(A)(1), to renumber the remaining subparts of Rule 29(A), to delete superfluous language, and to refer to Rule 103, SCRE, regarding objections. Amend Rule 29(D) to delete the last sentence.

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)~~(1) The parties shall be given an opportunity to briefly present opening statements.

- ~~(3)~~(2) 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)~~(3) Each witness shall be sworn or affirmed by the administrative law judge or the court reporter and be subject to examination. In the discretion of the administrative law judge, witnesses may be sequestered during the hearing.
- ~~(5)~~(4) Parties have the right to introduce evidence on the points at issue and to cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, ~~to present evidence in rebuttal and to submit briefs.~~
- ~~(6)~~(5) All objections to procedure, admission of evidence or any other matter shall be timely made and stated on the record, in accordance with Rule 103, SCRE.
- ~~(7)~~(6) When all of the parties and witnesses have been heard, the parties shall be given the opportunity to present final arguments.
- ~~(8)~~(7) ~~Briefs and proposed findings of fact and conclusions of law~~ Proposed orders 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.~~

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, SCRPC, 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.~~

Amend Rule 36(A) to specify that, when a case is reassigned after the first notice of assignment is filed, the time frame for filing the Record on Appeal runs from the date the initial notice of assignment was filed.

36. Record on Appeal.

- A. Time for Service and Filing.** Within forty-five (45) days of the date of the notice of assignment to an administrative law judge, the agency with possession of the Record shall file an original and one (1) electronic copy of the Record with the Court and serve one (1) copy on each party to the appeal, unless the time for filing the Record is extended by the Administrative Law Judge assigned to the appeal. In appeals from decisions of the Department of Employment and Workforce, the Department must file and serve the Record within twenty (20) days of the date of the notice of assignment. In preparing the Record, the agency must comply with the provisions of Rule 6(B) regarding privacy protection. The time for filing the Record on Appeal is not tolled if the case is subsequently reassigned to another administrative law judge and runs from the date of the initial notice of assignment.

Amend Rule 36(D) to add requirements for the content of the title page of the Record on Appeal:

36. Record on Appeal.

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

Amend Rule 40 to delete the last sentence:

- 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.~~

Amend Rule 59 to provide that motions filed in inmate appeals, other than motions to dismiss filed by the agency, do not affect the time frames for filing the Record and briefs.

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

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

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

Amend Rule 60 to add subpart D, regarding multiple briefs filed by an appellant:

60. Briefs.

- A. **Time for Filing Briefs.** Unless otherwise ordered or stayed by the operation of Rule 59, the party first noticing the appeal shall file an initial ~~original~~ brief within ninety (90) days after the date of assignment. Within one hundred ten (110) days after the date of assignment, the respondent shall file an ~~original~~ brief in response. A reply brief may be

filed within one hundred twenty (120) days after the date of assignment. The initial principal briefs shall not exceed ten (10) pages and the reply brief shall not exceed five (5) pages. Motions to extend the time for filing briefs will only be granted in exceptional circumstances.

B. Content of Brief. Each brief shall contain:

- (1) **Statement of the Issues on Appeal.** A statement of each of the issues presented for review. The statement shall be concise and direct as to each issue and may be stated in question form. Broad general statements may be disregarded by the Court. Ordinarily, no point will be considered that is not set forth in the statement of issues on appeal.
- (2) **Statement of the Case.** The statement shall contain a concise history of the proceedings, insofar as necessary to an understanding of the appeal. The statement shall not contain contested matters and shall contain as a minimum, the following information: the date of commencement of the action; the nature of the action; the nature of the defense or response; the date and nature of the agency action appealed from; the date of service of the notice of appeal; the date of and description of any orders or proceedings in the agency as may have affected the appeal, or may throw light upon the questions involved in the appeal. Any matters stated or alleged in a party's statement shall be binding on that party.
- (3) **Argument.** The brief shall be divided into as many parts as there are issues to be argued, and each such part shall bear an appropriate caption, followed by a discussion and citation of authority. A party may also include a separate statement of facts relevant to the issues presented for review, with reference to the record on appeal, which may include contested matters and summarize that party's contentions. Any facts stated or alleged in a party's argument shall be binding on that party.
- (4) **Conclusion.** A short conclusion stating the precise relief requested.
- (5) **Proof of Service.** Proof of service of the brief on all parties of record.

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

D. Multiple Briefs. Only one initial brief and reply brief will be considered by the court unless the court, upon motion, has allowed the filing of an additional brief.