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. Proof 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. 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.

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.

2014 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 both a filing fee as provided in Rule 71, and proof 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 of the agency determination within thirty days of its issuance 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.

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 Prehearing Statement. 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 setting forth with particularity the issues in the contested case.

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Notes to 2014 Amendments

Rule 14 is amended to require that prehearing statements must set forth with particularity the issues for consideration in 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. Requests for preliminary or injunctive relief other than in a pending case shall be governed according to the procedures set forth in this section (II) for contested cases 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.

2014 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. Requests for preliminary or injunctive relief other than those made in a pending case are governed by the Rules of Procedure for contested cases.

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.

E. **Motions for Expedited Hearing.** All requests for an expedited hearing must be made by motion as provided in subsection (A) above and must be accompanied by a filing fee as provided in Rule 71.

2014 Revised Notes

Subsection (A) contains the requirement that motions be made at least thirty days before the contested case hearing. All motions filed with the Court must be accompanied by a filing fee as provided in Rule 71(D). Responses to the motion must be filed within ten days after the motion is filed, and replies must be made within five days after the response is filed. The presiding judge may extend or shorten any of these time frames. 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. Motions for leave to intervene are governed by Rule 20 rather than this rule. Requests for an expedited hearing must be made by motion and must be accompanied by a filing fee as provided in Rule 71.

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 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.

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.

2014 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 2016 Amendments

Rule 21(A) has been amended to change the triggering date for the discovery timeline from 90 days from receipt of the Notice of Assignment to 90 days from the date of the Notice of Assignment, and to delete an obsolete reference to "Request for Information."

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.

2014 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. The clerk will not sign a subpoena form which is incomplete or contains erroneous information. As officers of the Court, 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 adversely 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.

2014 Revised Notes

The administrative law judge may dispose of a contested case adversely to a defaulting party. Rule 23(B) also allows the administrative law judge to 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 documents 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.

Notes to 2014 Amendments

The 2014 amendments deleted obsolete references to 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.

2014 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 opposing party has ten days from the date the motion is filed to file a response to the motion. The administrative law judge must decide the motion within 30 days or it is deemed denied, but if an opposing party files a response to the motion, the 30 day time frame begins to run from the date the response is filed. 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.

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

A. All documents filed with or by the Court;

B. All evidence received or considered;

C. A statement of matters judicially noticed;

D. All proffers of proof of excluded evidence;

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

Notes to 2014 Amendments

The 2014 amendments deleted obsolete references to pleadings. Subsection (A) was amended to include documents filed by the Court as part of the record of the contested case, and former Subsection (E) was deleted because the final order of the Court is a document “filed by the Court” and is therefore included under Subsection (A). Former Subsection (F) has been redesignated as Subsection (E).

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(C) (2005) (as amended). The cost of preparing a copy of a transcript shall be borne by the party requesting the transcript.

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

33. **Notice of Appeal.** 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 mailing 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(5). 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. 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 the filing fee is processed.

2014 Revised Notes

The notice of appeal must be filed with the Court within thirty days of receipt of the decision being appealed. The notice of appeal should include a general statement of the issues on appeal, but the statement of issues in the brief shall be considered the final statement of the issues on appeal. The notice of appeal must include the 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 and proof of service of the notice on all parties. Any incomplete notice of appeal, or a notice not accompanied by the filing fee, will not be assigned to an administrative law judge until all required information and fees are received. Notices of appeal in Department of Employment and Workforce cases must be filed within 30 days of the date of mailing of the agency decision in accordance with the applicable statute.

34. **A.** **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;